

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	M/s Aasmaa Commodities Pvt. Ltd.	INZ000076031

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceeding is originating from the Enquiry Report dated July 31, 2020, submitted by the Enquiry Officer 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 “**the 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, has recommended that the registration of M/s Aasmaa Commodities Pvt. Ltd (hereinafter referred to as “**ACPL/ Noticee**”) as a commodity derivatives broker be cancelled.
2. The aforesaid Enquiry Report was submitted pursuant to an enquiry proceeding initiated against the *Noticee* by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) based on the findings that ACPL, as a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”), has dealt/facilitated in the trading of

the ‘paired contracts’ at the exchange platform of the NSEL during the period September 2009 to July 2013 (hereinafter referred to as “**relevant period**”) which were in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) and the conditions prescribed in the Government of India Notification dated June 05, 2007 (hereinafter referred to as “**2007 Exemption Notification**”). Further, it was observed that the continuance of the registration of the *Noticee* as a commodity derivatives broker (having Registration No. INZ000076031) is detrimental to the interest of the Securities Market and that the *Noticee* is no longer a ‘fit and proper person’ for holding the certificate of registration (Registration No. INZ000076031) as commodity derivatives broker in the Securities Market which is one of the conditions for grant/holding/continuance of registration, in terms of regulation 5(e), regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”).

3. In view of the aforesaid finding of facts, a DA was appointed to enquire into and to submit a report pertaining to the aforesaid acts of the *Noticee* and into the possible violations of regulation 5(e), regulations 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, allegedly committed by the *Noticee*.
4. The DA issued a show cause notice dated September 25, 2018 to the *Noticee* under regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) asking the *Noticee* to show cause as to why appropriate recommendation should not be made against it under regulation 27 (as applicable at that time) of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”). In response to the same, the *Noticee* vide letter dated October 15, 2018 (received on October 22, 2018) submitted its reply. Subsequently, the DA vide

supplementary show cause notice dated June 19, 2020 provided certain documents (as specified in the said notice) to the *Noticee* and further advised the *Noticee* to file its written representation within 14 days of the receipt of the said supplementary show cause notice. It is noted that the said supplementary show cause notice was duly served on the *Noticee* by way of digitally signed email addressed to the email id of the *Noticee* i.e., admin@aasmaacommodities.in on June 19, 2020. However, no response to the same was received from the *Noticee* within the stipulated period of time. Subsequently, the *Noticee* was provided another opportunity vide reminder letter dated July 14, 2018 to submit its reply by July 28, 2020 but the *Noticee* once again failed to submit its response to the supplementary show cause notice.

5. The background facts necessary for the present proceedings are narrated in brief, hereunder:
 - i. The *Noticee*, M/s Aasmaa Commodities Pvt. Ltd., is a commodity derivatives broker registered with SEBI having Registration No. INZ000076031 and is a member of the Multi Commodity Exchange of India Ltd. and the NSEL.
 - ii. The 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 the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia* including “no short sale by the members of the exchange shall be allowed” and “all outstanding positions of the trades at the end of the day shall result in delivery”.

- iii. In October 2008, the 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 the 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 the NSEL on the same day at same time and at different prices, involving the same counterparties.
- 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 the 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 the NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, the FMC passed an Order in the matter on December 17, 2013 (hereinafter referred to as “**FMC Order**”) wherein it was *inter alia* observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘*no short sale by members of the exchange shall be allowed*’ was being not complied with by the NSEL and its members. The 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 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 the NSEL, from the purview of the FCRA.

- v. As per the Finance Act 2015 (vide which the FMC was merged with the SEBI), an intermediary could continue to buy, sell or deal in commodity derivatives as a commodity broker, if it had made an application for such registration to the SEBI within a period of 3 months from the date of merger till the disposal of such application. Accordingly, ACPL was granted the aforesaid SEBI Registration Number on December 25, 2015 on the application made by the *Noticee* to SEBI for registration as a commodity derivatives broker in this regard.
6. On the basis of the aforesaid factual details, the DA, after considering the replies filed by the *Noticee*, has *inter alia* observed the followings in the report:
- “27. Thus, in the light of the admission of the noticee mentioned in Paragraph 7 and observations made in Paragraphs above regarding the trade data of the noticee on NSEL platform, which shows that it had dealt in the paired contracts, the fact that the noticee had participated in the trading on the NSEL platform during the period September 2009 to August 2013, which were in violation of the Notification issued under Section 27 of FCRA, is established.*
- 29. In view of the aforesaid, it is evident that the Designated Authority is required to make an appropriate recommendation of suspension / cancellation / prohibition or debarment, whichever is applicable, under Regulation 27 of the Intermediaries Regulations against the noticee, where the facts and evidences so warrant. Therefore, I am of the view that the material placed before me on record establishes the factum of noticee’s indulgence in the illegal ‘paired contracts’ on the platform of the NSEL. Under the facts and circumstances of the instant case, I conclude that the noticee has violated Regulation 9(b) and 9(f) read with Clause A(2) and A(5) of the Schedule II of the Broker Regulations and Regulation 5(e) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.”*

7. After considering the Enquiry Report, a Show Cause Notice dated August 17, 2020 (hereinafter referred to as “**SCN**”) enclosing therewith the Enquiry Report of the DA along with certain material/information as specified therein, was issued to the *Noticee* under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the aforesaid materials/information as brought out above alongwith Enquiry Report concerning the fit and proper person criteria, should not be considered and as to why the action as recommended by the DA or any other direction/measure as may be deemed fit, should not be passed against /imposed on it by the Competent Authority. The SCN further advised the *Noticee* to submit its reply, if any within 21 days of receipt of the said SCN.
8. Accordingly, in response to the SCN the *Noticee* has made submissions vide its letter dated September 09, 2020 which are summarized hereunder:
- i. The *Noticee* could not reply to supplementary show cause notice dated June 19, 2020 and a subsequent reminder letter date July 14, 2020 issued by the DA due to change in its registered email Ids to manik@aasmaasecurities.com (Compliance Officer) and sbaid@aasmaasecurities.com (Managing Director). The old email i.e., admin@aasmaacommodities.in was kept live to check old communications but the *Noticee* is not following the said old email.
 - ii. The *Noticee* has done only two trades in its PRO Account.
 - iii. The *Noticee* has done the aforesaid trades for testing purpose.
 - iv. No investor is registered in the NSEL by the *Noticee*.
 - v. No investor obligation is due in the paired contracts.
 - vi. There is no question of Fit & Proper status as the *Noticee* has not taken any undue advantage of the fraudulent contracts by registering the investors on the NSEL and made them to trade.

- vii. As the *Noticee* could not understand the paired contracts and they suspected the transactions, due to which the *Noticee* has not entertained its clients and not registered any client on the NSEL for trading in the paired contracts
 - viii. Based on the above submissions, the *Noticee* is not to be alleged for any violations and it pleads for no action to be recommended against it.
9. In conformity with the principles of natural justice, an opportunity of personal hearing was provided to the *Noticee* on September 16, 2021, communication of the which was sent to and served upon the *Noticee* vide email dated August 26, 2021. I note that no one appeared before me on the scheduled date of personal hearing i.e. September 16, 2021. It is noted that despite the service of the aforesaid communication upon the *Noticee*, it has chosen not to attend the said hearing. Under the circumstances, I observe that the principles of natural justice have been complied with adequately in the present matter, and as the *Noticee* has preferred not to participate in the present proceedings before me, therefore, under the circumstances, the matter is fit to be proceeded with, on merit based on the material available on record.

CONSIDERATION OF ISSUE AND FINDINGS

10. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, the reply dated September 09, 2020 made by the *Noticee* and other materials/information as made available to the *Noticee* vide supplementary show cause notice dated June 19, 2020 or as available in the public domain. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN, the issue which arises for my consideration in the present proceeding is as under:
- I. Whether continuance of the *Noticee* as a market intermediary, in the light of its alleged involvement in trading / facilitation of trading in 'paired

contracts' on the exchange platform of the NSEL if in violation of the conditions of the 2007 Exemption Notification and also of the applicable provisions of FCRA, is detrimental to the interest of the Securities Market and thus whether the *Noticee* is a 'fit and proper' person for holding the certificate of registration as a registered market intermediary in terms of regulation 5(e), 9(b), 9(f) read with regulation 27(iv) of the Stock Brokers Regulations.

11. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the securities laws, which are alleged to have been violated by the *Noticee* and 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 and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter and the key management persons by whatever name called —

(a) integrity, reputation and character;

- (b) absence of convictions and restraint orders;*
- (c) competence including financial solvency and networth*
- (d) absence of categorization as a wilful defaulter.*

Action in case of default.

27. After considering the representations, if any, of the noticee, the facts and circumstances of the case and applicable provisions of law or directions, instructions or circulars administered by the Board the designated authority shall submit a report, where the facts so warrant, recommending, –

(ii) cancellation of certificate of registration;

12. I note that prior to merger of the FMC with the SEBI on September 28, 2015, the *Noticee* was required to be a member of recognized commodity derivative exchanges and was not required to be registered with either the FMC or any other regulatory authority under the FCRA. Therefore, the Parliament, while noticing the mischief that the intermediaries dealing with commodities derivatives market were not required to be registered under the FCRA and thus were not under control of any competent authority, rectified the same through the Finance Act, 2015 by bringing them under the regulatory supervision of the SEBI. Recognizing the aforesaid step taken by the Parliament to remove the aforesaid mischief of regulatory gap, 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 as under:

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

control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority”.

13. Thus, it is an admitted position that prior to the date of merger of the FMC with the SEBI (i.e., 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 the FMC with the SEBI a commodity derivatives broker required mandatorily to have a certification of registration from the SEBI in case the 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 the SEBI and also mandated regulation of commodity derivatives brokers by the SEBI, which included their registration as commodity derivatives broker with the 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 stock broker *w.e.f.* December 25, 2015 and since then it has been acting as a market intermediary registered with the SEBI.
14. In order to continue to hold such certification of registration from the SEBI, the *Noticee* is also required to satisfy the conditions of eligibility to continue with such registration, which *inter alia* included, continuance of its status as a ‘fit and proper’ person. The above condition to be a fit and proper 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 wishes to remain associated with the Securities Market as a registered intermediary.

15. It is relevant to note here that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as “**SAT/Tribunal**”) in the matter of *Jermyn Capital LLC v. SEBI*, (decided on September 06, 2006), while dealing with the nature and requirement of criteria of ‘fit and proper’ person under the SEBI (Criteria for Fit and Proper Person) Regulations, 2004, *inter alia* held as under:

“Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate. ... ”

It is further held by the Hon'ble Tribunal that:

“...The Regulations apply across to all sets of regulations and all intermediaries of the securities market including those who associate themselves with the market and they all have to satisfy the criteria of 'fit and proper person' before they could be registered under any of the relevant regulations and this criteria they must continue to satisfy throughout the period of validity of their registration and throughout the period they associate with the market”.

16. Therefore, it is clear that 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 the SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, the SEBI is well within the powers to examine the ‘fit and proper’ status of such entity based on various parameters including the following parameters provided under Schedule II of the Intermediaries Regulations:

- (a) integrity, reputation and character;

- (b) absence of convictions and restraint orders;
- (c) competence including financial solvency and networth;
- (d) absence of categorization as a wilful defaulter.

17. Further, while observing that SEBI was entitled to take the view that an entity was not a 'fit and proper' person where there were charges of criminal conspiracy made against the chairman of the company and the same were yet to be established in court of law, the Hon'ble SAT in the matter of *Mukesh Babu Securities Ltd. v. SEBI (Appeal No. 53 of 2007 decided on December 10, 2007)* has held that:

"It is true that these are only allegations made in the charge-sheet and we are conscious that these are yet to be established in a court of law but from what is stated in the charge-sheet liaison between Shri Mukesh Babu and the chairman of the bank prima facie appears to be established. ... The charges leveled are indeed serious and if established, they involve moral turpitude. We are unable to agree with the learned counsel for the appellant that the criminal case pending against Shri. Mukesh Babu and others has no concern with the securities market. It is through the terminals of the company that the chairman of the Bank had traded and incurred losses through speculative trading which losses have been made up by overdrawing money from the Bank. In these circumstances, the Board was entitled to take the view that the company was not a fit and proper person. It could not be said that Shri. Mukesh Babu or the company enjoyed good reputation within the meaning of the Fit and Proper Person Regulations."

18. Considering the aforesaid deliberations, I am of the view that the existence of any material on record that questions integrity, reputation or character of the *Noticee*, or proves close association with any person who does not enjoy a good reputation are parameters good enough to determine that the person in question is not 'fit and proper'. Thus, good reputation and integrity are critical aspects of the 'fit and proper' criteria laid down in the Intermediaries Regulations. It has also been held by the courts that while determining as to whether an entity enjoys a good reputation, the observations, even if prima facie, made by the courts and other regulatory authorities, would be relevant. Further, the statutory requirements to obtain a certificate of registration as

laid down under various provisions of the Intermediaries Regulations and the Stock Brokers Regulations are not only applicable to and required to be complied with by the *Noticee* at the time of making such application and obtaining such registration, but also subsequently on a continuous basis after the registration is granted till the time the market intermediary is operating in the Securities Market.

19. Having discussed the scope, nature and requirement of the criteria of ‘fit and proper’ person, I will now proceed to deliberate on the allegations levelled against the *Noticee*. It is noted that the main allegation against the *Noticee* is that by participating/facilitating in the trading in ‘paired contracts’ on the NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it is alleged in the SCN that the continuance of the registration of the *Noticee* as a commodity derivatives 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 commodity derivatives 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 and regulations 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Stock Brokers Regulations.
20. In this regard I note that the NSEL was granted exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs, 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, 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*’.

21. 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

The 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 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.

22. 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:

“...It has also come to the knowledge of the Commission from the report of the forensic auditor that a large number of NSEL exchange trades were carried out with paired back-to-back contracts. Investors simultaneously entered into a “short term buy contract” (e.g. T+2 — i.e. 2 day settlement) and a “long term sell contract” (e.g. T + 25 i.e. 25 day settlement). The contracts were taken by the same parties at a pre-determined price and always registering a profit on the long-term positions. Thus, there existed a financing business where a fixed rate of return was guaranteed on investing in certain products on the NSEL....

NSEL conducted its business not in accordance with the conditions stipulated in the notification dated 05.06.2007 granting it exemption from the operation of FCRA, 1952, with regard to the one-day forward contracts to be traded on its exchange platform. As noted in the SCN, the condition of 'no short-sell' and 'compulsory delivery of outstanding position at the end of the day' stipulated in the notification were violated by NSEL. NSEL Board allowed launching of paired back-to-back contracts on its exchange platform comprising a short-term buy contract (T+2 settlement) and a long-term sell contract (T+25 settlement) with predetermined price and profit for the buyer and seller, which violated the very concept of spot market of commodities and the transactions ultimately were in the nature of financial transactions" (emphasis supplied)

23. The Department of Economic Affairs, Ministry of Finance, while agreeing with the aforesaid observations of the FMC, vide its letter dated December 30, 2014 observed as under:

"This department is in agreement with FMC that NSEL has violated the first two conditions of exemption granted to it under section 27 of FCRA making it liable for appropriate action including penal action under section 21 of FCRA. Further, this department is also in agreement with the observations of Special Team of Secretaries that by offering contracts having settlement beyond 11 days, without obtaining recognition and/or registration, NSEL has also violated the Provisions of sections 5, 6, r/w 14A also making it liable for appropriate action including action under section 21 of FCRA."

24. The Hon'ble Bombay High Court, while deciding Writ Petition No. 2743 of 2014 dated December 04, 2017, in the matter of *63 Moons Technologies Limited v. Union of India* had also observed as under:

"85] The very offer of T+18, T+25 or T+36 contracts by NSEL prima facie constituted breach of the condition that the exemption from applicability of FCRA was only in respect of contracts of one day's duration. There is really no dispute, either in facts or in law on this aspect because even FTIL in its list of dates and events at entry 4 against date 05.06.2007, accepts this position...

86] Further, apart from the note against entry 8 (November 2011 onwards) in the list of dates and events of FTIL, there is ample material on record which establishes that NSEL offered 'paired contracts' at its exchange from 2009 itself. Further, the record indicates and it has not been disputed that by the year 2013 the volume of paired contracts constituted almost 99% of the

turnover at the NSEL exchange. In monetary terms, this turn over from 2009 to 2013 was in the region of Rs. 1,34,000 crores. Therefore, to say that all this was without the involvement or even knowledge of FTIL and NSEL and to attempt to blame 'certain trading clients, commodities sellers or brokers' is just not prima facie acceptable.

88] The material on record, including in particular the presentations made by and on behalf of NSEL and the Grant Thornton Report establish that this modus operandi of paired contracts, was in reality, nothing but financing transactions. These contracts were invariably at predetermined prices and the long terms sell contract, was always at a profit, the difference effectively being the cost of lending. These paired contracts were obviously in breach of the conditions of the exemption notification and consequently the FCRA itself. Under the guise of offering spot delivery or ready delivery contracts, the NSE-L Exchange indulged not just in forward trading but in financing unhindered by any regulatory checks which would, but for the exemption notification dated 5th June 2007 have applied to such operations.

89] The record indicates and it has not been disputed that by the year 2013, the volumes of paired contracts constituted almost 99% of the turnover of the NSEL Exchange. In monetary terms, this turnover of paired contracts was in the region of Rs.1,34,000 crores between the years 2009 to 2013. This means that the entire operations at the NSEL Exchange, which was meant to be a commodities stock exchange, were entirely subverted in gross disregard of the conditions of the exemption notification dated 5th June 2007 and consequently, the FCRA itself.

90] The FTIL in its pleadings as well as the list of dates, is really in no position to factually dispute the manner in which the operations were held at the NSEL Exchange. The NSEL itself has not even instituted any petition to question the impugned order, which takes cognizance of such facts. The learned counsel for NSEL when requested to comment on the operations at NSEL Exchange simply chose to submit that since the impugned order is based only on one ground or reason, namely, facilitating NSEL in recovering dues from the defaulters, there is no point in offering any comments or explanations about the operations at the NSEL Exchange. Even otherwise, there is extensive material on record in the form of Grant Thornton Report etc. which establishes that the operations at the NSEL Exchange were inconsistent with the conditions of the exemption notification dated 5th June 2007 and consequently the FCRA itself."

25. The Economic Offences Wing, Mumbai, vide letter dated April 04, 2015, had forwarded an interim report to the SEBI in connection with the investigation being conducted by it to identify the role played by the broking houses in the

NSEL Case (EOW C.R. No. 89/2013). The relevant extracts of the report are as follows:

‘IV. Objectives of this investigation into the brokers’ role:

A scam of this magnitude would be difficult to continuously occur for 3 years without some of the large brokers’ gross negligence or perhaps active participation.

The actual role of the brokers was:

- *To bring in investors to invest in ‘pair trades’ promising them assured returns and the investors got about 13-16% p.a. for investing in the commodity*
- *The sellers got finance at 18-20 or more % by pledging their commodity in NSEL warehouses*
They got brokerage from investors on the NSEL platform, and those brokers who had their NBFCs got additional revenue by financing investors for investing on NSEL.

Though the matter is still under investigation, brokers have also received back from exchange certain charges collected from investors such as transaction fees, delivery and warehousing charges, etc. It is suspected that these are indirect motivation incentives for brokers to generate huge volumes. It is also possible that brokers may have benefitted from or compensated by the sellers or defaulters.

The higher the trading turnover, the higher revenues for the exchange and the brokers. Therefore, both wanted to increase turnover at the exchange.

In light of the foregoing, the objective of EOW in investigating brokers was to inquire whether they had been involved in any wrongdoing connected with trading on NSEL. Specifically, to determine whether they participated in:

- a) Any activities which were detrimental to the investors, NSEL, or third parties. To determine whether they had made false and misleading representations, offered inducement, financing and deliberately made wrongful assertions purely to get brokerage and facilitate NSEL in generating higher volumes.*
- b) Whether they had any illegitimate personal enrichment, or, there has been knowing dereliction in their duties as clearing and forwarding agents towards the commodities and protect the investors.*
- c) It was also deemed necessary to ensure that their activities were within the framework of law.”*

26. 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*¹ (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), wherein it *inter alia* observed 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”.

27. I further find it apt to reproduce the observations of the Hon'ble Bombay High Court in its order dated August 22, 2014 in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra (Criminal Bail Application no. 1263 of 2014)* wherein the Hon'ble Bombay High Court observed the following at *prima-facie* level:

“16 There is great substance in the contentions advanced by the learned counsel for the applicant that the brokers through whom the so called trade transactions were entered into, do have their own legal team and a full knowledge of how the market operates. The legalities of the transactions were quite expected to be known to the brokers and the traders who do not hesitate to term themselves as 'investors', and they were expected to assess the legalities of the transactions. The brokers being quite experienced, and the investors being informed persons, it is apparent that the issue of illegality of the transactions raised by them is not out of their concern to adhere to legalities, but in order to project the applicant as the main offender, rather than the defaulting parties.”

I find that, even six years and several litigations later, the above observations of the Hon'ble Bombay High Court stand its grounds and haven't been overturned by any judicial forum.

28. In view of the aforesaid observations and findings of the various courts and authorities, I note that the NSEL, by providing a platform for trading in 'paired contracts', which was in reality a financing transaction wherein fixed rate of return was assured under the garb of 'paired contract', violated the conditions of exemption mandated to it for compliance under 2007

¹ (2019)18 SCC 401

Exemption Notification issued under the FCRA and instead used its platform to provide services which were specifically barred under the FCRA. Further, as stated above, such 'paired contracts' constituted almost 99% of the turnover at the NSEL exchange by FY 2013-14. I note that the *Noticee* was one of the commodity derivatives brokers that facilitated its clients to trade on the platform of the NSEL in 'paired contract', which have attracted serious adverse charges from several authorities and courts as discussed in detail above. Thus, I am of the view that the association of the *Noticee* with such illegal trading on the exchange platform of the NSEL would be crucial to determine the 'fit and proper' status of the *Noticee*.

29. In this regard, it is noted that the *Noticee* has admitted doing trades in its proprietary account for testing purpose. I note that the *Noticee*, as a commodity derivatives broker, represented the face of the NSEL for regular investors. The execution of the trades in 'paired contracts' by the *Noticee* shows the participation of the *Noticee* in the fraudulent scheme perpetrated by the 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 has acted as an instrument of the NSEL in promoting 'paired contracts' which were in the nature of financing transaction as held by the Hon'ble Supreme Court of India as noted above. The *Noticee*, by providing a platform 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 thereby raising 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' on the NSEL platform have serious ingredients amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.

30. Looking holistically at the alleged conduct of the *Noticee* which is a registered market intermediary, I find that by no standard, the aforesaid conduct of the *Noticee* can be said to be fair and honest and the said conduct overwhelmingly proves that the *Noticee* has not acted with due skill, care and diligence in the conduct of its business as required under Schedule II of the Intermediaries Regulations and therefore 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 obligation or has not taken any undue advantage of the fraudulent contracts by registering the investors on the NSEL and made them to trade. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in ‘paired contracts’ on the NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification and 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 the NSEL platform is detrimental to the interest of the Securities Market.
31. In view of the above observations and admission of the *Noticee* having traded in these ‘paired contracts’ on the NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in ‘paired contracts’ on the 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. Therefore, the continuance of the registration of the *Noticee* as a commodity derivatives broker can prove to be detrimental to the interest of the Securities Market as the *Noticee* can no longer be called a ‘fit and proper person’ for holding the certificate of registration as a commodity derivatives broker in the Securities

Market, which is one of the conditions for continuance of registration as specified in regulation 5(e), regulations 9(b) and 9(f) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

32. Before summarizing my observations and discussions in the foregoing paragraphs, I must note here that an entity which is granted registration to operate as a commodity derivatives broker is required to act in a manner and to comply with all applicable regulatory requirements which are in the best interests of the Securities Market and its investors so as to uphold the integrity of the Securities Market. As the arena of Securities Market is fundamentally vast and complex, the Stock Brokers Regulations have prescribed broad checks and balances so as to keep the interest of the investors protected from any kind of untoward treatment in the hands of unscrupulous commodity derivatives broker and to uphold the integrity of the Securities Market. The Code of Conduct spells out the general duties of the commodity derivatives broker to exercise due skill, care and diligence in the conduct of its business so as to serve the best interest of the clients in a fiduciary manner and to keep intact the integrity of Securities Market.
33. In the context of Securities Market, I note that the role of a registered intermediary including a registered commodity derivatives 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 commodity derivatives broker, which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between regulator 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. Thus, undisputedly a commodity derivatives 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.

34. However, contrary to the above conduct displayed by the *Noticee* while performing its functions as a commodity derivatives broker, by indulging in participation/ facilitation in the trading in ‘paired contracts’ on the NSEL, with an aim to earn illegal profit by putting a blind eye to all the illegalities taking place on the exchange platform of the NSEL, has seriously hampered the trust of the Regulator in the integrity of the *Noticee*, hence the continuation of the *Noticee* in Securities Market as an intermediary does not appear to be in the interest of investors and the Securities Market as such misconduct has apparently amounted to serious violation of regulation 5(e) read with Clauses A(1), (2) and A(5) of the Schedule II of the Stock Brokers Regulations and regulations 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. 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 the NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA so as to decide its continuous association in the Securities Market. From the above, it is evident that NSEL through its members had indulged in running a scheme contrary to the permissible activities as permitted to it by the Central Government and under the garb of ‘paired contracts’ had promoted trading in 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.

35. 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 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 the 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.
36. 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 facts that the scheme of paired contracts traded on the NSEL ultimately has caused loss to the market to the extent of INR 5,500 Crore itself cast serious aspersion on the conduct, integrity and reputation of the associate person like the *Noticee* who participated in such paired contracts and therefore, its continuous association with the Securities Market cannot be viewed as good and congenial for the interest of the investors.
37. As noted above, the adherence to the Code of Conduct is an ongoing requirement but the conduct displayed by the *Noticee* in performing functions of an commodity derivatives broker, including its act of indulging in participation/facilitating in the trading in 'paired contracts' on the NSEL platform is certainly not in the interest of investors and the Securities Market and in my view such misconduct has amounted to serious violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the

Intermediaries Regulations and regulations 9(b) and 9(f) read with Clauses A(1), (2) and A(5) of Schedule II of the Stock Brokers Regulations.

38. Under the circumstances, I am constrained to hold that the *Noticee* is not a 'fit and proper' person in terms of regulation 5(e) read with regulation 27(iv) of the Stock Brokers Regulations further read with Schedule II of the Intermediaries Regulations and hence, the continuance of the *Noticee* as a commodity derivatives broker will be detrimental to the Securities Market. Therefore, such activities of the *Noticee* as a registered commodity derivatives broker cannot be condoned and deserve appropriate remedial measure to prevent for such wrong doings from recurring to the detriment of the interest of the Securities Market.

ORDER

39. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. Aasmaa Commodities Pvt. Ltd., I hereby cancel the registration of the *Noticee* viz. M/S Aasmaa Commodities Pvt. Ltd (SEBI Registration nos. INZ000076031).
40. The *Noticee* shall, after receipt of this order, immediately inform its existing clients about the aforesaid direction in paragraph 39 above.
41. Notwithstanding the direction at paragraph 39 above, the *Noticee* shall allow its existing clients to withdraw or transfer their securities or funds held in its custody, within 60 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 60 days, the *Noticee* shall transfer the funds and securities of such clients to another broker within a period of 30 days thereon, under advise to the said clients.
42. The Order shall come into force with the immediate effect.

43. 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.
44. A copy of this order shall be served upon the Noticee, the recognised Stock Exchanges and the Depositories for necessary compliance.

Sd/-

DATE: OCTOBER 29, 2021

PLACE: MUMBAI

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA