

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.	PAN
1.	SRD Commodities Pvt. Ltd.	INZ000060532	AAJCS7274C

in the matter of National Spot Exchange Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') had appointed a Designated Authority (hereinafter referred to as 'DA') to enquire into and to submit a report pertaining to the acts of M/s. SRD Commodities Pvt. Ltd. (hereinafter referred to as **"SRDCPL/ Noticee"**) as a stock broker bearing registration No. INZ000060532 into the possible violations of regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **"Stock Brokers Regulations"**) read with Schedule II of the Intermediaries Regulations, alleged to have been committed by the noticee in the matter of trading activities on the National Spot Exchange Limited (hereinafter referred to as **'NSEL'**).
2. After conducting the enquiry as envisaged under Regulation 25 of the SEBI (Intermediaries Regulations), 2008 (hereinafter referred to as **'Intermediaries Regulations'**), on the basis of materials available on record and after considering the replies filed by the noticee, the DA submitted an enquiry report dated December 31, 2019 (hereinafter referred to as 'the Enquiry Report') in respect of the noticee in terms of Regulation 27 of the Intermediaries Regulations (as applicable at the relevant time), wherein it was found that the noticee, as a stock broker of the NSEL, had dealt/facilitated in the trading of the 'paired contracts' on the exchange platform of NSEL during the period from September 2009 to August 2013, the period during which NSEL have alleged to have offered trading in 'paired contracts' (hereinafter referred to as **"relevant period"**) which was 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**”). It was also observed in the Enquiry Report that the continuance of the Certificate of Registration of the noticee as a stock broker (having Registration No. INZ000060532) is detrimental to the interest of the securities market and that the noticee is not a ‘fit and proper person’ to hold the Certificate of Registration No. INZ000060532 as a stock broker in the Securities Markets which is one of the conditions for grant/holding/ continuance of registration, in terms of regulation 5(e), 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. The DA in view of the aforesaid finding has recommended that the Certificate of Registration of the noticee as a stock broker may be cancelled.

3. The relevant excerpts of the Enquiry Report is reproduced below:

“43. In view of the facts and circumstances of the case and material placed before the Designated Authority, I am of the view that the Noticee is not a fit and proper person in terms of Regulation 5(e) of the Stock Broker Regulations read with 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. SRD Commodities Pvt. Ltd., Stock Broker, SEBI registration no., INZ000060532 as a commodities derivatives broker be cancelled in the interest of the securities market.”

4. Pursuant to the same, a Show Cause Notice dated January 28, 2020 (hereinafter referred to as “**SCN**”) enclosing therewith the enquiry report of the DA and certain other documents as specified in the said SCN, was issued to the noticee under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration, as recommended by the DA or any other action as may be considered appropriate by the Competent Authority, should not be taken against it, in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time). The SCN further advised the noticee to submit its reply, if any within 21 days of receipt of the said SCN. The noticee filed its reply to the SCN vide letter dated February 25, 2020.
5. Meanwhile, SEBI passed five separate orders during February 2019 rejecting the applications filed by five other entities seeking registration as commodity brokers who were involved in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**Hon’ble SAT**”). The Hon’ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

“42...The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues

raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice.....”

6. 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”, collectively SCN and SSCN being referred to as “SCNs”) provided certain additional documents/material (as indicated in the SSCN) to the noticee and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The noticee was further informed that if no reply is received within 15 days of receipt of the SSCN, it would be presumed that it had no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. In response, the noticee vide letter dated November 11, 2022 submitted its reply.
7. Pursuant to the receipt of the reply to the SSCN, in the interest of natural justice, the noticee was granted an opportunity of personal hearing before me on December 06, 2022 at 3.00 p.m. through video conferencing. On the scheduled date of hearing, Mr. Rajendra Agrawal, authorized representative of the noticee appeared and made submissions in line with its earlier replies. The noticee has also requested to read its reply in conjunction with its earlier replies. Further, the noticee was granted time till December 20, 2022 for making post hearing submissions, if any. The noticee made additional submissions vide its letter dated December 16, 2022. Thus the principles of natural justice have been adhered to in the present matter. 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 during the personal hearing.
8. The replies filed by the noticee vide its letters dated February 25, 2020, November 11, 2022, December 16, 2022 and the oral submissions made during the course of the personal hearing held on December 06, 2022, are summarized hereunder:
 - i. There was irregularity involved in appointment of Designated Authority by the Whole Time Member of SEBI instead of by the Executive Director of SEBI as mandated by Intermediaries Regulations.

- ii. Instead of giving relevant information, data, trade and order log, investigation/inspection report or any other material relied upon by SEBI for issuing the SCN, SEBI advised the noticee to refer publicly available documents such as FMC's order dated December 17, 2013.
- iii. The noticee has allegedly participated in/ facilitated trading in the paired contracts at the trading platform of NSEL when it was governed by the rules, regulations, bye laws of NSEL and also by the provisions of Forward Contract (Regulation) Act, 1952 ("FCRA").
- iv. When the commodity brokers were brought under the jurisdiction of SEBI with effect from September 28, 2015, the Finance Act, 2015 inserted a new Section 29A in the SCRA in terms whereof a fresh proceeding related to an offence under the FCRA could be initiated by SEBI under the FCRA within a period of three years from the date on which the FCRA is repealed. In view of the provisions in Section 29A (2)(e) of the FCRA, SEBI could only initiate prosecution proceedings against the members of the NSEL for alleged violation of FCRA and could not initiate the enquiry proceedings under the Intermediaries Regulations, which are attracted when an intermediary allegedly violates any of the conditions of the Certificate of Registration or any of the provisions of the Securities laws and the regulations framed there under.
- v. No brochures/pamphlets/presentations on NSEL Products were issued or provided to its clients by the noticee.
- vi. Few of the noticee's clients were constantly requesting it to allow them to invest their funds in this product as the noticee already has necessary infrastructure in place but was not active in that product. After carrying out due diligence of the product on the basis of inquiries with NSEL officials, fellow brokers and their clients who were already participating in this product, the noticee started trading in the product for only some of its clients.
- vii. The paired contracts were introduced by NSEL with the approval of its Board. NSEL was functioning in complete public knowledge and was permitted to provide the trading platform for paired contracts and hence there was no reason for the noticee to question the legality of such product launched by NSEL. The noticee as a broker of NSEL provided the product to the clients as received from NSEL. There is no allegation whatsoever that the noticee has committed any breach of the business rules and regulations of NSEL as applicable to the trading in paired contracts.

- viii. The last trade of noticee on NSEL trading platform was on September 02, 2011 whereas the payment crises broke out in July/August 2013. All the trades were executed as per the instructions of the clients. The noticee was not active member when all the violations committed by NSEL were being discovered and discussed. None of the clients of the noticee have lost any money.
- ix. The noticee had executed 78 trades (39 buy trades and 39 sell trades) on NSEL between 26th April 2010 and 27th September 2011 and no trade was executed after 27th September 2011.
- x. The noticee's entire trades on NSEL were of a value of Rs. 16.98 crores, as against Rs. 1,25,000 crores traded on NSEL. A total of 08 clients out of 70 clients had traded through the noticee on NSEL platform during the period. These entities were the noticee itself, relatives of Directors and a Director himself. The total brokerage earned by the noticee on NSEL was only Rs.1,72,007.
- xi. There are no investor complaints against the noticee. No regulatory action has ever been initiated against the noticee except the present matter.
- xii. The noticee and its clients are also victims of fraud committed by NSEL and there are no pay out obligations and by end May 2013, all the positions were squared off and there were no outstanding obligations on the noticee.
- xiii. Ministry of Finance's letter dated 30th December 2014 addressed to the Forward Markets Commission advises initiating appropriate actions against NSEL under FCRA. It does not contain any advisory to initiate action against Trading Members of NSEL, who has traded as per Exchange Rules, Bye laws and Regulations.
- xiv. The letter dated November 20, 2015 of the Ministry of finance (issued after Notification of the Repeal of FCRA and vesting of jurisdiction in SEBI in respect of commodities markets) has direct bearing on the question of jurisdiction of SEBI on spot market. It is a matter of record that FMC had not dealt with / initiated any action against the brokers including the noticee for trading in the paired contracts at NSEL Hence, as per the mandate of the said letter, SEBI is not supposed to deal with the matter in question pertaining to the members of NSEL which was not taken up by the erstwhile FMC. The said letter of MoF is in consonance with the provisions of Finance Act, 2015 under which SEBI has been given the jurisdiction over the commodities market and not the spot markets.

- xv. The noticee's name was not found in the interim report of EOW. The name of noticee is not appearing among the list of brokers to whom NSEL had pay out obligations as on September 19, 2013. Further the name of noticee does not feature in top 10 participants of Agri and non-Agri commodities. The noticee's name does not appear in the list where special payout was given and in the forensic audit report of Grant Thornton.
- xvi. The Apex Court in the matter of amalgamation of 63 Moons with NSEL, in its judgment dated April 30, 2019 has observed that the paired contracts of NSEL were in breach of exemption granted to NSEL. The said judgment has no relevance so far as the role of members of NSEL or the noticee is concerned. It is incorrect to suggest or infer that because the noticee traded in paired contracts, it was closely associated with NSEL and paired contracts.
- xvii. As per the criteria stated (for the purpose of filing the Complaint) in paragraph 4 of the Complaint dated September 24 2018 of SEBI, the noticee's name need not have been included in the Complaint as the noticee did not meet the stated criteria. The complaint is dated September 24 2018 whereas the noticee was already a registered broker at this time by virtue of a registration certificate granted to it on July 14 2016, under Registration No INZ000060532. The proceedings against the noticee are for considering cancellation of certificate of registration and not for considering application for grant for registration.
- xviii. It is trite law that no one can be presumed guilty till the person is held to be guilty by appropriate Courts. Mere filing of the Report, which is merely an allegation, does not establish any guilt and cannot be the ground for taking the same into account for purpose of these proceedings.
- xix. If the trading in alleged paired contracts was unlawful and a systemic risk for the entire commodities market, FMC/DCA ought to have taken action to prevent any further damage to the investors and the commodities market.
- xx. Amended Schedule II of the Intermediaries Regulations 2008, which made the criteria of Fit and Proper Person more stringent, is applicable only w.e.f. 17th November 2021. No retrospective application of the amendment to Intermediaries Regulations can be made.
- xxi. The use of the word 'may' in Clause 3, as compared to the use of word 'shall' in Clause 1, establishes the intention of the legislature to make application of clause 3 as being discretionary, as opposed to being mandatory in Clause 1. A

discretionary power available to a statutory authority has to be exercised judiciously and not arbitrarily.

- xxii. SEBI complaint dated September 24, 2018 has been filed under Section 156 of Code of Criminal Procedure, 1973. In view of clause 3(b)(i) of Schedule II, the complaint dated September 24, 2018 filed u/s. 156 of Cr.PC does not fall within its purview as it is applicable only to complaints filed u/s 154 of Cr.PC.
- xxiii. The noticee had taken membership of 2 (two) Commodity Exchanges namely National Commodity & Derivative Exchange Limited (NCDEX) and Multi Commodity Exchange of India Limited (MCX). Whereas the surrender of membership of NCDEX has been accepted by NCDEX vide its letter dated November 12, 2021, surrender of membership of MCX is pending owing to existence of a Show Cause Notice from SEBI in the matter of NSEL.
- xxiv. Final chargesheet in the matter of NSEL scam has been filed by EOW and name of the noticee does not appear in the chargesheet.

CONSIDERATION OF ISSUE AND FINDINGS

- 9. I have carefully perused the SCNs issued to the noticee and the enquiry report, the replies dated February 25, 2020, November 11, 2022, December 16, 2022 filed by the noticee, the oral submissions made on behalf of the noticee during the personal hearing and other material/information available on record. After considering the allegations made/charges levelled against the noticee in the instant matter as spelt out in the SCNs, the issue which arises for my consideration in the present proceedings is whether the noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations and whether the Certificate of Registration granted to the noticee should be cancelled, as recommended by the DA or any other action should be taken against the noticee.
- 10. 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 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.

11. The noticee has also submitted that it has not been provided with all the documents which have been relied upon while issuing the notice. In this regard, I have perused the material available on record and I note that the noticee in its reply dated February 25, 2020, has mentioned that certain information was provided to the noticee by SEBI. Further, vide its reply dated December 16, 2022 the noticee itself has provided details of trades executed by it on NSEL during the relevant period from its proprietary account and also on behalf of its Director and relatives of Directors. Further, all the relevant documents pertaining to the instant proceedings were provided to the noticee as annexure to the SCNs. In view of the same, I note that the relied upon information pertaining to the proceedings against noticee in the matter has been provided or was already available with the noticee. Therefore, the noticee's contention as regard to non-supply of relevant documents/information is misplaced.
12. The Noticee has further submitted that SEBI does not have the jurisdiction to deal with the Spot Market. The merger of FMC with SEBI cannot empower SEBI to regulate the Spot Market. In this regard, without going into the merits of the contention that whether SEBI has the authority to regulate Spot Market or not, I note, that the issue under consideration in the present proceedings is limited to the determination of fit and proper status of the Noticee under the Intermediaries Regulations. It is a settled position of law that SEBI has statutory authority to determine the fit and proper status of the intermediaries registered with it. Since the Noticee is an intermediary registered with SEBI, I am of the view that SEBI is within its jurisdiction to determine the fit and proper status of the Noticee.
13. Before I proceed to examine the issue, as stated above, vis-à-vis the material available on record before me, it would be appropriate at this stage, to refer to the relevant provisions of the law applicable, which are alleged to have been violated by the noticee and/or are referred to in the present proceedings. The same are reproduced below for reference:

THE SEBI ACT, 1992

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

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

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

THE STOCK BROKERS REGULATIONS, 1992

Consideration of application for grant of registration.

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant, (e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

Conditions of registration.

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

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

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

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) 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.*

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

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

15. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e. September 28, 2015), the noticee was not required to be registered under the FCRA or any other regulation to act as a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker was mandatorily needed to have a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 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 for registration to SEBI within 3 months from September 28, 2015. Accordingly, the noticee applied for a certificate of registration and was registered as a broker *w.e.f.* December 11, 2015 and since then it has been acting as a market intermediary registered with SEBI.

16. As mentioned in the preceding paragraphs, the Enquiry Report dated December 31, 2019 alongwith certain other relevant documents were provided to the noticee through SCN dated January 28, 2020. Further, in the light of the order passed by the Hon'ble SAT on June 09 2022, as mentioned at Para 6 above (hereinafter referred to as “**SAT Order**”) in the NSEL matters, a SSCN dated October 11, 2022 enclosing a copy of the SAT Order was issued to the noticee calling upon the noticee to show cause as to why the following information/material along with the enquiry report dated December 31, 2019 should also 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.
17. Before moving forward to consider the matter on merits and test the fulfilment of the ‘*fit and proper person*’ criteria by the noticee, on the basis of available material including the additional material as detailed at paragraph 16 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:
- i. The noticee, M/s SRD Commodities Pvt. Ltd, is a commodity derivatives broker registered with SEBI having Registration No. INZ000060532 with effect from December 11, 2015 (however, the noticee in its submissions dated November 11, 2022 has mentioned the date of grant of registration as July 14, 2016) and is currently a member of MCX.
 - ii. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia*, including “*no short sale by the members of the exchange shall be allowed*” and “*all outstanding positions of the trades at the end of the day shall result in delivery*”.
 - iii. NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short “**MCA**”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration, traded on NSEL subject to certain conditions which, *inter alia*, included that “*no short sale by members of the NSEL shall be allowed*” and that all ‘*outstanding positions of the trade at the end of the day shall result in delivery*’. It was also stipulated that all information or returns

relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.

- iv. In October 2008, 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 at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
 - v. On February 06, 2012, the erstwhile FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "FMC Order") wherein it was inter alia observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of '*no short sale by members of the exchange shall be allowed*' was being not complied with by the NSEL and its members. FMC further observed that the 'paired contracts' offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on NSEL, from the purview of the FCRA.
18. From the perusal of the FMC Order in respect of the '*paired contracts*', which were traded on the NSEL platform during the relevant period, I note that the FMC had *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

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

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

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

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

20. 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 the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. As per the FMC Order under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A ‘ready delivery contract’ is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within

such period not exceeding eleven days". Given the said definition contained in FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is therefore seen that, even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, FMC, in its Order, relying on the definition of "*forward contract*" under FCRA held that NSEL was allowed to trade only in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, as discussed above, it is clear that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to the NSEL.

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

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

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

23. Thus, the Hon'ble Supreme Court has already described the nature of the '*paired contracts*' offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it

was held by the Hon'ble Supreme Court 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.

24. The Hon'ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon'ble Supreme Court has also observed that NSEL was advertising a uniform return of 16% p.a. for the 'paired contracts' traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. At Para 45 of the said order, the Hon'ble Supreme Court has also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 & T+25 paired contract in steel had the same return as a T+ 5 & T + 35 paired contract in castor oil. The 'paired contracts' were being marketed as an alternative to fixed deposits.
25. It was also noted in the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were short sales i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.
26. The aforesaid discussion shows how 'paired contracts' were not in the nature of spot trading, which was permitted to trade 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% p.a. 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.
27. When MCA vide its letter dated July 12, 2013, on the recommendation of FMC, asked NSEL to settle contracts on the due dates and to give an undertaking that no fresh contract shall be launched, NSEL failed to do so and defaulted. Investors lost money, as all the underlying warehouse receipts were bogus and there were no underlying securities. As noted in the judgement of the Hon'ble Supreme Court in the MPID matter, the exchange publicized that it provided counter party guarantee risk but, in reality, failed to do so.
28. On perusal of the replies submitted by the noticee, I note that it is an admitted fact that the noticee had participated/facilitated the trading in paired contracts on NSEL. In this regard, I deem it fit to refer to the submission made by the noticee in its reply dated February 25, 2020 wherein it is *inter alia* admitted at Point 4(VI)(K) of its reply that, "*The Noticee had traded in/ facilitated the paired contracts as a member of NSEL in accordance with the business rules and regulations of NSEL and as on the date of closure of business of NSEL, there were no pay out obligations and by May*

2013 all positions were squared off.” Further, in its reply dated December 16, 2022, the noticee has admitted that, “It is a matter of record that we had executed trades on NSEL only between 26th April 2010 and 27th September 2011 and no trade was executed by us after 27th September 2011.” Thus, it is undisputed fact that the noticee has indulged into trading in ‘paired contracts’ from its proprietary account and also on behalf of its clients who were its Director and relatives of Directors. I also note that the noticee vide its replies dated November 21, 2019 and December 12, 2022 has provided trade data in the matter to SEBI.

29. In the background of the discussion on ‘paired contract’ in the preceding paragraphs, I now proceed to examine whether the noticee satisfies the ‘fit and proper person’ criteria as laid down under Schedule II of the Intermediaries Regulations.
30. As recorded in the SSCN, SEBI has filed a complaint dated September 24, 2018, against brokers who traded / facilitated access to ‘paired contracts’ traded on the NSEL, including the noticee, with the EOW, Mumbai. On the basis of this complaint, an FIR dated September 28, 2018 has also been registered with the MIDC Police Station, Mumbai against the noticee.
31. Having found that the noticee has traded in ‘paired contracts’ in its proprietary account and for its clients i.e. its Director and relatives of Directors, I note that the main allegation against the noticee, as levelled in the SCN, is that by participating/facilitating in the trading in ‘paired contracts’ on the 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 the provisions of the FCRA also. Therefore, in the SCN, the noticee was asked to state as to why its certificate of registration as a commodity derivatives broker, may not be cancelled as the noticee is not a ‘fit and proper person’ for holding the certificate of registration. Subsequently, SEBI, on the basis of certain documents/material such as SEBI’s Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the noticee vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents as well as observations against the noticee in the enquiry report dated December 31, 2019, and in view of the amendment to the Intermediaries Regulations w.e.f. November 17, 2021, the noticee is not a ‘fit and proper person’ for holding the certificate of registration. The noticee’s submissions have been summarized in paragraph 8 above.
32. The noticee’s main contentions are that the noticee was merely a member of NSEL and followed all the byelaws, rules and regulations of NSEL, no responsibility was placed on members of NSEL by the exemption notification dated June 5, 2007, the DCA / FMC ought to have taken action for preventing any unlawful activities of NSEL, the noticee has not been chargesheeted in the case, the noticee has traded in its proprietary account and only for the clients who were its Director and relatives of Directors, name of the noticee was not appearing

in the interim report of EOW, name not appearing in the list of brokers to whom NSEL had pay out obligations as on September 19, 2013, name not appearing in the fortnightly reports of NSEL to FMC featuring top 10 participants of agri and non-agri commodities and that it has not committed any of the alleged violations or there has been any lapse on its part and the regulations that have been amended on November 17, 2021, should not have retrospective effect.

33. In this regard, as discussed above, the noticee has admittedly traded in 'paired contracts' from its proprietary account and on behalf of its clients i.e. its Director and relatives of Directors. The noticee, as a commodity derivatives broker, represented the face of NSEL for 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 contracts' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns and were advertised as such by NSEL, as observed by the Hon'ble Apex Court, under the garb of spot trading in commodities. Therefore, the noticee by its conduct and as a member of NSEL had promoted and/or dealt in 'paired contracts' which were in the nature of financing transaction as held by the Hon'ble Supreme Court of India as noted supra. The noticee, by providing a platform for taking exposure to 'paired contracts' 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. As already recorded in SSCN as discussed above, SEBI's complaint dated September 24, 2018 and the FIR registered with the MIDC Police Station, Mumbai on September 28, 2018 under section 154 of Cr.PC are validly subsisting and has not been challenged, quashed or stayed by any competent court qua the noticee as on date. The noticee has contended that the complaint was filed by SEBI under section 156 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.PC) and therefore the same is not covered under the disqualifications as stipulated under Clause 3(b)(i) of Schedule II to the Intermediaries Regulations. In this regard, I note that Clause 3(b)(i) of Schedule II to the Intermediaries Regulations stipulates that, '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 criminal complaint or information under section 154 of the Cr.PC has been filed against such person by the Board and which is pending'. A plain reading of the said provision makes it clear that pendency of any criminal complaint or information filed under Section 154 of the Cr.PC may amount to disqualification for determining any person as 'fit and proper'. In the instant matter, as noted above, both the Criminal complaint and FIR filed under Section 154 of the Cr.PC are validly subsisting against the noticee and therefore I find no merit in the said contention of

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

34. The noticee has contended that it was undertaking proprietary trading on NSEL and the other clients traded through it were its Director and relatives of Directors. There are no investor complaints against the noticee and no regulatory action has ever been initiated against the noticee except the present matter. Further, there are no pay out obligations and by end May 2013, all the positions were squared off and there were no outstanding obligations on the noticee. Be that as it may, it may 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 is clearly against the noticee. For the same reason, the fact whether the name of the noticee was mentioned or not in the FMC order or EOW interim report or in the letter dated December 30, 2014 of the Government of India is not relevant. As regards its submission that it was not closely associated with NSEL and the 'paired contracts' were introduced by NSEL, it cannot be denied that the involvement of the noticee in trading/facilitation of trading in 'paired contracts' on the NSEL is certainly a conduct which was neither permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, a conduct similar to that displayed by the noticee in its trading on the NSEL platform would be detrimental to the interest of the Securities Market.
35. It is pertinent to state that regulation 5(e) of the Stock Brokers Regulations provides that, for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. It is further stated that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, were amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021. The condition of a fit and proper is not a one-time condition applicable only at the time of seeking registration. Rather, as per clause 7 of Schedule II of the Intermediaries Regulations, it is a condition which each and every registered intermediary is required to fulfil on a continuous basis, right from the time of filing such application to the time the entity wishes to remain associated with the Securities Market, as a registered intermediary, after obtaining such registration.
36. Further, necessity of specifying a period of time, after which the applicant may become eligible to seek registration does not arise in this order as mentioned in the SAT Order dated June 09, 2022 (unlike in the case of entities desiring to be registered as market intermediaries) while dealing with an entity holding a certificate of registration which is recommended to be

cancelled as this forum cannot presume whether such entity would wish to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable provisions. At this juncture, I note that the noticee's membership with NCDEX as a commodity derivatives broker has already been surrendered and the noticee has also applied for surrender of its membership with MCX, which is pending for disposal.

37. The fact that the noticee had traded / facilitated trading in the 'paired contracts' on the NSEL, in violation of the conditions of the 2007 Exemption Notification and also the provisions of the FCRA, seriously calls into question the integrity, honesty and lack of ethical behaviour on its part. These contracts were financing transactions which were portrayed as spot contracts in commodities. The argument that the transactions were entered into were only for its proprietary account, its Director and relatives of Directors for trading in 'paired contracts' and no third party clients were involved, does not absolve a broker of the responsibility to conduct the diligence required to be performed by any reasonable or prudent person. Further, the contention that the FMC/DCA ought to have taken action for preventing any unlawful activities of NSEL cannot be a reasonable ground for the noticee not to act diligently and ethically.
38. The role of a registered intermediary including a broker demands from it honesty, transparency, fairness and integrity as has been laid down in Clause 3(a) of Schedule II of the Intermediaries Regulations. SEBI under its mandate to protect interest of investors apart from regulations and development of the securities market is empowered to grant registration to various classes of entities including brokers, who have a very important role in ensuring a fair, transparent and efficient market to the investors. Thus, a broker is bound to act in an honest and ethical manner and comply with all applicable regulatory requirements which would be in the best interests of investors.
39. In view of the above, I hold that the noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and therefore, the continuance of the noticee as a broker will be detrimental to the interest of the securities market. Hence, action as proposed in the SCNs needs to be taken in the interest of the securities market.
40. 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

41. In view of the foregoing discussions and deliberations, I, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27

of the SEBI (Intermediaries) Regulations, 2008, cancel the Certificate of Registration (bearing No. INZ000060532) of the noticee i.e. SRD Commodities Pvt. Ltd.

42. The noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 41 above.
43. Notwithstanding the direction at paragraph 41 above,
 - a. the noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.
 - b. the noticee shall square off open positions, if any, within 30 days from the date of this order.
44. This Order shall come into force with immediate effect.
45. The above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter involving the noticee.
46. It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, 2008, the procedure for action on receipt of recommendation of a DA prescribed under regulation 28 of the Intermediaries Regulations, 2008 has now been incorporated in the amended regulation 27 of the Intermediaries Regulations, 2008. Accordingly, this order is passed under the amended regulation 27 of the Intermediaries Regulations, 2008.
47. A copy of this order shall be served upon the noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

DATE: APRIL 06, 2023
PLACE: MUMBAI

ANAND R. BAIWAR
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA