QJA/PR/MIRSD/DOP/26419/2023-24

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 -

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	**Bharat Bhushan Finance & Commodity Brokers Ltd.**	**INZ000087136**

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

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated August 29, 2019 (hereinafter referred to as **"Enquiry Report"**), submitted by the Designated Authority (hereinafter referred to as **"DA"**) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008, as it stood at the relevant point of time, prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021 (hereinafter referred as **"Intermediaries Regulations"**), wherein the Designated Authority (hereinafter referred to as **"DA"**), based on various factual findings and observations so recorded in the said Enquiry Report, recommended that the registration of Bharat Bhushan Finance & Commodity Brokers Limited (hereinafter referred to as **"Bharat Bhushan Commodity"** or **"Noticee"**) as a stock broker may be cancelled. Subsequent to the same, a Post Enquiry Show Cause Notice dated September 24, 2019 (hereinafter referred to as **"SCN"**), along-with the copy of the aforesaid Enquiry Report and copy of the Hon'ble Bombay High Court's decision dated August 22, 2014 and letter dated December 30, 2014 of DEA, Ministry of Finance was issued to the *Noticee.*

2. Pursuant to that, a hearing before the then Ld. Whole Time Member of SEBI (hereinafter referred to as "**WTM**") was granted to the Noticee on May 25, 2020 (rescheduled to May 26, 2020 on account of public holiday). In the interim the *Noticee* availed inspection of documents on January 27, 2020. Due to the pandemic, as requested by the Noticee the hearing was re-scheduled to September 08, 2021 during which the *Noticee* requested

for copy of certain documents and pursuant to which, the *Noticee* made its written submissions vide letter dated September 16, 2021. Thereafter, the personal hearing was conducted before the then WTM on September 27, 2021. The *Noticee* made its post hearing submissions vide letters dated October 11, 2021 and November 01, 2021. In its submissions dated November 01, 2021, the *Noticee* cited an order dated October 28, 2021 passed by the Hon'ble SAT in the matter of ***Joindre Commodities Limited vs. SEBI***, wherein, while granting stay on the operation of SEBI's order, the Hon'ble SAT observed:

> *"Considering the fact that the alleged violation of trade contracts is between the period September 2009 to August 2013 and coupled with the fact that the appellant only became a member in September 2011 and no violation has been found against the appellant after 2013 till the date of the passing of the order. We direct that the effect and operation of the impugned order shall remain stayed during the pendency of the appeal."*

Accordingly, as requested by the *Noticee*, the matter was kept in abeyance.

3. Subsequently, the competent authority of SEBI, reallocated the present matter to the undersigned for further proceedings.

4. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers who were involved in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI and while remanding the aforesaid orders, the Hon'ble SAT, *inter alia*, observed 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……"*

5. In light of the aforesaid SAT orders, it was felt necessary to furnish certain additional documents/material to the *Noticee* and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated

October 11, 2022 (hereinafter referred to as "**SSCN**") provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of the SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been sent to the *Noticee* through *Speed Post Acknowledgement Due* (for short '**SPAD**') vide letter dated October 11, 2022. Further, the scanned copy of the SSCN was also served upon the *Noticee* vide email dated October 17, 2022 and proof of delivery is available on record. In response to the said SSCN, the *Noticee* vide its letter dated October 28, 2022 filed a reply in the matter. In the interest of natural justice, an opportunity of personal hearing was granted to the *Noticee* on November 17, 2022. As requested by the *Noticee*, the hearing was re-scheduled to January 12, 2023.

6. On the scheduled date of hearing Mr. Prakash Shah, Mr. Kushal Shah and Dr. Keyur Shah, Authorized Representatives of the *Noticee* along with Mr. Vijay Bhushan, Director of the *Noticee* appeared in person and made oral submissions in the matter. The *Noticee* was granted 10 days' time for filing of post hearing written submissions in the matter. I note from available records that the *Noticee* vide email dated February 3, 2023 had requested four weeks' time to file post hearing submissions in the matter on account of medical grounds but no such submissions have been made by the *Noticee* yet.

7. Subsequently, the *Noticee*, vide letter dated March 6, 2023, intimated that it has filed a settlement application in the present proceedings under the SEBI (Settlement Proceedings) Regulations, 2018. The *Noticee* further requested to keep the proceedings in abeyance till the said application is disposed. Accordingly, passing of the order in the matter was kept in abeyance in terms of regulation 8(1) of the SEBI (Settlement Proceedings) Regulations, 2018. Subsequently, the said settlement application filed by the *Noticee* was rejected by the Competent Authority and the same was communicated to the *Noticee* vide email dated March 24, 2023.

8. In view of the above discussed facts and circumstances of the matter, I observe that the matter can be and is fit to be proceeded with on merit.

9. The written submissions filed by the *Noticee* vide letters dated October 18, 2019, December 27, 2019, January 29, 2020, September 16, 2021, October 11, 2021, November

01, 2021, October 28, 2022, November 11, 2022 and the oral submissions made during the course of the personal hearings held on January 12, 2023, are summarized hereunder:

i. The SCN has been issued to the *Noticee* after inordinate delay;
ii. The DA has failed to follow the due process of law, insofar, the DA has not taken proper cognizance of the *Noticee's* request of inspection of documents and providing an opportunity of personal hearing;
iii. The *Noticee* had executed the trades in alleged paired contracts only during the year 2012-13 for and on behalf of 25 clients under the clients' instructions. No advice, presentation or inducement of any nature was provided to the clients;
iv. The clients executed the trades on their own and no funding/ financing was provided to the clients;
v. None of the clients of the *Noticee* has raised any grievance/ complaint against the *Noticee*;
vi. Relevant material available with SEBI has not been provided to the *Noticee*;
vii. The *Noticee* had no other connection with NSEL except for member/ broker relationship and the *Noticee* had no connection or association with NSEL, its directors, promoters and Key Management person in any manner;
viii. Except for meagre brokerage on execution of trades for few of its clients, the *Noticee* has not derived any gain or benefit of any nature;
ix. The *Noticee* carried out its transactions in compliance with the Bye Laws, Rules, Regulations and Circulars issued by NSEL from time to time;
x. The insinuation that brokers were not regulated by FMC is incorrect as they were required to obtain a 'Unique Member Code' from the FMC and since FMC was the regulator at the relevant time and not SEBI, SEBI ought not to initiate any action under regulation 23 of the Intermediaries Regulation for contravention of provisions of securities laws;
xi. There was no prohibition for grant of personal hearing by DA under the Intermediaries Regulations and thus in the interest of principles of natural justice, the DA ought to have granted the opportunity of personal hearing;
xii. The Enquiry Report has wrongly placed reliance on the order dated December 4, 2017 passed by the Hon'ble Bombay High Court in the mater of ***63 Moons technologies Limited Vs The Union of India***[1] which has been

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

subsequently set aside by the Hon'ble Supreme Court vide its order dated April 30, 2019[2];

xiii. The Enquiry Report has placed reliance on the interim report of EOW dated April 4, 2015 but the said report has no relevance to the *Noticee's* case and ought not to be referred;

xiv. Reliance cannot be placed on the Investigation report of SFIO as the same has been held to be without jurisdiction by the decision of the Hon'ble Bombay High Court vide order dated January 15, 2020;

xv. As a business policy for rendering services to the clients, the *Noticee* never rendered any advisory services to the clients and it followed the instructions of the clients to execute transactions at the exchanges;

xvi. The first transaction in the trades contracts was carried out by the *Noticee* on April 23, 2012 for and on behalf of its clients;

xvii. FMC was appointed as the 'designated agency' vide notification dated February 6, 2012 to ensure compliance with the 2007 Exemption Notification and the *Noticee* executed trades in traders contracts only after appointment of FMC as the 'designated agency';

xviii. Out of total 20,052 clients registered with the *Noticee* and its group companies for share trading and commodity trading, only 25 clients had carried out transactions in the traders contracts at NSEL;

xix. All the relevant, vital and material facts were in the knowledge of SEBI when the registration was granted to the *Noticee* in 2016;

xx. By obtaining membership with the exchange, the *Noticee* was authorized to execute trades on behalf of clients and receive brokerage and it did not receive anything from the exchange;

xxi. It is erroneous and incomprehensible to allege that since the *Noticee* executed trades in the alleged paired contracts for tis clients, it was closely associated with the NSEL. The *Noticee* never approached/ advised/ guided its clients for execution of transactions;

xxii. As regard the terms and conditions of the 2007 Exemption Notification, the *Noticee* submits as under:

a) The first condition stipulated that '*No Short Sales and All outstanding positions at the end of the day shall result in delivery* and NSEL Circular dated August 31, 2012 clarified that short sales were prohibited and directed that the seller must be in

[2] (2019) 18 SCC 401, Also available at - https://indiankanoon.org/doc/169098295/

possession of commodities or equivalent buy position. The first transaction for all alleged '*paired contracts*' was always 'purchase' and therefore there is no question of 'short sale';

b) It is incomprehensible and impractical to contend that when thousands of clients were participating in alleged pair contracts, all of them would be taking physical delivery for their positions across multiple warehouses across the country;

c) The second condition stipulated, i.e., "*All outstanding positions of the trade at the end of the day shall result in delivery...* ", only meant that the open positions at the end of the day had to result in delivery but on the Exchange, such delivery was by delivery of requisite documents/ Delivery Allocation Letter, and not by actual physical delivery of commodities. The buyer could either take physical delivery or sell the goods and deliver the said documents and pay in but in either case, the exemption condition did not mean that the delivery had to be on the same day;

d) The third condition which stipulated that the "*the National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place*", only put a compliance requirement on NSEL and the *Noticee* understands that NSEL must have complied with the same;

e) The fourth condition pertaining to providing all information/ return relating to trade to the Central Government/ Designated Agency, only pertained to NSEL and not to brokers. Further, it is an admitted positon that fortnightly reports were being filed by NSEL with FMC;

f) The fifth condition which allowed the Central Government to impose additional condition and no condition was imposed that the settlement period of all contracts had to be less than 11 days and that trading in paired contracts would not be permitted;

g) While withdrawing the exemption notification under the sixth condition of the exemption notification, the government did not allege that there was any violation of any of the exemption conditions. Further, since the trading was in knowledge of FMC/ DCA and they permitted the same to go on without any objection, the same amounts to waiver of breach. In fact, the same also amounted to estoppel as to the correct interpretation of the 2007 Exemption Notification;

h) The fulfilment of the conditions of the 2007 Exemption Notification was the duty/ obligation of NSEL and not of the brokers/ clients and it was the responsibility of NSEL, FMC, DCA to ensure that the contracts launched on NSEL were in compliance with the conditions of the 2007 Exempting Notification;

xxiii. It was NSEL which introduced the paired contracts and not the broker members of NSEL and the said contracts were being traded openly for more than 3 years without any objection or demur by any authority before the *Noticee* commenced the trading on the NSEL;

xxiv. As regard the reliance placed by the DA on the Ministry of Finance, Department of Economic Affairs letter dated December 30, 2014, following is submitted:

(a) In the said letter, there is a reference to an earlier letter dated June 19, 2014 which is supposed to be an enclosure to the letter dated December 30, 2014 but the same has not been provided to the *Noticee*;

(b) The said letter was issued one year after the FMC Order date December 17, 2013 and one and half year after NSEL had defaulted and the fraud perpetrated by NSEL had become public knowledge;

(c) It is observed from the letter that alleged violation of 2007 Exemption Notification were still being examined and it was through this letter that DEA concurred that NSEL had violated the first two conditions;

(d) The said letter advised FMC to initiate appropriate action against NSEL and does not make any allegations or suggest any action against the *Noticee*;

(e) Since SEBI has merged with FMC, SEBI is obliged to follow the instructions in the said DEA letter and only take action against NSEL;

xxv. The reliance on the decision dated April 30, 2019 passed by the Hon'ble Supreme Court to label the alleged '*paired contracts*' as financing transactions by the designated authority is not sustainable in view of the following:

(a) All contracts were launched after taking prior concurrence of FMC in terms of the Bye-Laws of NSEL which has not yet been disputed by anyone;

(b) There was no 'pre-determination' of price between the *Noticee* and the counter-party brokers and the prices were prevailing market prices;

(c) Similar paired trading, commonly referred to as the 'calendar spreads' are openly and regularly traded in equity and commodities derivatives markets and treated as legal by SEBI. Thus, features of trading on NSEL in the alleged '*paired contracts*' with commodities as underlying was not considered to be a financing business by the *Noticee*;

(d) Additional costs such as VAT, Sales Tax, Octroi, APMC Cess, Warehouse Charges etc., were being paid to the State Governments/ other authorities and therefore at the relevant time the transactions seemed to be genuine to the *Noticee* and not mere financing transactions;

(e) At the time, there was no law, rule, regulation which prohibited execution of trades in NSEL even if the same amounted to a financing business;

(f) NSEL was regularly submitting detailed reports to FMC in respect of all trades carried out and therefore, FMC was fully aware about the nature of the alleged '*paired contracts*' and yet it never held them to be financial transactions;

xxvi. Reliance cannot be placed on the decision of ***Jignesh Prakash Shah Vs. The State of Maharashtra***[3] as the *Noticee* or any other broker was not a party to the same and was not given any opportunity to make or file any submissions or pleadings before the Hon'ble Court. Further, the said order also did not consider the fact that all contracts were launched with prior concurrence of FMC;

xxvii. As regard the '*fit and proper*' person criteria, the *Noticee* submits as under:

(a) 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;

(b) The alleged transactions relate to the period 2012-13 and the *Noticee* was granted registration by SEBI much later and thus the *Noticee* fulfilled the condition of fit and proper person in 2016, i.e., at the time of grant of registration;

(c) Even in the matter of ***Jermyn Capital LLC Vs. SEBI***[4], the Ld. WTM had held that the person who had a bad reputation were no more associated with the Jermyn Capital and further that since a period of 2 years had elapsed since

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

[4] 2007 74 SCL 246 SAT, Also available at - https://indiankanoon.org/doc/1511076/

such disassociation, the concerned party would be concerned as a fit and proper person. In the present matter, the alleged 'association' of the *Noticee* with the broker has ceased since 2013 and accordingly, the present proceedings are liable to be quashed and set aside. Further, even from the perspective of a reasonable/ prudent person, the *Noticee* enjoys enviable reputation and stature and the *Noticee* is not a defaulting broker and has always fulfilled its settlement obligations;

(d) Reliance cannot be placed on ***Mukesh Babu Securities Limited Vs. SEBI***[5] as the facts of the said case are totally different and distinguishable and further a chargesheet had also been filed in that case against Mr. Mukesh Babu;

xxviii. The *Noticee* was not a party to the FMC Order dated December 17, 2013 which, *inter alia*, observed that the market participants and general public were kept in dark by the Board and Management of NSEL, which proves that the *Noticee* was also in dark and there was no 'association' with NSEL. Further, the said order is pending by way of writ petitions before the Hon'ble Bombay High Court and therefore the same cannot be said to have attained finality and cannot be held to be binding on the *Noticee*;

xxix. The decision of the Hon'ble Bombay High Court in the matter of ***63 Moons Technologies Limited Vs. Union of India***[6] has been set aside by the Hon'ble Supreme Court vide order dated April 30, 2019 and therefore cannot be relied upon. Further, neither the Hon'ble Bombay High Court nor the Hon'ble Supreme Court recorded any adverse findings against the *Noticee* or the non-defaulting brokers;

xxx. Trading on the NSEL platform was anonymous and the *Noticee* was not aware of the identity of the counter party broker or clients and it was open to all market participants to place an order;

xxxi. As regard the reliance on the EoW letter dated April 4, 2015 by the DA, the following is submitted:

(a) The said EoW report has not been provided to the *Noticee* and therefore the *Noticee* is not in a position to comment on the same;

(b) On perusal of orders passed by SEBI in case of brokers, the *Noticee* understands that pursuant to the receipt of the said report, auditors were

[5] Appeal No. 53 of 2007, decided on December 10, 2007, Also available at- https://www.sebi.gov.in/satorders/mukesh53.pdf

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

appointed by SEBI to carry out inspection/ performance audit of the brokers but no such action was taken in respect of the *Noticee* and thus it is understood that the said EoW report does not include the name of the *Noticee*;

xxxii. Reliance cannot be placed on the SFIO report as the same has been held to be without jurisdiction by the Hon'ble Bombay High Court. Further, the name of the *Noticee* was not in the list of brokers which the Government of India had directed the SFIO to investigate;

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

a) It is absurd to gold that merely acting as broker amounts to acting as a 'facilitator of trades' as no clients were permitted to executed trades directly on the NSEL and had to do so through a registered broker;

b) 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;

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

d) Till the time the *Noticee* continued to act as a broker of NSEL, the reputation of NSEL had not been tarnished;

e) 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;

f) MCX and NSEL had common directors and common shareholding and thus the two were closely associated but no proceedings have been initiated against MCX;

g) The *Noticee* does not even fall within the definition of the term 'associate' or 'associate company' as defined under the Intermediaries Regulations or the Companies Act, 2013 and thus, even as per these definitions also the *Noticee* cannot be termed as 'associate' of NSEL;

xxxiv. The criteria for deciding '*fit and proper person*' under Schedule II of the Intermediaries Regulations stipulated the '*absence of convictions and restraint orders*' despite the fact that there are no convictions/ restraint orders against the *Noticee*, the Enquiry Report/ SCN purports that the *Noticee* is not a '*fit and proper person*';

xxxv. While SEBI has wide discretion in deciding the '*fit and proper*' status of an entity, the said discretion must be exercised in accordance with the settled principles of law and the SCN/ enquiry report does not comply with the same;

xxxvi. Even the FMC in its order dated December 17, 2013 had mentioned that market participants like *Noticee* were not aware about the fraud undertaken by the NSEL;

xxxvii. The parameters to determine fit and proper status are ex facie untenable and unsustainable as the same insinuate that a party can be deprived of the right to trade merely on the specious grounds that in the subjective opinion of SEBI such party was 'associated' with another party which did not have a good reputation;

xxxviii. The reputation of NSEL got tarnished only after the settlement default on July 31, 2013. Further, it is unfair on the part of SEBI to hold that the *Noticee's* reputation/ integrity/ honesty has been tarnished;

xxxix. The *Noticee* states and declares that the *Noticee* had no 'association with NSEL' and it is absurd to hold that merely acting as a broker of NSE amounted to 'facilitation' and that the same automatically amounted to *Noticee's* reputation being tarnished;

xl. 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;

xli. 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;

xlii. 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;

xliii. 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;

xliv. 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;

xlv. Although FMC was the regulator of NSEL at the time, it never cautioned NSEL, brokers or the investors/ public that NSEL was in violation of the exemption conditions. Further, no authority, regulator or government cautioned the brokers/

clients/ public that the alleged '*paired contracts*' were in violation of the exemption notification;

xlvi. NCDEX Spot Exchange was also given a similar exemption but it also offered contracts with settlement periods exceeding 11 days and no action has been taken against NCDEX;

xlvii. There has been no adverse finding against the *Noticee* by FMC, EOW, Ministry of Finance etc., after the *Noticee's* registration with SEBI in October 2016 and there are no allegations of misconduct against the *Noticee* and therefore, it cannot be said to be not fit and proper;

xlviii. All 24 clients who had executed trades in the Traders Contracts have stated on oath that the same was done at their own accord and no persuasion of any nature was done by the *Noticee*;

xlix. At the relevant time, Mr. Sachin Kwatra was solely looking after the trading operations of the *Noticee* at NSEL and has submitted an undertaking on June 25, 2011 to NSEL, *inter alia*, declaring that Mr. Sachin Kwatra shall be solely responsible for all transactions on NSEL platform and in view of the same, the present proceedings ought not to be initiated against the *Noticee;*

l. The Enquiry Report relies on the observations of the Hon'ble Supreme Court pertaining to cases of 63 Moons Technologies and Jignesh Shah but the *Noticee* was not a party to the said cases and it is unfair to selectively quote form the said decisions to make adverse observations against the *Noticee*;

li. Till the passing of FMC Order dated December 17, 2013, the *Noticee* had no reason to expect that the alleged paired contracts were in contravention of the provisions of FCRA;

lii. Pursuant to the FMC Order, neither FMC nor any other regulatory Authority raised any objection/ warning/ caution that the paired contracts were in violation of the 2007 Exemption Notification and thus it could be reasonably concluded that such contracts were in the knowledge of the authorities from inception and thus deemed to be legal, permissible and enforceable;

liii. The *Noticee* is not a defaulting member and there is no amount payable/ receivable from the *Noticee;*

liv. The *Noticee* traded in the alleged paired contracts from April 23, 2012 to May 24, 2013 on the screen based trading platform of NSEL on behalf of and in accordance with the instructions of the clients;

lv. Although there was no official communication from NSEL/ FMC/ DCA, the *Noticee* persuaded its clients to not trade in the paired contracts pursuant to adverse

media reports and by May 2013 all the outstanding positions had been squared off by the *Noticee*. Therefore, the *Noticee* has genuinely acted as a gatekeeper for filtering the orders being placed on NSEL trading terminals;

lvi. The fact that the *Noticee* was a non-defaulting broker is the most relevant factor in *Noticee's* assessment of the fit and proper person criteria and the same cannot be brushed aside as irrelevant;

lvii. NSEL had huge insurance policies and even the insurance companies would have checked the goods before issuing such large policies and there was no allegation/ finding that the goods covered by the *Noticee's* were missing;

lviii. The *Noticee* has around 110 employees working for it and the recommendation, if accepted, would result in civil death of the Company causing undue hardship, loss and damage to all the stakeholders;

lix. Paired contracts were introduced by NSEL and the *Noticee* had no role to play in launch of such contracts. The paired contracts were being traded as standard contracts for more than 3 years before the *Noticee* commenced its trading on the NSEL;

lx. The paired contracts amounted to 99% of the total trading turnover of the NSEL and thus it could never have been held that the paired contracts which were so widely traded on a national level government approved exchange and regulated by FMC were illegal or in violation of the 2007 Exemption Notification;

lxi. If the alleged paired contracts had to be considered as 'illegal' then the same had to be annulled as the same would be void in law but neither Government of India, nor FMC nor the DCA, nor SEBI, nor any other authority has held that all such transactions had to be annulled;

lxii. The principle of proportionality has been totally ignored in the present case. For example, in the co-location scam, SEBI only imposed monetary penalty upon the large brokers. In this regard, in terms of Section 11(4A) of the SEBI Act, the Competent Authority is empowered to levy a monetary penalty after holding inquiry in the prescribed manner;

lxiii. The punishment of being declared as not fit and proper is the ultimate punishment and should be imposed sparingly in case of repeated offences. It is a settled law that punishment should not only be reasonable but must fit the violation of law;

lxiv. The SSCN issued to the *Noticee* on the basis of the decision of the Hon'ble SAT dated June 9, 2022 is misplaced as the *Noticee* was not a party to the said order;

lxv. In terms of regulation 27(5) of the Intermediaries Regulations, the Competent Authority shall pass an appropriate order within one hundred and twenty days from the date of personal hearing or date of receipt of submissions, whichever is later. In the present matter, the post hearing submissions were made on October 11, 2021 and nearly 365 days have passed and thus the *Noticee* was of the considerate view that the proceedings have been disposed without passing of any order;

CONSIDERATION OF ISSUE AND FINDINGS

10. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee,* the replies submitted by the *Noticee*, the oral submissions made by the *Noticee* during the personal hearing held on January 12, 2023 and other materials/information as available in the public domain and also made available to the *Noticee* vide SSCN dated October 11, 2022. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN/SSCN, the issue which arises for my consideration in the present proceedings is whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.

11. 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 the laws, which are alleged to have been violated by the *Noticee* and/or are referred to in the present proceedings. The same are reproduced below for ease of reference:

THE SEBI ACT, 1992

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

12.(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:
Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

THE STOCK BROKERS REGULATIONS, 1992

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

Conditions of registration.

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

[See regulation 7]

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

(a) the competence and capability in terms of infrastructure and manpower requirements; and

(b) the financial soundness, which includes meeting the net worth requirements.

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

(a) the applicant or the intermediary;

(b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and

(c) *the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

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

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

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

(a) *integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*

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

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

(ii) *charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*

(iii) *an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*

(iv) *recovery 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.

12. Admittedly, prior to the merger of FMC with SEBI (w.e.f. September 28, 2015), the *Noticee* was not required to be registered under the FCRA or any other regulation to be a commodity derivatives broker, however, after the merger of FMC with SEBI, a commodity derivatives broker is required mandatorily to have a certification of registration from SEBI in case it is desirous to remain associated with the Securities Market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the *Noticee* was registered as a broker *w.e.f.* September 27, 2016 after it filed application for registration with SEBI and since then it has been acting as a registered market intermediary and holding the certificate of registration.

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

13. As noted above, taking cognizance of the order passed by the Hon'ble SAT on June 09 2022 (hereinafter referred to as "**SAT Order**") in the NSEL matters, a SSCN dated October 11, 2022 *inter alia* enclosing a copy of the SAT Order was issued to the *Noticee* calling upon the *Noticee* to show cause as to why the following information/material along with the Enquiry Report dated August 29, 2019 should not be considered against it

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

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

14. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon'ble SAT which consequently led to issuance of the aforesaid SSCN to the *Noticee* in the present matter:

a. The observations of the Hon'ble Bombay High Court in the matter of ***63 Moons vs. Union of India***[7] cannot be relied upon as the said judgement has been set aside in appeal[8] by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
b. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "**MPID Act**") (***NSEL vs. State of Maharashtra***[9]) cannot be relied upon, as in a subsequent Writ Petition[10] moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the *prima facie* observations made by the single bench while dismissing NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that *prima facie* observations cannot be utilized to judge the reputation, character or integrity of NSEL.
c. The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of ***Jignesh Prakash Shah vs. The State of Maharashtra***[11], cannot also be relied upon as the observations made in

[7] Writ Petition No. 2743 of 2014, Also available at - https://indiankanoon.org/doc/66704740/
[8] (2019) 18 SCC 401, Also available at - https://indiankanoon.org/doc/169098295/
[9] Writ Petition No. 1403 of 2015, Also available at - generatenewauth.php (bombayhighcourt.nic.in)
[10] MANU/MH/2309/2019, Also available at - https://indiankanoon.org/doc/178307788/
[11] Criminal Bail Application No.1263 Of 2014, Also available at -http://www.nationalspotexchange.com/HC-order.pdf

a bail order were limited to the fact as to whether the bail should be granted or not.

d. Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.

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

f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***[12] and ***Mukesh Babu Securities vs. SEBI***[13] is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.

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

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

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

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[12] Appeal No. 26 of 2006, decided on September 06, 2006, Also available at - https://indiankanoon.org/doc/1511076/

[13] Appeal No. 53 of 2007, decided on December 10, 2007, Also available at- https://www.sebi.gov.in/satorders/mukesh53.pdf

15. It is also noted from the SAT Order that the matter was remanded back to SEBI, taking into consideration the contention made by the counsel appearing on behalf of SEBI that there was additional material available, which had come into existence after the SEBI orders, based on which the findings in the said order could be sustained. The Hon'ble Tribunal, taking into consideration the submissions made on behalf of SEBI, held that:

> *"It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available."*

16. Before moving forward to consider the matter on merits and test the compliance of the *Noticee* with the *'fit and proper person'* criteria, on the basis of the additional material that has been brought on record post the SEBI order (as detailed at paragraph 13 above), the background facts necessary for the present proceedings are narrated in brief, hereunder:

    i. The *Noticee,* Bharat Bhushan Finance and Commodity Brokers Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000087136 with effect from September 27, 2016 and is currently a member of the Multi Commodity Exchange of India (hereinafter referred to as **"MCX"**).

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

    iii. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL had introduced the concept of '*paired contracts*' in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration

contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.

iv. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as "**FMC**") was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "**FMC Order**") wherein it was *inter alia* observed that 55 contracts offered for trade on 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 NSEL and its members. FMC further observed that the '*paired contracts*' offered for trading on NSEL platform were in violation of the provisions of the FCRA and also in violations of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on NSEL, from the purview of the FCRA.

17. From the perusal of the FMC Order in respect of the '*paired contracts*', which were traded on NSEL platform during the relevant period, I note that the FMC had *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. Short Sale

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of "*no short sale by members of the NSEL shall be allowed*" was not being met by NSEL and its trading/clearing members who traded in the '*paired contracts'* during the relevant period.

b. Contracts with Settlement Period going beyond 11 days

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

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

19. 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)

20. It is therefore, clear that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. I further note from the FMC Order that under the FCRA, a "*forward contract*" is defined as a "*contract for delivery of goods and which is not a ready delivery contract*". A '*ready delivery contract*' is defined as "*a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days*". Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is therefore, noted that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of "*forward contract*" under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. Therefore, even going by the interpretation adopted by FMC, what is beyond doubt is that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL.

21. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*[14] *(Civil Appeal No. 4476 of 2019 decided on April 30, 2019)*, wherein it *inter alia* held that:

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

22. It is further pertinent to refer to the judgement dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd.*[15] (hereinafter referred to as "**MPID matter**"), wherein the Hon'ble Supreme Court while

[14] (2019)18 SCC 401. Also available at https://indiankanoon.org/doc/169098295/
[15] Civil Appeal No. 2748-49 of 2022. Also available at https://indiankanoon.org/doc/184205229/

drawing reference to the presentations made by NSEL in respect of the '*paired contracts*' has *inter alia* held that:

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

23. 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.

24. 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 and T+25 paired contract in steel had the same offered return as a T+ 2 and T + 35 paired contract in castor oil. The *'paired contracts'*, it is noted, were being marketed as an alternative to fixed deposits.

25. I note that the FMC Order and both judgments of the Hon'ble Supreme Court go into abundant detail regarding NSEL permitting short sales, i.e., permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the '*paired contracts*' which were executed were short sales – and naked short sales at

that - the commodities to back such sales were not available at the designated warehouses of NSEL.

26. 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 *bona fide* belief that the *'paired contracts'* were actually spot contracts in commodities. Or, can it be said that the very fact that *'paired contracts'* were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the *Noticee* should have been aware that such a product was far removed from the spot trading in commodities which was permitted on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was fixed (e.g. 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.

27. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the *Noticee* when these products were first offered by NSEL. With the material on record, especially those summarized at paragraphs 20, 21 and 22, 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.

28. As recorded in the SSCN, it is not in dispute that SEBI has filed a complaint dated September 24, 2018, against brokers who facilitated access to *'paired contracts'* traded on NSEL, including the *Noticee*, with EOW, Mumbai. On the basis of this complaint, subsequently, an FIR dated September 28, 2018 came to be registered with the MIDC Police Station, Mumbai, against the *Noticee*, which is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*.

29. In the background of the aforesaid discussion pertaining to *'paired contract'* as captured in the preceding paragraphs, I now move on to examine whether the *Noticee* satisfies the *'fit and proper person'* criteria as laid down under Schedule II of the Intermediaries Regulations.

30. In this context, as per replies of the *Noticee*, I note that it is an admitted position that the *Noticee* has indulged in trading of '*paired contracts*' on behalf of its clients. The *Noticee* in its reply dated October 11, 2021 has, *inter alia,* submitted that "*Besides we state that, our first Trader Contract was transacted on 23.04.2012 and last trader contract now alleged to be pair contract was executed by us on 24.05.2013"*. The *Noticee* in its reply dated September 16, 2021 has, *inter*

alia, stated that *"Admittedly, we started executing transactions in the alleged paired contracts only from the year 2012-13 i.e. much after the FMC was appointed as the "designated agency" in respect of NSEL by the letter dated 05.08.2011 issued by the GOI;*". Further, it is also noted from the submissions of the *Noticee* that for the financial year 2012-13, the purchase turnover in Trader's Contracts/ Paired Contracts was around ₹146.46 crore and the sell turnover was around ₹149.11 crore. Similarly, the purchase turnover for 2013-14 was around ₹27.57 crore and the sell turnover was around ₹28.02 crore. Thus, as per the submissions of the *Noticee* in its replies, it is clear that the *Noticee* has traded in the '*paired contracts*' on behalf of its clients.

31. Having established that the *Noticee* has traded in '*paired contracts*' on behalf of its clients, I now proceed to examine the allegations levelled against the *Noticee* in the SCN and the SSCN. It is noted that the main allegation against the *Noticee* is that by participating/facilitating in the trading in *'paired contracts'* on NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it is alleged in the SCN that the continuance of the registration of the *Noticee* as a broker is detrimental to the interest of the Securities Market and the *Noticee* is no longer a '*fit and proper person*' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018 etc.) as provided to the *Noticee* vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents filed against the *Noticee* by SEBI as well as observations/ findings against the *Noticee* in the Enquiry Report dated August 29, 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.

32. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. I further note that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI(Intermediaries)(Third Amendment) Regulations, 2021 with effect from November 17, 2021.

33. In this context, as noted above, I note that the *Noticee* is holding a Certificate of Registration No. INZ000087136 granted by SEBI on September 27, 2016. In order to continue to hold such Certificate of Registration from SEBI, the *Noticee* is also required to satisfy the conditions of eligibility, which *inter alia* include, continuance of its status as a '*fit and proper person'*. The above condition to be a fit and proper person is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.

34. Therefore, the criteria of '*fit and proper person'*, is an ongoing requirement throughout the period during which the *Noticee* remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the '*fit and proper*' status of such entity based on various parameters. Therefore, even if the *Noticee* was found to have fulfilled the '*fit and proper person*' criteria while granting the Certificate of Registration, in 2016, such an intermediary can still be assessed on being *fit and proper* at a later date. Furthermore, as and when the '*fit and proper'* criteria changes, the *Noticee* will be required to comply with the revised criteria, and in this instance criteria as revised vide the amendments in November 2021. It is noted that parameters provided under clause 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which, *inter alia*, includes the following:

> *(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
> *(b) the person not incurring any of the following disqualifications:*
> *(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*

35. As already recorded in SSCN and captured above, an FIR has been registered with the MIDC Police Station, Mumbai, against the *Noticee* under section 154 of the Code of Criminal Procedure, 1973 ('CrPC') on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. It is, therefore, noted that the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the *Noticee*.

36. In this regard, it is noted that the *Noticee* has admittedly traded in *'paired contracts'* on behalf of its clients. I note that the *Noticee*, as a broker and as a member of NSEL, represented NSEL to the regular investors. The execution of the trades in *'paired contracts'* by the *Noticee* shows the participation of the *Noticee* in the said scheme perpetrated by NSEL to provide its platform for trading in *'paired contract'* that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the *Noticee* by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in *'paired contracts'* which were in the nature of financing transaction (as held by the Hon'ble Supreme Court of India to be so, as noted above). The *Noticee*, by providing access for taking exposure to *'paired contracts'* has exposed its clients to the risk involved in trading in a product that did not have regulatory approval and also undertaking such exposure itself on account of its proprietary trades thereby raises doubts on the competence of the *Noticee* to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the *Noticee* in *'paired contracts'* for its clients on NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.

37. Therefore, looking holistically I find that the said conduct of the *Noticee* is detrimental to the Securities Market being not in conformity with the applicable code of conduct. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the *Noticee*. In my considered view, it is immaterial if the *Noticee* has no outstanding investor complaints or if the *Noticee* has not traded through its proprietary account. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in *'paired contracts'* on NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on NSEL platform is detrimental to the interest of the Securities Market.

38. Further, as noted above, the *Noticee* has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of the FIR registered against the *Noticee*. In this regard it is pertinent to note that the said FIR is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. In this context, as observed above, I note that being a '*fit and proper person*' is a continuing

'*eligibility criteria*' which must be satisfied by the *Noticee* including the amended criteria. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II hold the field which are binding upon me, and arguments, if any, to the contrary are not maintainable.

39. The *Noticee* has contended that the DA has failed to provide an opportunity to the *Noticee* which is against the basic principles of Natural Justice and therefore, the said enquiry by the DA stands vitiated due to the non-adherence to the principles of Natural Justice. In this regard I note that, the Intermediaries Regulations were amended with effect from January 21, 2021, wherein regulation 25 was replaced. As per regulation 25(6) of the amended regulations, the DA shall grant an opportunity of personal hearing to the *Noticee*. However, no such requirement was mandated under the pre-amended regulations. I note that the proceedings in the present matter before the DA have been completed before the said amendment to the Intermediaries regulations mandating the DA to grant personal hearing came into being. Without prejudice to the above, the Noticee was provided an opportunity of personal hearing in these proceedings before me which was availed by it. In view of that, I do not find any merit in the argument of the *Noticee* that the enquiry by the DA is in violation of the principles of Natural Justice and therefore reject the said contention.

40. The *Noticee* has also contended that in terms of regulation 27(5) under Chapter V of Intermediaries Regulations the designated member shall pass an appropriate order within one hundred and twenty days from the date of receipt of submissions or the date of personal hearing, whichever is later. Since the *Noticee* made its post hearing submissions vide letter dated October 11, 2021 and no order was passed within one hundred twenty days, the *Noticee* was of the view that the proceedings have been disposed without any order. In this regard, I am of the view that the said contention of the *Noticee* is misplaced. The records show that the *Noticee*, vide its letter dated November 1, 2021 had requested to keep the proceedings in abeyance in light of the interim order passed by Hon'ble SAT in the similar matter of *Joindre Commodities Limited Vs. SEBI*[16] wherein the Hon'ble SAT had issued a stay on the order passed by SEBI against the noticee therein. I note that pursuant to the said request of the *Noticee*, the proceedings were kept in abeyance till the final disposal of the aforesaid matter, i.e., till July 20, 2022, when the matter was remanded by the Hon'ble SAT to SEBI. Further, on perusal of the provisions of the Intermediaries Regulations, I note that the Competent Authority shall '*endeavor*' to pass an appropriate

[16] Appeal No. 672 of 2021, Decided on October 28, 2021, Also available at - BEFORE THE SECURITIES APPELLATE TRIBUNAL (sat.gov.in)

order within one hundred twenty days. Furthermore, it is also noteworthy that the *Noticee* has not brought out any prejudice that has been caused to it on account of the "stated" delay in passing of the order in these proceedings. Considering the above and that the Intermediaries Regulations do not impose a statutory obligation to mandatorily dispose the proceedings within one hundred twenty days, I am of the view that the submissions of the *Noticee* in this regard are without any merit.

41. The *Noticee* has also submitted that it has not been provided with all the documents which have been relied upon for initiation of proceeding against the noticee. In this regard, I have perused the material available on record and I note that inspection of documents was conducted by the *Noticee* on January 27, 2020 wherein documents relevant and relied upon documents to the proceedings were shown to the *Noticee.* Further, vide SSCN dated October 11, 2022 the Noticee was provided with the relevant and relied upon documents in the matter. Therefore, the Noticee's contention as regard to non-supply of relevant documents in unfounded.

42. I am also aware that recently SEBI has passed 5 separate orders[17] in the related NSEL matters where the noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the *Noticee* is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the Noticee is already having registration with SEBI. Further, I note that the Hon'ble SAT in its order dated June 09, 2022 (pertaining to entities whose application for registration was rejected) has observed that the period for which the noticees cannot apply

[17] Orders dated November 29, 2022 in respect of Motilal Oswal Commodities Brokers Pvt. Ltd. (at https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-_65602.html), Anand Rathi Commodities Ltd.(at https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-_65604.html), Geofin Comtrade Limited (previously known as Geojit Comtrade Limited)(at https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited_65597.html), India Infoline Commodities Ltd.(at https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-_65595.html) and Phillip Commodities India Pvt. Ltd.(at https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-_65593.html) in the matter of NSEL.

for registration needs to be specified by SEBI. Having noted the aforesaid observation of the Hon'ble SAT, I am of the view that since the recommendation in the present matter is of cancellation of registration, and not of rejection of the application, the necessity of specifying a period of time may not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries), as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations. If it chooses not to, such issue becomes moot.

43. I would also like to address the objection of the *Noticee* with respect to issuance of the SSCN dated October 11, 2022 which was issued pursuant to and on the basis of the SAT Order dated June 9, 2022 on account of the fact that the *Noticee* was not party to the aforesaid SAT Order and hence no further proceedings can be initiated against the *Noticee*. In this regard, I find that the said objection, is totally misplaced as the Hon'ble SAT while remanding the matters to SEBI had issued the directions to adjudge the matters in light of the decision of the Hon'ble SAT in order dated June 9, 2022. The Hon'ble SAT while remanding the present matter back to SEBI has, *inter alia*, observed as under:

> "… *The appeals of the brokers are allowed. The matters are remitted to the WTM to decide the matter afresh in the light of the observations made in our order dated June 9, 2022 in accordance with law after giving an opportunity of hearing to the brokers*"
>
> *"…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…"*

In view of the above, the Hon'ble SAT had already granted permission to SEBI to issue SSCN which was complied with by SEBI and therefore the contention of the *Noticee* does not hold merit.

44. In view of the above observations and admission of the *Noticee* having traded in these *'paired contracts'* on NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in *'paired contracts'* on NSEL platform during the relevant period as a Trading Member/Clearing Member and has violated the conditions of the 2007 Exemption Notification and also the provisions of the FCRA. Further, as noted above, the *Noticee* has also attracted disqualifications under clause 3(b)(i) of Schedule II and the act of *Noticee* in offering access to *'paired contracts'*, as detailed above,

also seriously calls into question the integrity, honesty and lack of ethical behavior on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*'or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in '*paired contracts*' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The *'paired contracts'* were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-by to the terms of the 2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question, the appropriateness and suitability of the continuance of the registration of the *Noticee,* as a broker. Equally, any argument deflecting the responsibility to NSEL, MCA or FMC is misplaced and hereby rejected, as the primary onus of diligence enjoined on an intermediary, which diligence any reasonable or prudent person would also perform, has not been undertaken by the *Noticee*. Clearly, the actions of the *Noticee* has been and could be detrimental to the interest of the Securities Market and accordingly the *Noticee* can no longer be called a '*fit and proper person*' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

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

requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

46. It would not be material for the *Noticee* to submit that there is no loss caused to the investors on account of its trades since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA and also attracting disqualification under amended Schedule II of the Intermediaries Regulations so as to decide on its continuing role in the Securities Market. From the above, it is evident that the *Noticee* was part of a scheme that was contrary to the permissible activities prescribed by the Central Government. Under the garb of *'paired contracts'* the *Noticee* had indulged in facilitating impermissible financing transactions, and such illegal activities as well as participation of the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market.

47. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honored in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted above, the principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.

48. 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.

49. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as *'paired contracts'* on NSEL were not spot contracts in commodities. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, provided access to its clients to participate in a product which raises serious questions on the ability of the *Noticee* to conduct proper and effective due diligence regarding the product itself. Further, as per findings recorded above, the *Noticee* also attracts the disqualification provided in clause 3(b) (i) under the amended Schedule II of the Intermediaries Regulations insofar an FIR against the *Noticee* under section 154 of CrPC has been registered with the MIDC Police Station, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the *Noticee* that the aforesaid FIR is either stayed or quashed by any competent court qua the *Noticee* or otherwise. In view of the above, I hold that the *Noticee* does not satisfy the '*fit and proper person*' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the *Noticee* as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities of the *Noticee* as a registered broker cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.

50. 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

51. In view of the foregoing discussions, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. Bharat Bhushan Finance and Commodity Brokers Limited, Certificate of Registration (bearing No. INZ000087136) of the *Noticee* is hereby cancelled.

52. The *Noticee* shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 51 above.

53. Notwithstanding the direction at paragraph 51 above, the *Noticee* shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the *Noticee* shall transfer the funds and

securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients.

54. The Order shall come into force with the immediate effect.

55. 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.

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

Sd/-

DATE: MAY 12, 2023
PLACE: MUMBAI

PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA