

## 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	REGISTRATION NO.	PAN
1.	M/s Share India Commodity Brokers Private Limited	INZ000035935	AADCR0497E

In the matter of National Spot Exchange Limited

**BACKGROUND**

1. The instant proceedings were initiated on the basis of an Enquiry Report dated November 14, 2019, submitted by the Designated Authority (hereinafter referred to as “DA”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”). The DA, based on the facts noted in the said enquiry report, has recommended that the certificate of registration of M/s Share India Commodity Brokers Private Limited (hereinafter referred to as “**SICBPL/noticee**”) as a stock broker bearing Registration No. INZ000035935 may be cancelled.
2. The DA submitted the enquiry report 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 finding that the noticee, as a stock broker of the National Spot Exchange Limited (hereinafter referred to as “**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 (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 that the continuance of the Certificate of Registration of the noticee as a stock broker (having Registration No. INZ000035935) 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. INZ000035935 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), regulations 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 regulation 5(e), regulation 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, allegedly committed by the noticee.
4. Accordingly, the DA issued a show cause notice dated September 25, 2018 to the noticee under regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time), *inter alia*, 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 29, 2018 submitted its reply. Further, vide email dated October 31, 2019, the noticee was advised to provide data pertaining to trades executed by the noticee in the ‘*paired contracts*’. I note from the material available on record that the noticee, vide letter dated November 08, 2019, submitted the response to the aforesaid email.
5. On the basis of the aforesaid factual details, material available on record and after considering the replies filed by the noticee, the DA has, *inter alia*, observed the following in the report:

*“39. In view of the facts and circumstances of the case and material available on records, it is determined 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, it is recommended that the certificate of registration of the Noticee, i.e. Share India Commodity Brokers Pvt Ltd, registered with SEBI as a trading/clearing member bearing Registration No. INZ000035935 may be cancelled, in the interest of the securities market.”*

6. Pursuant to the same, a Show Cause Notice dated January 15, 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. I note from the material available on record that the noticee filed its reply vide letter dated February 10, 2020.

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

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

8. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the noticee before concluding the present proceedings against the noticee. 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 was received within 15 days of receipt of this SSCN, it shall be presumed that the noticee had no additional comments/reply to submit and the matter would be decided in accordance with law and on the basis of material available on record. The SSCN was sent to the noticee by *Speed Post Acknowledgement Due* (for short '**SPAD**') vide letter dated October 11, 2022. Subsequently, vide email dated October 14, 2022 the scanned copy of the SSCN was also served upon the noticee and the noticee was intimated that an opportunity of personal hearing has been granted to the noticee on November 01, 2022. In response to the SSCN, the noticee vide its letter dated October 29, 2022 submitted its reply.

9. On the scheduled date of hearing which was held through video conferencing, Mr. Sachin Gupta, Director of the noticee appeared and made submissions in line with the noticee's replies dated February 10, 2020 and October 29, 2022. Pursuant to the same, the noticee was granted seven days' time to file the post hearing submissions in the matter which were submitted vide letter dated November 5, 2022.
10. The replies filed by the noticee vide its letters dated February 10, 2020 and October 29, 2022, the oral submissions made during the course of the personal hearing held on November 01, 2022, and the letter dated November 5, 2022 are summarized hereunder:
- i. The DA has not dealt with the contentions raised by the noticee pertaining to the non-compliance of principles of natural justice, irregularity in the process of appointment of the DA and non-applicability of the Intermediaries Regulations and the Stock Broker Regulations;
  - ii. The noticee was alleged to have violated regulation 9(b), 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II and regulation 5(e) of the Stock Brokers Regulations but the DA in its Enquiry Report has not recorded any findings in this regard and thus it can be assumed that the noticee has been exonerated of these charges;
  - iii. Regulation 5(e) is attracted at the time of granting of registration and not at the time of cancellation and SEBI had granted the registration to the noticee on December 25, 2015 after satisfying itself that the noticee was a '*fit and proper person*';
  - iv. The DA has failed to appreciate that no loss was caused to the investors and the noticee provided services only to 9 (nine) of its clients who wanted to trade in the alleged paired contracts and that there is no investor complaint against the noticee;
  - v. The noticee started trading in the alleged paired contracts in June, 2012 whereas the trading in the paired contracts was going on since September, 2009;
  - vi. The reliance on the decision of *Mukesh Babu Securities Limited Vs. SEBI* (Appeal No. 53 of 2007, decided on December 10, 2007) by the DA is misplaced as the Chairman of Mukesh Babu Securities, i.e., Mr. Mukesh Babu was accused in a criminal case involving unlawful loss caused to a bank but in the instant case, the SCN has not alleged that the Chairman/ Whole Time Director/ Managing Director of the noticee is involved in a criminal case;
  - vii. The noticee cannot be said to have a close association with a stock exchange/ SEBI only on the basis of the entity being an exchange member/ SEBI intermediary;

- viii. The reliance placed by the DA on the adverse observations made by courts/ authorities including Economic Offence Wing, the finding of the DA that the paired contracts were not contracts in commodity but in the form of financial transactions etc., are not relevant and are devoid of any force in light of the decision of the Hon'ble Bombay High Court in the matter of *63 Moons' Technologies Limited Vs. State of Maharashtra* dated August 22, 2019. The Hon'ble High Court in the said matter has held that the paired contracts were not financial transactions but were trades in commodity as per regulations and bye laws of NSEL;
- ix. The reliance on the Grant Thornton report by the DA is in violation of the decision of the Hon'ble Madras High Court dated July 26, 2018 wherein it had granted injunction against the use of the said report in any adverse manner against the plaintiff therein, i.e., 63 Moons' Technologies Limited;
- x. If any member of NSEL is found guilty of violating any provision of the FCRA, Regulations and bye laws, the member may be punished under FCRA and it is not necessary to declare that the member is not a '*fit and proper person*';
- xi. Observations by the courts/ agencies/ authorities on the mismanagement of NSEL by its promoters and key managerial personnel cannot have any bearing on the '*fit and proper person*' status of the noticee and the noticee was not a party to the FMC order dated December 17, 2013 wherein the FMC found fault with the operation of NSEL;
- xii. The report of Economic Offence Wing does not level any specific charges against the noticee and the same cannot be relied upon as the same is only an interim investigation report and has to undergo test of judicial scrutiny;
- xiii. The finding of the DA that the noticee allowed itself to become an instrument of NSEL by participating in the execution of the alleged '*paired contracts*' is perverse and baseless as the '*paired contracts*' were introduced by NSEL with the approval of its Board;
- xiv. The DA has not dealt with the submission of the noticee that trades carried out by it were on the requirement of its 09 clients, no brochures, pamphlets, presentations on NSEL products were issued or provided to its clients by the noticee and the NSEL was functioning in complete public knowledge and the noticee had no reason to question the legality of '*paired contracts*' offered by NSEL;

- xv. The Government of India's letter dated December 30, 2014 merely confirms the government's agreement with the view of FMC that the NSEL had violated the conditions of the 2007 Exemption Notification and the said letter was silent on the activities of the members of the NSEL. Further, the letter is neither an investigation report nor a judicial/ quasi-judicial order and cannot be relied upon;
- xvi. The only allegation against the noticee pertains to trading on behalf of its clients in the alleged '*paired contracts*' and the SCN does not contain any other fact/ finding whatsoever which may support the recommendations made by the DA in the report;
- xvii. The DA's recommendation to cancel the noticee's certificate of registration is based on the noticee's alleged close connection with the NSEL and as per the SAT Order dated June 09, 2022, the same has been held to be far-fetched and arbitrary;
- xviii. None of the documents relied upon by the DA such as Grant Thornton report, interim report of Economic Offences Wing, fortnightly reports furnished by NSEL etc., contains any reference to the noticee and even then the DA has recommended the severest of the punishment. i.e., cancellation of registration;
- xix. Although the NSEL is now being accused of wrong-doings and misconduct on several accounts, no such allegations were available in public domain, at least till the last date of the noticee's transaction, i.e., May 02, 2013;
- xx. At the relevant time, no one was aware that paired contracts may be labelled as illegal and no advisory or cautionary note in this regard was issued to the noticee by anyone, including the FMC;
- xxi. The noticee started trading in the paired contracts in 2012, i.e., after 3 years from the launch of the said contracts on NSEL and since the names like NAFED, a government agency, were among the promoters of NSEL and thus, there was no scope of any suspicion;
- xxii. The noticee never executed any proprietary trades;
- xxiii. The noticee stopped trading in paired contracts after May 2, 2013 due to lack of business activities and no amount remained due to the noticee's clients;
- xxiv. No investor grievance/ complaint has been filed against the noticee.

## **CONSIDERATION OF ISSUE AND FINDINGS**

11. I have carefully perused the SCNs issued to the noticee and the enquiry report, the replies dated February 10, 2020, October 29, 2022 and November 5, 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.
12. 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.
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 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 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

***Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.***

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 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 Rathni 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 certification 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 of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the noticee applied for a certificate of registration and was registered as a broker *n.e.f.* December 25, 2015 and since then it has been acting as a market intermediary registered with SEBI.
16. In the light of the order passed by the Hon'ble SAT on June 9, 2022, as mentioned at Para 7 above, (hereinafter referred to as “**SAT Order**”) in the NSEL matters, a SSCN dated October 11, 2022 enclosing a copy of the SAT Order was issued to the noticee calling upon the noticee to show cause why the following information/material along with the enquiry report dated November 14, 2019 should not be considered against it for determining whether the noticee

satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations:

- a. SEBI complaint dated September 24, 2018 filed with EOW;
- b. First Information Report (for short '**FIR**') dated September 28, 2018; and
- c. Amended Schedule II of the Intermediaries Regulations.

17. As regards other observations in the SAT order, I find that the 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, which were pending at the time of passing those orders.
18. 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 Share India Commodity Brokers Pvt. Ltd., is a commodity derivatives broker registered with SEBI having Registration No. INZ000035935 with effect from December 25, 2015 and is currently a member of the National Commodity & Derivatives Exchange Ltd. (hereinafter referred to as "**NCDEX**").
  - ii. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia*, including "*no short sale by the members of the exchange shall be allowed*" and "*all outstanding positions of the trades at the end of the day shall result in delivery*".
  - iii. 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 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 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.

- 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 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 the NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as “FMC Order”) wherein it was *inter alia* observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘no short sale by members of the exchange shall be allowed’ was being not complied with by the NSEL and its members. FMC further observed that the ‘paired contracts’ offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.
19. 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.

20. Thus, 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 forward contracts 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.
21. 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)*

22. It is, therefore, clear that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. In its Order, 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. I 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 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 the NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, what is beyond doubt is that the 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 NSEL.

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

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

24. 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 representations made by the NSEL in respect of the paired contracts *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)*

25. 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 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 held that such transactions come within the definition of ‘*deposits*’ under the MPID Act.
26. 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 offered return as a T+ 5 & T + 35 paired contract in castor oil. The ‘*paired contracts*’ were being marketed as an alternative to fixed deposits.
27. 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.
28. The aforesaid discussion shows how ‘*paired contracts*’ were not in the nature of spot trading, which was permitted on NSEL’s platform. Further, as stated above, the 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.
29. 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 was no underlying security. 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.



30. As recorded in the SSCN, SEBI has filed a complaint dated September 24, 2018, against brokers who facilitated access to *'paired contracts'* traded on the NSEL, including the noticee, with the EOW, Mumbai. On the basis of this complaint, subsequently, an FIR dated September 28, 2018 has also been registered with the MIDC Police Station, Mumbai against the noticee.
31. 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.
32. On perusal of the replies submitted by the noticee, I note that it is an admitted fact that the noticee had participated/ facilitated the execution of paired trades for its clients. In this regard, I deem it fit to refer to the submission made by the noticee in its reply dated February 10, 2020 wherein it is, *inter alia*, admitted that “...the Noticee provided broking services only to those 9 clients out of 550 registered clients, who wanted to trade in alleged paired contracts available on the NSEL platform.”. At this juncture, I deem it fit to refer to the trade details of the noticee, as mentioned in the enquiry report on the basis of the reply submitted by the noticee itself vide its reply dated November 08, 2019 before the DA:

Sl. No	Transaction date	Settlement date	Client Name	Commodity Name	Quantity	Buy/Sell
1.	22/06/2012	26/06/2012 (T+2)	TCG Stock Broking Ltd	SM30AMBL2	1000	Buy
	22/06/2012	30/07/2012 (T+25)	TCG Stock Broking Ltd	SM30AMBL25	1000	Sell
	22/06/2012	26/06/2012 (T+2)	TCG Stock Broking Ltd	SM30AMBL2	1000	Buy
	22/06/2012	30/07/2012 (T+25)	TCG Stock Broking Ltd	SM30AMBL25	1000	Sell
	22/06/2012	26/06/2012 (T+2)	TCG Stock Broking Ltd	SM30AMBL2	1000	Buy
	22/06/2012	30/07/2012 (T+25)	TCG Stock Broking Ltd	SM30AMBL25	1000	Sell
2	22/06/2012	26/06/2012 (T+2)	TCG Stock Broking Ltd	RCW1121LH2	150	Buy

	22/06/2012	30/07/2012 (T+25)	TCG Stock Broking Ltd	RCW1121LH2	150	Sell
3	23/08/2012	27/08/2012 (T+2)	Anil Kumar Garg (HUF)	CWOILKD12	1500	Buy
	23/08/2012	28/09/2012 (T+25)	Anil Kumar Garg (HUF)	CWOILKD12 5	1500	Sell

On a perusal of the above table, I note that since the same clients of the noticee have simultaneously entered into short term buy contract (e.g. T + 2 settlement) and long term sell contract (e.g. T + 25 settlement) on the same trade date for the same quantity, it can be said that the trades are '*paired contracts*'. The noticee vide its reply dated February 10, 2020 has admitted to having facilitated/ traded in the '*paired contracts*' for 9 clients.

33. Having found that the noticee has traded in '*paired contracts*' for its clients, 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 November 14, 2019, the noticee is not a '*fit and proper person*' for holding the certificate of registration. The noticee's submissions have been summarized in paragraph 10 above. The noticee's main contentions are that regulation 5(e) of the Stock Brokers Regulations comes into effect at the time of grant of registration and not thereafter, the noticee had not induced its clients to trade in the said contracts and that the material relied upon by the DA in reaching the conclusion is perverse and baseless. I note that no specific contentions have been made against the SEBI's complaint and FIR provided along with the SSCN and the amended provisions dealing with the '*fit and proper criteria*' in Schedule II of the Intermediaries Regulations.
34. At this juncture, it is necessary to specifically deal with the submission of the noticee that it is not correct to declare the noticee as not fit and proper for violation of provisions of FCRA and appropriate actions may be taken under FCRA itself. The power to investigate into violations of FCRA vests with the police authorities under CrPC and as mentioned above,

SEBI has filed a complaint dated September 24, 2018 with the EOW for initiating appropriate action for the violations of the FCRA by the noticee and a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai on the basis of the said complaint. In view of Section 29(A)(2)(e) of FCRA, any violation under the FCRA is to be brought out to the notice of Police Authorities by SEBI, which has already been done vide complaint dated September 24, 2018. 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. I note that, the complaint has been filed against the noticee within the period as specified by the legislature.

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. I further note 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.
36. The above 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.
37. In this regard, as discussed above, the noticee has admittedly traded in '*paired contracts*' on behalf of its clients. 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 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 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 has filed a complaint dated September 24, 2018 with EOW and further an FIR was registered with the MIDC Police Station, Mumbai on

September 28, 2018 under section 154 of Cr.PC and the same is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the noticee as on date. Therefore, the noticee attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations.

38. The noticee has contended that it provided services only to 9 investors, at their own request and the functioning of NSEL was in public knowledge, no loss was caused to any investors, no investor complaints were filed against it and no amounts remained due to its clients. 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. Hence, it is immaterial if the noticee has any outstanding investor complaints or not. 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 with the approval of its Board, 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.
39. It has been argued by the noticee that at the time of grant of Certificate of Registration to the noticee in December, 2015, it was already adjudged as a '*fit and proper person*' by SEBI and, therefore, the said criteria are already satisfied by the noticee. However, as noted above, '*fit and proper person*' criteria is a continuing requirement under the Intermediaries Regulations which the noticee ought to comply with at all times as long as it desires to remain associated with the securities market as a registered intermediary. Further, necessity of specifying a period of time, after which the applicant may become eligible to seek registration does not arise in this order (unlike in the case of entities desiring to be registered as market intermediaries) while dealing with an entity holding a certificate of registration which is recommended to be cancelled as this forum cannot presume whether such entity would wish to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable provisions.
40. The admission of the noticee having traded 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 at the request of the clients for trading in '*paired contracts*' does not absolve a broker of the responsibility to conduct the diligence required to be performed by any reasonable or prudent person.

41. 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 a honest and ethical manner and comply with all applicable regulatory requirements which would be in the best interests of investors. Further, as noted above, the noticee has also attracted disqualification under point 3(b)(i) of Schedule II of the Intermediaries Regulations
42. 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.
43. 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**

44. 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. INZ000035935) of the noticee i.e., Share India Commodity Brokers Private Limited.
45. The noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 44 above.
46. 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.
47. 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.

48. A copy of this order shall be served upon the noticee, the recognized Exchanges and the Depositories for necessary compliance.

Sd/-

**DATE: FEBRUARY 28, 2023**

**PLACE: MUMBAI**

**ANAND R BAIWAR  
EXECUTIVE DIRECTOR**

**SECURITIES AND EXCHANGE BOARD OF INDIA**