

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	Blue Crest Commodities Pvt. Ltd.	INZ000050632

In the matter of National Spot Exchange Limited (NSEL)

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated April 26, 2019, submitted by the Enquiry Officer in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008, as it stood at the relevant point of time, prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021 (hereinafter referred as “**Intermediaries Regulations**”), wherein the Designated Authority (hereinafter referred to as “**DA**”), based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that the registration of Blue Crest Commodities Pvt. Ltd. (hereinafter referred to as “**Blue Crest/ Noticee**”) as a stock broker may be cancelled.
2. The aforesaid Enquiry Report was submitted pursuant to an enquiry proceeding initiated against the *Noticee* by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) based on the findings that Blue Crest, as a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”), has traded/facilitated in the trading of the ‘*paired contracts*’ at the exchange platform of NSEL during the period September 2009 to August 2013 (hereinafter referred to as “**relevant period**”) which were in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) and the conditions prescribed in the Government of India Notification dated June 05, 2007 (hereinafter referred to as “**2007 Exemption Notification**”). Further, it was observed that continuance of the Certificate of Registration of the *Noticee* as a stock broker (having

Registration No. INZ000050632) is detrimental to the interest of the Securities Market and that the *Noticee* is no longer a ‘fit and proper person’ for holding the Certificate of Registration No. INZ000050632 as a stock broker in the Securities Market which is one of the conditions for grant/holding/continuance of registration, in terms of regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as “**Intermediaries Regulations**”).

3. In view of the aforesaid finding of facts, a DA was appointed to enquire into and to submit a report pertaining to the aforesaid acts of the *Noticee* and into the possible violations of regulations 5(e), 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, allegedly committed by the *Noticee*.
4. The DA issued a show cause notice dated September 24, 2018 to the *Noticee* under regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) asking the *Noticee* to show cause as to why appropriate recommendation should not be made against it under regulation 27 (as applicable at that time) of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”). In response to the same, the *Noticee* vide letter dated October 12, 2018 submitted its reply, seeking certain information/ documents, from the DA. I note from the material available on record that vide letter dated March 13, 2019, the DA provided the relevant documents to the *Noticee* and granted further time of 15 days to file written submissions in the matter. Accordingly, the *Noticee* vide letter dated March 27, 2019 submitted its response to the show cause notice issued by the DA.
5. On the basis of the aforesaid factual details, material available on records and after considering the reply filed by the *Noticee*, the DA has, *inter alia*, observed and made the following recommendation in the report:

“28. In view of the foregoing, after taking into consideration all the facts and circumstances of the case, I am of the view that the Noticee is not a ‘fit and proper person’ in terms of regulation 5(e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of the provisions of regulation 27 of the Intermediaries Regulations read with section 12(3) of the SEBI Act and regulation 27(iv) of the Brokers Regulations, I hereby recommend cancellation of the certificate of registration granted to the Noticee i.e. Blue Crest Commodities Pvt. Ltd., [SEBI Regn. No.: INZ000050632] as a commodity derivatives broker.”

6. After considering the Enquiry Report, a Post Enquiry Show Cause Notice dated September 11, 2019 (hereinafter referred to as “**SCN**”) enclosing therewith the Enquiry Report of the DA was issued to the *Noticee* under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration as recommended by the DA including passing of appropriate direction, should not be taken against it in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time), as the Competent Authority considers appropriate. The SCN further advised the *Noticee* to submit its reply, if any within 21 days of receipt of the said SCN. In response to the said SCN, the *Noticee* vide letter dated October 14, 2019 filed its reply. Pursuant to the same, the *Noticee* was granted an opportunity of hearing on November 25, 2019 before the then Competent Authority, i.e., Whole Time Member (hereinafter referred to as the “**WTM**”) of SEBI which was re-scheduled to December 09, 2019 on the request of the *Noticee*. The *Noticee* vide its letter dated November 28, 2019 requested inspection of certain documents and the *Noticee* was provided inspection of the relevant and relied upon documents in the present proceedings, on January 2, 2020.
7. While 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 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 back to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

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

9. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the *Noticee* before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as "**SSCN**") and collectively SCN, second SCN and SSCN referred to as "**SCNs**") provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of this SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been sent to the *Noticee* through *Speed Post Acknowledgement Due* (for short '**SPAD**') vide letter dated October 11, 2022. Further, the scanned copy of the SSCN was served upon the *Noticee* vide email dated October 17, 2022 and proof of delivery is available on record. In response to the said SSCN, the *Noticee* vide its letter dated November 2, 2022 filed a reply in the matter. Pursuant to the reply of the *Noticee*, an opportunity of personal hearing was granted to the *Noticee* on November 3, 2022 through Webex. I note that the said hearing was re-scheduled on the request of the *Noticee* and was adjourned to December 1, 2022. The hearing was further re-scheduled on account of administrative exigencies to December 2, 2022.
10. On the scheduled date of hearing, Advocate Rishika Harish along with Advocate Suyash Bhandari (hereinafter referred to as "**Authorized Representatives**") appeared through video conferencing, on behalf of the *Noticee* and requested time to file reply to the SSCN. As requested, the *Noticee* was granted time of three weeks to file submissions and the hearing was adjourned to January 12, 2023. Accordingly, the *Noticee* vide letter dated December 22, 2022 filed its response to the SSCN. Pursuant to the same, the hearing, as scheduled, was held on January 12, 2023 and the Authorized Representatives of the *Noticee* appeared through video conferencing and made submission in line with the reply dated December 22, 2022. During the course of hearing, details pertaining to the due diligence done by the *Noticee* prior to taking membership of NSEL, complaints filed against the *Noticee*, and the present status of the business carried out by the *Noticee* were sought from the *Noticee* and the *Noticee* vide its letter dated January 20, 2023 made submissions regarding the same.
11. Under the circumstances, I observe that the principles of natural justice have been adequately adhered to in the present matter. Therefore, the matter is fit to be proceeded

with, on merit, based on the materials contained in the SCNs as well as the replies of the *Noticee* available on record and the oral submissions made by the *Noticee* during the personal hearing.

12. The written submissions filed by the *Noticee* vide letters dated March 27, 2019, October 14, 2019, February 6, 2020, December 22, 2022, January 20, 2023 and the oral submissions made during the course of the personal hearing held on January 12, 2023, are summarized hereunder:

- i. The *Noticee* denies all the allegation raised in the SCNs;
- ii. SEBI does not have power and jurisdiction to regulate the spot market in India and has power to only regulate commodities market which is different from spot market. The said contention can also be corroborated by the “*Report of Expert Committee on Integration of Commodity Spot and Derivatives Market*” wherein it has been observed that spot contracts for commodities are not within the ambit of SCRA and SEBI could be made the regulating authority of the spot market after making necessary amendments under the SCRA. Till date no competent authority having jurisdiction has made any adjudication proceedings against the *Noticee* for violation of the provisions of any law including FCRA and unless there is an adjudication against the *Noticee* for violation of provisions of law, the integrity of the *Noticee* cannot be questioned by SEBI. Pursuant to the merger of SEBI with FMC, SEBI has power only to regulate the commodities market and not the spot market;
- iii. In terms of regulation 24(2) of the Intermediaries Regulations, the DA has to be appointed by the Executive Director and not the Whole Time Member, as has been done in the present proceedings. If a procedure has been laid down to execute a particular task, the said procedure must be followed to execute that task;
- iv. The notice issued to the *Noticee* by the DA was vague and illegal as the same did not provide details relating to the allegation levied in the notice, it did not show how the *Noticee* has participated/ facilitated ‘Pair Contracts’ or how the *Noticee* was in cahoots with NSEL, etc. Accordingly, the notice was not specific and did not show how the charges levied have been committed by the *Noticee*;
- v. The *Noticee* has not been provided with the relevant documents in the matter as is required under regulation 25(3) of the Intermediaries Regulations;
- vi. As per Intermediaries Regulations, the ‘designated member’ can approve initiation of proceedings only when the person registered with SEBI has failed to comply

with any conditions subject to which the certificate of registration was granted to it or contravenes any provision of securities laws. Thus, the relevant provisions are not applicable on the defaults committed by an entity prior to grant to certificate of registration, as is the case in the present matter;

- vii. The *Noticee* was granted certificate of registration on May 23, 2016 which shows that the *Noticee* was a '*fit and proper person*' as on May 23, 2016 and as per the doctrine of estoppel, SEBI is now estopped from changing its stance;
- viii. The onus is on SEBI to prove that the *Noticee* has committed violation as stated in the notice on the basis of documents and material collected during the investigation and the *Noticee* and it cannot ask the *Noticee* to prove the allegations and supply documents/ material. Since it is SEBI which has alleged that the *Noticee* has participated/ facilitated in paired contracts, the onus of proof/ burden of proof is also upon SEBI to prove the said allegation. The *Noticee* has not been provided with details of the order log, investigation report or even the excerpt of the report related to the *Noticee*;
- ix. Even if it is assumed that the *Noticee* has traded in 'paired contracts', the *Noticee* cannot be held liable solely on the basis of trading in 'paired contracts', in absence of any evidence showing collusion/ malice on the part of the *Noticee*;
- x. It is a legitimate expectation of a broker that if a product is introduced by the Exchange, the same must be legal and valid. A broker cannot be suspicious of the Exchanges and assume that the products introduced by the Exchange are illegal;
- xi. The commodities contracts, including the paired contracts, were introduced by the Board/ Management of NSEL with the prior concurrence of NSEL and thus the *Noticee* was of the view that the same were legal and genuine;
- xii. The *Noticee* was trading in the commodities including alleged paired contracts on behalf of its clients as the said contracts were specified by Board of NSEL;
- xiii. The contracts are launched by the Exchange and the clients undertake the trades and the brokers only act as an agent therefore the liability, if any, cannot fastened upon the brokers;
- xiv. To hold a stock broker liable, it must be proved that the broker participated in the illegal contracts knowingly and merely executing trades on behalf of clients will not make the brokers liable;

- xv. The *Noticee* cannot be held liable until and unless the clients who actually traded in paired contracts are held liable as mischief done by the clients of the *Noticee* is a prerequisite to prove the alleged mischief done by the *Noticee*;
- xvi. Discontinuing the business is a serious charge which will cause loss to the business of the *Noticee* and will cause irreparable damage to the reputation of the *Noticee*;
- xvii. Right of hearing is an inalienable right which is also embodied as a principle of 'rule of law' guaranteed by the Constitution of India itself and therefore personal hearing has to be provided by the statutory authority as a matter of right;
- xviii. The *Noticee* was not provided an opportunity of personal hearing before the DA. The right of fair hearing is an inalienable right which embodied as a 'rule of law' guaranteed by the Constitution of India and merely because a decision;
- xix. Until September 2015, no rules or regulations were prescribed by any statutory authority as to the conduct of business as a commodity broker at NSEL and even if it is presumed that FCRA was applicable, Intermediaries Regulations were not a part of it. Further, the *Noticee* applied for registration on October 1, 2015 and therefore there cannot be any enquiry with respect to previous dealings/ transactions of the *Noticee*, prior to that;
- xx. No action was taken against the *Noticee* by FMC, the then regulator of the spot markets in India for the relevant period between September 2009 to August 2013 and even SEBI has not initiated any action under the repealed FCRA Act;
- xxi. The Ministry of Finance, Department of Economic Affairs vide its letter dated November 20, 2015 had clearly advised that SEBI is not expected to deal with the matters which were not dealt with by erstwhile FMC and since spot market/ ready delivery contracts were not regulated by FMC, SEBI is not expected to take upon itself any regulatory function with regard to such market;
- xxii. The Enquiry and the Enquiry Report are ultra vires as the scope of enquiry conducted by SEBI is beyond the scope of FCRA. SEBI has initiated proceedings under the SEBI Act/ SEBI Regulations instead of initiating the proceedings for the alleged violations of the provisions of FCRA which is in contradiction with Section 29A(d) of the FCRA;
- xxiii. The *Noticee* has a good reputation in the market and always carried out his work with utmost care and due diligence;

- xxiv. Since in the present matter, the conduct of the broker prior to its registration was not regulated by SEBI, the case of *Jermyn Capital*¹ cannot be applied upon by the DA and SEBI cannot initiate any proceedings for the actions not under its regulatory remit;
- xxv. Since NSEL was not recognized as a stock exchange under the SCRA at the time of insertion of section 28A in FCRA, the provisions of regulation 9(b) of Brokers Regulations cannot be attracted in event of breach of its rules, regulations and bye laws by its members;
- xxvi. As regard the allegation of violation of regulation 9(f), Clause A(1) and A(2) of the Schedule II of the Broker Regulation, no competent authority has determined that the conduct of the *Noticee* had been non-confirmatory to the requirements of the high standards of integrity, promptitude and fairness or the *Noticee* has acted without due skill, care and diligence while in the conduct of its business;
- xxvii. As regard the illegality of paired contracts, the DA has failed to acknowledge that the finality of the paired contracts is admittedly sub-judice and therefore the matter should not be proceeded with till the matter attains finality;
- xxviii. The *Noticee* has not been made a party to the observations of Forward Markets Commission, Hon'ble Bombay High Court and the economic Offences Wing and therefore the same cannot be preferred against the *Noticee*. The DA has based its observations on *in rem* observations which do not specifically deal with the conduct of the *Noticee* and cannot be taken into consideration;
- xxix. The interim report of the EoW contains the details of the payout obligations by NSEL and NSEL vide letter dated December 5, 2018 has communicated the details of the outstanding receivables in the alleged pared contracts but the *Noticee* was not provided with the details when it sought documents and thus the same cannot be relied upon;
- xxx. As per the report of the EoW, the scam would be difficult to occur continuously for 3 years without participation or gross negligence of large brokers but the *Noticee* is a small commodity derivative broker and had none to negligible revenue from executing trades on NSEL platform. The *Noticee* has not received from NSEL any charges collected from *Noticee's* clients and it has not entered into any agreement to finance the transactions entered into by its clients;

¹ 2007 74 SCL 246 SAT, Also available at - <https://indiankanoon.org/doc/1511076/>

- xxxi. The term 'paired contracts' was not defined by NSEL Bye laws and was later coined by the authorities for easy reference and the same has no legal reference. The buy and sell orders were given at different time and different price and there was no relation between the short period contract and long period contract;
- xxxii. The revenue earned by the *Noticee* was negligible and should be seen in conjunction with other brokers. Further, the specific trades of the *Noticee* have not been provided in order to determine the alleged role of the *Noticee* and the extent of the alleged participation;
- xxxiii. Further, non-action of Central Government for six years after the exemption gave an impression to the public at large, that the trading at NSEL was in consonance with the exemption granted by the Central Government;
- xxxiv. FMC was regarded as regulator of NSEL from February 6, 2012 and weekly working reports were being submitted by NSEL to FMC and neither the FMC nor the government had prior to 2013, initiated any scrutiny or enquiry in the working of NSEL;
- xxxv. There has been no inquiry/ proceedings against the clearing banks or the board of NSEL or the board of FMC or the 800 brokers alleged to be a part of NSEL and in absence of the same, holding the *Noticee* liable who merely executed the trades on instructions of its clients is against the principles of natural justice;
- xxxvi. The 'paired contracts' were neither formulated nor promoted nor approved by the *Noticee* but were formulated and approved by NSEL;
- xxxvii. It was the responsibility of NSEL/ Clearing Member to verify the commodities in the warehouses and further, the execution of trades was executed on anonymous electronic trading platform and the counterparty cannot be identified at the time of execution of transaction;
- xxxviii. The *Noticee* had no role to play in issuing warehouse receipts in pursuance of the alleged paired contracts;
- xxxix. The *Noticee* should be given a cross-examination of the author of the reports of the EoW and FMC in order to determine the veracity of the observations in the report specifically pertaining to the *Noticee*, if any;
- xl. The *Noticee* had a very limited role in any trading done at NSEL as the *Noticee* was only an agent of its clients and entered into trades only on their express instructions;

- xli. The clients approached the *Noticee* on the basis of their prior individual understanding and desire and the *Noticee* did not promote any product or induce the clients;
- xlii. The interim EoW report was in the nature of investigation report dealing with the role of brokers in NSEL scam and the same cannot be relied upon in the present matter as it does not contain specific allegations against the *Noticee*. Further the *Noticee* neither induced the investors to trade in paired contracts, nor financed its clients for the same;
- xliii. Reliance cannot be placed on the letter dated December 5, 2018 submitted by NSEL to SEBI which contains the list of brokers with outstanding receivables on their trades until and unless the *Noticee* has a chance of cross-examining the author of the said letter;
- xliv. The fact that the Competent Authority has sought additional information from the *Noticee* during the course of hearing itself corroborates that there is no basis to proceed against the *Noticee* and the Enquiry Report submitted by the DA has no basis. The same is also in violation of regulation 27 of the Intermediaries Regulations which does not provide for reliance on any other document or information after submission of the Enquiry Report by the DA and thus the Competent Authority is barred from relying upon the additional data sought from the *Noticee* as well as considering the additional documents relied upon and provided to the *Noticee* vide SSCN dated October 11, 2022;
- xlvi. Merely because an entity was a trading member of an Exchange and had done/ facilitated the trades on the platform, it cannot be alleged that the entity was in close association with the Exchange;
- xlvi. The Intermediaries Regulations were amended after the submission of the Enquiry Report by the DA and since the amended regulations were not considered by the DA, they cannot be considered by the Competent Authority either. Accordingly, the fresh material issued to the *Noticee*, which was not available for consideration of the DA, cannot be relied upon in the present matter;
- xlvi. While in the SAT Order dated June 9, 2022, the matter was remanded for fresh consideration and SEBI was at liberty to rely upon additional documents, nothing of that sort is applicable in the present case and thus, reliance cannot be placed on additional material after submission of the Enquiry Report;

- xlvi. Filing of a mere complaint against the *Noticee* cannot be a ground to disqualify the *Noticee* as the same would be in violation of the principle that a person is considered innocent until proven guilty;
- xlix. In order to preserve the clients from shifting their business to other brokers the *Noticee* took registration as Trading Member of NSEL;
 - i. With participation of government companies and/ or government backed federations such as Cotton Cooperation of India Limited, Food Corporation of India Limited etc., there was no straw of doubt left as regard the legality of the products and business of NSEL;
 - ii. The *Noticee* was not a privy to the 'paired contracts' and while the said contracts were being traded from 2009-2013, there was regulatory intervention by the Ministry of Consumer Affairs and thus there was no basis for the *Noticee* to doubt the legality of the paired contracts;
 - lii. There are no complaints against the *Noticee* by any of its clients or investors with respect to its operations at NSEL;

CONSIDERATION OF ISSUE AND FINDINGS

- 13. I have carefully perused the SCN, the Enquiry Report, the replies dated March 27, 2019, October 14, 2019, February 6, 2020, December 22, 2022 and January 20, 2023 and the oral submissions made by the *Noticee* during the personal hearings held on December 2, 2022 and January 12, 2023 and other materials/information as available in the public domain and also made available to the *Noticee* SSCN dated October 11, 2022. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN/SSCN, the issue which arises for my consideration in the present proceedings is whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
- 14. Before coming to the merit of the case, it is relevant to deal with the contention of the *Noticee* that the power to appoint a Designated Authority (DA) has been vested in the Executive Director while in the instant case the DA has been appointed by the Whole Time Member of SEBI thereby raising a concern about the irregularity in the appointment of DA. In this regard, I note that the Section 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order, 2015 specifically provides that, "*The powers 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, in presence of a valid

delegation conferred upon by the statute, I find that the *Noticee's* challenge to the appointment of DA by the Whole Time Member of SEBI, who is an authority higher in grade, rank and position to the Executive Director of SEBI, is devoid of any merit.

15. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the laws, which are alleged to have been violated by the *Noticee* and/or are referred to in the present proceedings. The same are reproduced below for ease of reference:

THE SEBI ACT, 1992

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

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

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

THE STOCK BROKERS REGULATIONS, 1992

Consideration of application for grant of registration.

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

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

Conditions of registration.

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

[See regulation 7]

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

- (a) *the competence and capability in terms of infrastructure and manpower requirements;*
and
(b) *the financial soundness, which includes meeting the net worth requirements.*

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

- (a) *the applicant or the intermediary;*
(b) *the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
(c) *the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

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

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

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

- (a) *integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) *the person not incurring any of the following disqualifications:*
 - (i) *criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
 - (ii) *charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
 - (iii) *an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
 - (iv) *recovery 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."*

Recommendation of action

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

- (i) disposing of the proceedings without any adverse action;*
- (ii) cancellation of the certificate of registration;*
- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the noticee;*

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

Order.

27. (5) *After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.*

16. Admittedly, prior to the merger of FMC with SEBI (w.e.f. 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, after the merger of FMC with SEBI, a commodity derivatives broker is required to mandatorily have a certification of registration from SEBI in case it is desirous to remain associated with the Securities Market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the *Noticee* submitted an application to be registered as a Stock Broker and was subsequently registered as a broker *w.e.f.* May 23, 2016 and since then it has been acting as a market intermediary registered with the SEBI.

Scope of the present proceedings vis-à-vis order passed by the Hon'ble SAT on June 09, 2022

17. As noted above, taking cognizance of the order passed by the Hon'ble SAT on June 09 2022 (hereinafter referred to as “**SAT Order**”) in NSEL matters, a SSCN dated October 11, 2022 *inter alia* enclosing a copy of the SAT Order was issued to the *Noticee* calling upon the *Noticee* to show cause as to why the following information/material along with the Enquiry Report dated June 28, 2019 should not be considered against it for determining whether the *Noticee* satisfies ‘fit and proper person’ criteria as laid down under Schedule II of the Intermediaries Regulations:
 - a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing (**EOW**);
 - b. First Information Report (**FIR**) dated September 28, 2018; and
 - c. Amended Schedule II of the Intermediaries Regulations.
18. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon'ble SAT which consequently led to issuance of the aforesaid SSCN to the *Noticee* in the present matter:

- a. The observations of the Hon'ble 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. The 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 (for short "**MPID Act**") (*NSEL vs. State of Maharashtra*⁴) cannot be relied upon, as in a subsequent Writ Petition⁵ moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has 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 NSEL petition could not be relied upon as they were preliminary observations and such observations do 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 utilized to judge the reputation, character or integrity of NSEL.
- c. The 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*⁶, 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 on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.
- e. Effect of SFIO Report under the Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.

² Writ Petition No. 2743 of 2014, Also available at - <https://indiankanoon.org/doc/66704740/>

³ (2019) 18 SCC 401, Also available at - <https://indiankanoon.org/doc/169098295/>

⁴ Writ Petition No. 1403 of 2015, Also available at -

<https://bombayhighcourt.nic.in/generatenewauth.php?bhcpa=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9qdWRnZW1bnRzLzIwMTUvJmZuYW1lPUNSV1AxNDZMTUucGRmJnNtZmxhZz1OJnJqdWRkYXRIPSZ1cGxvYWRkdD0wMS8xMC8yMDE1JnNwYXNzcGhyYXNIPTA5MDIyMzEyMzU0Ng==>

⁵ MANU/MH/2309/2019, Also available at - <https://indiankanoon.org/doc/178307788/>

⁶ Criminal Bail Application No.1263 Of 2014, Also available at -<http://www.nationalspotexchange.com/HC-order.pdf>

- f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***⁷ and ***Mukesh Babu Securities vs. SEBI***⁸ 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 Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
 - g. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
 - h. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and NSEL. This was overlooked by SEBI.
 - i. 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.
19. It is also noted from the SAT Order that the matter was remanded back to SEBI, taking into consideration the contention made by the counsel appearing on behalf of SEBI that there was additional material available, which had come into existence after the SEBI orders, based on which the findings in the said order could be sustained. The Hon'ble Tribunal, taking into consideration the submissions made on behalf of SEBI, held 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.”

⁷ Appeal No. 26 of 2006, decided on September 06, 2006, Also available at - <https://indiankanoon.org/doc/1511076/>

⁸ Appeal No. 53 of 2007, decided on December 10, 2007, Also available at- <https://indiankanoon.org/doc/129504/>

20. Before moving forward to consider the matter on merits and test the compliance of the *Noticee* with the '*fit and proper person*' criteria, on the basis of the additional material that has been brought on record post the SAT order (as detailed at paragraph 17 above), the background facts necessary for the present proceedings are narrated in brief, hereunder:
- i. The *Noticee*, Blue Crest Commodities Pvt. Ltd., is a commodity derivatives broker registered with SEBI having Registration No. INZ000050632 with effect from May 23, 2016 and is currently a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**").
 - ii. NSEL was incorporated in May 2005 as a Spot Exchange *inter alia* with a purpose of developing an electronic Spot Exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification, granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia* including "*no short sale by the members of the exchange shall be allowed*" and "*all outstanding positions of the trades at the end of the day shall result in delivery*".
 - iii. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL had introduced the concept of '*paired contracts*' in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
 - iv. 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 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 NSEL in the prescribed reporting

formats. After analyzing the trade data received from 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 NSEL platform were in violation of the provisions of the FCRA and also in violations 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 NSEL, from the purview of the FCRA.

21. From the perusal of the FMC Order in respect of the ‘paired contracts’, which were traded on 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 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 NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of 2007 Exemption Notification.

22. Thus, I note that NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short “**MCA**”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906 (E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration traded on NSEL subject to certain conditions which, *inter alia*, included that ‘*no short sale by members of the NSEL shall be allowed*’ and that all ‘*outstanding positions of the*

trade at the end of the day shall result in delivery'. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. 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. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the SCN are reproduced as under:

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

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

24. It is therefore, clear that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed 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 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. It is therefore, noted that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of “forward contract” under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. Therefore, even going by the interpretation adopted by FMC, what is beyond doubt is 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.

25. At this stage, it is also pertinent to refer to the judgment of the Hon’ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*⁹ (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), wherein it *inter alia* held that:

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

26. It is further pertinent to refer to the judgment dated April 22, 2022 passed by the Hon’ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd.*¹⁰ (hereinafter referred to as “**MPID matter**”), wherein the Hon’ble Supreme Court while drawing reference to the presentations made by NSEL in respect of the ‘paired contracts’ has *inter alia* held that:

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

⁹ (2019)18 SCC 401. Also available at <https://indiankanoon.org/doc/169098295/>

¹⁰ Civil Appeal No. 2748-49 of 2022. Also available at <https://indiankanoon.org/doc/184205229/>

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 NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was 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 NSEL and the contents of the publicity material and other investor resources. In this regard, it can be noted that 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 judgments of the Hon’ble Supreme Court go into abundant detail 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 naked short sales at that - the commodities to back such sales were not available at the designated warehouses of NSEL.
30. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the *Noticee* while facilitating such transactions for its clients and traded in its proprietary accounts was under the *bonafide* belief that the ‘*paired contracts*’ were actually spot contracts in commodities. Or can it be said that the very fact that ‘*paired contracts*’ were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the *Noticee* should have been aware that such a product was far removed from the spot trading in commodities which was permitted on NSEL’s platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was 16% across all commodities

irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.

31. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the *Noticee* when these products were first offered by NSEL. With the material on record, especially those summarized at paragraphs 25 and 27, it is further clear that any prudent person (including the *Noticee*) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had a trappings of a financial product which offered fixed and assured returns, as the Hon'ble Supreme Court has already held.
32. As recorded in the SSCN, it is not in dispute that SEBI has filed a complaint dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the *Noticee*, with EOW, Mumbai. On the basis of this complaint, subsequently, an FIR dated September 28, 2018 came to be registered with the MIDC Police Station, Mumbai, against the *Noticee*, which is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*.
33. In the background of the aforesaid discussion and deliberation pertaining to '*paired contract*' as captured in the preceding paragraphs, I now move on to examine whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
34. In this context, I note that the *Noticee* in its reply date October 14, 2019 has, *inter alia*, submitted that "81. In absence of the same, holding the broker responsible who had *merely executed the instructions of its clients in normal course of business* is against the principles of natural justice". The *Noticee* in its reply dated March 27, 2019 has also submitted that "68. The *Noticee* was trading in the commodities contracts including alleged paired contracts on behalf of its clients as the said contracts were the contracts specified by the Board of NSEL for trading on the exchange".
35. At this juncture, I deem it important to note that the *Noticee* has submitted that the *Noticee* "*...is not accepting that it has traded in the alleged illegal pair contracts launched by NSEL, but for sake of arguments stated below, has just assumed that it has traded in the alleged 'pair contracts' launched by NSEL*". I am of the considered view that such a caveat, without any material to defend the position is superfluous and that there is sufficient material on record to establish that the *Noticee* had indeed traded/ facilitated the trading in the '*paired contracts*'. I note from the records that, the *Noticee* has not provided any explanation to the observation made in the EoW Report wherein, as on September 19, 2013, NSEL had a payout obligation against the *Noticee* and the default amount of the clients who traded through the *Noticee* was

Rs.9,41,11,749. Further, the *Noticee* has not presented any evidence to rebut the information as contained in NSEL letter dated December 5, 2018 which provided the details of the outstanding receivables in the alleged illegal forwards contracts for the *Noticee*. The details relevant to the *Noticee* are as under:

S.No.	Client Name ¹¹	Client Code	Outstanding Amount
1	A.* S***** P***** Limited	A004	1,33,38,456/-
2	B** E***** P***** Limited	B004	11,35,800/-
3	K***** K*****	K001	41,73,000/-
4	M***** M**** P***** Limited	M010	26,31,850/-
5	N***** K*****	N001	98,87,325/-
6	N*** J****	N005	20,26,200/-
7	P * * C***** P***** Limited	P008	34,13,340/-
8	R*** K*****	R007	66,48,000/-
9	S***** K*****	S001	26,70,488/-
10	S. *. O** T***** P***** Limited	S012	1,37,62,500/-
11	S. *. D***** P***** Limited	S017	16,51,500/-
12	S***** M***	S018	9,46,500/-
13	S**** S***** F****	S021	21,35,100/-
14	S***** V***** P***** Limited	S022	1,07,89,770/-
15	S***** F****	S023	16,01,325/-
16	S**** A*** F***** P***** Limited	S027	11,35,800/-
17	T***** M***	T004	4,91,295/-
18	U** D*** F****	U003	14,23,350/-

¹¹ The names of the clients of *Noticee* have been masked and only their initials have been used in the interest of customer privacy.

19	Blue Crest Commodities Pvt. Ltd.	-	1,42,50,150/-
Total			9,41,11,749/-

From the above table, I observe that the *Noticee* had traded/ facilitated the trading in ‘*paired contracts*’ for 18 clients and the *Noticee* also engaged in proprietary trading. The *Noticee* had contended that the copy of NSEL letter dated December 5, 2018 and the interim EoW Report was not provided to the *Noticee*. In this regard, I note from the minutes of the inspection of documents dated January 2, 2020 that a copy of the said letter dated December 5, 2020 along with the relevant portion of its annexures and a copy of the interim EoW Report etc have been provided to the *Noticee*. Therefore, I see no merit in the said contention of the *Noticee*.

36. The *Noticee* has also failed to adduce any evidence contrary to the fact that the name of the *Noticee* was appearing in NSEL Circulars dated December 16, 2014 and March 10, 2015 which contained the details of the payout made to the brokers vide special payout. The *Noticee* has also failed to address the fact that a special payout of Rs. 7,05,518 was made to the *Noticee* by NSEL. In view of the same, I reject the submission of the *Noticee* that it did not trade/ facilitate the trading in the ‘*paired contracts*’ as there is no material to establish the claims of the *Noticee*.
37. Having established that the *Noticee* has traded in ‘*paired contracts*’ for its clients and on its proprietary account, I now proceed to examine the allegations levelled against the *Noticee* in the SCN and the SSCN. It is noted that the main allegation against the *Noticee*, as levelled in the SCN, is that by participating/facilitating in the trading in ‘*paired contracts*’ on NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that the continuance of the registration of the *Noticee* as a broker is detrimental to the interest of the Securities Market and the *Noticee* is no longer 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 Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018 etc.) as provided to the *Noticee* vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents filed against the *Noticee* by SEBI as well as observations/

findings against the *Noticee* in the Enquiry Report dated April 26, 2019, the *Noticee* is no longer a '*fit and proper person*' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

38. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. I further note that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI(Intermediaries)(Third Amendment) Regulations, 2021 with effect from November 17, 2021.
39. In this context, as noted above, the *Noticee* is holding a Certificate of Registration No. INZ000050632 granted by SEBI on May 23, 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 person is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
40. Therefore, 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, 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 while granting the Certificate of Registration, in 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, *inter alia*, includes the following:

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

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

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

41. As already recorded in SSCN and captured above, an FIR has been registered with the MIDC Police Station, Mumbai, against the *Noticee* under section 154 of the Code of Criminal Procedure, 1973 ('CrPC') on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. It is, therefore, noted that the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the *Noticee*.
42. In this regard, it is noted that the *Noticee* has traded in '*paired contracts*' on behalf of its clients as well as through its proprietary account. I note that the *Noticee*, as a broker and as a member of NSEL, represented NSEL to the regular investors. The execution of the trades in '*paired contracts*' by the *Noticee* shows the participation of the *Noticee* in the said scheme perpetrated by NSEL to provide its platform for trading in '*paired contract*' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the *Noticee* by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in '*paired contracts*' which were in the nature of financing transaction (as held by the Hon'ble Supreme Court of India referred supra). 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 and also undertaking such exposure itself on account of its proprietary trades thereby raises 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 and for itself on NSEL platform have serious ingredients amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.
43. 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. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the *Noticee*. In my considered view, it is immaterial if the *Noticee* has no outstanding investor complaints. The fact that is undeniably clear before

me is that the involvement of the *Noticee* in trading/ facilitation of trading in ‘paired contracts’ on NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on NSEL platform is detrimental to the interest of the Securities Market.

44. Further, as noted above, the *Noticee* has also earned disqualification under Clause 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of the complaint filed by SEBI and the FIR registered based on the same. In this regard it is pertinent to note that the said FIR 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. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II hold the field which are binding upon me, and arguments, if any, to the contrary are not maintainable.
45. At this juncture, I note that, the *Noticee* in its reply has stated that, SEBI has not initiated any proceedings under the FCRA. With respect to the same, I note that, SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA *inter alia* alleged to have been committed by the *Noticee*. I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same is validly subsisting. Therefore, I do not see any merit in the said submission of the *Noticee*.
46. The *Noticee* has also stated that in view of Section 29(A) of FCRA, the present proceedings for violation of SEBI Act/ Regulations are not maintainable under FCRA. At this juncture, it is significant to reproduce the relevant excerpt of section 29A(2)(e) of the FCRA which is as under:

“(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;”

The said provision is an enabling provision which enables SEBI to initiate fresh proceedings within a period of three years from the date on which the FCRA is repealed. As stated above, SEBI has, *inter alia*, filed complaint against the *Noticee* within the period as specified by the wisdom of the legislature.

47. I also note that the present proceedings have been initiated to adjudge whether the *Noticee* meets the criteria for fit and proper person as specified in the Broker Regulations and the Intermediaries Regulations. The *Noticee* is obliged to maintain the fit and proper person criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market. I therefore find no merit in the said submission of the *Noticee*.
48. 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 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. 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. Further, I note that the Hon'ble SAT in its order dated June 09, 2022 (pertaining to entities whose application for registration was rejected) has observed that the period for which the noticees cannot apply for registration needs to be specified by SEBI. Having noted the aforesaid observation of the Hon'ble SAT, I am of the view that since the recommendation in the present matter is of cancellation of registration and not of rejection of the application, the necessity of specifying a period of time may not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) 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. If it chooses not to, such issue becomes moot.

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-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.

49. The *Noticee* has also raised an objection to issuance/ reliance on the material which was not available for perusal of the DA and has submitted that while in the SAT Order, the case was remanded for fresh consideration and SEBI was at a liberty to rely upon additional documents, the same is not applicable in the present case and therefore, reliance cannot be placed on additional material after submission of the Enquiry Report. Further, it is also foreseeable that an objection may be taken to the issuance of the SSCN dated October 11, 2022 which was issued pursuant to and on the basis of the SAT Order on account of the fact that the said SAT Order is not applicable to the *Noticee* as the *Noticee* was not a party before the Hon'ble SAT in those 5 appeals where the said SAT Order was passed. However, I find that the said objection, if taken would have been totally misplaced as the essence of the said SAT Order is that it advises SEBI to provide the documents which it intends to use/rely in the present proceedings so that the entity would have an opportunity to prepare its defence pertaining to these documents and which is also in adherence to the principles of natural justice. Due opportunity to evaluate the materials and to be heard addresses the principles of natural justice. In any case, as recorded above, the Hon'ble SAT had already granted permission to SEBI to issue SSCN which was complied with by SEBI in this regard and therefore, in my opinion, the *Noticee* cannot take the defence that additional material cannot be provided to the *Noticee* pursuant to the SAT Order.
50. In view of the above observations and the finding that the *Noticee* had traded in these 'paired contracts' on NSEL, I hold that by virtue of the *Noticee's* participation/ facilitating in the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has violated the conditions of the 2007 Exemption Notification and also the provisions of the FCRA. Further, as noted above, the *Noticee* has also attracted disqualifications under point 3(b)(i) of Schedule II and the act of *Noticee* in offering access to 'paired contracts', as detailed above, also seriously calls into question the integrity, honesty and lack of ethical behavior on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. 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-by to the terms of the

2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question, the appropriateness and suitability of the continuance of the registration of the *Noticee*, as a broker. Equally, any argument on the lines that the clients demanded such access to the 'paired contracts' and may have given business to someone else or that other persons were engaged in such conduct, does not detract the diligence required to be performed by any reasonable or prudent person including the *Noticee*, which cannot rely upon such client entreaties/threats or swayed by actions of others on the street. Clearly, the actions of the *Noticee* has been and could be 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 Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

51. 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 simpliciter 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.
52. It would not be material for the *Noticee* to submit that there is no loss caused to the investors on account of its trades since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA and also attracting disqualification under amended Schedule II of the Intermediaries Regulations so as to decide on its continuing role in the Securities Market. From the above, it is evident that the *Noticee* was part of a scheme that was

contrary to the permissible activities prescribed by the Central Government. Under the garb of '*paired contracts*' the *Noticee* had indulged in facilitating impermissible financing transactions, and such illegal activities as well as participation of the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market.

53. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honored in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted above, the principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.
54. It further needs appreciation that the issue under consideration is not to gauge the profit/loss incurred or likely to be incurred by an individual, but 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 that the scheme of '*paired contracts*' traded on 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.
55. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as '*paired contracts*' on NSEL were not spot contracts in commodities. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, 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 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 FIR

against the *Noticee* under section 154 of CrPC has been registered with the MIDC Police Station, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the *Noticee* that the aforesaid FIR 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.

56. Having examined and dealt with all the contentions raised by the *Noticee* in the preceding paragraphs, I concur with the recommendation made by the DA.

ORDER

57. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. Blue Crest Commodities Pvt. Ltd., Certificate of Registration (bearing No. INZ000050632) of the *Noticee* i.e., Blue Crest Commodities Pvt. Ltd., is hereby cancelled.
58. The *Noticee* shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 57 above.
59. Notwithstanding the direction at paragraph 57 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 advise to the said clients.
60. The Order shall come into force with the immediate effect.
61. It is clarified that in view of the amendment made *w.e.f.* January 21, 2021 in the Intermediaries Regulations, 2008, 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 NSEL matter and/or any proceedings

pending before any authority in respect of similar matter concerning the *Noticee* or other relevant persons.

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

Sd/-

DATE: MARCH 31, 2023

PLACE: MUMBAI

**PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA**