

**SECURITIES AND EXCHANGE BOARD OF INDIA  
EXECUTIVE DIRECTOR, SHRI MANOJ KUMAR**

**ORDER**

**UNDER SECTION 12 (3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF TRADING ON NATIONAL SPOT EXCHANGE LTD.**

<b>NOTICEE</b>	<b>Registration No.</b>
<b>Camco Commodities Pvt. Ltd.</b>	<b>INZ000022739</b>

**BACKGROUND**

1. **Camco Commodities Pvt. Ltd.** (“Noticee”) was registered with Securities and Exchange Board of India (“SEBI”) as a stock broker under the SEBI (Stock Brokers) Regulations, 1992 (“Brokers Regulations”). Noticee was a member of Multi Commodity Exchange of India Ltd. (‘MCX’). The Noticee was earlier a member of the National Spot Exchange Limited (“NSE”).
2. In the Union Budget for the FY 2015-16, it was announced that Forward Market Commission (“FMC”), the regulator of the commodity derivatives market, would be merged with SEBI. The Finance Act, 2015, provided that any person dealing in commodity derivatives prior to the aforesaid merger of FMC with SEBI may continue to do so provided they have made an application for registration with SEBI within a period of three months from the date of such merger. The merger of FMC and SEBI took effect on September 28, 2015.

3. The Noticee was a member of NSEL and after the merger of FMC with SEBI, it applied for registration with SEBI. SEBI granted certificate of registration on April 26, 2016 to the Noticee with registration number INZ000022739, as a commodity derivatives broker subject to the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations').
4. As the Noticee was a member of the NSEL and had participated in / facilitated trading in paired contract(s) on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the Intermediaries Regulations and appointed a Designated Authority ('DA') on September 24, 2018, to enquire into whether the Noticee was '*fit and proper*' to continue to hold the certificate of registration, in view of the alleged violation of regulation 9(b), 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II and 5(e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations.
5. Upon completion of the enquiry, an Enquiry Report dated June 20, 2019, was submitted by the DA to the Designated Member ('DM') observing that the Noticee was not a fit and proper person in terms of regulation 5(e) read with Schedule II of the Intermediaries Regulations, and therefore, in terms of regulation 27 of the Intermediaries Regulations read with section 12(3) of the Securities And Exchange Board Of India Act, 1992 ('SEBI Act') and regulation 27(iv) of the Brokers Regulations, recommending cancellation of the certificate of registration granted to the Noticee as a commodity derivatives broker.
6. Pursuant to this, a post enquiry SCN dated June 28, 2019, was issued to the Noticee, under regulation 28(1) of Intermediaries Regulations, to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the Noticee. A copy of the DA's Report was also forwarded to the Noticee. Thereafter, a supplementary SCN dated September 20, 2019 was

also issued to the Noticee *inter alia* highlighting the observations made the Hon'ble Supreme Court and Hon'ble Bombay High Court in respect of paired contracts offered on the NSEL platform. The Noticee filed a reply vide letter dated September 25, 2021 and appeared for a personal hearing on September 27, 2021. Subsequent to the hearing, the Noticee filed additional submissions dated October 8, 2021.

7. The DM took on record that the Noticee had surrendered its registration with MCX and vide letter dated July 19, 2018, MCX informed the Noticee that SEBI had approved the surrender of membership.
8. The DM while closing the proceedings vide order dated October 14, 2021, *inter alia* observed that “...I am in agreement with the DA that the Noticee has fallen short of satisfying the ‘fit and proper’ criteria, to the extent of its association with NSEL and the consequent exposure of its client(s) to paired contracts. I, therefore, find the Noticee not fit and proper in terms of Schedule II of the Intermediaries Regulations. However, in light of surrender/cancellation of the Certificate of registration of the Noticee, I am of the view that it will not serve any purpose to issue further directions against the Noticee.”
9. Thereafter, the Noticee preferred an appeal against the SEBI Order before the Hon'ble Securities Appellate Tribunal (“SAT”). Vide an Order dated July 29, 2022, SAT set aside the SEBI Order and remanded the matter to SEBI for fresh consideration in the light of the observation made in Hon'ble SAT order dated June 09, 2022 in the NSEL matter.
10. While considering the matter afresh, I will be guided by the findings and observations made by Hon'ble Tribunal in the Order dated June 9, 2022 while setting aside the earlier SEBI Order. It would thus be appropriate to summarize and list the grounds on which the SEBI Order was set aside by SAT, and remanded back to SEBI.

- a) Observations of the Bombay High Court in the matter of **63 Moons vs. Union of India** cannot be relied upon as the said judgement has been set aside in appeal by Hon'ble Supreme Court vide judgment dated April 30, 2019.
- b) 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 ("MPID Act") (*NSEL vs. State of Maharashtra*) cannot be relied upon, as in a subsequent Writ Petition 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 the NSEL petition could not be relied upon as they were preliminary observations and such observation does not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, was of the opinion that prima facie observations cannot be utilized to judge the reputation, character or integrity of NSEL.
- c) 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*, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- d) Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Bombay HC. 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, was not considered by SEBI.
- f) Reliance placed on decisions of the Hon'ble Tribunal in the matter of *Jermyn Capital vs. SEBI* and *Mukesh Babu Securities vs. SEBI* 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 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 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) Forensic report commissioned by SEBI does not find any close connection between applicant and NSEL. This was overlooked by SEBI.
- i) The 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.

#### **HEARING, SUBMISSIONS AND ADDITIONAL MATERIALS**

11. Pursuant thereto, a hearing notice dated November 11, 2022 scheduling personal hearing on December 22, 2022 was sent to the Noticee. In light of the SAT Order dated June 09, 2022, some additional material viz. a copy of

SEBI's complaint letter dated September 24, 2018 to EOW, and a copy of FIR dated September 28, 2018 registered by EOW was also provided to the noticee along with the hearing notice. Further, attention of the Noticee was drawn to the findings/ observation of Hon'ble Supreme Court in the matter of *State of Maharashtra v. 63 Moons Technologies Ltd* (Order dated April 22, 2022), and *63 Moons Technologies v. Union of India* (Order dated April 30, 2019).

12. The Noticee filed its reply to the hearing notice vide letter dated December 10, 2022. Thereafter, vide letter dated December 21, 2022 the Noticee sought adjournment of the hearing scheduled on December 22, 2022. In the interest of principle of natural justice, the request of the Noticee was acceded to, and the hearing was rescheduled to January 12, 2023. For the personal hearing, the Noticee was represented by its Authorised representative, Mr. Prakash Shah and Mr. Kushal Shah.
13. The Noticee in its reply dated December 10, 2022 made the following preliminary submissions:-
  - a) Vide letter dated 19.07.2018, MCX had intimated us that “ *...SEBI has approved the surrender of Membership of Camco Commodities Pvt. Ltd.*” Thus, w.e.f. 20.07.2018, we are not an Intermediary registered with SEBI in any capacity whatsoever. Importantly, the present proceeding was initiated on 21.09.2018 vide issuance of Show Cause Notice dated 24.09.2018 issued u/r 25(1) of the Intermediaries Regulations, 2008 by Ld. Designated Authority pursuant to Order dated 21.09.2018 passed by Ld. WTM, SEBI.
  - b) The initiation of present proceeding under Intermediaries Regulations when at the relevant time, we were not an Intermediary registered with SEBI is bad in law.
  - c) No condition was imposed by SEBI at the time of accepting our surrender application

- d) We were not having any trading right in any recognized Stock Exchange and were not a trading member hence we were not a stock broker when the proceeding was initiated against us i.e. on 21.09.2018.
  - e) In view thereof, we humbly submit that we are no longer an intermediary registered with SEBI; hence the proceedings as initiated vide issuance of SCN and supplementary SCN r/w Notice of Hearing dated 11.11.2022 should be disposed of /dropped without issuing any directions against us.
14. During the personal hearing held on January 12, 2023, the Authorised representative made the following additional submissions-
- a) On the day of issue of SCN, the Noticee was not an intermediary.
  - b) Proceedings under Intermediaries Regulations cannot be continued once the registration is cancelled.
  - c) If the party is adjudged as not fit and proper, then, stigma will be attached, which will remain forever.
  - d) The Noticee executed trades for only one client and that too for only one day. The period of counter trade was after June 2013, that is why the amount remained outstanding.

#### **NSEL AND THE NATURE OF PAIRED CONTRACTS**

15. NSEL was incorporated in 2005 as an electronic exchange for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs ("MCA"), Government of India, issued a Notification SO906(E) under Section 27 of the FCRA granting conditional exemption from the provisions of that Act for (i) forward contracts, (ii) for sale and purchase of commodities, of one-day duration traded on NSEL. The conditions *inter alia* placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day must 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 platforms 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.

16. In September 2009, NSEL introduced, on its platform, the concept of 'paired contracts', which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In other words, the 'paired contract' involved two simultaneous transactions being undertaken at the same time with the same counterparty – one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits
17. On February 6, 2012, MCA vide Gazette Notification S.O. 228(E) partially amended the Notification dated June 5, 2007, to the effect that *“all information or returns relating to the trade as and when asked for shall be provided to the Central Government or FMC”*.
18. Thereafter, MCA on April 27, 2012 directed NSEL to show cause as to why action should not be initiated against it for the following alleged contraventions:
  - a.) Permitting short sale of commodities. NSEL had not made it mandatory for the sellers to actually deposit goods in the warehouse before taking a short position through a member of the exchange. The Exchange had no facility to check stocks and the actual member level security position.
  - b.) Contracts made available by NSEL where for periods exceeding 11 days.
19. Subsequent to this, MCA vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:-



- a) No further/fresh contracts shall be launched by NSEL until further instructions from concerned authority; and
  - b) All the existing contracts will be settled on the due dates.
20. Thereafter, FMC vide an Order No.4/5/2013-MKT-1/B dated December 17, 2013 (“FMC Order”), observed that: *“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”* and *“the condition of ‘no short sale by members of the exchange shall be allowed’ was not being met by NSEL”*.
21. Further, in the above mentioned Order, FMC *inter alia* held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities:

**a) Short Sale.**

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of “no short sale by members of the NSEL shall be allowed” was not being met by the NSEL.

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

22. It is therefore clear that NSEL was given permission to set up as a spot exchange for trading in commodities. It was essentially meant to only offer

forward contracts having one-day duration as per the Notification dated June 05, 2007. 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.

23. Hon'ble Supreme Court of India has also extensively commented on the nature of the 'paired contracts' traded on NSEL. The following is noted in this regard:

a) The Two-Judge Bench of the Hon'ble Supreme Court in the course of determining the validity of the amalgamation order in the matter of 63 Moons (supra) vide judgment dated April 30, 2019, had observed as under:

*"55. We have seen that neither FTIL nor NSEL has denied the fact that 'paired contracts' in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such 'paired contracts'. There is no doubt that such 'paired contracts' were, in fact, financing transactions which are distinct from the sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL and the FCRA." (emphasis supplied)*

b) The Hon'ble Supreme Court in the MPID matter vide judgement dated April 22, 2022, has drawn reference to the presentations made by NSEL in respect of the 'paired contracts'. The relevant portion of the said judgment is reproduced below:

*"...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)"*

## **CONSIDERATION AND FINDINGS**

24. I note from the material available on record that the Noticee was registered as a member of NSEL and had allowed its client(s) to trade in paired contracts on the NSEL platform. Such paired transactions represented an overwhelming majority of the trades on NSEL by 2013-14. In the present case, the enquiry report has brought out that a settlement obligation of ₹10,35,000 was due to Noticee's client(s) on the date of closure of business of NSEL. In this regard, information was sought from the Noticee's authorized representative during the personal hearing, who submitted that during the period when paired contracts were being traded on the NSEL platform, the Noticee had facilitated transactions for one day for only one client.
25. It is further noted that the long leg of the paired transaction involved contracts being settled on a T+25 or T+36 basis, whereas the exemption granted by the MCA permitted NSEL to only offer spot delivery contracts. The notification issued by MCA was available in the public domain and even basic due diligence would have shown that the paired contracts were *per se* in violation of the said notification.
26. The Noticee by allowing its client to trade paired contracts which were in violation of the aforesaid MCA notification, as noted above, has failed in conducting its business in conformity with the standards expected to be maintained by registered securities market intermediaries. I note that the

reputation, competence, fairness, honesty, integrity and character of the Noticee is put into question by such dealings.

27. However, as observed by WTM in his order dated October 14, 2021 in the present matter, the Noticee had surrendered its registration with MCX and vide letter dated July 19, 2018, MCX informed the Noticee that SEBI had approved the surrender of membership.
28. I note that the action against the Noticee was approved on September 21, 2018 vide the order of appointment of the DA. However, on the said date, the Noticee was not a registered intermediary with SEBI in any capacity.
29. I also note that during the period when paired contracts were being traded on NSEL, the Noticee had executed trades only for one client on one day. The Noticee was registered with SEBI on April 26, 2016 pursuant to the merger of FMC with SEBI. The SCN does not bring out any wrongdoings on part of the Noticee during the period it was registered with SEBI as a commodity derivative broker. It is also noted that no conditions were placed by SEBI at the time of acceptance of the surrender of Noticee's certificate.
30. I further note that the FIR was registered by EOW on September 28, 2018, whereas the Noticee was no longer a SEBI registered intermediary at that time.
31. It is noted that vide the SEBI (Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021, the Schedule II of the Intermediaries Regulations was amended to add criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973, as one of the criteria to be taken into account for the purpose of determining 'fit and proper person'. In terms of clause (7) of Schedule II, the 'fit and proper person' criteria is applicable at the time of application of registration and during the continuity of registration. Accordingly, 'fit and proper person' criteria being a continuing one, would have applied to the Noticee had the Noticee's registration been alive as on date. However, as noted earlier, the Noticee in the present case

had surrendered its certificate of registration, which was accepted by SEBI without imposing any conditions on the Noticee, and an intimation in that regard was sent by MCX to the Noticee on July 19, 2018,

32. In light of the above discussion, even though the conduct of the Noticee falls short of the conduct expected from a SEBI registered intermediary in the securities market, considering the fact that the Noticee had surrendered its registration before the issuance of SCN, an order cancelling the certificate of registration as recommended by the DA would be infructuous at this point. Further, for the same reason, I find that issuance of any direction, under regulation 27 of Intermediaries Regulations, against the Noticee at this stage is not warranted.

### **ORDER**

33. In exercise of powers conferred under Section 19 of the SEBI Act read with regulation 27 of the Intermediaries Regulations, I hereby dispose of the instant proceedings against the Noticee, namely, Camco Commodities Pvt. Ltd. (SEBI Registration No. INZ000022739) without issuing any directions.
34. This order is without prejudice to any other action that may be taken against the Noticee by SEBI or any other authority in accordance with law.
35. A copy of this order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories for their record.

**Sd/-**

**Date- February 27, 2023**

**Place- Mumbai**

**MANOJ KUMAR  
EXECUTIVE DIRECTOR  
SECURITIES AND EXCHANGE BOARD OF INDIA**