QJA/VS/MIRSD/DOP/29134/2023-24

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

Name of the Noticee	SEBI Registration No.
Baljit Metals Private Limited	**INZ000051934**

In the matter of National Spot Exchange Limited ("NSEL")

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated August 27, 2019 submitted by the Designated Authority (hereinafter referred to as the **"DA"**) in terms of regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, as it stood at the relevant point of time, prior to its amendment vide Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021 (hereinafter referred as "**Intermediaries Regulations**"), wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that the certificate of registration of Baljit Metals Private Limited (hereinafter referred to as "**Baljit/ *Noticee***") as a commodity derivatives broker may be cancelled.

2. On the basis of the factual details, material available on record and after considering the reply filed by the Noticee, the DA has made the following recommendation:

> *"31. In view of the foregoing, after taking into consideration all the facts and circumstances of the case, I am of the view that the Noticee is not a 'fit and proper person' in terms of regulation 5(e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of the provisions of regulation 27 of the Intermediaries Regulations read with section 12(3) of the SEBI Act and regulation 27(iv) of the Brokers Regulations, I hereby recommend cancellation of the certificate of the*

registration granted to the Noticee i.e. Baljit Metals Private Limited [SEBI Regn. No. INZ000051934] as a commodity derivatives broker."

3. After considering the Enquiry Report, a Post Enquiry Show Cause Notice dated September 17, 2019 (hereinafter referred to as "**SCN**") enclosing therewith the Enquiry Report of the DA was issued to the Noticee under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration as recommended by the DA or any other action as deemed fit by the Competent Authority, under regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time) should not be taken against it. The SCN further required the Noticee to submit its reply, if any, within 21 days of receipt of the same. In response to the said SCN, the Noticee, vide its letters dated October 18, 2019, November 14, 2019 and January 14, 2020 filed its reply.

4. Thereafter, personal hearing in the matter was scheduled on November 25, 2019 before the then competent authority which was rescheduled on multiple occasions due to repeated requests received from the Noticee and finally the same was concluded on January 15, 2020. The Noticee filed additional written submissions vide its letter May 25, 2020.

5. While proceedings in the present matter were ongoing, SEBI passed five separate orders during February 2019 rejecting the applications filed by five other entities for registration as commodity brokers. 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 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. Subsequently, due to administrative reasons, the competent authority of SEBI, reallocated cases and transferred the present matter to the undersigned for further proceedings.

7. In light of the aforesaid order of Hon'ble SAT 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, a notice of hearing dated November 11, 2022 scheduling personal hearing on December 14, 2022 was sent to the Noticee. In light of the aforesaid order of Hon'ble SAT, certain additional documents/material (as indicated in the hearing notice) were provided to the Noticee with the hearing notice and Noticee was advised to file its reply, if any, in respect of the additional documents/information/facts before or on the date of hearing. Vide the aforesaid notice of hearing, the Noticee was also informed that the additional documents/information/facts will be considered by the Competent Authority along with the Enquiry Report. The Noticee filed written submissions vide letter dated December 10, 2022 in response to the hearing notice dated November 11, 2022. The hearing in the matter (scheduled on December 14, 2022) was adjourned to January 18, 2023 on the request of the Noticee.

8. On the scheduled date of hearing, the authorized representatives of the Noticee appeared before me and made submissions in line with the replies of the Noticee on record. During the course of hearing, the Noticee was advised to furnish certain information/document(s) which was provided by the Noticee vide its letter dated February 28, 2023. Subsequently, the Noticee, vide its letter dated July 18, 2023 filed additional written submissions.

9. The replies filed by the Noticee vide letters dated October 18, 2019, November 14, 2019, January 14, 2020, May 25, 2020, August 07, 2020, December 10, 2022 and February 28, 2023 are summarized hereunder:

9.1. The present SCN has been issued after a gap of more than 10 years for the alleged paired contracts were executed in the year 2009. There is an inordinate delay in initiation of proceedings by SEBI. In support of the submissions, Noticee has relied upon various decisions of Hon'ble SAT and Hon'ble Supreme Court.

9.2. It is stated that on multiple occasions the Noticee had sought copy of the additional document, however the same were not provided to it. In absence of relevant information and documents, it is not in a position to present the case in detail and has reiterated its request for providing the documents and its inspection.

9.3. The SCN is in violation of the basic principles of '*Audi alteram Partem'* as no opportunity of being heard was provided to the Noticee before issuance of SCN. There was no exemption/prohibition for grant of personal hearing by the DA under the Intermediary Regulations.

9.4. NSEL had not defined any contract as 'paired contract' and in order to have clarity, information including turnover for alleged paired contracts was sought from NSEL and the same was denied. Noticee has requested SEBI to direct NSEL to provide clarifications on the alleged paired contracts.

9.5. The facts about the role and nature of NSEL as commodity exchange was within the knowledge of SEBI and while granting the registration, SEBI had already looked into it and thus it is requested to not take a different view belatedly.

9.6. The Noticee has executed the contracts with utmost integrity and adhered to soundness, moral principles and character in terms of Clause A(1) of the Code of Conduct under the Brokers Regulations. Clause A(2) of the Code of Conduct of Brokers Regulations mandates a stock broker to act with due skill, care and diligence and the Noticee has duly exercised such due skill, care and diligence as a man of ordinary prudence is expected to do. Further, violation of clause A(5) of the code of conduct is also denied.

9.7. In terms of regulation 5(e) of the Brokers Regulations, the 'fit and proper person' criteria is looked into at the time of granting of certificate of

registration and the Noticee was duly compliant with the criteria at the time of grant of certificate of registration;

9.8. In terms of regulation 9(b) of the Broker Regulations, the Noticee was required to abide by the rules, regulations and bye laws of the exchange and the Noticee has not lapsed in complying with the same and there is no allegation in this regard in the Enquiry Report/ SCN;

9.9. In terms of regulation 9(f) of the Broker Regulations, the Noticee was required to abide by the Code of Conduct as specified in the Schedule II therein and the Noticee has always abided by the same while carrying out transactions at NSEL;

9.10. It is requested to give regard to various mitigating factors.

9.11. Except being a member/broker of NSEL, the Noticee has no other connection or association with NSEL, its directors and promoters in any manner whatsoever. Except earning meagre brokerage on execution of trades for the clients, the Noticee has not derived any gain or benefit.

9.12. The Noticee had never approached any of its clients in any manner and in support of it, declaration of oath from its 58 clients has also been provided.

9.13. Reliance placed on Order dated December 04, 2017 passed by Hon'ble Bombay High Court is misplaced as the said Order was quashed by the Order dated April 30, 2019.

9.14. No reliance ought to be placed on the EOW Report and SFIO Report.

9.15. At the relevant time, FMC was the regulator of the Commodities derivative's market and SEBI was not the regulator of the NSEL. SEBI could not have initiated any action under Regulation 23 of the Intermediaries Regulations on the purported ground of alleged contravention of "…*provisions of the securities laws or directions, instructions or circulars issued thereunder."*

9.16. The Noticee has always abided by the Rules, Bye laws, Circulars, instructions and directions issued by NSEL and its Regulator, the FMC.

9.17. The Noticee executed transactions in Traders Contracts only after issuance of notification dated February 06, 2012.

9.18. Out of around 6800 registered clients with the Noticee in the equity and commodity broking entities, the Noticee executed traders' contract only for 68 clients. The Noticee and its clients are also the victim of the fraud committed by NSEL and the defaulting members of NSEL as NSEL had

pay out obligations of ₹ 9,87,90,980 for 57 clients at the time of default and it is yet to receive ₹ 8,55,31,212 from NSEL.

9.19. The Noticee has complied with all the terms and conditions of the Government of India exemption Notification dated June 05, 2007. NSEL circular dated August 31, 2018 clarified that short sale were prohibited and directed that the seller must be in possession of commodities or an equivalent buy position before entering his sale order. The first leg of the alleged paired contract was always a purchase. Hence, there is no question of a short sale. There appears to be a misconception that a party has to go to the warehouse and take actual physical possession of commodities. All settlements and delivery were by way of handing over documents to the buyer who could take physical delivery, or sell the goods and deliver the documents. Thus, the same could not amount to a 'short sale'.

9.20. It was NSEL which had introduced the concept of 'paired contracts and not the broker members of NSEL. The Noticee had no role to play in NSEL deciding to launch such alleged pair contracts. No Hon'ble Court or authority had ever held or even alleged that any contracts launched by the NSEL were without the prior concurrence of FMC as stipulated in Bye laws of NSEL.

9.21. SEBI is obliged to follow the instructions in the DEA letter dated December 30, 2014 and take action only against NSEL since SEBI is choosing to rely upon the said letter.

9.22. FMC with full knowledge allowed such pair trading transactions to continue to be traded without any objection and same amounted to a representation to the Noticee that such transactions were fully legal and permitted.

9.23. The Noticee has made submissions in reference to the Hon'ble Supreme Court Order dated April 30, 2019 in the matter of 63 Moons Technologies Ltd. on the purported financing transactions and stated the said submissions were not placed before or considered by the Hon'ble Supreme Court. SCN is required to consider all the submissions and give independent findings on the same and ought not to rely upon the referred orders of Hon'ble Court.

9.24. The Noticee has made submissions in reference to the Hon'ble Bombay High Court Order dated August 23, 2014 in the criminal bail application in

matter of Jignesh Prakash Shah vs State of Maharashtra and stated that the said reliance on the Order dated August 23, 2014 is misplaced, misconceived and untenable.

9.25. The Noticee has made submissions in reference to the Hon'ble Bombay High Court Order dated October 01, 2015 and stated that the same pertains to the proceedings only in respect of considering whether action/investigation under the MPID Act could have ever been commenced against the NSEL and was totally irrelevant to the fit and proper status of the non-defaulting brokers. It is further stated that the broker was not even a party in the said order and no observations were made against it. The Order is in effect reversed by an order dated August 22, 2019. Non-defaulting brokers are the victims and not the perpetrators of any mischief.

9.26. Reliance placed on the Orders passed by Hon'ble SAT in *Jermyn Capital LLC* and *Mukesh Babu Securities Ltd.* is misplaced and irrelevant since the facts of both the cases are different and distinguishable.

9.27. The FMC Order dated December 17, 2013 was/is completely irrelevant qua the issue as to whether the Noticee is a fit and proper person.

9.28. In the Hon'ble Bombay High Court Order dated February 28, 2014 there are no findings of any nature whatsoever on the role of any of the brokers who had executed trades at NSEL.

9.29. Neither the Order dated December 04, 2017 of the Hon'ble Bombay High Court and the Order dated April 30, 2019 of the Hon'ble Supreme Court made any adverse observations or findings against the Noticee or any other non-defaulting brokers. Moreover, in the said December 04, 2017 Order, it is held that brokers cannot be blamed for trading in the alleged pair contracts and there were no observations or findings against the Noticee or any broker.

9.30. The EOW report has not been provided to the Noticee and thus reliance should not be placed on it. Further, the EOW report does not include its name.

9.31. SFIO had never given any opportunity to the Noticee to furnish its reply or submissions and SFIO report was not provided to it. Therefore, its observations are not binding and cannot be relied upon against it.

9.32. As regards the Noticee's 'close association' with NSEL, the following is submitted:

9.32.1. No clients were permitted to execute trades directly on the NSEL and had to do so through a registered broker;

9.32.2. The trading in NSEL was open and transparent and there was nothing surreptitious about it and no authority had ever questioned the legitimacy or validity of any contracts/ trades;

9.32.3. The entire ecosystem of NSEL was similar to all other Exchanges and there were no 'red flags' to arouse any suspicion;

9.32.4. Till the time the Noticee continued to act as a broker of NSEL, the reputation of NSEL had not been tarnished;

9.32.5. The Noticee was not on any committee or Advisory Board of NSEL and there was no relationship between NSEL and the Noticee apart from member and exchange;

9.32.6. MCX and NSEL had common directors and common shareholding and thus the two were closely associated but no proceedings have been initiated against MCX, on the other hand, the Noticee had no actual 'association' with the NSEL;

9.33. The concept of 'fit and proper' has a very wide amplitude and that SEBI has wide discretion in the matter, which has to be exercised in accordance with well settled principles of law.

10. The additional written submissions filed by the Noticee vide its letter dated July 18, 2023 and the oral submissions made during the course of personal hearing held on January 18, 2023, are summarized hereunder:

10.1. NSEL had been openly carrying out trading in variety of commodities and details of the same were regularly reported to FMC, who was performing the function of a regulator over NSEL. There was no reason to doubt the legality of these contracts.

10.2. It had executed trades on NSEL platform when at the relevant time around 500 Brokers were executing trades through thousands of terminals for lacs of clients including Government companies and Organizations like MMTC, FCI, NAFED, etc., no adverse remark/red flag were raised against any of the entities who were also purported to be closely associated with NSEL

and alleged paired contracts. Thus, their dealing in NSEL trading platform be considered on similar lines.

10.3. On August 05, 2011, FMC was appointed as the designated agency for NSEL and it was expected to play a proactive role by monitoring trades at NSEL platform and its statutory compliance requirements in terms of Government of India notification dated June 05, 2007. There was gross failure of FMC in performing its duties as an apex regulator of commodities market and their presence as mere silent spectator is root cause of subject matter of present proceedings.

10.4. The paired contracts were also referred to as 'Trader Contract'. Noticee had fulfilled its total obligation on execution of buy and sell contracts independently. Notably, it was acting as a 'Member' of NSEL and thus on execution of buy order, it made full payment of consideration on buy contract and were in totality delivery based transaction executed on NSEL. Thus on making full payment for buy contract, it had complied with entire obligation. With regard to sell contracts, on fulfillment of pay in obligation for delivery of underlying commodities, pay out was received by it. Thus, it had complied with its entire obligation qua sell contracts. On each buy and sell contracts, levy of VAT as applicable, warehousing charges and octroi as applicable were recovered and paid by it.

10.5. Except member/broker relation with NSEL, it has no other connection or association with NSEL, its directors, promoters and KMP in any manner whatsoever. Except earning meagre brokerage on execution of trades for few of the clients, it has not derived nay gain or benefit of any nature. The transactions were carried out in due compliance of Bye laws, Rules, Regulations and Circulars issued by NSEL from time to time and no grievance of any nature was raised against it by NSEL or FMC or any of the clients.

10.6. It was its genuine and bonafide belief that the alleged contracts were in compliance with the conditions of GOI notification and there was nothing contrary thereto. If any such alleged paired contract had to be considered to be illegal, then the same had to be annulled as void in law *ab initio.* Neither GOI nor FMC nor the department of Consumer affairs (DCA) nor SEBI nor any authority has held that all such transactions need to be annulled.

10.7. While granting registration to it, SEBI was fully aware that it had carried out the trades in alleged paired contracts and therefore the principles of res judicata and estoppel would apply.

10.8. At the relevant time, SEBI was not the regulator of the NSEL, and it ought not to have initiated any action under Regulation 23 of the Intermediaries Regulations on the purported ground of alleged contravention of "…*provisions of the securities laws or directions, instructions or circulars issued thereunder."*

10.9. It was NSEL which had introduced the concept of alleged 'paired contracts' and the brokers had no role to play in NSEL deciding to launch such alleged paired contracts. The trading in alleged paired contracts amounted to about 99% of the total trading in the NSEL as held in the Order dated December 04, 2017 of the Hon'ble Bombay High Court in WP No. 2743 of 2014. It could never have been held that such widely traded contracts were illegal or in violation of GOI notification dated June 05, 2007. The paired contracts were launched in accordance with the NSEL bye laws.

10.10. SEBI has placed reliance on various orders, judgements passed/issued by various regulatory authorities wherein the Noticee was not even a party to the said proceedings/order/Judgement. The observations made in these reports/orders were specific to the entities therein and not specific to the Noticee.

10.11. The Hon'ble Supreme Court in its Order dated April 30, 2019 in the matter of *63 Moons Technologies* has not made any adverse observations or finding against it or any other non-defaulting broker. The Hon'ble Court in its Order dated April 22, 2022 has held that this controversy in question was devised by a few trading members along with NSEL and Noticee is a victim in respect of the present matter.

10.12. No flaws, non-compliance, deficiencies and breaches of trading in commodities were pointed out by any government department, FMC or by any other regulatory authorities when it was functional. The allegations against it are afterthought and without any cogent, incriminating material against it. At all the time, the Noticee had maintained fit and proper person criteria specified in Schedule II of the Intermediaries Regulations. It has always complied with the applicable rules, regulations and bye-laws of the Stock/Commodity Exchange.

10.13. The amendment to Schedule II of the Intermediaries Regulations came into force from November 17, 2021 which is much after the initiation of present proceedings and the filling of the FIR and thus retrospective application of the same would be in gross violation of the principles of natural justice.

10.14. The Complaint/First Information Report (FIR) dated September 24, 2018 cannot be given any weightage for determining the 'fit and proper' status of the Noticee for the following reasons:

10.14.1. FIR is only the first instance of reporting of the complaint and is a preliminary document based on the one sided statement of the complainant without any adjudication of the same.

10.14.2. The main plank of the said FIR is that the Noticee like all other trading members of NSEL has traded in paired contracts on the NSEL platform. It appears that SEBI has initiated enquiry not only against the Noticee but also against 300 members of NSEL who allegedly participated in paired contracts. It is illogical to contend that anyone who dealt in alleged paired contracts as member of NSEL would be declared as not a 'fit and proper person'.

10.14.3. SEBI cannot rely on its own complaint dated September 24, 2018, pursuant to which FIR September 28, 2018 was filed. Thus, while SEBI itself has filed the FIR, by way of these proceeding, SEBI itself would be judging the same allegation. Thus, these proceedings are void *ab initio.*

10.14.4. Noticee has placed reliance on the observations of Hon'ble SAT in the matter of *Almondz Global Securities Ltd. vs SEBI* and Order dated October 18, 2022 passed by Hon'ble Bombay High Court in the matter of *Geeta Lunch Home Vs State of Maharashtra & Ors*. to contend that only a FIR is filed against the Noticee and charge against it is not proven.

10.15. The Noticee was meeting all the important criteria for being fit and proper person provided under Schedule II at the relevant time i.e. prior to the SEBI (Intermediaries) (Third Amendment) that was w.e.f November 17, 2021.

10.16. The punishment of being declared as not fit and proper is the ultimate punishment and should be imposed sparingly in case of repeated offences while consistently applying the doctrine of proportionality.

10.17. The Amended provisions are punitive in nature and impinge upon the Intermediaries Fundamental Rights enshrined in Articles 14, 19(1)(g) and 21 of the Constitution.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the Enquiry Report dated August 27, 2019, SCN dated September 17, 2019 and the replies / written submissions filed by the Noticee and the oral submissions made by the Noticee during the personal hearing held on January 18, 2023 and other materials/information available in the public domain and also made available to the Noticee. After considering the allegations made/charges levelled against the Noticee in the instant matter as spelt out in the SCN, 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.

12. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate to refer to the relevant provisions of law, 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:

> **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.*
>
> **STOCK BROKERS REGULATIONS, 1992**
>
> ***Consideration of application for grant of registration.***
>
> *5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,*
>
> *(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008*
>
> ***Conditions of registration.***

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Liability for action under the Enquiry Proceeding Regulations.

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

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

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 proceeding s 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.

13. Before coming to the merits of the case, it is relevant to deal with the contention of the *Noticee* that it was not provided with personal hearing before the DA and there was no exemption/prohibition for grant of personal hearing by the DA under the Intermediaries Regulations. In this regard, I note that the DA had issued the show cause notice dated September 25, 2018 under the then existing Regulation 25(1) of the Intermediaries Regulations and Enquiry Report was submitted on August 27, 2019. The Intermediaries Regulations were amended vide the SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021, and the amended Regulations now provide that the DA shall grant an opportunity of personal hearing and issue or cause to issue a notice scheduling a date for hearing. It is pertinent to note that under the then existing Intermediaries Regulations prior to its amendment w.e.f. January 21, 2021, there was no legal requirement for providing the opportunity of personal hearing to the Noticee by the DA. However, the Regulations specified granting of opportunity of personal hearing by the competent authority, which in the present case, has been provided to and availed by the Noticee. Thus, there is no defect in the process followed in the present enquiry proceedings and accordingly, the contentions raised by the Noticee in this regard are misplaced and devoid of any merit.

14. Another objection raised by the Noticee is that there is an inordinate delay of more than 10 years in initiating the present proceedings and issuance of the SCNs against the Noticee. In this context, the Hon'ble Supreme Court in Adjudicating Officer, *Securities and Exchange Board of India v. Bhavesh Pabari* [1] was pleased to observe that delay in issue of the SCNs itself would not exonerate the defaulters from the default. Reference may also be made to

1 (2019) 5 SCC 90. Available at: https://main.sci.gov.in/supremecourt/2013/36291/36291_2013_Judgement_28-Feb-2019.pdf

the order of the Hon'ble Supreme Court in the matter of *SEBI v. Sunil Krishna Khaitan and Ors* [2] on the aspect of delay and its impact on proceedings in the context of SEBI. The Hon'ble Supreme Court while referring to its earlier decision in the matter of Bhavesh Pabari (supra) held as follows:

> *"81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:*
>
> > *"35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere."*
>
> *82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as*

2 Civil Appeal No. 8249 of 2013, decided on July 11, 2022. Availabale at: https://www.sebi.gov.in/enforcement/orders/jul-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-8249-of-2013-sebi-vs-sunil-krishna-khaitan-and-ors-_61342.html

whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/ officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."

15. In view of the aforesaid decisions, it is clear that no specific limitation period has been provided in the SEBI Act but than even in the absence of a limitation period in the SEBI Act, the proceedings have to be initiated in a timely manner by the regulator. In the present matter, although the trades were executed during the period 2009-2013, SEBI was granted the jurisdiction to regulate the commodities segment only in 2015. Pursuant thereto, given the magnitude of the NSEL scam and upon examination of all relevant records and after identifying the entities involved, a show cause notice was issued by the DA on September 25, 2018. Further, the purpose of the present proceedings is not to adjudge the violation of provisions of FCRA but to adjudge the 'fit and proper' status of the Noticee, which is a continuing requirement under the Intermediaries Regulations. Accordingly, I am of the view that the plea regarding delay in initiation of the proceedings raised by the Noticee is not tenable.

16. I note that the Noticee has vehemently contended that it had sought certain documents and information which were not provided to it. The Noticee has reiterated its request for providing the documents and information. It is also contended that by not providing the relevant information, documents and material, the principles of natural justice have not been adhered to. I also note

that Sub-regulation (3) and (4) of Regulation 25 of the Intermediaries Regulations specifies that the copies of the documents "relied upon by SEBI" along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee.

17. In this regard, I note that all the relevant and relied upon documents pertaining to the instant proceedings have already been provided to the Noticee. I note from the paragraph no. 8 of the Enquiry report that vide letter dated November 12, 2018, Noticee was provided with the following documents relied upon by SEBI in the present proceedings.
    17.1. Copy of the relevant FMC Order with Annexures;
    17.2. Copy of the Grant Thornton Report with Annexures;
    17.3. Copy of the Notification issued by the Ministry of Consumer Affairs dated June 05, 2007;
    17.4. Documents explaining specifications of 'paired contracts' (as available in the Grant Thornton Report) (which is narrated in the FMC order);
    17.5. List of trading members/ fund name and clearing member name and the amount mentioned against their name in the EOW interim report dated April 04, 2015, who have applied/ registered with SEBI (the amount indicates default amount of clients (investors) who traded through the said brokers);
    17.6. Copies (total 11) of fortnightly reports submitted by NSEL to the erstwhile FMC;
    17.7. List of 148 members against whom NSEL has pay-out obligations as on September 19, 2013 as mentioned in the Grant Thornton Report (as per Annexure 6 of the Grant Thornton Report) dated September 21, 2013;
    17.8. Data containing registration documents of 299 members and Annual Return documents of 234 members;

18. The facts and events elaborated above clearly indicate that the processes in the proceedings carried out were in a timely and structured manner and all the necessary documents relied upon by SEBI for the purpose of framing charges against the Noticee were provided to it and every principle of natural justice has been adhered to while conducting these proceedings. Further, pursuant to

the issuance of SCN, additional material like SEBI complaint letter dated September 24, 2018, FIR dated September 28, 2018 registered with EOW and amended Schedule II of the Intermediaries Regulations has also been provided to the Noticee along with the Notice of Hearing dated November 11, 2022. Thus, I find that no prejudice has been caused to the Noticee on account of not providing any such document which has been sought by it, but has neither been relied upon nor is relevant to the present proceedings. Thus, the contention of the Noticee that it was not provided with the relevant information and documents is without any merit and is accordingly rejected.

19. The Noticee has also raised objection on the jurisdiction of SEBI and it is argued that at the relevant time SEBI was not the Regulator of commodities market and the same were regulated by FMC and the Noticee was governed by NSEL's bye laws, Regulations, etc. and provisions of FCRA. In this regard, I note that the issue for 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 that SEBI has the statutory authority to determine the "fit and proper" status of the intermediaries registered with it. Accordingly, to argue that the 'fit and proper' status of an entity can be adjudged only on the basis of violation of SEBI Act or allied regulations would not be correct. Since the Noticee is an intermediary registered with SEBI, I am of the considered view that SEBI is within its jurisdiction to determine the "*fit and proper"* status of the Noticee.

20. Moreover, SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the provisions of FCRA *inter alia* alleged to have been committed by the Noticee. I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same is subsisting. In the background of these facts, it is pertinent to see the scope and scheme of Section 29A(2)(e) of the FCRA which is reproduced as under for ease of reference:

*"**29A. Repeal and savings. —** (1) The Forward Contracts (Regulation) Act, 1952 (74 of 1952) is hereby repealed.*

(2) On and from the date of repeal of Forward Contracts Act—

(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;"

21. A bare perusal of the aforesaid provision would reveal that it is an enabling provision which enables SEBI to initiate fresh proceedings within a period of three years from the date on which the FCRA is repealed. As stated above, SEBI has *inter alia* filed complaint against the Noticee within the stipulated period as specified in the FCRA. Accordingly, I note that SEBI has taken appropriate steps for the alleged violation of the provisions of the FCRA. Further, the transactions done by the Noticee prior to September, 2015 are within the regulatory ambit of SEBI as Section 29A(2)(e) of the FCRA mandates SEBI to initiate appropriate proceedings within the given timeframe for the offences committed under the FCRA.

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

23. I further note that the provisions in the Finance Act, 2015 effecting the merger of FMC with SEBI in September, 2015 do not, *prima facie,* confer any power on SEBI to take charge, deal, inquire and resolve NSEL settlement crisis that broke out in 2013. Pursuant to repeal of FCRA and dissolution of FMC in terms of Section 131 of Finance Act, 2015, all recognized associations under the FCRA became deemed recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"). NSEL was not a recognized association under FCRA, and therefore the question as to NSEL falling under the regulatory jurisdiction of SEBI does not arise and the contention of the Noticee that FMC was acting as the regulator of NSEL is not tenable.

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

24. In light of the order passed by the Hon'ble SAT on June 09 2022 in the NSEL matters, as mentioned at paragraph 5 above, and in the interest of natural justice, the following documents/information were enclosed along with the notice of hearing dated November 11, 2022 and the Noticee was informed that these additional documents / information would be considered by the competent authority along with the Enquiry Report submitted by the DA:
    24.1. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing ('**EOW**');
    24.2. First Information Report ('**FIR**') dated September 28, 2018; and
    24.3. Amended Schedule II of the Intermediaries Regulations.

25. In this regard, I find it apposite to encapsulate the list the grounds on which the SEBI orders were set aside by the Hon'ble SAT, which consequently led to issuance of the aforesaid documents, along with the hearing notice, to the Noticee in the present matter:
    25.1. The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India*[3] cannot be relied upon as the said

[3] Writ Petition No. 2743 of 2014, Also available at - https://indiankanoon.org/doc/66704740/

judgement has been set aside in appeal[4] by the Hon'ble Supreme Court vide judgment dated April 30, 2019.

25.2. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "**MPID Act**") (***NSEL vs. State of Maharashtra***[5]) cannot be relied upon, as in a subsequent Writ Petition[6] moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the *prima facie* observations made by the single bench while dismissing NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that *prima facie* observations cannot be utilized to judge the reputation, character or integrity of NSEL.

25.3. The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of ***Jignesh Prakash Shah vs. The State of Maharashtra***[7], cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.

25.4. Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High

[4] (2019) 18 SCC 401, Also available at - https://indiankanoon.org/doc/169098295/

[5] Writ Petition No. 1403 of 2015, Also available at - https://bombayhighcourt.nic.in/generatenewauth.php?bhcpar=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9qdWRnZW1lbnRzLzIwMTUvJmZuYW1lPUNSV1AxNDAzMTUucGRmJnNtZmxhZz1OJnJqdWRkYXRlPSZ1cGxvYWRkdD0wMS8xMC8yMDE1JnNwYXNzcGhyYXNlPTA5MDIyMzEyMzU0Ng==

[6] MANU/MH/2309/2019, Also available at - https://indiankanoon.org/doc/178307788/

[7] Criminal Bail Application No.1263 Of 2014, Also available at -http://www.nationalspotexchange.com/HC-order.pdf

Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.

25.5. Effect of SFIO Report under the Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.

25.6. Reliance placed on decisions of the Hon'ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***[8] and ***Mukesh Babu Securities vs. SEBI***[9] is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.

25.7. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.

25.8. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and NSEL. This was overlooked by SEBI.

25.9. SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

26. Thus, the Hon'ble SAT in the aforesaid Order dated June 09 2022 has already observed that no reliance can be placed on the SFIO report, its Orders in the matter of *Jermyn Capital* and *Mukesh Babu Securities and* various

[8] Appeal No. 26 of 2006, decided on September 06, 2006, Also available at - https://indiankanoon.org/doc/1511076/
[9] Appeal No. 53 of 2007, decided on December 10, 2007, Also available at- https://indiankanoon.org/doc/129504/

observations of Hon'ble Bombay High Court in the orders mentioned above. Thus, I do not find it necessary to deal with the contentions of the Noticee in this regard mentioned in the preceding paragraphs.

27. Before moving forward to consider the matter on merits and test the compliance of the Noticee with the *'fit and proper person'* criteria, on the basis of the additional material that has been brought on record post Hon'ble SAT's order (as detailed at paragraph 24 above), the background facts necessary for the present proceedings are narrated in brief, hereunder:

    27.1. The Noticee, Baljit Metals Private Limited, is a commodity broker registered with SEBI.

    27.2. NSEL was incorporated in May 2005 as a Spot Exchange *inter alia* with a purpose of developing an electronic Spot Exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification, granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia* including "*no short sale by the members of the exchange shall be allowed*" and "*all outstanding positions of the trades at the end of the day shall result in delivery*".

    27.3. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL had introduced the concept of '*paired contracts*' in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.

27.4. 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 measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "**FMC Order**") wherein it was *inter alia* observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of '*no short sale by members of the exchange shall be allowed*' was being not complied with by the NSEL and its members. FMC further observed that the '*paired contracts*' offered for trading in NSEL platform were in violation of the provisions of 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 forward contracts for sale and purchase of commodities traded on NSEL, from the purview of the FCRA.

28. It is contended that neither the Noticee was a party to the FMC order nor the trades of Noticee in paired contracts were matter under consideration of FMC, and thus FMC order cannot be relied upon. In this regard, I note that reference has been drawn to the FMC Order only to recognize the nature of contracts being traded on the NSEL and violations of the relevant provisions of law in order to ascertain the fit and proper status of the Noticee in the securities market. From the perusal of the FMC Order in respect of the '*paired contracts*', which were traded on NSEL platform during the relevant period, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. Short Sale

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of "*no short sale*

by members of the NSEL shall be allowed" was not being met by NSEL and its trading/clearing members who traded in the '*paired contracts'* during the relevant period.

b. <u>Contracts with Settlement Period going beyond 11 days</u>

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

29. Thus, I note that NSEL was granted conditional exemption from the provisions of FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short "**MCA**"), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906 (E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one–day duration traded on NSEL subject to certain conditions which, *inter alia*, included that '*no short sale by members of the NSEL shall be allowed*' and that all '*outstanding positions of the trade at the end of the day shall result in delivery*'. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

30. 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. 25day 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)

31. It is, therefore, clear that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. I further note from the FMC Order that under 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 NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is, therefore, noted that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of "*forward contract*" under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. Therefore, even going by the

interpretation adopted by FMC, what is beyond doubt is that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL.

32. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*[10] (hereinafter referred to as the **"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".*

33. It is further pertinent to refer to the judgment dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd.*[11] (hereinafter referred to as "**MPID matter**"), which overruled the Hon'ble Bombay High Court Order dated August 22, 2019 which has been relied upon by the Noticee to argue that paired contracts were not financial transactions but were trades in commodities as per regulations and bye laws of NSEL. In the said MPID matter, Hon'ble Supreme Court, while drawing reference to the presentations made by NSEL in respect of the '*paired contracts*', has, *inter alia,* held that:

> *"The above representation indicates that 'paired contracts' were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance.* ***Therefore, NSEL***

[10] (2019)18 SCC 401. Also available at https://indiankanoon.org/doc/169098295/
[11] Civil Appeal No. 2748-49 of 2022. Also available at https://indiankanoon.org/doc/184205229/

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)*

34. I, therefore, note that the Hon'ble Supreme Court has already commented on the nature of the '*paired contracts*' offered on NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court has held that such transactions come within the definition of '*deposits*' under the MPID Act.

35. It is further noted that the Hon'ble Supreme Court in the MPID matter, had extensively referred to the claims made on the website of NSEL and the contents of the publicity material and other investor resources. In this regard, it can be noted that NSEL was advertising a uniform return of 16% p.a. for the '*paired contracts*' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The *'paired contracts'*, it is noted, were being marketed as an alternative to fixed deposits.

36. I note that the FMC Order and both judgments of the Hon'ble Supreme Court go into abundant detail regarding NSEL permitting short sales i.e., permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgment of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the '*paired contracts*' which were executed were short sales and naked short sales - that the commodities to back such sales were not available at the designated warehouses of NSEL.

37. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the Noticee, while facilitating such transactions for its clients, was under the *bonafide* belief that the *'paired contracts'* were actually spot contracts in commodities, or, can it be said that the very fact that '*paired contracts'* were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the Noticee should have been aware that such a product was altogether different from the spot trading in commodities, which was permitted on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.

38. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the Noticee when these products were first offered by NSEL. With the material on record, it is further clear that any prudent person (including the Noticee) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had trappings of a financial product which offered fixed and assured returns, as the Hon'ble Supreme Court has already held.

39. 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.

40. In this context, I note that the Noticee in its reply dated May 25, 2020 has submitted that out of around 6800 registered clients for carrying out share trading and commodity trading activities, it had executed trades only for 68 in the paired contracts at NSEL. Also, NSEL had payout obligations of ₹ 9,87,90,980 for its 57 clients at the time of default. Further, the DA has also observed that as per the Grant Thornton Report and Interim Report of EOW, NSEL *had payout obligation to the Noticee to the extent of about ₹8,97,77,312 for trades carried out in paired contracts*. It is pertinent to note that the Noticee

has also admitted that it had executed transactions in the paired contracts. Thus, there is ample evidence to demonstrate that the Noticee had facilitated trading in the paired contracts on the NSEL platform on behalf of its clients.

41. Having noted that the Noticee has traded in *'paired contracts'* for its clients, I now proceed to examine the allegations levelled against the Noticee in the SCN. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in *'paired contracts'* on NSEL platform during the relevant period as a Trading Member/Clearing Member, the Noticee has violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that the continuance of the registration of the Noticee as a broker is detrimental to the interest of the Securities Market and the Noticee is no longer a '*fit and proper person*' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. In this context, the Noticee in its submissions has, *inter alia*, submitted that the paired contracts were introduced and approved by NSEL and the Noticee as a member of NSEL had no other option but to trade in such contracts by observing the business rules and regulations of NSEL. Thus, it has been argued that the observation that the Noticee as commodity broker allowed itself to become an instrument of NSEL in promoting trading in paired contracts among its clients is erroneous.

42. With respect to the above arguments of the Noticee, I note that the Noticee, as a broker and as a member of NSEL, represented NSEL to the regular investors. The execution of the trades in *'paired contracts'* by the Noticee shows the participation of the Noticee in the 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 under the garb of spot trading in commodities. Therefore, the Noticee by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in *'paired contracts'* which were in the nature of financing transactions (as held by the Hon'ble Supreme Court of India referred

supra). Further, the Noticee has also vehemently submitted that it was not closely associated with NSEL. In this regard, I note that the present proceedings are not based on Noticee's relationship with NSEL as a trading member. Factors such as pendency of FIR, Noticee having traded/ facilitated trading in paired contracts (which were found to be in violation of the 2007 Exemption Notification by the Hon'ble Supreme Court), and other material have been taken into account in the present proceedings. The Noticee, by providing access for taking exposure to *'paired contracts'* has exposed its clients to the risk involved in trading in a product that did not have regulatory approval. Thus, I am of the view that the trading activities of the Noticee in *'paired contracts'* for its clients on NSEL platform have serious ingredients jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

43. The Noticee has also submitted that DA's reliance on the interim report of EOW is erroneous and misplaced and there are no specific charges made against the Noticee in the interim report. In this regard, I note that the Interim EOW report has been relied by DA only to demonstrate the involvement of the Noticee in facilitating the trading in paired contracts. Even without the EOW report there is sufficient material on record to establish that the Noticee had indeed facilitated the trading in the 'paired contracts'. Accordingly, I find no merit in the Noticee's contentions in this regard.

44. As mentioned above, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018, etc.) as provided to the Noticee with the hearing notice dated November 11, 2022, further alleged that in light of the aforesaid documents filed against the Noticee by SEBI as well as observations/ findings against the Noticee in the Enquiry Report dated August 27, 2019, the Noticee is no longer a *'fit and proper person'* for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. I further note that the '*fit and*

proper person' criteria specified in Schedule II of the Intermediaries Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

45. Noticee has contended that SEBI Regulations cannot be made applicable retrospectively and that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the initiation of the present proceedings. In this context, as noted above, the Noticee is holding a Certificate of Registration granted by SEBI. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which, *inter alia,* included, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper person is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market. I therefore find no merit in the said submission of the Noticee. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the '*fit and proper*' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the '*fit and proper person*' criteria while granting the Certificate of Registration, in 2016, such an intermediary can still be assessed on being *fit and proper* at a later date. The Noticee's contention that SEBI was fully aware of the NSEL scam while granting registration to the Noticee and thus would be estopped from retracting from its own decision of granting it the said registration certificate is also misplaced as the principle of estoppel does not apply to the instant case and if the continued applicability of the fit and proper criteria to its functioning is challenged, there would exist a market where the overall interest of the investors would stand compromised. Furthermore, as and when the '*fit and proper'* criteria changes, the Noticee will be required to comply with the

revised criteria, and in this instance, criteria were revised vide the amendment in November 2021, particularly when the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field even till date and hence any arguments to the contrary are not maintainable. It is noted paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which, *inter alia*, include the following:

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

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

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

46. In this regard, the Noticee has submitted that an FIR is only the first instance of reporting of a complaint that is lodged with the police and only a preliminary document based on the one-sided statement(s) of the complainant without any adjudication of the same and such an FIR is far from being equivalent to a final determination, thus, no reliance can be placed on any FIR particularly an FIR which has been filed by SEBI itself. In relation to this submission, I note that an FIR has been registered with the MIDC Police Station, Mumbai, *inter alia,* against the Noticee on September 28, 2018 and the same is pending as on date and is subsisting and has not been quashed or stayed by any competent court *qua* the Noticee. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Further, due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field till date which is binding upon SEBI, and arguments to the contrary as advanced by the Noticee while referring to the observations of various SAT orders are not maintainable. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. It is, therefore, noted that the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the Noticee.

47. In view of the above observations and the finding that the Noticee had facilitated the trading in these *'paired contracts'* on NSEL, I hold that by virtue of the Noticee*'s* participation/ facilitating in the trading in *'paired contracts'* on NSEL platform during the relevant period as a Trading Member/Clearing Member, the Noticee has violated the conditions of the 2007 Exemption Notification and also the provisions of FCRA. Further, as noted above, the Noticee has also attracted disqualifications under point 3(b)(i) of Schedule II and the act of the Noticee in offering access to *'paired contracts'*, as discussed above, also seriously calls into question the integrity, honesty and lack of ethical behavior on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and were different from the spot contracts in commodities which were permitted to be traded on NSEL. The *'paired contracts'* were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-by to the terms of the 2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question, the appropriateness and suitability of the continuance of the registration of the Noticee*,* as a broker. I also note that the Noticee has provided affidavits from 58 of its clients wherein, *inter alia,* the clients have stated that they are well informed investors, do their own research and analysis, and they have carried out the trade in paired contract and invested their own money. In this regard, I am of the view that any argument on these lines that the clients demanded such access to the 'paired contracts', or did their own research and invested their own money and executed the contracts without any solicitation, as contended by the Noticee, does not lessen the diligence required to be performed by any reasonable or prudent broker including the Noticee, which cannot rely upon such client requests. Clearly, the actions of the *Noticee* could be and have been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a '*fit and proper person*' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

48. As regards, Noticees contention that no adverse remarks/red flags were raised against various agencies like MMTC, FCI, NAFED, etc. who had executed trades as clients on NSEL platform and who were also purported to be closely associated with NSEL and that its dealings on the NSEL trading platform should also be considered on similar lines, I note that SEBI has passed an order dated August 02, 2023 against MMTC limited in the matter of NSEL and cancelled its certificate of registration as a commodity broker for its role and involvement in the facilitation/trading in the paired contracts on NSEL platform. I also note that proceedings have been proposed and initiated against various entities based on the trades executed in the paired contracts on the NSEL platform and the accompanying facts and circumstances of their respective cases relying on material available on record. Since the Noticee was one of such entity that had facilitated the trading in paired contracts on behalf of its clients, the present proceedings have been initiated against it. The extent of the role of the Noticee has been clearly brought out in the SCNs issued to it and as a quasi-judicial authority, the issue before me is to adjudicate the gravity of the allegations in the SCNs and arrive at a finding. Thus, the contention of the Noticee is devoid of any merit.

49. Another argument raised by the Noticee that while granting registration to it, SEBI was fully aware that it had carried out the trades in alleged paired contracts and therefore the principles of res judicata would apply, is misconstrued and holds no ground, considering that at the point of time when registration was granted, SEBI was yet to determine any violation of law by the brokers I also note that principles of res judicata as provided under Section 11 of the Code of Civil Procedure, 1908 provides that *no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court*. Thus, the principles provide that if a suit filed for a cause of action and the dispute is resolved or judged by the competent court within its jurisdiction limits then the subsequent suit filed for the same cause of action is barred by the principle of Res Judicata. In the present proceedings, the issue of fit and

proper status of the Noticee has not been decided by SEBI before but is under consideration in the present proceedings. Thus the issue of applicability of res judicata does not arise and the contention of the Noticee is misconceived.

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

51. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honored in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions.

52. It further needs appreciation that the issue under consideration is not to gauge the profit/loss incurred or likely to be incurred by an individual, but the limited

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

53. At this juncture, I also note that necessity of specifying a period of time as stipulated by the SAT Order, after which the applicant may become eligible to seek registration does not arise in this order (unlike in the case of entities whose application seeking registration as an intermediary is pending) 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 applicable provisions.

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

ORDER

55. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. Baljit Metals Private Limited, the Certificate of Registration (bearing No. INZ000051934) of the Noticee, is hereby cancelled.

56. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 55 above.

57. Notwithstanding the direction at paragraph 55 above, the Noticee shall allow its existing clients, if any, to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker within a period of next 15 days therefrom, under advice to the said clients.

58. The Order shall come into force with immediate effect.

59. It is clarified that in view of the amendment made *w.e.f.* January 21, 2021 in the Intermediaries Regulations, 2008, powers that were exercised under regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.

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

Sd/-

DATE: SEPTEMBER 05, 2023 **V. S. SUNDARESAN**
PLACE: MUMBAI **EXECUTIVE DIRECTOR**
SECURITIES AND EXCHANGE BOARD OF INDIA