

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

Name of the Noticee	SEBI Registration No.
Dynamic Commodities Private Limited	INZ000047433

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. Dynamic Commodities Private Limited (hereinafter referred to as “**DCPL**”/ “**Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker bearing registration no. INZ000047433. DCPL was earlier a member of National Spot Exchange Limited (hereinafter referred to as the “**NSEL**”).
2. The present proceedings originate from the enquiry report dated September 19, 2019 (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 SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as the “**Intermediaries Regulations**”) 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. The DA, based on findings recorded in the said Enquiry report, recommended that the registration of DCPL as a stock broker may be cancelled.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Pursuant to the Enquiry Report, a post enquiry show cause notice dated October 15, 2019 (hereinafter referred to as “**SCN**”) was issued to the Noticee, along with copies of (i) the aforesaid Enquiry Report; (ii) Finance Ministry letter dated December 30, 2014 to Forward Markets Commission (“**FMC**”); (iii) Hon’ble Bombay HC’s order in criminal bail application no. 1263 of 2014 in Jignesh Prakash Shah vs. State of Maharashtra dated August 22, 2014. In response to the SCN, the Noticee filed a reply dated November 14, 2019. Thereafter, the Noticee availed inspection of documents on January 16, 2020 and then filed additional replies dated January 17, 2020 and March 12, 2020.
4. While the aforesaid proceedings were pending, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (“**Hon’ble SAT**”). The Hon’ble SAT *vide* its common order in the matter of Geofin Comtrade Ltd. And Ors. vs. SEBI (Appeal no. 214 of 2019) dated June 09, 2022 (“**June 2022 SAT Order**”), remanded the aforesaid SEBI orders to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

“...

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

documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice...”

5. In light of the June 2022 SAT Order, it was felt necessary to furnish certain additional documents/material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, a supplementary SCN dated February 27, 2023 (“**SSCN**”) was served on the Noticee along with the following documents:
 - 5.1. Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing (“**EoW**”);
 - 5.2. Copy of FIR dated September 28, 2018 filed by SEBI under section 154 of Criminal Procedure Code, 1973 (“**CrPC**”); and
 - 5.3. Amended Schedule II of Intermediaries Regulations.
6. The Noticee submitted an additional reply vide letter dated June 29, 2022. Vide letter dated March 24, 2023, the Noticee requested for inspection of documents and the same was granted on June 15, 2023. Vide letter dated June 19, 2023, the Noticee made further submissions. Though the Noticee was granted an opportunity of personal hearing on August 21, 2023, the Noticee sought adjournment without specifying any reason. Thereafter, the Noticee was granted another opportunity of personal hearing on September 26, 2023 and the Noticee once again sought adjournment stating that its director is unwell. Subsequently, the Noticee was granted another opportunity of personal hearing on October 17, 2023 and the Noticee once again sought adjournment stating that its director was still unwell. Then, the Noticee was granted a final opportunity of personal hearing on November 01, 2023 and the Noticee was also advised to authorise a representative to attend the scheduled hearing in case its director was not available. On the scheduled date and time, the Noticee failed to appear before me and after about 5 hours from the scheduled time, the Noticee sent an email stating that the meeting could not be attended due to medical exigency and further requested for another opportunity of hearing. I note that the Noticee has been given sufficient opportunities for personal

hearing and therefore, the principles of natural justice have been duly complied with and I now proceed to consider the matter based on the replies and material available on record.

7. The written submissions filed by the Noticee dated November 14, 2019, January 17, 2020, March 12, 2020, June 29, 2022, March 24, 2023 and June 19, 2023 are summarized hereunder:

7.1. The SCN was issued after a gap of more than 8 years from the alleged paired contracts execution in 2012. Hence, there is an inordinate delay in initiation of proceedings by SEBI. In this regard, reference has been made to the order dated August 22, 2019 passed by the Hon'ble SAT in the matter of Ashok Shivalal Rupani & Anr. Vs. SEBI (Appeal no. 417 of 2018).

7.2. The Designated Authority failed to take proper cognizance of its request of inspection of documents and also did not provide personal hearing. The Designated Authority failed to provide all the documents referred to and relied upon by SEBI in issuing the SCN to the Noticee. The Noticee has placed reliance on the judgements in the cases of Painter v. Liverpool Gas Light CO. [(1836) 3 A & E 433], A.R. Antulay v. R.S. Nayak [(1988) 2SCC 602] and Canara Bank and Ors. vs. Shri Debasis Das [Appeal (civil) 7539 of 1999 decided on 12.03.2003].

7.3. The documents requested have not been provided during inspection of documents.

7.4. Noticee name is not mentioned in Grant Thornton Report, Fortnightly reports of NSEL to FMC, EOW report, extract from NSEL website and OD reports.

7.5. There were no outstanding obligations or any default committed by the Noticee in NSEL.

7.6. The Noticee has not been provided with a copy of the letter dated June 19, 2014 referred in the letter dated December 30, 2014.

7.7. These proceedings deserve to be disposed of forthwith without any action owing to inordinate delay. In this regard, the Noticee has placed reliance on the orders of the Hon'ble SAT in the matter of Sanjay Jethalal Soni and Others Vs SEBI (Appeal no. 102 of 2019) decided on 14.11.2019, Ashlesh

Gunvantbhai Shah and Ors Vs SEBI (appeal no. 169 of 2019) dated 31.01.2020, Parag Sarda and Ors. vs SEBI (appeal no. 279 of 2020) dated 12.11.2020, Yatin Pandya HUF vs SEBI (appeal no. 719 of 2021) dated March 24, 2022, Rakesh Kathotia & Ors. vs SEBI dated May 27, 2019, Ashok Shivilal Rupani vs SEBI and ICICI Bank Ltd. vs SEBI on July 08, 2020 and SEBI order in the matter of Monarch Networth Capital Limited dated December 30, 2021.

7.8. The Noticee has denied all the allegations made in the SCN.

7.9. The Noticee has not been provided any document which supports allegations against it.

7.10. The Noticee did not have any outstanding on the date when the NSEL settlement failed i.e., 31.07.2013. The last trade undertaken by the Noticee on the NSEL platform was on 10.09.2012, almost 1 year prior to the NSEL settlement failing. Further, none of the investors who traded through the Noticee suffered any losses on NSEL platform in the contracts in question. The last date of payment made to the Noticee's clients for trading on the NSEL platform in the contracts in question was on 11.12.2012.

7.11. The trading volume/ turnover from the first trade date i.e., 13.3.12 up to the last trade date i.e., 10.9.12 in trades other than E series contracts is a negligible volume amounting to INR 20,83,99,348.

7.12. The SCN has misconstrued 'observations against NSEL' by various courts/ authorities as 'conclusions against the Noticee' and this demonstrates predetermined mind and prejudice against the Noticee.

7.13. The Noticee has relied on SAT Order in the matter of Geofin Comtrade Limited and submitted that the impugned order of SEBI in the said matter emanated from similar material and in the same case. Therefore, the principle adopted by SAT would be squarely applicable in this case and the SCN deserves to be disposed of without any action against it.

7.14. The SCN including the Enquiry report of the DA does not fall within the scope and purview of the provisions of the Intermediaries Regulations including that of Regulations 23 and 24 of the Intermediaries Regulations.

7.15. The Noticee was not a 'Stock Broker' prior to date of registration with SEBI as a trading member i.e., 29.04.2016 and therefore, it was not an

intermediary prior to that date. Trades executed on NSEL were not in the nature of 'Securities' and the applicability of the 'Securities laws' is not retrospective. Further, the provisions of Regulations 23 as well as that of 24 (1) of the Intermediaries Regulations make it clear that the violations stated therein should have occurred on a date subsequent to the date the intermediary has been granted a certificate of registration.

7.16. The Designated Member while forwarding documents vide SSCN has assumed the role of the Designated Authority, however, the provisions of Regulation 28(1) do not provide for including any fresh observations/ allegations by the Designated Member, beyond the report submitted by the DA.

7.17. As per the SCN, the allegations contained in those 3 pages are levelled by the Designated Member and now by way of these proceedings, the Designated member would be judging the very same allegations brought by him / her. This is in violation of principles of natural justice i.e., 'nemo judex in sua causa' – no person can judge a case in which he/ she is a party or in which he/ she has an interest. In this regard, the Notice has relied on the order of the Hon'ble SAT in the matter of Shruti Vora vs SEBI.

7.18. NSEL was not a 'Stock Exchange' as defined under securities laws nor was a 'Stock Exchange' – a fact confirmed by FMC/ SEBI. FMC Order dated 17.12.2013 records the same. Thereafter, FMC was merged with SEBI with effect from 28.09.2015. Consequently, the aforesaid FMC order dated 17.12.2013 and the conclusions drawn in the said order have to be deemed to be the order and conclusions of SEBI.

7.19. The Transactions executed by the Noticee on its behalf and on behalf of its clients on NSEL do not fall within the ambit of securities contracts (Regulation) Act, 1956 and hence, beyond the regulatory purview of SEBI. Section 133B of Finance Act, 2015 has included 'commodity derivatives' within the definition of derivatives under Securities Contracts (Regulation) Act, 1956 with effect from 28.09.2015 and there is no stipulation that the said provisions are retrospective.

7.20. The Noticee was not a 'stock broker' prior to the date of registration as a stock broker with SEBI i.e., 29.04.2016 and the Noticee was not an intermediary prior to 29.04.2016. Since on and from the date of its registration with SEBI as a registered stock broker / intermediary, the Noticee has not participated in and / or facilitated its clients in trading on NSEL in any contracts, paired or otherwise, nor committed any default as alleged, the question of violation of these regulations does not arise. Thus, these proceedings do not fulfil the pre-requisites stipulated under Regulation 23 and 24(1) of the Intermediaries Regulations.

7.21. The Noticee submitted that it has not been provided any "basis of findings" or the "material relied upon for those findings" by the Ministry of Finance, Department of Economic Affairs in its letter dated 30.12.2014. The Hon'ble Supreme Court in its order dated 30.04.2019 and the Hon'ble Bombay High Court in its order dated 22.08.2014 as stated in the SCN have made certain observations against FTIL/NSEL. In view of the seriousness of the allegations in SCN, the Noticee has requested to furnish the specific information/violations alleged, if any, against it by the authorities/ Hon'ble Courts referred at paragraphs 2.a, 2.b and 2.c of SCN, so as to enable it to furnish its reply. In this regard, the Noticee has placed reliance on Canara Bank & Ors. Vs. Debasis Das & Ors. (2003) 4 SCC 557.

7.22. The Noticee submitted that vide its letter dated 30.12.2014, the Department of Economic Affairs, Ministry of Finance has advised FMC (now SEBI) to take action against NSEL and not against it. Reliance is placed on the order passed by Hon'ble SAT on 30.09.2013 in the matter of Vidhya Finvest Limited, Kolkata and Others V/s SEBI.

7.23. The Noticee submitted that as it had carried out its transactions on NSEL as per market mechanism and in accordance with the bye laws of NSEL, the proceedings initiated against it deserves to be disposed of without any action.

7.24. The Noticee submitted that it was admitted as 'Trading cum Clearing Member' by NSEL on 26.07.2008 i.e. over 1 year after the Notification was issued by the Government of India on 5.06.2007. Thus, the aforesaid conditions which were imposed by the Government of India on NSEL and

mentioned by SEBI in the SCN also existed for about 1 year. Consequently, the Noticee had no role whatsoever in commencing or carrying out/facilitating any activity(ies) by NSEL in violation.

7.25. The Noticee further submitted that, nowhere in the Supreme Court order dated 30.04.2019 it is stated that they as a 'Trading cum Clearing Member' on NSEL, were aware of and/or were party to the scam perpetrated by NSEL. On the contrary, FMC (Now SEBI), vide its order dated 17.12.2013, has already confirmed that they were the victims of NSEL fraud. Further, the trades on NSEL trading platform were by way of an anonymous order matching mechanism in which, while executing trades, the counterparties did not know the identity of each other. The Noticee submitted that the FMC order does not mention their name anywhere.

7.26. The Noticee denied the allegation of it carrying out any 'financing transactions' or 'paired trades' on NSEL.

7.27. With respect to the Supreme Court Order dated 30.04.2019, the Noticee has submitted that it was not a party to the proceedings or heard in the matter. Further, there are no adverse observations against it in the said Order.

7.28. The said Supreme Court order records that stocks worth INR 6000 crores were missing from the warehouses leading to the NSEL scam. Therefore, the NSEL scam was irrespective of the alleged 'financing transactions', 'paired trades' or alleged 'association' taking place or not.

7.29. The Noticee stated that the promoters of NSEL were Financial Technologies (India) Limited (now known as '63 Moons') and NAFED under the Ministry of Agriculture and Farmers' Welfare, Government of India and no action has been taken against NAFED or any of the aforesaid authorities in the NSEL matter despite their association with NSEL and despite them facilitating activities of NSEL.

7.30. The Noticee submitted that mere undertaking the trades on the trading platform of NSEL in the ordinary course of business as a 'Trading cum Clearing Member' cannot be considered as a ground for close association with NSEL and paired contracts as alleged, being bad in law. Hence, the SCN issued to it deserves to be disposed of without any adverse action.

- 7.31. The Noticee submitted that NSEL scam happened not because of having/not having their 'own legal team' or 'full knowledge how the market operates' but owing to a scam perpetrated by NSEL as brought out by FMC in its order dated 17.12.2013.
- 7.32. The fact that several market participants lost crores of rupees owing to the NSEL scam establishes beyond doubt that market participants including the Noticee had no inclination of wrong doing before the NSEL scam surfaced.
- 7.33. It took close to 1 ½ years after FMC letter dated 22.02.2012 for Government authorities including SEBI/ FMC to take a view on the functioning of NSEL and thereafter to alert other stakeholders on 06.08.2013. Considering the time taken by the authorities in determining the legalities of transactions on NSEL, no fault can be attributed to the Noticee based on its trading on NSEL platform.
- 7.34. The SCN does not bring out any material or document to support that the Noticee has 'full knowledge' of any illegality of the transactions at a time when those were taking place on NSEL. In this regard, the Noticee has placed reliance on the order passed by Hon'ble SAT on 19.06.2012 in the matter of Network Stock Broking Limited vs. SEBI.
- 7.35. The Noticee submitted that against the Bombay High Court Order dated 22.08.2014, a Special Leave Petition was filed in Supreme Court on 17.11.2014 challenging the order of the High Court. The observation made by the High Court in its order dated 22.08.2014 shall not stand in the way at any point of time.
- 7.36. The Noticee submitted that as a SEBI Registered stock broker they have never participated in/facilitated in paired contract as alleged in SCN. Since the whole SCN including the aforesaid information/ materials in the form of observations by various Courts/Authorities that they had participated in/ facilitated in paired contracts transacted on NSEL, is based on an assumption that the same was done in their capacity "as a Broker" is incorrect, the SCN issued to them deserves to be disposed of without any adverse action against them.

- 7.37. Any association with any institution in the normal course of business, in retrospect, cannot be a criterion for deciding the integrity of another person merely on the basis of such association. The Noticee submitted that any action against them alleging and inferring their association with NSEL in the normal course of business, before taking any action against NSEL, is bad in law. In this regard, reliance is placed on the order passed by Hon'ble SAT on 19.06.2012 in the matter of Networth Stock Broking Ltd. Vs SEBI.
- 7.38. The Noticee was enrolled as a trading cum clearing member with NSEL on 26.07.2008 when NSEL was already in operation for over a year prior to that and no violation can be attributed to the Noticee unless the knowledge of wrong doing by NSEL is attributed to the Noticee. Hence, the Noticee's trades as a 'trading cum clearing member' on NSEL in its ordinary course of business cannot be termed as having "close association" with NSEL for any violation committed by NSEL.
- 7.39. The Noticee submitted that alleged serious questions on their reputation / competence / character / integrity having bearing on their fit and proper status thereby declaring them 'not fit and proper' as contemplated in SCN, without similarly questioning NSEL and without declaring NSEL as 'not fit and proper', is bad in law. The Noticee has placed reliance on the Order dated 30.09.2013 by the Hon'ble SAT in the matter of Vidhya Finvest Limited and Others V/s SEBI.
- 7.40. The SCN has failed to bring out any material which supports the allegation that the Noticee was 'associated' let alone 'closely' with NSEL in terms of Regulation 2(1)(b) of the Intermediaries Regulations.
- 7.41. The Noticee cannot be alleged to be 'not fit and proper' based on the alleged 'close association' with NSEL since till date, NSEL has not been declared as 'not fit and proper' by any authority including FMC / SEBI. In this regard, the Noticee has placed reliance on the order of the Hon'ble SAT in the matter of Geofin Comtrade Ltd. and Ors. vs SEBI (appeal no. 214 of 2019) decided on 09.06.2022.
- 7.42. The Noticee further submitted that that the SCN issued u/r 28(1) of the Intermediaries Regulations as well as the Enquiry Report do not specify as to

which provision(s) of which of the Securities Law(s) has been violated by them. The SCN issued to them does not specify as to which rules, regulations and bye-laws have not been abided by them or which provisions of Code of Conduct as specified in schedule II, have not been abided by them. Non stipulation of the specific provision(s) of the securities laws which have been alleged to have been violated by them in SCN has led to impairment of their ability to defend this matter effectively and adequately. In this regard, the Noticee has placed reliance on the Order of the Supreme Court in the matter of Canara Bank & Ors. vs. Debasis Das & Ors. (2003) 4 SCC 557 (supra) and the Order of the Hon'ble SAT in the matter of Dhanalakshmi Bank Limited vs. SEBI (Order dated April 20, 1999).

- 7.43. Hon'ble Supreme Court in Maharashtra vs 63 Moons Technologies clearly held that the transactions on NSEL were 'deposits' under Maharashtra Protection of Interest of Depositors Act ('MPID') and not paired contracts in commodities. Therefore, the very foundation of the present proceedings has been dispensed with by the Hon'ble Supreme Court and therefore neither the Enquiry Report nor the SCN can sustain.
- 7.44. The Noticee had requested another opportunity of hearing in light of the Hon'ble Supreme Court Order passed on April 22, 2022 in the matter of Maharashtra vs. 63 Moons Technologies (Civil Appeal no. 2748-49 of 2022), however, the same was reject vide your email dated May 27, 2022. The same is in violation of principles of natural justice.
- 7.45. In the matter of Reliance Capital Limited, Reliance Communications Limited and Reliance Power Limited before the Hon'ble AO dated March 23, 2018, it was held that the core / foundation on which the proceedings were initiated i.e., Regulations, did not exist on the date of the alleged transactions and therefore proceedings were disposed of. In the same manner, in the present case, the core / foundation on which the proceedings have been initiated i.e., dealing in paired contracts in commodities on NSEL, is now, in view of the said Supreme Court's order being accepted as deposits received under MPID Act and therefore, the core / foundation on which the present proceedings have been initiated does not exist anymore.

- 7.46. Various authorities including the Supreme Court have multiple times held that the member brokers against whom SEBI had initiated action in NSEL, who were non-defaulting are not the beneficiaries of the NSEL scam but are merely victims of it.
- 7.47. The DA did not consider its submissions and also has not provided the requisite documents stated to be relied upon by the DA. These proceedings were initiated against the Noticee vide the DA-SCN inter alia referring to FCRA without specifying as to which provision / section of FCRA has been violated by the Noticee. The FCRA was repealed on 29.09.2015, the period of 3 years stipulated as above vide Finance Act, 2015 ended on 28.09.2018 and no specific violation of FCRA is alleged against the Noticee now. Consequently, on these grounds alone, these proceedings deserve to be disposed of without any action.
- 7.48. As per the Enquiry Report, the DA has already concluded that the Noticee's name does not appear in the Grant Thornton report, Fortnightly reports of NSEL to FMC, EOW report, Circulars dated 27.08.2013 and 10.03.2015 and the said documents have not been provided to the Noticee.
- 7.49. The determination of 'fit and proper' requirement is applicable prospectively and there is no provision to apply it retrospectively.
- 7.50. The DA issued SCN before relied upon documents were received from OD and so it is not clear as to in absence of those documents at the time of issuing DA-SCN, the DA could rely upon the said documents and also satisfy himself that the requirements of the provisions of Regulations 25(1) of the Intermediaries Regulations regarding "reasonable ground to issue DA-SCN" were fulfilled.
- 7.51. The Noticee has not been furnished the requisite details and information of trades and details of clients for whom the Noticee had 'allegedly participated in and / or facilitated' in entering into such paired contracts on the platform of NSEL during the period September 2009 to July / August 2013 to enable the Noticee to furnish specific details and its replies thereto. The Noticee has relied upon the judgement of the Hon'ble Supreme Court in the matter of State of Punjab vs. Chaman Lal Goyal (1995) 2 SCC 570 and Hon'ble SAT in the matter

of Tree House Education and Assn. Ltd. & Ors. vs. SEBI (appeal no. 78 of 2019 dated 07.11.2019).

7.52. Before granting the certificate of registration to the Noticee, SEBI had already satisfied itself that the Noticee was 'fit and proper' person.

7.53. The word 'association' used by the Hon'ble SAT in its order dated 06.09.2006 in the matter of Jermyn Capital LLC vs. SEBI was pursuant to an appeal filed by Jermyn Capital LLC against SEBI order dated 13.01.2006. The Enquiry Report has erred in assigning an entirely different meaning and connotation to this word 'association' by incorrectly attributing it to the aforesaid order dated 06.09.2006 by the Hon'ble SAT and incorrectly terming the Noticee's activity as 'Trading cum Clearing member' on NSEL as 'Close association'.

7.54. The Enquiry Report has erred in relying upon the order dated 10.12.2017 in the matter of Mukesh Babu securities Limited vs. SEBI while inferring adversely against the Noticee. In the said matter, there were serious criminal charges and charges of gross financial irregularities against Mukesh Babu, the Chairman and Managing Director of 'Mukesh Babu Securities Limited' which was registered as a Stock Broker with SEBI. As per the said order, Mukesh Babu was the beneficiary and his liaison with other persons involved in the said financial irregularities was established. The CBI had alleged that there was a criminal conspiracy and illegal acts which resulted in wrongful loss to depositors. As against this, the SCN does not allege any criminal charge or financial irregularities by the Noticee. In view of the same, the ratio laid down in the said case relied upon by DA is not applicable to the facts of these proceedings.

7.55. The Noticee was merely acting as an agent for its investors and the Noticee had never promised its investors any assured returns as stated by EOW. The meagre brokerage which was payable to a 'Trading cum clearing member' of the NSEL by the client did not support any such a business model of 'assurance' as noted in its interim findings of EOW. As admitted by DA, there is no specific allegation against the Noticee by EOW in its 'interim findings' which have been reproduced in the 'Enquiry Report'.

- 7.56. With respect to the observation of the DA that the Noticee was “agent of NSEL”, the Noticee has submitted that it was paid charges by its clients for services rendered by it and it is the agent of its clients and not NSEL.
- 7.57. The SCN does not bring out any evidence to demonstrate that a copy of the GOI notification dated 05.06.2007 was issued to the Noticee on any date prior to the date on which NSEL scam surfaced or that the Noticee had any knowledge of wrong doing of / violation by NSEL before the scam surfaced. The SCN is silent on any provision of law pursuant to which the Noticee was required to do basic due diligence of contracts offered on NSEL vis-à-vis the conditions specified in the notification by GOI.
- 7.58. The Noticee has drawn a parallel with ‘Cash vs Futures trades’. The ‘cash vs Futures Trading’ is not termed as illegal or in violation of any law by the Stock Exchanges or by SEBI but both these authorities facilitate their trading and also approve of them. Further, stock brokers who participated / facilitated ‘Cash vs Future trades’ for their clients are neither alleged to be closely associated with the stock exchanges or with those trades nor called into serious questions regarding their reputation / competence etc. Therefore, alleging the transactions on NSEL as ‘financing transactions’ in violation of unspecified law or alleging the same as connection with NSEL is self-contradictory. Hence, it is denied that during its registration, the Noticee had carried out any financing transactions or paired trades on NSEL.
- 7.59. The Noticee’s activities in the normal course of business on behalf of its clients cannot be termed as ‘facilitating’ or ‘association’. The Noticee has submitted that SEBI is applying different yardsticks to trades and traders of NSEL vis-à-vis trades and trades of Stock Exchanges such as NSE or BSE.
- 7.60. The Noticee has submitted that any allegation contained in the SCN read with the Enquiry Report if established to be true, has to necessarily culminate into violation of some provisions of FCRA and/ or the securities laws. Thus, once it has been concluded in the SCN read with the Enquiry Report that there is no violation of any provisions of FCRA or securities laws by the Noticee and those specified are not applicable under the facts and circumstances of this

case, nothing survives to inquire into and the proceedings against the Noticee deserve to be disposed of.

7.61. The SCN dated October 15, 2019 initiated proceedings under the at that time Regulation 28(1) of the Intermediaries Regulations, 2021 and the said Regulation stands omitted from January 21, 2021 without any provision for “Save and Repeal” and therefore, no proceedings can continue under the said Regulation.

7.62. The present Supplementary SCN dated February 27, 2023 would amount to a fresh SCN issued under Regulation 27(1) of the Intermediaries Regulation and the same is barred by limitation.

7.63. The Noticee has requested for a copy of charge sheet filed by EOW based on the FIR mentioned by SEBI in its SCN. Further, SEBI has informed that it has not relied on the charge sheet for the entities who are not made an accuses in the charge sheet. This stand of SEBI is evident beyond doubt that it is not one of the accused in the charge sheet and therefore, it is imperative for it to peruse a copy thereof and make submission on the basis of grounds of EOW. The Noticee has placed reliance on the judgement of the Hon’ble Supreme Court in the matter of T. Takano in this regard.

C. BRIEF HISTORY OF NSEL SCAM

8. Before moving forward to consider the matter on merits, the background facts necessary for the present proceedings are narrated in brief as under:

8.1. NSEL was incorporated in May 2005 with the 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* the 2007 Exemption Notification, granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions. The said notification *inter alia* stated that “*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*”. It was also stipulated that all information

or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.

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

8.3. On February 06, 2012, the erstwhile FMC was appointed by DCA as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest.

8.4. DCA on April 27, 2012 directed NSEL to show cause as to why action should not be initiated against it for violation of the conditions mentioned in the 2007 Exemption Notification.

8.5. Subsequent to the above, NSEL filed a reply. Further, MCA sought comments of FMC on the said replies. MCA also sought certain information from NSEL pursuant to which *vide* its letter dated July 12, 2013, MCA directed NSEL to give an undertaking that:

8.5.1. No further/fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and

8.5.2. All the existing contracts will be settled on the due dates

8.6. NSEL issued a circular on July 31, 2013 suspending its spot exchange operations.

8.7. On August 27, 2013, FMC directed a forensic audit of NSEL by Grant Thornton LLP. Further, the Union of India ordered an inspection of accounts of NSEL and 63 Moons Technologies Ltd. (*earlier FTIL*) under section 209A of the Companies Act. The EoW also registered cases against the directors and key management personnel of the NSEL and 63 Moons (*earlier FTIL*) and against trading members and brokers of NSEL under the provisions of the Indian Penal Code and Maharashtra Protection of Interest of Depositors Act, 1999 ("**MPID Act**").

8.8. After analysing the trade data received from NSEL and the forensic audit report submitted by Grant Thornton LLP, the FMC passed Order dated December 17, 2013 in the matter ("**FMC Order**") wherein it *inter alia* observed that Financial Technologies (India) Ltd. is not a fit and proper person to continue to be a shareholder of 2% or more of the paid-up equity capital of MCX. Further, from paragraph 8 of the FMC Order, I note that the DCA *vide* its letter dated April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the 2007 Exemption Notification. In response to the same, NSEL submitted a reply *vide* their letter dated May 29, 2012. DCA, *vide* its letter dated May 31, 2012, sought comments of FMC on the NSEL reply. The FMC, *vide* its letter dated August 02, 2012 to the DCA provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

8.8.1. Short sale by members of the exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order.

FMC was of the view that all the sale transactions which are not backed by the ownership of goods were in violation of the condition of “*no short sale by the members of the Exchange shall be allowed*” as stated in the 2007 Exemption Notification.

8.8.2. Contracts in which settlement period goes beyond 11 days: In view of the definition of “forward contract” under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are “non-transferable specific delivery contracts”. Thus, even if the 2007 Exemption Notification does not specify the delivery period, NSEL had to settle the delivery for all open positions within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

8.9. On September 19, 2014, Ministry of Finance, Government of India, issued a notification withdrawing the exemption granted to NSEL vide the 2007 Exemption Notification.

8.10. From the above, it is clear that NSEL had permitted contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to NSEL. Subsequently, certain entities who were primarily borrowing on the NSEL platform through the modus of trading in the aforesaid “paired contracts” defaulted in fulfilling their payment obligations leading to a huge settlement default of outstanding contracts to the tune of ₹5,600 Crores.

8.11. EoW, Mumbai, *vide* letter dated April 04, 2015, had forwarded an interim report in connection with the investigation conducted by them to identify the role played by the broking houses in the NSEL case. The relevant extracts of the said interim 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.*

8.12. Vide the Finance Act, 2015, FMC was merged with SEBI on September 28, 2015 in pursuance thereof SEBI was entrusted with the powers to regulate the trading in commodities futures market. As per the said act, an existing intermediary could continue to buy, sell or deal in commodity derivatives as a commodity broker, if it would make an application for its registration as an intermediary to SEBI within a period of 3 months from the date of merger till the disposal of such application by SEBI. Accordingly, the Noticee on the basis of an application so made by it, was granted SEBI registration number to operate as a stock broker in the securities market. In terms of the said act, FCRA was also repealed with effect from the aforesaid date.

8.13. On September 24, 2018, SEBI filed a complaint with EoW to initiate appropriate action against brokers/members of NSEL and other persons in the NSEL matter under sections 20, 21 and other appropriate provisions of the FCRA.

8.14. On September 28, 2018, SEBI gave a statement to the police which resulted into a FIR under section 154 of CrPC.

8.15. It is also pertinent to refer to the judgment of the Hon'ble Supreme Court decided on April 30, 2019, passed in the matter of 63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. vs. Union of India & Ors. (Civil Appeal No. 4476 of 2019) (2019)18 SCC 401 ("**Merger Petition**"), wherein it *inter alia* held that:

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

8.16. Further, in judgement dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of The State of Maharashtra vs. 63 Moons Technologies Ltd. (Civil Appeal No. 2748-49 of 2022) (“**MPID matter**”), the Hon'ble Supreme Court while drawing reference to the presentations made by NSEL in respect of the “paired contracts” has *inter alia* held that:

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

8.17. In the background of the aforesaid discussion pertaining to “paired contracts” as captured in the preceding paragraphs, I now move on to examine whether the Noticee satisfies the “fit and proper person” criteria as laid down in Schedule II of the Intermediaries Regulations.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the contents of the Enquiry Report, the SCNs issued to the Noticee, the responses filed by the Noticee and other documents available on record as shared with the Noticee.
10. Before moving forward to examine charges and the evidence available on record, it would be appropriate to take a look at the legal provisions of the SEBI Act, which are relevant in the present case. It is alleged that the Noticee has violated (i) regulation 5(e) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of Intermediaries Regulations; and (ii) regulation 9(b), 9(f) read with clause A (1), A (2) and A (5) of Schedule II of Stock Brokers Regulations. The same are reproduced below for reference:

SEBI Act

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

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

Stock Brokers Regulations

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; and

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;

SCHEDULE II

Code of Conduct for Stock Brokers

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.

Intermediaries Regulations

Schedule II

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 fulfill 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 proceedings 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-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.

11. I find it appropriate to first deal with the preliminary contentions raised by the Noticee.
12. The Noticee has argued that there has been an inordinate delay in initiation of present proceedings and that the SCN was issued after a gap of almost 8 years. In support of the same, the Noticee has relied upon the cases of Sanjay Jethalal Soni and others (supra), Ashlesh Gunvantbhai Shah and Ors (supra), Parag Sarda and Ors. (supra), Yatin Pandya HUF (supra), Rakesh Kathotia & Ors. (supra) Ashok Shivilal Rupani & Anr. (supra) and ICICI Bank Limited (supra).
13. In this regard, I note that the NSEL scam unfolded in 2013 after which several agencies such as EoW, SFIO, etc. conducted investigations into the activities of NSEL. Further, FMC, Hon'ble Bombay HC and Hon'ble SC made important pronouncements relating to different facets of the matter such as whether merger of NSEL with FTIL should be permitted and whether NSEL can be considered as a "financial establishment" under the MPID Act. A large number of brokers had allegedly participated in the illegal contracts at NSEL platform. After the merger of FMC with SEBI on September 28, 2015, some of these brokers applied for registration with SEBI. Thereafter, assessing all the factual circumstances available before SEBI and considering the importance of fulfilling "fit and proper person" criteria by brokers, action was duly initiated against the set of brokers who executed the alleged trades. Thus, in absence of any prejudice caused to the Noticee, merely because proceedings were initiated in 2018 by way of DA SCN, I find that the present proceedings do not stand vitiated. Further, I note that after issuance of DA SCN, June 2022 SAT Order was passed by Hon'ble SAT wherein it set aside the impugned orders of WTM concerning similar facts and evidence as the present case. I find it appropriate here to briefly delve into the grounds on which the impugned orders of SEBI were set aside by Hon'ble SAT leading to the issuance of SSCN. The grounds are as follows:

- (i) The observations of the Hon'ble Bombay High Court in the matter of 63 Moons vs. Union of India (Writ Petition No. 2743 of 2014 dated December 04, 2017) cannot be relied upon as the said judgement has been set aside in appeal by the Hon'ble Supreme Court in the Merger Petition judgment.
- (ii) The observation from the order dismissing the Writ Petition filed by NSEL against the invocation of the MPID Act in NSEL vs. State of Maharashtra and Ors. (Writ Petition No. 1403 of 2015 dated October 01, 2015), cannot be relied upon, as in a subsequent Writ Petition moved by 63 Moons Technologies Ltd., in Writ Petition No. 1181 of 2018, a Division Bench of the Hon'ble Bombay High Court observed that the *prima facie* observations made in its earlier order were not binding and the same was observed since further investigation was in process at the relevant stage.
- (iii) The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of Jignesh Prakash Shah vs. The State of Maharashtra, cannot also be relied upon as such observations were limited to the fact as to whether the bail should be granted or not.
- (iv) Reliance on the SFIO Report was misplaced. The report only directs EoW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an order dated July 29, 2019 which was challenged due to jurisdiction before Hon'ble Bombay High Court. The Hon'ble Bombay High Court by an order dated January 15, 2020 passed an interim order staying the effect and operation of the impugned order dated July 29, 2019.
- (v) Reliance placed on decisions of the Hon'ble Tribunal in the matter of Jermyn Capital vs. SEBI and Mukesh Babu Securities vs. SEBI is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by

SEBI, and the Hon'ble Tribunal was of the view that the criteria for passing an ad interim order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of certificate of registration. The decision in the matter of Mukesh Babu Securities was distinguished by the Hon'ble Tribunal on the basis that in the said matter a criminal complaint was filed against the chairman of the company. The Hon'ble Tribunal noted that with respect to the appellants, there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.

- (vi) Regarding close association of the appellant with NSEL, forensic report which was made at the behest of SEBI has exonerated the appellant on this charge. This fact has not been considered by the WTM while holding the appellant to be closely connected with NSEL. There is no finding in the impugned cases indicating that the appellants have any control directly or indirectly over NSEL and, therefore, the question as to whether the appellant is a close associate of NSEL has not been considered in the right perspective.
- (vii) In the impugned cases, the application for grant of registration certificate has been rejected without specifying how long the rejection of application would continue. Such rejection cannot continue indefinitely and if an application is rejected, a period should be prescribed within which the broker cannot apply for grant of a fresh registration certificate but after the expiry of the period he could file such an application.

14. The SSCN issued pursuant to the June 2022 SAT Order takes into consideration additional material available on record. The issuance of SSCN, delivery of SSCN, examining the reply to the SSCN and hearing opportunities provided thereafter, were essential steps in ensuring that principles of natural justice are being met at the cost of prolonging the conclusion of present proceedings. Therefore, I find that

the events detailed above necessitated an extended period for concluding the proceedings.

15. The Noticee has contended that all the documents sought by the Noticee was not provided to it. The Noticee has also contended that the DA issued the SCN before the relied upon documents were received from OD and therefore did not satisfy the requirements of regulation 25(1) of the Intermediaries Regulations. I note that Sub-regulations (3) and (4) of Regulation 25 of the Intermediaries Regulations specify that the copies of the documents “relied upon by SEBI” along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee. On perusal of paragraph 15 of the Enquiry Report, I note that the Noticee was provided with the following documents.

- 15.1. Copy of the relevant FMC Order with Annexures;
- 15.2. Copy of the Grant Thornton Report with Annexures;
- 15.3. Copy of the Notification issued by the Ministry of Consumer Affairs dated June 05, 2007;
- 15.4. Documents explaining specifications of ‘paired contracts’ (as available in the Grant Thornton Report) (which is narrated in the FMC order);
- 15.5. Copy of EOW interim report dated April 04, 2015;
- 15.6. Copies (total 11) of fortnightly reports submitted by NSEL to the erstwhile FMC;
- 15.7. List of 148 members against whom NSEL has pay-out obligations as on September 19, 2013 as mentioned in the Grant Thornton Report (as per Annexure 6 of the Grant Thornton Report) dated September 21, 2013; and
- 15.8. Data containing registration documents of 299 members and Annual Return documents of 234 members.

16. I also note that vide post Enquiry SCN dated October 15, 2019, Noticee was provided with documents such as letter dated December 30, 2014 of DEA, Ministry of Finance and Order dated August 22, 2014 of the Hon’ble High Court of Bombay in the criminal bail application of Jignesh Prakash Shah vs. State of Maharashtra.

I further note that vide SSCN dated February 27, 2023, the Noticee was provided with copies of SEBI complaint dated September 24, 2018 filed with EOW and FIR dated September 28, 2018 filed by SEBI. Thereafter, during inspection of documents granted on June 15, 2023, the Noticee was provided with copies of Grant Thornton Report, EOW Report, NSEL complaint letters dated March 17, 2015 and March 24, 2015, Email dated August 31, 2018 sent by SIT EOW to SEBI, FMC complaint letter dated January 16, 2015 against NSEL and SEBI letter dated July 09, 2018 to EOW. Therefore, I find that all the material / relevant documents have been duly provided to the Noticee in compliance with the principles of natural justice in conducting present enquiry proceedings. Hence, the contention of the Noticee is devoid any merit.

17. The Noticee has further contended that it has not been provided with the trade log and details of clients for whom the Noticee had allegedly participated in paired contracts on NSEL platform to enable the Noticee to furnish specific details and replies. As noted above, all the relevant and relied upon documents pertaining to the instant proceedings were provided to the Noticee as annexures to the SCNs or during inspection of documents. In any case it is Noticee's own contention that it was trading in the commodities contracts including alleged 'paired contracts' on behalf of its clients. Thus, as per the admissions of the Noticee in its reply, it is clear that the Noticee has indulged into trading in 'paired contracts' on behalf of its clients. Further, I find it relevant to refer to the finding of Hon'ble SC in Merger Petition, wherein it *inter alia* held that:

"We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts....."

Thus, it is clear that on NSEL (other than E-series contracts) the proportion of paired contracts as a percentage of total trades amounted to 99% in 2013. It is not the Noticee's case that the transactions facilitated by it for its clients were E-series

contracts. Accordingly, by inference, transactions on NSEL facilitated by the Noticee, could not have been anything but “paired contracts”. In these circumstances, the contention that in the absence of trade log and details of clients, providing the justification for the said trades is not possible, lacks any merit.

18. The Noticee has also contended that it was not provided with personal hearing before the DA. In this regard, I note that the DA had issued the show cause notice dated September 25, 2018 under the then existing Regulation 25(1) of the Intermediaries Regulations. Thereafter the Enquiry Report was submitted on September 19, 2019. The Intermediaries Regulations were amended vide the SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021. The amended Regulations now provide that the DA shall grant an opportunity of personal hearing and issue or cause to issue a notice scheduling a date for hearing. Thus, under the then existing Intermediaries Regulations prior to its amendment w.e.f. January 21, 2021, there was no legal requirement for providing the opportunity of personal hearing to the Noticee by the DA as contended by the Noticee. The Regulations specified granting of opportunity of personal hearing by the competent authority, which as has been detailed in the previous paras has been more than adequately provided to the Noticee. Thus, every opportunity was provided to the Noticee and no prejudice has been caused to the Noticee and there is no defect in the process followed in the present enquiry proceedings. Accordingly, the contention raised by the Noticee in this regard is also misplaced and devoid of any merit.

19. I note that the Noticee has also submitted that the Designated Member by placing reliance on additional material / documents which was not relied upon by the DA while recommending cancellation of certificate of registration has assumed the role of DA. In this regard, as stated above, the SSCN was issued in light of the June 2022 SAT Order to provide all relevant material to the Noticee to defend itself.

20. The Noticee has further submitted that the Noticee was not even a ‘stock broker’ nor an ‘intermediary’ in terms of the definitions provided under the SCRA when the transactions were executed by the Noticee on NSEL platform. Further, the Noticee has argued that NSEL was not a “stock exchange” and the trades executed on

NSEL were not in the nature of “securities”. I note that the Finance Act, 2015, permitted existing commodity derivatives brokers to continue to deal in commodity derivatives till disposal of an application made by them for registration as a stock broker. Thus, all the commodity derivative brokers, who applied to SEBI and whose application was in process, were allowed to carry on their functions as commodity derivative brokers till the disposal of their respective application. Thus, by virtue of provisions of Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration. Thereafter, I note that pursuant to the merger of FMC with SEBI, the Noticee had applied for a certificate of registration as a commodity broker and was granted a certificate of registration by SEBI on December 05, 2015. Therefore, the Noticee has become a SEBI registered intermediary from the said date and falls under the definitions of a ‘stock broker’ and an ‘intermediary’ under the SCRA. Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in “paired contracts” for its clients on the NSEL platform affects its ability to be considered as a “fit and proper person”.

21. The Noticee has argued that if it is held that the present proceedings are under the provisions of regulation 27(1) of Intermediaries Regulations as stated in the SSCN, the same are fresh proceedings and hence are barred by limitation. In this regard, I note that the Intermediaries Regulations was amended and in view of the amendment made w.e.f. January 21, 2021, powers that were exercised under regulation 28 of the Intermediaries Regulations are now being exercised under regulation 27 of the Intermediaries Regulations. I find that this technical change in legal provision number does not have any effect on the present proceedings.
22. The Noticee has also submitted that the SCN issued under regulation 28(1) of the Intermediaries Regulations as well as the Enquiry Report do not specify as to which provision(s) of which of the securities law(s) was violated by them and this has led to impairment of its ability to defend the matter effectively. I note that the SCN issued to the Noticee specifically records that the Noticee was alleged to be in

violation of regulation 5(e) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “Stock Brokers Regulations”) read with Schedule II of Intermediaries Regulations and regulation 9(b), 9(f) read with clause A (1), A (2) and A (5) of Schedule II of Stock Brokers Regulations. Therefore, the submission of the Noticee is devoid of any merit.

23. The Noticee has admitted and not disputed that it has dealt in paired contracts offered on the NSEL platform for its clients. Having established that the Noticee has traded in ‘paired contracts’ on behalf of its clients, I now proceed to examine the allegations levelled against the Noticee in the SCN and the SSCN. It is noted that the main allegation against the Noticee, 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 continuance of the registration of the Noticee as a broker is detrimental to the interest of the Securities Market and the Noticee is no longer a ‘fit and proper person’ for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018 etc.) as provided to the Noticee vide SSCN dated February 27, 2023, further alleged that in light of the aforesaid documents filed against the Noticee by SEBI as well as observations/ findings against the Noticee in the Enquiry Report dated September 19, 2019, the Noticee is no longer a ‘fit and proper person’ for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

24. The Noticee has submitted that all the trades were executed in accordance with bye-laws of NSEL. I note 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 these definitions in the FCRA, all the contracts traded on the NSEL which provided for a settlement schedule exceeding 11 days were treated by the FMC as Non-Transferable Specific Delivery Contracts. It is, therefore, seen that while the Ministry of Consumer Affairs (MCA) had stipulated in the Exemption Notification that only forward contracts of ‘one-day’ 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 forward contracts of ‘one-day duration’ and was obligated to ensure delivery and settlement within 11 days. Thus, 55 contracts of various commodities, having duration longer than 11 days that were executed on the NSEL were paired contracts without regulatory approval and in contravention of the exemption granted to NSEL and thus clearly not in accordance with law.

25. The Noticee has contended that the Hon’ble Supreme Court in MPID matter held that the transactions on NSEL were deposits under MPID Act and not paired contracts in commodities. In this regard, I note that in the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon’ble Supreme Court held that these contracts were in the nature of financing transactions and were thus, in breach of the exemptions granted to NSEL and the FCRA. Further, in the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court enlarged the interpretation and held that such transactions come within the definition of ‘deposits’ under the MPID Act. While extensively referring to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources, the Hon’ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the ‘paired contracts’ traded on the NSEL platform where the return offered was the same across the commodities and that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon’ble Supreme Court 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 rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon’ble Supreme Court in the MPID matter highlighted how the

'paired contracts' were being marketed as an alternative to fixed deposits wherein the overwhelming majority of the sale leg of the 'paired contracts' which were executed were in fact short sales and further that, the commodities to back such sales were not available at the designated warehouses of the NSEL.

26. The Noticee has submitted that the observations by the various courts / authorities is against NSEL and the Noticee's name is not appearing anywhere in the said order citing any adverse observation against it. In this regard, I note that reference drawn to the said orders / reports is to recognize the nature of contracts being traded on the NSEL and violations of the relevant provisions. The Noticee has also submitted that the cases referred to in the Enquiry Report viz. SAT Order in Jermyn Capital LLC Vs. SEBI and Mukesh Babu Securities Ltd Vs. SEBI and the order of the Bombay High Court in Jignesh Prakash Shah Vs. State of Maharashtra and 63 Moons vs. Union of India cannot be considered in light of the SAT Order dated June 09, 2022 and that the Noticee was neither a party to the said proceedings nor was any order passed against it. Considering the observations made by the Hon'ble SAT with respect to the said orders in the June 2022 SAT Order, I find that the said documents are not relevant for consideration in the present matter. Further, I note that vide the SSCN, the Noticee was given a copy of SEBI complaint dated September 24, 2018 and FIR dated September 28, 2018, and called upon the Noticee to file its reply in relation to it. Thus, I find that the aforesaid two documents are relevant material which can be relied upon for determining the "fit and proper person" criteria.

27. I also note that the scope of the present proceeding is to analyse the apparent impact as well as the consequences of the conduct of the Noticee as per the justification and contentions advanced and also to examine as to whether or not, the Noticee acted in a manner expected of a registered market intermediary. It cannot be denied that the involvement of the Noticee in trading in 'paired contracts' was neither permitted by the Exemption Notification nor by any of the applicable provisions of the FCRA. Under these circumstances, any conduct similar to that

displayed by the Noticee in its trading on the NSEL platform would be detrimental to the interest of the securities market.

28. Despite the above and the discussion in the context of the facts of the case, I have examined at length the other submissions made by the Noticee and also examined whether while transacting in paired contracts, the Noticee could have been under the *bonafide* belief that such transactions were actually spot contracts in commodities or alternatively that since 'paired contracts' were offered, that meant that NSEL was offering contracts which were not resulting in compulsory delivery.
29. The Noticee has contended that its turnover in the alleged paired contracts was negligible in trades other than E series contracts. Further, the Noticee has submitted that there were no outstanding obligations or any default committed by the Noticee. With regard to the said submissions, I note that it is an admitted fact that the Noticee had indulged in / facilitated paired contracts and therefore, the same does not alter the fact that the Noticee did facilitate trading in paired contracts, which as discussed above, were not in accordance with the 2007 Exemption Notification.
30. While Noticee has contended that it was only acting as an agent for its clients and never promised any assured returns, I note that there are no two opinions of the fact that the paired contracts were being advertised as an alternative to fixed deposit returns by offering fixed returns (approx. 16%) across all commodities, irrespective of the nature of the contract or the duration and were in fact structured in a manner which ensured that the buyer always made pre-determined profits. Any prudent person (including the Noticee, who is an intermediary and well versed with financial and commercial knowledge) would have or should have come to the conclusion that what was being offered were not spot contracts in commodities rather that they had the trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in State of Maharashtra vs. 63 Moons Technologies Ltd. which was contrary to the FCRA and the Exemption Notification and which eventually caused losses to the market stated to be to the extent of ₹ 5,600 Crores.

31. The Noticee has contended that no action has been taken against NAFED or promoters of NSEL despite their association with NSEL. Further, the Noticee has contended it cannot be declared “not fit and proper” based on the alleged “close association” with NSEL since till date, NSEL has not been declared “not fit and proper”. In this regard, I note that proceedings have been proposed and initiated against several entities based on the trades executed by them in the paired contracts on the NSEL platform and the accompanying facts and circumstances of their respective cases, solely relying on the material available on record. Since the Noticee was one such entity that had facilitated the trading in paired contracts on behalf of its clients, the present proceedings have been initiated against it. The extent of the role of the Noticee has been clearly brought out in the SCNs issued to it and as a quasi-judicial authority, the issue before me is to adjudicate the gravity of the allegations in the SCNs and arrive at a finding. Thus, the contention of the Noticee is devoid of any merit.

32. The Noticee submitted that there is no evidence to demonstrate that the Noticee had any knowledge of violations by NSEL and that it had no role in NSEL commencing any activity in violation of GOI notification. Further, the Noticee has contended that the SCN is silent on the provision of law pursuant to which the Noticee was required to do basic due diligence. 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-à-vis* the conditions specified in the aforesaid Notification. For these reasons, the Noticee is found to have violated Clause A (1), A (2) and A (5) Code of Conduct of Stock Brokers Regulations.

33. The Noticee has submitted that the Noticee was registered with SEBI as a 'Stock Broker' of a recognized Stock Exchange only after SEBI had satisfied itself that the Noticee was a 'fit and proper person'. The Noticee has further 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. It is a settled position of law that every registered intermediary in the securities market is required to fulfil all the conditions of its registration at all points of its functioning including any additional criteria statutorily provided for, from time to time. Else, there would arise an anomalous situation where an entity that has obtained a certificate of registration after fulfilling the said criteria would fail the test after a period of time and yet continue to function in the securities market despite not fulfilling the required criteria. On this premise, it can be said that the requirement of being a 'fit and proper' person, is a continuing 'eligibility criteria'/ statutory requirement, which ought to be satisfied by all registered entities at all points of time. This condition is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the grant of registration provides that this is a condition which every registered intermediary is required to fulfil, on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which an entity remains operational in the securities market as a registered intermediary. If the continued applicability of the fit and proper criteria to its functioning is challenged, there would exist a market where the overall interest of the investors would stand compromised. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the 'fit and proper' status of such entity based

on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria while granting the Certificate of Registration, in 2015, such an intermediary can still be assessed on being fit and proper at a later date. I therefore find no merit in the said submission of the Noticee.

34. The contention of the Noticee that its trading volume was negligible or that it earned meagre brokerage is equally misplaced and flawed as the quantum of such dealings is not relevant for the present proceedings.

35. As regards its submission that it was not closely associated with NSEL and the 'paired contracts' were introduced by NSEL, it cannot be denied that the involvement of the Noticee in trading/facilitation of trading in 'paired contracts' on the NSEL is certainly a conduct which was neither permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, a conduct similar to that displayed by the Noticee in its trading on the NSEL platform would be detrimental to the interest of the Securities Market.

36. 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 and Regulation 9(b) of the Stock Brokers Regulations mandates a registered stock broker to abide by the rules, regulations and bye-laws of the stock exchange which are applicable to it. In terms of Regulation 9(f) of the Stock Brokers Regulations, a registered stock broker is required to abide by the Code of Conduct as specified in Schedule II of the Stock Brokers 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.

37. Thus, as and when any of the 'fit and proper' criteria change, every registered entity is required to comply with the revised criteria, including as in this instance, the criteria as revised vide the amendment in November 2021. The requirement is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria provides it to be a condition which each and every

registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. 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 at any point of time.

38. The parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which, *inter alia*, include the following:

“(1).....

(2).....

(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;

.....”

39. The Noticee has submitted that an FIR is only the first instance of reporting of a complaint that is lodged with the police and only a preliminary document based on the one-sided statement(s) of the complainant without any adjudication of the same and such an FIR is far from being equivalent to a final determination, thus, no reliance can be placed on any FIR particularly an FIR which has been filed by SEBI itself. Further, the Noticee has contended that it has not been included in the charge sheets filed by EOW. As detailed in the SSCN, FIR was registered by the EOW with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018. I note that this FIR is subsisting and has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date. 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. The

disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations has also been triggered *vis-à-vis* the Noticee.

40. Thus, by virtue of its conduct, trades and being a member of NSEL, the Noticee acted as an instrument 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*). By providing a platform for trading to its clients and by providing access for taking exposure to such 'paired contracts', the Noticee exposed its clients to the risks involved in trading in a product that did not have regulatory approval.

41. I also note that the Noticee has submitted that its clients did not suffer any loss on NSEL platform in the contracts in question. I am of the view that any argument on the lines that the clients hold no grievance with the Noticee who merely executed the contracts without soliciting, does not lessen the extent of its obligations. The lack of diligence required to be performed by an intermediary of prudence is indicative of lack of competence and integrity while acting as a registered intermediary. Undoubtedly such activities of the Noticee not only seriously jeopardized the integrity of market and that of its investors but also SEBI's belief in the reputation, character, competence and integrity of the Noticee and other brokers which compelled SEBI to file the criminal complaint against it as also against several other brokers. Thus, the Noticee has also attracted disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries Regulations on account of this complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI, and the complaint remains pending.

42. In the present case, the conduct, integrity and reputation of the Noticee has been found wanting on account of its involvement in trading of "paired contracts" on the NSEL platform and also for the reason that since SEBI has filed a complaint on the basis of which an FIR dated September 28, 2018 has been registered by EOW, which is yet to be finally determined by a Court of competent jurisdiction, the

disqualification provided in paragraph 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

43. The facts and circumstances along with other material available on record clearly leads me to the conclusion that the Noticee has not satisfied the “fit and proper person” criteria specified in Schedule II to the Intermediaries Regulations. I have also taken into consideration of an order previously passed by SEBI in the context of similar facts and circumstances, namely, Adroit Commodities Services Pvt. Ltd. (order dated September 01, 2023), wherein the registration of the said entity has been suspended for 3 months or till the said entity is acquitted by an order of a Court, whichever is later.

44. Considering all of the above, while I find that the Noticee does not satisfy the “fit and proper person” criteria specified in Schedule II of the Intermediaries Regulations, I do not agree with the measure recommended by the DA. Given the peculiar facts and circumstances of the case, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three months or till discharge/ acquittal of the Noticee by a Court of competent jurisdiction, whichever is later, would be more appropriate, and proportionate to the violations brought out in the present case.

E. ORDER

45. In view of the facts and circumstances of the case and the conclusions arrived at discussed above, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with regulation 27 of the Intermediaries Regulations, hereby suspend the certificate of registration (bearing registration no. INZ000047433) of the Noticee i.e. Dynamic Commodities Private Limited, for a period of three 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 later.

46. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, immediately about the aforesaid direction in paragraph no. 45.

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

48. This Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/ or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.

49. A copy of this Order shall be served upon the Noticee and all recognized stock exchanges and depositories for necessary compliance.

Sd/-

ANANTH NARAYAN G.

DATE: DECEMBER 11, 2023

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA