QJA/GG/MIRSD/DOP/29530/2023-24

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:
MCI Commodities
PAN No. AATFM4200F

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated August 31, 2020 (hereinafter referred to as the **"Enquiry Report"**), submitted by the Designated Authority (hereinafter referred to as the **"DA"**) in terms of regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred as the **"Intermediaries Regulations"**) as it stood at the relevant point of time prior to its amendment vide Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021, wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, recommended that MCI Commodities (hereinafter referred to as the **"Noticee"**) should not be granted registration and its business as a commodity derivatives broker may be stopped. The relevant excerpts of the Enquiry Report are reproduced as below.

> *"37. In view of the facts and circumstances of the case and material placed before me, I am of the view that the Noticee is not a fit and proper person in terms of Regulation 5(e) read with Regulation 27(iv) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that Noticee i.e. MCI Commodities should not be granted registration and its business as a commodities derivatives broker may stopped."*

2. Pursuant to the same, a Post Enquiry Show Cause Notice dated September 15, 2020 (hereinafter referred to as the **"SCN"**), along with other relevant documents

was issued to the Noticee calling upon it to show cause as to why the action recommended by the DA or any other action as deemed fit by competent authority should not be taken against it. The Noticee, vide its letter dated March 01, 2021 filed its reply to the SCN.

3. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as the **"SEBI"**) passed five separate orders during February 2019 rejecting the applications filed by five other entities (involved therein) for seeking registration as commodity brokers who were involved in NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"Hon'ble SAT"**). Hon'ble SAT, vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, Hon'ble SAT, *inter alia,* held as under:

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

4. In light of the aforesaid order of Hon'ble SAT and certain other subsequent orders passed by Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/ material to the Noticee before concluding the present proceedings. Accordingly, SEBI, vide a Supplementary SCN dated February 13, 2023 (hereinafter referred to as the **"SSCN"**, collectively SCN and SSCN being referred to as **"SCNs"**) provided certain additional documents/ material to the Noticee and advised it to submit its reply/ comments/ clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The Noticee was further informed that if no reply is received within 15 days of receipt of the SSCN, it would be presumed that it had no additional comments/ reply to submit and the matter would be proceeded in terms

of the provisions contained in the Intermediaries Regulations. In response, the Noticee, vide letter dated March 09, 2023 submitted its reply.

5. It is pertinent to mention that Regulation 27 of the Intermediaries Regulations was amended with effect from January 21, 2021. Pursuant thereto, the procedure for action on receipt of the recommendation of the DA (which was earlier provided under Regulation 28 of the Intermediaries Regulations) was duly incorporated in the amended Regulation 27of the Intermediaries Regulations. Thus, these proceedings are being considered under the amended Regulation 27 of the Intermediaries Regulations.

6. The Noticee was granted an opportunity of personal hearing on April 05, 2023. On the scheduled date of hearing, the Authorised Representatives of the Noticee appeared and made submissions in line with its earlier replies. Thus, the principles of natural justice have been adhered to in the present matter. The matter is fit to be proceeded with, on merit, based on the material contained in the SCNs as well as the replies of the Noticee available on record and the oral submissions made during the personal hearing.

7. The written submissions made by the Noticee vide its letters dated March 01, 2021 and March 09, 2023 and submissions made during the oral hearing held on April 05, 2023 are summarised as below:

7.1 The enquiry report on which the present proceedings are based pertains to M/s Ray Trading Private Limited, who were holding registration certificate and whereas, the Noticee's application for registration is pending and as such the SCN being bad in law requires to be withdrawn.

7.2 The Forward Market Commission ("FMC") report which has been relied for issuance of SCN puts the onus on National Spot Exchange Limited ("NSEL") only. It was not stated that the action against the intermediary be also initiated against the brokers. It is trite law that the entity which has obtained the registration has to comply with the conditions of registration and that entity is solely responsible for the same.

7.3 SEBI has been granted powers by Finance Act, 2015 to initiate any action for violations of provisions of FCRA only and thus, it can initiate adjudication proceedings under FCRA and not under the SEBI Act. In case, the Noticee had been penalised under FCRA than only the 'fit and proper' criteria would have been relevant for considering the registration under SEBI Act.

7.4 Only on the basis of allegations levelled by SEBI, it cannot be said that the Noticee is not a 'fit and proper' person. The observations of FMC/DEA or observations of the Hon'ble Courts quoted in the SCN have no relevance and have been taken out of context. It has not been held that the brokers were responsible for non-compliance of conditions of grant of registration which was the responsibility of NSEL.

7.5 The Enquiry report has not considered its reply and thus the same is bad in law and the principles of natural justice have not been adhered.

7.6 The reliance has been placed on the observations of Hon'ble Supreme Court Judgement in the matter of 63 Moons Technologies Ltd whereas the Noticee was not a party and the filling of appeal and the observations of Hon'ble Court were subsequent to issuance of SCN and thus the same cannot be relied upon. On merits, there was no such observation against brokers in general or anything directly attributable to the Noticee. The Hon'ble Supreme Court has held that FTIL and NSEL were in breach of the conditions of the exemptions granted and there is no finding against the brokers.

7.7 The Bombay High Court Judgement in the criminal bail application No. 1263 of 2014 in the matter of Jignesh Shah and others cannot be relied as SEBI had been granted powers only by Finance Act, 2015 and the said judgement precedes before that. Further, the Noticee was not a party to the said matter and no opportunity was available to it to defend before High Court and thus it cannot be used against it.

7.8 In the said matter (criminal bail application No. 1263 of 2014) the question before Hon'ble High Court was not whether the brokers were liable to be proceeded under SEBI Act. Any incidental observation in the bail application cannot be relied upon and the issuance of SCN on that basis is far-fetched.

7.9 The various observations of Courts have been taken out of context while issuing the SCN and these observations have nowhere questioned its

reputation/competence/character/integrity. It is unfortunate that only partial observations have been reproduced in the SCN.

7.10 FMC had full knowledge of the business which was being transacted at NSEL platform and transactions were reported in press. The failure of regulator in ensuring compliance of conditions of grant of licence to NSEL and that to over a period of six years leads to public at large and intermediaries that everything was in order. The failure of regulator to perform its duties is fastened on the Noticee which requires to be demonstrated in detail and not by making any bald statement.

7.11 The Enquiry officer has recommended harsh punishment which deprives the Noticee of its right to do business and right to livelihood and thus the same is contrary to the constitution of India.

7.12 It is submitted that when an application for grant of registration is pending, only Section 12 of the SEBI Act and Regulations 3 to 9 of the Intermediaries Regulations are applicable. Regulation 7(3) has to be complied with before rejecting its application and only the Board has the power in respect of the same.

7.13 The proceedings were conducted on the basis of deemed provisional registration and in that case, the procedure under Regulations 22 to 28 becomes applicable and procedure as prescribed therein requires to be complied with. As per Regulation 24, the DA can be appointed only in respect of violations of Regulation 23 which provides only for suspension and cancellation. It does not provide for recommendation for refusal to grant certificate of registration. The recommendation has been made by the DA under Regulation 27 of the Intermediary Regulation which does not confer power to the enquiry officer to recommend refusal of grant of registration certificate.

7.14 Trading in commodities was not covered under the Securities Contracts (Regulation) Act as the same were not securities as the commodities market was regulated by FMC. Thus, the acts complained of were never securities on the date of alleged violation and were much prior in time before SEBI was granted power to regulate the same.

7.15 The SCN was issued in the month of September 2018 i.e. at the fag-end of the period prescribed by the Finance Act, 2015. It suffered from laches as has been held by various judgements of Hon'ble Supreme Court and Hon'ble SAT.

7.16 Any penal provision cannot be made retrospective.

7.17 No such provision exists in SEBI Act or rules and regulations framed thereunder for issuance of Supplementary SCN.

7.18 On the date of issuance of SCN, SEBI was aware about the FIR and Complaint dated September 24, 2018 and the same should have been provided along with the SCN. This lapse cannot be rectified by issuance of SSCN.

CONSIDERATION OF ISSUE AND FINDINGS

8. I have carefully perused the SCNs issued to the Noticee, the Enquiry report and the replies dated March 01, 2021 and March 09, 2023 filed by the Noticee and other material/ information available on record. After considering the allegations made/ charges levelled against the Noticee in the instant matter as spelt out in the SCNs, the issues which arise for my consideration in the present proceedings is whether the Noticee satisfies the 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations and whether the application filed by the Noticee for registration as commodity derivatives broker, should be rejected as recommended by the DA or any other action should be taken against the Noticee.

9. Before I proceed to examine the issue *vis-à-vis* the material available on record before me, it would be appropriate to refer to the relevant provisions of law applicable, which are alleged to have been violated by the Noticee and/ or are referred to in the present proceedings. The same are reproduced below for ease of reference:

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;

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

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

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

The Intermediaries Regulations, 2008

SCHEDULE II

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

[See regulation 7]

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

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

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

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

(a) the applicant or the intermediary;

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

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

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

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

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

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

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

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

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

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

(iv) recovery 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.

10. Before proceeding on the merits of the case, it would be relevant to deal with the preliminary contention of the Noticee. The Noticee has stated that the enquiry report on which the present proceedings are based pertains to M/s Ray Trading

Private Limited, who was holding registration certificate and whereas, the Noticee's application for registration is pending and as such the SCN being bad in law requires to be withdrawn. In this regard, after perusal of the material available on record, I note that the present enquiry proceedings were initiated against the Noticee for its alleged role in facilitating the paired contracts on the NSEL platform. A show cause notice dated September 25, 2018 was issued by the DA to the Noticee. In response thereto, the Noticee had vide its letter dated July 31, 2020 filed its merit based response. On considering the response of the Noticee, the DA vide the Enquiry Report dated August 31, 2020 recommended that Noticee should not be granted registration and its business as a commodity derivatives broker may be stopped. The said Enquiry Report was shared with the Noticee which was sent along with the SCN dated September 15, 2020. The SCN was also addressed to the Noticee and while perusing its contents it has come to my attention that the name of Ray Trading Private Ltd. is mentioned in paragraph 1 of the SCN. It appears that the name of other entity i.e. Ray Trading Private Ltd. was inadvertently captured in the SCN and the same has nothing to do with the Noticee and no prejudice has been caused to the Noticee on account of the same. Thus, the contention of the Noticee is misconstrued and based on wrong understanding of the law and is devoid of merit.

11. Noticee has contended that SEBI is not empowered to investigate/ inquire into the alleged violation of FCRA. I note that prior to merger of FMC with SEBI on September 28, 2015, the Noticee was required to be a member of recognized commodity derivative exchange(s) and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives market were not required to be registered under FCRA and thus were not under control of any competent authority, rectified the same through the Finance Act, 2015, as notified on May 14, 2015, by bringing them under the regulatory supervision of SEBI. With regard to the aforesaid, the Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathi Commodities Limited*, *Motilal Oswal Commodities Broker Private Limited*, *Geofin Comtrade Limited* and *IIFL Commodities Limited vs. SEBI* vide its Order dated October 04, 2018, observed the following:

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

12. I note that pursuant to the merger of FMC with SEBI, a commodity derivatives broker was mandatorily required to obtain a certification of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. The Finance Act, 2015, *inter alia*, conferred the powers to SEBI to regulate commodity derivatives brokers, 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 the commodity derivatives market under the erstwhile FCRA 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, within the aforesaid transitory period of 3 months, the Noticee filed its application to SEBI for consideration and approval to grant of certificate of registration.

13. The power of SEBI to investigate/ inquire into the alleged violation of FCRA flows from the Finance Act, 2015, which amended the provisions of FCRA. I note that Section 29A of FCRA, as inserted by the Finance Act, 2015*, inter alia,* provides:

"(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.

(2) On and from the date of repeal of Forward Contracts Act–
(a)….
(b)….
(c)….
(d)….
(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the

date on which that Act is repealed and be proceeded with as if that Act had not been repealed;

(f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);

(g) clause (d), (e), (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-sections."

14. I note that the aforesaid provision empowers SEBI to initiate a fresh proceeding with respect to the offences within a period of three years from the date on which FCRA is repealed. Thus, pursuant to the merger of FMC with SEBI, SEBI stepped into the shoes of FMC and was well within its powers to initiate proceedings under Chapter V of FCRA i.e., filing of the criminal complaint to the Economic Offence Wing (hereinafter referred to as the **"EOW"**). I note from the complaint dated September 24, 2018 filed by SEBI that EOW was requested to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers/ members of NSEL and other persons mentioned in the complaint. However, the aforesaid proceedings are different from the proceedings before me. The present proceedings pertain to adjudging the 'fit and proper person' status specified in the Stock Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to the EOW under Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **"CrPC"**). The Noticee is obligated to maintain the fit and proper person criteria on a continuous basis, and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market.

15. The Noticee has contended that no such provision exists in SEBI Act or rules and regulations framed thereunder for issuance of Supplementary SCN. I note from the SCN that Noticee was called upon to show cause as to why the information/ material as brought out in the SCN and in the Enquiry Report concerning fit and proper person criteria should not be considered for determining the fit and proper status of the Noticee. Subsequently, a SSCN, enclosing a copy of the order passed by Hon'ble SAT on June 9, 2022, as

mentioned at paragraph 3 above, (hereinafter referred to as **"SAT Order"**), was issued to the Noticee calling upon the Noticee to show cause why the following information/ material along with the Enquiry Report should not be considered against it for determining whether the Noticee satisfies the 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations:

a. SEBI complaint dated September 24, 2018 filed with EOW;
b. First Information Report (hereinafter referred to as the **"FIR"**) dated September 28, 2018; and
c. Amended Schedule II of the Intermediaries Regulations.

Thus, the SSCN was issued pursuant to the aforesaid SAT Order and pursuant to certain other developments which ensued after issuance of SCN. The SSCN was not a separate SCN but was forming part of the original SCN only and the same was also mentioned in the SSCN. Further, issuance of SSCN was in adherence to the order of Hon'ble SAT and also in compliance with the principles of natural justice which afforded an opportunity to the Noticee to submit its response to the additional material being relied upon by SEBI for determining the fit and proper person criteria of the Noticee under the amended Schedule II of the Intermediaries Regulations. Thus, the contention of Noticee is without any merit and liable to be rejected.

16. Before moving forward to consider the matter on merits and test the fulfilment of the 'fit and proper person' criteria by the Noticee, on the basis of available material including the additional material as detailed at above paragraph, the background facts necessary for the present proceedings are narrated in brief, hereunder:

a. The Noticee was a member of NSEL.

b. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the

NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia*, including *"no short sale by the members of the exchange shall be allowed"* and *"all outstanding positions of the trades at the end of the day shall result in delivery".*

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

d. On February 06, 2012, the erstwhile FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as the "FMC Order") wherein it was, inter alia, observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of 'no short sale by members of the exchange shall be allowed' was being not complied with by the NSEL and its members. FMC further observed that the 'paired contracts' offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government

of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

17. Noticee has contended that it was not a party to the FMC order wherein the FMC found fault with the operation of NSEL and therefore cannot be relied upon. In this regard, I note that to initiate proceedings under the Intermediaries Regulations for ascertaining the fit and proper status of the Noticee, it is not a pre-condition that the Noticee should be party to the FMC Order. The reliance on the FMC Order is to recognize the nature of contracts being traded on the NSEL and violations of the relevant provisions of law in order to ascertain the fit and proper status of the Noticee in the securities market. From the perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. Short Sale

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

b. Contracts with Settlement Period going beyond 11 days

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

18. It is observed that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts

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

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

"...a large number of NSEL exchange trades were carried out with paired back-to-back contracts. Investors simultaneously entered into a "short term buy contract" (e.g. T+2 —i.e. 2-day settlement) and a "long term sell contract" (e.g. T + 25 i.e. 25-day settlement). The contracts were taken by the same 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. 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. vs. Union of India & Others* (Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (hereinafter referred to as the **"merger petition"**), wherein it was, *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".*

21. Further, I note that in the judgment dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of the ***State of Maharashtra vs. 63 Moons Technologies Ltd.*** (Civil Appeal No. 2748-49 of 2022) (hereinafter referred to as the **"MPID matter"**), the Hon'ble Supreme Court while drawing reference to the representations made by NSEL in respect of paired contracts, *inter alia*, held that:

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

against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act."

22. Thus, I note that the Hon'ble Supreme Court has already described the nature of the 'paired contracts' offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court held that such transactions come within the definition of 'deposits' under the MPID Act. The Hon'ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon'ble Supreme Court has also observed that NSEL was advertising assured and uniform return of 16% p.a. for the 'paired contracts' traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. At Para 45 of the said order, the Hon'ble Supreme Court has also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in steel had the same offered return as a T+5 and T+35 paired contract in castor oil. The 'paired contracts' were being marketed as an alternative to fixed deposits. It was also noted in the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were short sales i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.

23. In view of the above, I am of the view that reliance on the observations of Hon'ble Supreme Court's Judgement has been placed only to emphasise the point that all such paired contracts were not contracts in the commodity segment but in the nature of financing transactions which were not envisaged under the Exemption Notification. Thus, the contention of the Noticee in this regard that it was not a party in these cases and thus the same cannot be relied upon is misplaced. Further, pursuant to the Hon'ble SAT Order dated June 09, 2022 no reliance has been placed on the observations of Hon'ble Bombay High Court in the matter of

Criminal Bail Application No. 1263 of 2014 in the matter of Jignesh Shah and others.

24. The present proceedings pertain to adjudging the 'fit and proper person' status specified in the Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to the EOW under Section 154 of the CrPC. I note that in terms of Regulation 5(e) of the Stock Brokers Regulations, every applicant/ stock broker at the time of seeking registration, and thereafter, has to satisfy the "fit and proper person" criteria specified in Schedule II of the Intermediaries Regulations. I note that the Enquiry Report proceeds on the basis that the past conduct of the Noticee in facilitating access to the "paired contracts" traded on NSEL calls into question the compliance of the Noticee with 'fit and proper person' criteria. Further, SEBI, while examining the compliance of an applicant, or even a registered intermediary, with the "'fit and proper person' criteria can take into consideration not just contravention of the provisions of securities laws, but also the general conduct of the Noticee which may have a bearing on its functioning once it is granted registration as an intermediary. The 'fit and proper criteria including the amended criteria must be satisfied by the Noticee, at the time of making application of registration under the Stock Brokers Regulations. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field which is binding upon SEBI, and arguments to the contrary are not maintainable. To consider the application of the Noticee for the registration as a stock broker, the Noticee is required to satisfy the fit and proper person criteria and thus, it is well within the jurisdiction and powers of SEBI to adjudge the said 'fit and proper' status of the market intermediaries in the interest of securities market.

25. I note that the DA vide email dated July 20, 2020 had shared the trade details to the Noticee which has not been disputed by the Noticee. The EOW in its interim report had mentioned that the Noticee had a settlement obligation amounting to ₹ 5,94,68,297 on the date of closure of business of NSEL. Further, I have also perused the NSEL Circular No. NSEL/C&S/2015/003 dated March 10, 2015 and

note that NSEL had made a special payout of ₹ 1,11,34,889 to the Noticee and it had 43 clients. Thus, it is an undisputed fact that the Noticee had facilitated the trading in paired contracts on behalf of its clients. Considering the deliberations and discussions recorded above and the submissions of the Noticee, the moot question is whether the Noticee while facilitating transactions in paired contracts for its clients under the *bona fide* belief that such transactions 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 different from the spot trading in commodities which was permitted on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was 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.

26. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the Noticee when these products were first offered by NSEL. With the material on record, it is further clear that any prudent person (including the Noticee) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in the *State of Maharashtra vs. 63 Moons Technologies Ltd*. The Noticee was expected to do due diligence on the products which it offered for trading to its clients. An assumption as to the legality of 'paired contracts' clearly shows that the Noticee failed to do adequate due diligence. The Notification regarding approval of contracts permitted on NSEL was in public domain. Thus, I find that Noticee failed to perform basic due diligence of the contracts offered *vis-a-vis* the conditions specified in the aforesaid Notification.

27. Having observed that the Noticee had traded in 'paired contracts' for its clients, I now proceed to examine the allegations levelled against the Noticee in the SCNs. It is noted that the main allegation against the Noticee, as levelled in the SCN, is

that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/ Clearing Member, the granting of registration to the Noticee as a broker could be detrimental to the interest of the Securities Market and the Noticee is not a 'fit and proper person' for grant of certificate of registration or holding such certificate of registration as a broker in the Securities Market, which is one of the conditions 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 basis of certain documents/material such as SEBI's Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the Noticee called upon it to show cause as to why the additional information/material as brought out in the SSCN along with the Enquiry Report should not be considered against it. In this regard, 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.

28. Noticee has contended that SEBI Regulations cannot be made applicable retrospectively and that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the initiation of the present proceedings. In this context, as noted above, in order to grant such Certificate of Registration, the Noticee is required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper person is not a onetime condition applicable only at the time of filling the application seeking registration. Rather, the provisions governing the criteria show that this is a condition which every applicant is required to fulfil on a continuous basis as long as the entity seeks the certificate of registration. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee's application has not been decided or it remains operational in the Securities Market as a registered

intermediary. In case, before the grant of registration by SEBI, if 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 could have fulfilled the 'fit and proper person' criteria at the time of its application, in 2016, such an applicant 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 paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays 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;"*

29. I note from the SSCN that an FIR has been registered with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been quashed or stayed by any competent court *qua* the Noticee. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. It is, therefore, noted that the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the Noticee.

30. In this regard, it is an undisputed fact that the Noticee has traded in the 'paired contracts' on behalf of its clients. Vide an email dated July 20, 2020, the DA had shared the trade details of the Noticee as obtained from EOW. 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 contracts' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the Noticee by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in 'paired contracts' which were in the nature of financing transactions (as held by the Hon'ble Supreme Court of India referred *supra*). 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 the same 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 the NSEL platform have serious ingredients jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

31. Noticee has contended that since it had filed application for seeking registration under the Intermediaries Regulations, the process specified under regulation 7(3) of the Intermediaries Regulations ought to have followed which provides that before rejecting an application, the applicant shall be given an opportunity to make good the deficiencies within the time specified by SEBI, for that purpose. Further, it is contended that SEBI has proceeded against it on the basis of deemed provisional registration and in that case Regulation 22 to 28 of the Intermediaries Regulations becomes applicable. As per regulation 24, the DA can be appointed only in respect of violation of regulation 23 and it does not provide the power for recommendation for refusal to grant certificate of registration to DA. Thus, as argued, the DA had only power to recommend suspension or cancellation of certificate only and not that of rejecting Noticee's application for grant of certificate.

32. Regarding the aforesaid contention of the Noticee, it is pertinent to mention the normal circumstances in the securities market which are as detailed below.

32.1 Intermediaries Regulations is applicable when an intermediary is registered with SEBI and a certificate of registration is granted to it under SEBI Act and rules and regulations made thereunder, thereby operating and functioning in securities market as per the rules and regulations made under SEBI Act.

32.2 An entity that had applied for registration under regulation 3 read with regulation 5 of Brokers Regulations, would not normally be functioning or operating as stock broker till the disposal of application in his favour and consequent registration under regulation 7 of Stock Brokers regulations.

33. However, in view of the facts and circumstances of the case discussed above i.e. prior to the merger of FMC with SEBI, an intermediary was not required to be registered under FCRA for operating / functioning in commodity derivatives market, and pursuant to the merger of FMC with SEBI, by virtue of the Finance Act, 2015, if an intermediary had made any application of registration within a period of three months from September 28, 2015, it was permitted to continue its activities and operate in the commodity derivatives market from September 28, 2015 till the disposal of its application of registration by SEBI even though technically it was not holding a certificate of registration. An entity cannot operate in a regulatory vacuum for the period when it operates as a commodity derivative broker till the disposal of its application of registration by SEBI. Thus, it was brought under the supervision and control of SEBI, by virtue of the Finance Acts, 2015, even as its application for registration was pending. Thus, in view of the facts and circumstances of the case, the nature / status of the Noticee that it was operating and functioning in commodity derivatives market as commodity derivatives broker, before and after the merger of FMC with SEBI, without technically holding a certificate of registration from SEBI but within the regulatory supervision and control of SEBI from September 28, 2015 and at the same time, the Noticee is an applicant for registration as a commodity derivatives brokers under Stock Brokers Regulations. Accordingly, the Noticee was and continues to be under the supervision and regulatory control

of SEBI from September 28, 2015 onwards till the disposal of its application for registration. Therefore, I am of the view that Chapter V and VI of the Intermediaries Regulations are applicable to the Noticee even though technically it does not hold a certificate of registration. Thus, the contentions of the Noticee in this regard are misconceived and devoid of any merit and are hereby rejected.

34. I note that the scope of the instant proceedings 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. I note that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honoured 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. Further the principle of *'ignorantia juris non excusat'* or that *'ignorance of law is no excuse'* also becomes squarely applicable.

35. 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 substantial loss to the market itself casts serious aspersion on the conduct, integrity and reputation of, *inter alia*, the Noticee who 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.

36. 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. Such activities of the Noticee cannot be condoned and deserve appropriate measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market. Further, as per findings recorded above, the Noticee also attracts the disqualification provided in paragraph 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 subsisting/ pending as on date

37. 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 providing broking services by the Noticee would be detrimental to the interest of the Securities Market.

Consideration of DA's recommendation

38. The DA in the Enquiry Report, after determining that the Noticee is not "fit and proper", has recommended that it should not be granted registration and its business as a commodities derivatives broker may be stopped.

39. As discussed in the preceding paragraphs, the facts and circumstances in the instant matter lead to the conclusion that the Noticee is not a "fit and proper" person. Once an entity has been declared to be not "fit and proper", in the interest of securities market, it should not be granted registration till the time it does not regain its "fit and proper" status.

40. In this instance, the Noticee has been determined not to be "fit and proper" for the reason that its conduct, integrity, and reputation have been found wanting as a result of the Noticee's involvement in trading "paired contracts" on the NSEL platform. Additionally, since the FIR dated September 28, 2018 has been registered by EOW, which is still pending for final determination by a Court of

competent jurisdiction, the disqualification specified in clause 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

41. Schedule II of the Intermediaries Regulations, in clause 4 provides that "*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*". This clause, squarely covers the scenarios whereas the application of an intermediary is rejected on the grounds of it not meeting the fit and proper criteria. Thus, the Intermediaries regulations envisage deeming time limit (of 5 years) or specification of a time limit by the deciding authority, within which the intermediary may cure the defects which led to determination of its status, if the same is done at its end and may reapply for grant of registration.

42. Considering the above, in the instant case, having held that the Noticee is not "fit and proper" person, I agree with the recommendation of the DA regarding rejection of the application of the Noticee. However, in light of the Order dated June 09, 2022 of Hon'ble SAT, I find it appropriate to specify the time period pursuant to which the Noticee would be eligible to reapply to SEBI for seeking registration as an intermediary. I am of the view that 3 months' time would be appropriate and proportionate in this case considering the fact that the transactions in paired contracts facilitated by the Noticee pertain to the period 2009-13 and it would also serve the desired purpose, as envisaged under the Intermediaries Regulations, of keeping the Noticee out of the securities market after which the Noticee would be eligible for making a fresh application for grant of registration.

ORDER

43. I, therefore, in exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, reject the application filed by the Noticee and also debar the Noticee from making a fresh application seeking registration, before SEBI, for a period of 3 months from the date of this Order or till such time an order is passed

by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is earlier.

44. The Noticee shall, immediately after receipt of this order, inform its existing clients, if any, about the aforesaid direction in paragraph 43.

45. The Order shall come into force with immediate effect. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

Place: Mumbai **G P GARG**

Date: October 04, 2023 **EXECUTIVE DIRECTOR**

SECURITIES AND EXCHANGE BOARD OF INDIA