

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of:

Hem Multi Commodities Pvt. Ltd.

SEBI Registration No: INZ000091331

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. Hem Multi Commodities Pvt. Ltd. ("**Noticee**") is registered with Securities and Exchange Board of India ("**SEBI**") as a stock broker bearing SEBI registration no. INZ000091331. The Noticee was earlier a member of National Spot Exchange Limited ("**NSEL**").
2. The present proceedings originate from the enquiry report dated September 30, 2019 ("**DA Report**"), submitted by the Designated Authority ("**DA**") in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 ("**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 DA Report, recommended that the registration of the Noticee as a broker may be cancelled.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Pursuant to the DA Report, a post enquiry show cause notice dated January 03, 2020 ("**SCN**") was issued to the Noticee, alongwith copies of (i) the aforesaid DA Report; (ii) Finance Ministry letter dated December 30, 2014 to Forwards Market Commission ("**PMC**"); (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.
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:

- (i) Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing ("**EoW**");
- (ii) Copy of FIR dated September 28, 2018 filed by SEBI under section 154 of Criminal Procedure Code, 1973 ("**CrPC**"); and
- (iii) Amended Schedule II of Intermediaries Regulations.

6. *Vide* emails dated May 29, 2023 and September 20, 2023, the Noticee submitted its replies. The replies are summarized below:

6.1 SEBI DOES NOT HAVE THE REQUISITE JURISDICTION OVER SPOT MARKETS

6.1.1 There is no provision under Securities Contracts (Regulation) Act, 1956 ("**SCRA**") or SEBI Act, 1992 ("**SEBI Act**") which gives power to SEBI to regulate the spot markets in India. Regulation of spot market in India comes under the prerogative only of the Government of India. Regulation 9(b) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("**Stock Brokers Regulations**") refers to the rules, regulations and bye laws of the stock exchange. NSEL, was neither a 'stock exchange' within the meaning of Stock Brokers Regulations nor a recognized association/ exchange under the Forward Contracts (Regulation) Act, 1952 ("**FCRA**"). NSEL has never been regulated by any regulator, therefore, acts of Noticee does not fall within the purview of SEBI.

6.1.2 In the Report of Expert Committee on Integration of Commodity Spot and Derivatives Markets which was submitted by the Committee headed by Prof. Ramesh Chand, Niti Aayog Member to the Department of Economic Affairs, Ministry of Finance, Government of India in February, 2018, it has been observed that spot contracts for commodities are not within the ambit of SCRA and the Committee has made the recommendation that SEBI could be made the regulating authority of the spot market after making necessary amendments under SCRA. SEBI also comes under Department of Economic Affairs, Ministry of Finance, and Government of India, therefore, it cannot take a stand that it will not rely upon the report of the Committee.

Further, Ministry of Finance, Department of Economic Affairs, Government of India, vide its letter dated November 20, 2015 to SEBI had clearly advised: "*SEBI is not expected to deal with the matters which were not dealt with by erstwhile FMC. Further, it clarified that since spot market /ready delivery contracts were not regulated by the FMC, SEBI is not expected to take upon itself any regulatory function with regard to such markets*". SEBI cannot have jurisdiction over the commodity spot/ready delivery contracts market just because it got merged with FMC.

- 6.1.3 It is mandatory for the court to deal with the preliminary issue of jurisdiction framed by the court and raised in the matter. A decision taken in excess of jurisdiction would render the same a nullity. Reliance is placed on decisions of Hon'ble SC in Commissioner of Income Tax, Chandigarh vs. Pearl Mech. Engg. and Foundry Works (P) Ltd., AIR 2004 SC 2345, M. L. Sethi vs. R. P. Kapur, Kiran Singh vs. Chaman Paswan, AIR 1954 SC 340, and Harpal Singh vs. State of Punjab, AIR 2008 SC 743. The DA Report has been issued without a proper determination on the issue of jurisdiction. It is the duty of the court or authority to frame preliminary issue in that behalf and try and decide the same at the earliest opportunity before proceeding with the merits of the contentions.
- 6.1.4 Until September 2015, no rules or regulations were prescribed by any statutory authority as to the conduct of business as a commodity broker at NSEL. Even if it is to be presumed that FCRA was applicable, the Intermediaries was not a part of the FCRA, and there were no issues raised at the time when FCRA was in place. The period of enquiry is for the month of September, 2012, so neither the Noticee, nor its actions, or business transactions can be made subject to the application of any regulations prior to September, 2015. Further, since there was no requirement for the Noticee to seek any registration under any law with any statutory authority, the regulations cannot be made applicable on the Noticee and hence the proceedings initiated vide the Notice are *void ab initio*.
- 6.1.5 Neither FMC took any action for the period of September, 2012 against the Noticee nor has SEBI initiated any action under the repealed FCRA, hence the present

proceedings initiated by SEBI under SEBI Act and/or allied regulations stand *non est*.

- 6.1.6 If a retrospective power is to be provided to SEBI to overlook the activities that had been initiated, executed and completed before the FCRA was repealed and merger of FMC and SEBI took effect, a provision in this regard needs to be inserted in the respective regulations, which is neither present in any of the provisions of the law under immediate consideration nor can be reasonably inferred by operation of any law or legal provision.
- 6.1.7 SEBI has initiated the proceedings under SEBI Act/ SEBI regulations instead of initiating the proceedings for the alleged violations under the provisions of FCRA. The immediate actions of the SEBI against the Noticee are in contradiction to the express provisions of the section 29A(d) of FCRA.

6.2 SCN AND SSCN ARE VAGUE AND THEREFORE IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

- 6.2.1 The specific provisions which have been violated by the Noticee has no basis. For a consequence there has to be a cause shown and in the present case the main allegation of allegedly trading in paired contracts has not been shown by SEBI in the first place. The DA Report attached to the SCN does not provide any details relating to the allegation levied against the Noticee. It only contains a simple finding that the Noticee by participating/ facilitating in 'paired contract' in the trading platform as a trading/ clearing member has violated the conditions of notification and the provisions of FCRA.
- 6.2.2 It has not been shown in the SCN as to how the Noticee has participated or facilitated in paired contracts or how it was either in cahoots with NSEL or its client. No material, in the DA Report, including any investigation report, trade details or logs, was provided in the DA Report to substantiate the allegations. The details as to when the Noticee had participated in the paired contracts and the details of the trades which has been allegedly undertaken have not been provided in the DA Report. It is also

silent on the aspect if the 'paired contracts' launched by NSEL were promoted by the Noticee to its clients in any manner. It does not annex complaints filed by NSEL and other investors against the Noticee. No relation has been established in the DA Report between the alleged act of the Noticee and the charges levied against it.

6.2.3 The DA Report alleges violation of regulation 9(b) of the Stock Brokers Regulations, however, the SCN and the DA Report does not allege as to what provisions of the rules, regulations and/ or bye-laws of the stock exchange have not been complied by the Noticee. NSEL is not a stock exchange within the meaning of Stock Brokers Regulations. The DA in his report without examining all the documents/ materials and most importantly the trades which form the crux of the allegation, has issued the SCN to the Noticee presuming its role in the scam. By not providing the aforesaid complete documents, materials, reports, data etc., grave prejudice has been caused to the Noticee. In view of non-availability of the aforesaid documents, the Noticee has been incapacitated to submit an effective reply/ objection in the captioned matter.

6.2.4 Reliance is placed on decisions of Hon'ble SC in Gorkha Security Services vs. Govt. (NCT of Delhi), (2014) 9 SCC 105, S.L. Kapoor v. Jagmohan & Ors. (1980) 4 SCC 379, SEBI vs. PWC (Civil Appeal No. 6003-6004/12), New Prakash v. New Suvama, AIR 1957 SC 232. Further, reliance is also placed on decision of Hon'ble SAT in J.B. Shares and Stocks Limited vs. SEBI, (Appeal No. 189/2004 decided on March 07, 2006), Shri B. Ramalinga Raju v. SEBI (Appeal No. 286 of 2014 dated May 12, 2017) and Ms. Smitaben N. Shah v. SEBI (Appeal No. 37 of 2010 dated July 30, 2010).

6.3 PERSONAL HEARING OPPORTUNITY NOT PROVIDED BY THE DA

6.3.1 Even if the procedure regulation does not specifically prescribe that an opportunity of hearing must be provided before taking any decision, personal hearing has to be provided by the statutory authority as it is an unwritten, inalienable and fundamental right of the party.

- 6.3.2 Right of personal hearing is a *sine qua non* for fair procedure and this rule cannot be sacrificed at the altar of administrative convenience or celerity.
- 6.3.3 The power of principles of natural justice apply equivocally even to the procedure of enquiry under the Intermediaries Regulations, since the enquiry report prepared by the DA has bearing on the final decision making of the Designated Member. Merely because a decision is not being taken while conducting the enquiry and preparing a report, it does not subdue the importance of oral hearing, especially in the facts and circumstances of a complicated case like the instant case.

6.4 DA HAS NOT CONSIDERED THE SUBMISSIONS MADE BY THE NOTICEE

- 6.4.1 The DA has not considered the submissions made by the Noticee vide its letter dated October 15, 2019.
- 6.4.2 Further, vide letter dated September 23, 2019, the Noticee was provided with additional documents and information in continuance of the DA SCN dated September 25, 2018. The Noticee was granted time till September 20, 2019 to present its response. The Noticee vide its letter dated September 20, 2019 had requested for extension for submission of the response. No reply from SEBI was received by the Noticee in respect of the said request and hence there was a clear abrogation of the principles of natural justice by the DA.
- 6.4.3 The DA Report is dated September 30, 2019. If the Noticee was given time to present its response till September 30, 2019, the DA could not have issued the DA Report on September 30, 2019 itself. The said detail, brings to forefront the fact that the DA Report was drawn and issued with pre-conceived notions and pre-judgment by the DA which renders the DA Report illegal and void.
- 6.4.4 Submissions of the Noticee has not been considered by SEBI even when the SCN dated January 03, 2020 and SSCN dated February 27, 2023 was issued to the Noticee which clearly indicates a disregard to the submissions of the Noticee which

indicates the continuance of the proceedings in clear abrogation of the principles of natural justice.

6.5 FIT AND PROPER PERSON STATUS OF THE NOTICEE

- 6.5.1 SEBI has failed to show the exact role of the Noticee in the alleged scheme and has held it to be not fit and proper on grounds undisclosed or unidentified.
- 6.5.2 Noticee was never associated or related with NSEL or the alleged paired contracts. It was merely carrying out its duties as a broker and has never been associated with people of NSEL.
- 6.5.3 Despite the Ministry of Consumer Affairs and FMC finding large-scale violations as early as April 27, 2012, the NSEL was allowed to continue for 16 months. For close to two years, the Government did not take any actions in the matter. Though the FMC submitted a draft legislation for regulating spot exchanges to the Ministry, and the MCA issued a show cause notice to the NSEL on April 27, 2012, there was no follow-up action. Then, FMC merged with SEBI in 2015, and by the notification in Finance Act, 2015, SEBI had powers to regulate the commodities market. There were orders of FMC and EOW dated December 17, 2013 and April 04, 2015, respectively providing observations on NSEL matter. Thus, there was sufficient material on record for SEBI to determine the application of registration of the Noticee. If SEBI had the slightest of doubt regarding the “fit and proper” status of the Noticee, it could have granted the Noticee a conditional certificate of registration or sought more clarification on the matter. This is not a case where the Noticee while making the application for registration has suppressed a material fact which SEBI is coming to know after the grant of registration certificate. The fact that the registration has been granted to the Noticee on December 28, 2016, itself shows that on and till December 28, 2016, the Noticee was a “fit and proper person” as per the Intermediaries Regulations. Therefore, the Noticee cannot be held liable for any alleged wrongdoing committed before December 28, 2016. Once SEBI had given registration to the Noticee as per the doctrine of estoppel, it is now estopped from changing its stance.

- 6.5.4 Schedule II of the Intermediaries Regulations states the factors to determine a fit and proper person which includes factors like integrity, reputation and character, etc. The Noticee has a good reputation in the market and has always carried out its work with utmost care and due diligence. With respect to the derogation of regulation 9(f), clause A(l) and A(2) of the Schedule II of the Stock Brokers Regulations, no competent authority has determined or confirmed that any conduct of the Noticee had been non-confirmatory to the requirement of high standards of integrity, promptitude and fairness or the Noticee has acted without the due skill, care and diligence in the conduct of any of its business. Above requirements are openly worded and should appropriately be taken into consideration only after the derogations of the same are sufficiently and profoundly established against the Noticee by a competent authority.
- 6.5.5 The allegations are of grave nature and need to be proved beyond reasonable doubt. The incomplete investigation of SEBI is affecting the reputation of the Noticee to a large extent without even having been proved in the first place.
- 6.5.6 DA has proceeded on an assumption that the said trades were paired contracts based on reports by various authorities but has failed to acknowledge that the finality of the paired contracts is admittedly *sub judice* and so the matter should not be proceeded further till the finality is reached.

6.6 MERE TRADING IN PAIRED CONTRACTS IS NOT ILLEGAL IN ABSENCE OF COLLUSION AND NOTICEE HAD EXERCISED NECESSARY DUE DILIGENCE

- 6.6.1 The term 'paired contracts' was not defined by the NSEL bye laws, its business rules, circulars or any other rules/ regulations. The term has been coined by the authorities for easy reference and the same has no legal significance. The shorter period contracts *i.e.* T+2, T+3 and T+5 settlement and longer period contracts *i.e.* T+25, T+30 and T+36 settlement were independent contracts. The buy and sell orders were given at different time and different price. Merely because the name of the product being traded and its quantity are same, it cannot be said that it was illegal

to trade in them. There was always a risk factor in the execution of the trades and by no stretch of imagination it can be said that the returns from such trade were guaranteed.

- 6.6.2 Hon'ble Bombay HC has held 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."* However, the revenue earned by the Noticee was negligible and should be seen in conjunction with other brokers. Also, the specific trades of the Noticee have not been provided in order to determine the alleged role of the Noticee and the extent of the alleged participation.
- 6.6.3 The Noticee cannot be held liable solely on the basis of its trading in NSEL, in absence of any evidence showing collusion or malice on part of Noticee. The purported action of SEBI is illegal for baselessly attempting to hold Noticee liable for undertaking trading at NSEL platform which were legitimately expected to be within the law by all stakeholders, including the regulatory authorities and the Noticee.
- 6.6.4 Being a member of the exchange, the Noticee was amenable to regulatory remit of NSEL and could not be expected to doubt the competence of NSEL. The Noticee had no reason to suspect that NSEL lacks competence or that it would be operating in breach of the exemptions etc. The non-action of Central Government for six years after the exemption was granted gave an impression to the public at large, that the trading at NSEL platform was in consonance with the exemption granted by Central Government.
- 6.6.5 The alleged paired contract which were launched by the NSEL in different commodities vide various circulars were available on the website of NSEL and so were in public domain accessible to everyone including the regulatory authorities like FMC. The alleged 'paired contracts' were introduced by the board/ management of NSEL with the prior concurrence of the FMC. The Noticee was of the view that if the products are being launched on NSEL after the concurrence of the FMC then the same were legal and genuine. The Noticee has exercised adequate due

diligence as reasonably expected from a prudent broker when the Noticee carried out its business or transacted on behalf of the clients. For the misconduct, if any, on the part of the clients or on the part of the exchange, the Noticee cannot be blamed.

- 6.6.6 The stages or sequences of the essential events for the culmination of the paired contracts including the stage of verification of commodities in the warehouses is the responsibility of the NSEL/clearing member, which was providing the trading platform/ exchange mechanism for this purpose/ settlement function on trades executed on NSEL. The execution of the trades is executed on the anonymous electronic trading platform and the counter party cannot be identified at the time of execution of transaction. In the capacity of being only a trading member/ broker, the Noticee had no role in issuing any warehouse receipts in pursuance of the alleged paired contracts. NSEL used to allocate these warehouse receipts through an allocation letter to the buyers and the same allocation letter were available on the NSEL website itself.
- 6.6.7 FMC was regarded as the regulator of NSEL from February 06, 2012 and NSEL was required to submit weekly working reports to FMC. Neither FMC nor Government of India had, prior to 2013, initiated any scrutiny or enquiry in the working of NSEL. A broker has a duty to take due care while carrying on its business based on the rules and regulations of the relevant authorities, but the Noticee is not bound to check the legality or look into the workings of the relevant authorities who have passed those rules and regulations. Based on the silence maintained by the relevant governmental authorities, the board of NSEL on the matter of dealings at NSEL, and in the absence of anything calculated to excite suspicion, the Noticee rightly assumed the legality of the already executed contracts or to be executed on the platform of NSEL.
- 6.6.8 There have been no proceedings against the clearing banks or the board of NSEL or the board of FMC or the 800 brokers, alleged to be a part of NSEL. There is a legitimate expectation of a stock broker that if a product is introduced by a stock exchange, it must be legal and valid. The whole FTIL group, including NSEL, was the brainchild of Mr. Jignesh Shah who had previously worked with BSE Ltd. and had started many stock exchanges including MCX. He had a good reputation and

goodwill in the market and was treated as a man of integrity. NSEL had a network of alliances with clearing banks (such as SBI, Axis, HDFC, ICICI, Kotak), national depositories (NSDL, CDSL), public sector undertakings, (NAFED, FCI, MMTC etc.) and other market participants. All leading brokers on BSE and NSE were members of NSEL. More than 13,000 investors were trading in these contracts as they were lucrative and every commodity broker was dealing in these contracts on behalf of their client.

6.6.9 Reliance is placed on decisions of Hon'ble SAT in JM Financial Asset Management Pvt. Ltd. vs. SEBI and Appeal No. 56/2003 in the case of Imperial Corporate Finance and Services Pvt. Ltd.

6.6.10 In order to hold a stock broker liable, it must be proved that it knowingly participated in the illegal contracts and merely executing trades on behalf of their clients will not make the brokers liable considering that revocation of certificate of registration of a stock broker is a serious charge. Reliance is placed on decision of Hon'ble SC in SEBI v. Rakhi Trading Private Limited, [2018] 207 CompCas 443 (SC). Further, reliance is also placed on decisions of Hon'ble SAT in Networth Stock Broking Ltd vs. SEBI (SAT Appeal no 5 of 2012 decided on June 19, 2012), Kasat Securities Pvt Ltd vs. SEBI (Appeal No. 27 of 2006 decided on 29.06.2006) and Kishore Ajmera vs. SEBI.

6.7 OBSERVATIONS OF FMC, HON'BLE BOMBAY HC AND EoW CANNOT BE TAKEN INTO CONSIDERATION AGAINST THE NOTICEE

6.7.1 The Noticee has not been made a party to any of aforementioned orders, reports and the same cannot be preferred against the Noticee till the Noticee is made a party to these proceedings and gets an opportunity of hearing to explain its story. The DA has based its observations on such *rem* observations which do not specifically deal with the conduct of the Noticee, and hence cannot be taken into consideration for concertizing the alleged derogations or violations against the Noticee.

- 6.7.2 Observations of EoW and FMC are part of the respective reports by the respective authorities, fitness and reliability of which has not been tested before any competent authority or court, and hence, cannot be relied upon in the present matter. These reports have not been provided to the Noticee and simply a list has been given which reiterates the selective portions of the reports. Noticee should be given an opportunity to cross-examine the author of the reports of EOW and FMC in order to determine the veracity of his/her observations in the report specifically pertaining to the Noticee.
- 6.7.3 The Hon'ble SAT vide its order dated June 09, 2022 has observed that reliance on the order of the Hon'ble SAT in the matter of Jermyn Capital LLC vs. SEBI (Appeal No. 26 of 2006) and Mukesh Babu Securities Private Limited vs. SEBI (Appeal No. 53 of 2007) to question the good reputation, competence, integrity and character of an entity on observations which are not directly related to the said entity is not correct. Further, the Hon'ble SAT, in respect of determining the eligibility or ineligibility of an entity to be a market intermediary based on association with someone stated that such an issue cannot be decided on mere presumptions and has to be based on facts and attendant situations. It also held that just because some entity acted as a broker for its clients does not mean such broker was closely connected to NSEL. Hence, the complete basis/ substratum of the DA Report has been rendered frustrated by the said order of Hon'ble SAT, therefore, the said report cannot be considered against the Noticee.

6.8 CHARGESHEET DOES NOT INCLUDE THE NAME OF THE NOTICEE

- 6.8.1 The EoW filed its charge sheet (final report) dated January 19, 2023 before the Hon'ble Court of the Special Judge, Greater Bombay for the same alleged violations of FCRA wherein the name of the Noticee does not appear as an accused.
- 6.8.2 Hence, if after due investigation, the appropriate authority has not found anything amiss in the acts of the Noticee, then the complaint filed by the SEBI and the FIR registered by EoW should not be taken on their face value and should be disregarded.

6.9 REGULATION 27 OF THE INTERMEDIARIES REGULATIONS BARS THE COMPETENT AUTHORITY FROM CONSIDERING ANY DOCUMENT BEYOND THE SCOPE OF DA REPORT

- 6.9.1 From perusal of Regulation 27 of Intermediaries Regulations, it becomes clear that once the DA has submitted the DA Report, the Competent Authority has to forward it to the Noticee asking the Noticee to provide reasons as why the said DA Report should not be relied against it and the recommendation be positively considered. Regulation 27 itself does not provide for reliance on any other document or information after the submission of the DA Report as proposed to be done in the present case. Hence, reliance on additional documents / information outside the scope of the DA Report is in total and absolute contravention to the law and wrongly interferes with a trite legal and judicially accepted principle that when a particular act is defined and mentioned to be done in a particular way, such an act should be done according to the procedure already set or should not be done at all.
- 6.9.2 In support of the above, reliance is placed on decision of Hon'ble SC in State of Gujarat vs. Shantilal Mangaldas (1969) 1 SCC 509 and Hon'ble SAT in India Cements Investment Services Ltd. and Ors. vs. SEBI - [2003] 42 SCL 563 (SAT).

6.10 ADDITIONAL DOCUMENTS PROVIDED WITH THE SSCN SHOULD NOT BE CONSIDERED

- 6.10.1 In the SSCN, the Competent Authority has relied upon the June 2022 Order wherein the Hon'ble SAT has remanded the matter concerning 5 brokers to SEBI to decide afresh. From the facts of India Infoline Commodities Ltd, it is clear that it was never granted a registration certificate, and there were several documents which were not provided to the appellant brokers. Accordingly, SEBI was given liberty to rely on additional documents after providing to the appellant brokers. Since the above is not applicable in the present case, the Competent Authority after submission of DA Report, cannot rely on any additional document or information. The appellants in the June 2022 Order were also alleged to have made false representation to their

respective clients in respect of an assured and/ or risk free returns, arbitrage opportunity in spot market by way of paired contracts but none of such observations were ever made against the Noticee in the DA Report and hence the allegation regarding facilitation or aiding NSEL is absolutely non-est and deserves to be disregarded

6.10.2 The present proceedings emanate from enquiry proceedings and the SSCN proposes to add more charges, material and information after the first round of enquiry is already concluded and the DA Report has been successfully handed over by the DA. This conduct is a gross violation of the principles of natural justice. If the additional documents are considered by the Competent Authority which were never on record or were considered by the DA, the same would amount to conducting a review of the DA Report rather than assessing its correctness and from the Stock Brokers Regulations and Intermediaries Regulations it is clear that the Competent Authority does not have such a power.

6.11 RETROSPECTIVE APPLICATION OF SCHEDULE II OF INTERMEDIARIES REGULATIONS

6.11.1 The disqualification flowing from the registration/ filing of criminal complaint under section 154 of the CrPC has been introduced under the "fit and proper" criteria *vide* an amendment in the Intermediaries Regulations with effect from November 17, 2021, and hence, the said amendment is applicable prospectively and cannot be made applicable retrospectively in the cases either initiated prior to the introduction of the amended "fit and proper" criteria or where the cause of action has arose prior to November 17, 2021.

6.11.2 The Noticee was granted registration in the month of December, 2016, and hence, it is only after the Noticee was registered as a stock broker with SEBI that the Stock Brokers Regulations and Intermediaries Regulations became applicable on the Noticee. In the present case, the alleged transactions, if any, took place between the years 2009-2013 and the DA Report was issued in the month of September, 2019, and hence the amended Stock Broker Regulations and Intermediaries

Regulations cannot be said to be applicable in the present case. While SEBI has been given power to disqualify an entity based on the fact of filing of complaint, the cause of action needs to happen as well as such a complaint (for disqualification) needs to be filed after the amendment has taken place and since in the present matter, the same is not the case, the complaint and FIR cannot be considered against the Noticee.

6.11.3 The allegations/ charges against the Noticee have been effectively changed as on the first instance the "fit and proper" status of the Noticee was assessed based on its association with NSEL as its trading member and when the said ground has been declared as unreasonable by the June 2022 Order of the Hon'ble Tribunal, the "fit and proper" status of the Noticee is now said to be questioned based on the criminal complaint and the FIR filed against it by SEBI. When a specific allegation has been made against the entity, such allegation cannot be substituted by another allegation when the first allegation has been found to have failed or has been rendered unsubstantiated for want of evidence. Apart from the fact that the amended Stock Brokers Regulations and Intermediaries Regulations are not applicable on the Noticee post-facto, the fact of the filing of the criminal complaint and FIR cannot be considered against the Noticee as the same amounts to total change in the grounds on which the present proceedings were initially commenced and are now being carried out against the Noticee. Filing of the criminal complaint against the Noticee under section 154 of the CrPC by SEBI itself was never a ground for issuance of the adverse recommendation and hence by issuing the SSCN, the adverse recommendation is now being sought to be justified post-facto, especially on grounds which were never in the statute-book or under consideration of the DA while issuing the adverse recommendation. Therefore, the new ground of criminal complaint or filing of the FIR by SEBI cannot be a valid basis to assess the correctness or a reason to justify the said recommendation of the DA.

6.11.4 Only because the Hon'ble Tribunal had quashed the orders appealed against in the June 2022 Order and had remanded matters back to be considered afresh, SEBI was at liberty, in the case of India Infoline Commodities Limited, to consider and apply the amended Intermediaries Regulations and rely on the additional

documents. In the present case, the Noticee is asked to respond to the SCN and DA Report which dates back to September, 2019 i.e. prior to the amendment in the Intermediaries Regulations and hence the present matter does not warrant its application and reliance on the additional documents.

6.12 THE DOCUMENTS PROVIDED WITH SSCN DO NOT SHOW ROLE OF NOTICEE

- 6.12.1 The documents that have been provided vide the SSCN contain only general observations have been made and hence with no specific role being carved out against the Noticee, the said documents cannot be relied against the Noticee. The said documents are only "preliminary" and "prima facie" in nature, correctness of which in respect of the corresponding violations yet needs to be assessed and established before the appropriate authority / court and hence does not warrant to be relied upon.
- 6.12.2 The DA Report and the additional documents refers to actions of the Noticee functioning as the trading Member of the NSEL but fails to consider that no actions against the Noticee have ever been taken for functioning as the trading member of NSEL by any authority/ court/ tribunal.

6.13 MERE FACT THAT A COMPLAINT HAS BEEN FILED AGAINST THE NOTICEE CANNOT BE A BASIS ON WHICH AN ENTITY IS DISQUALIFIED

- 6.13.1 If the complaint or the FIR is considered as a sufficient basis for denial to grant any registration or cancellation of the registration as market intermediary, the same would be in gross violation of principle that a person/ entity is considered innocent until proven guilty. In support of the above principle, reliance is placed on judgment of Hon'ble SC in Dataram vs. State of Uttar Pradesh - (2018) 3 SCC 22.
- 6.13.2 Filing of a complaint or a FIR does not involve application of judicial mind, and it does not give the accused an opportunity to be heard or places any burden of proof on the complainant to demonstrate its case. Hence, the said amended Intermediaries Regulations which places disqualification on mere filing of the

complaint or FIR cannot correctly and rationally be considered against the Noticee in the present case.

6.14 DECLARATIONS FROM ITS CLIENTS SHOWS THAT THEY TRADED ON THEIR OWN VOLITION

- 6.14.1 There was no trading done by the Noticee in its proprietary account. In respect of the trades for its clients, the Noticee traded on NSEL on the instructions of the clients. There is no document or material on record which depicts that the Noticee had ever promoted or marketed the products or services to any of its clients.
- 6.14.2 In respect of the above, the Noticee has taken declarations from its clients that show that they traded on NSEL based on their own volition and the Noticee did not induce them or inform them about the products at NSEL.

6.15 CANCELLATION OF REGISTRATION CERTIFICATE IS ARBITRARY AND HARSH

- 6.15.1 Broking activities carried out by the Noticee on the NSEL platform form a microscopic part of the overall broking activities. The cancellation of registration will obstruct the Noticee from pursuing its profession or line of business and can cause serious injury to the reputation and livelihood.
- 6.15.2 Reliance is placed on decisions of Hon'ble SAT in M.J. Patel v. SEBI (2002) 38 SCL 889, Nirmal Bang Securities Private Limited vs. The Chairman, SEBI (Appeal 54 of 2002) dated October 31, 2003 and Radar Securities Ltd. vs. SEBI, [2003] 45 SCL 89 (SAT). Further, reliance is also placed on the decisions of Hon'ble SC in Industrial Credit and Investment Corporation of India Ltd. vs. Grapco Industries Ltd. AIR 1999 SC 1975, Institute of Chartered Accountants vs. L. K. Ratna., AIR 1987 SC 71, Hindustan Steel vs. State of Orissa (AIR 1970 SC 253), Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212 and Ranjit Thakur vs. Union of India (AIR 1987 SC 2386).

7. A hearing opportunity was also granted to the Noticee on July 12, 2023. *Vide* email dated July 11, 2023, the Noticee requested for an adjournment of 2 weeks' as it had received the hearing notice by post on July 11, 2023. The adjournment request was acceded to and the hearing was rescheduled to August 30, 2023. Thereafter, pursuant to Noticee's request the hearing was preponed to August 28, 2023. On the said date, the authorized representative ("**AR**") of the Noticee appeared through video conferencing before the undersigned and reiterated the submissions made by the Noticee *vide* letter and email dated May 29, 2023. The AR further requested for 2 weeks' time to make additional submissions, which was acceded to.

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:

- (i) 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 notification dated June 05, 2007 ("**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.
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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:
 - a. No further/fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and
 - b. All the existing contracts will be settled on the due dates
- (vi) NSEL issued a circular on July 31, 2013 suspending its spot exchange operations.
- (vii) 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**").

(viii) After analyzing 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:

- (a) 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.
- (b) 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.

- (ix) On September 19, 2014, Ministry of Finance, Government of India, issued a notification withdrawing the exemption granted to NSEL *vide* the 2007 Exemption Notification.
- (x) 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 Rs. 5600 Crores.
- (xi) 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.

- (xii) *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.

- (xiii) 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.
- (xiv) On September 28, 2018, SEBI gave a statement to the police which resulted into a FIR under section 154 of CrPC.
- (xv) 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....."

- (xvi) 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), 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.”

- (xvii) 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 DA Report, the SCNs issued to the Noticee, the responses filed by the Noticee and the submissions made during the course of the personal hearing and other documents available on record as shared with the Noticee.
10. I find it appropriate to first deal with the preliminary contentions raised by the Noticee. Noticee has argued that SEBI Act and regulations therein were never applicable to paired contracts traded by Noticee on NSEL at the relevant time. It has also argued that neither FMC took any action for the period of September, 2012 against the Noticee nor has SEBI initiated any action under the repealed FCRA, hence the present proceedings initiated by SEBI under SEBI Act and/or allied regulations stand *non est*. I have gone through the decisions cited by the Noticee in the cases of Pearl Mech. Engg. and Foundry Works (P) Ltd. (supra), M.L. Sethi (supra), Kiran Singh (supra), and Harpal Singh (supra), In this regard, 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 it was granted a certificate of registration by SEBI. Therefore,

the Noticee has become a SEBI registered intermediary from the said date. 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 violates securities law (including provisions of FCRA) and affects its ability to be considered as a "fit and proper person" under the Intermediaries Regulations. The power of SEBI to investigate/ inquire into the alleged violation of FCRA flows from the Finance Act, 2015, which amended the provisions of FCRA. I note that Section 29A(2)(e) of FCRA, as inserted by the Finance Act, 2015, reads as follows:

"29A. Repeal and savings

(2) On and from the date of repeal of Forward Contracts Act-

(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;"

11. I note that the aforesaid provision empowers SEBI to initiate a fresh proceeding with respect to the offences within a period of three years from the date on which FCRA is repealed. Thus, exercising its powers, SEBI has filed a complaint dated September 24, 2018 with EoW, seeking appropriate action under Sections 20 and 21 and other applicable provisions of FCRA against the brokers/members of NSEL, mentioned in the list attached thereto. Pursuant to the SEBI complaint, FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the CrPC at the MIDC Police Station, Mumbai was registered requesting it to take lawful action against the same trading members, which were listed in the SEBI complaint to EoW (Noticee's name is listed at serial no. 99). Therefore, I am of the considered view that the preliminary issue pertaining to jurisdiction of SEBI has no force and is accordingly rejected.
12. Noticee has also contested that in terms of the letter addressed by Ministry of Finance to SEBI dated November 20, 2015, SEBI could not have dealt with the matter pertaining to NSEL members which was not taken up by FMC. Thus, the present enquiry proceedings are beyond the regulatory framework of SEBI as per

the aforesaid letter. In this regard, I note that there was a special team of secretaries (“**STS**”) set up by the Government of India to examine the violation of laws by NSEL and to suggest measures. The STS in its last review meeting held on February 11, 2016, advised SEBI to examine and take necessary action against defaulting brokers as per law. Thus, the Noticee has relied upon incomplete sequence of events to advance its contention, which merits rejection. Notwithstanding the above, I note that the issue under consideration in the present proceedings is limited to the determination of “fit and proper person” status of the Noticee under the Intermediaries Regulations. As discussed above, SEBI has the statutory authority to determine the “fit and proper person” status of the intermediaries registered with it. Since the Noticee is an intermediary registered with SEBI, I am of the view that SEBI is within its jurisdiction to determine the “fit and proper person” status of the Noticee. Thus, the submission of the Noticee is not tenable.

13. The Noticee has further contended that it has not been provided with relevant information, data, trade/order log, investigation report or any other material relied upon by SEBI for issuing the SCNs. I have gone through the decisions relied upon the Noticee namely, Gorkha Security Services (supra), S.L Kapoor (supra), J.B. Shares and Stocks Ltd. (supra), SEBI vs. PWC (supra), New Prakash (supra), Shri B. Ramalinga Raju (supra) and Ms. Smitaben (supra). In this regard, I note that all the relevant and relied upon documents pertaining to the instant proceedings has already been provided to the Noticee. I note that the Noticee was provided with the following documents in the present proceedings:

- (i) Copy of the FMC Order dated December 17, 2013;
- (ii) Copy of the Grant Thornton Report;
- (iii) FMC complaint dated January 16, 2015;
- (iv) EoW report dated April 04, 2015;
- (v) Copy of NSEL circulars dated August 27, 2013 and March 10, 2015;
- (vi) SEBI’s email to EoW dated July 09, 2018;
- (vii) Special Investigation Team (SIT)’s email to SEBI dated August 31, 2018;
- (viii) Copy of SEBI complaint dated September 24, 2018 filed with EoW;

- (ix) Copy of FIR dated September 28, 2018 filed by SEBI under section 154 of CrPc.

Therefore, I find that all the relevant documents have been duly provided to the Noticee in compliance with the principles of natural justice in conducting present enquiry proceedings. Hence, I do not agree with the contention of the Noticee.

14. The Noticee has requested for a cross-examination of the author of reports of EoW and FMC in order to determine the veracity of his/her observations. In this regard, I note that the present proceedings have considered the Hon'ble Supreme Court's observations in the Merger Petition case which in turn has confirmed the said order / report of the authorities that the 'paired contracts' executed on the NSEL platform were in violation of the 2007 Exemption Notification. At this stage, therefore, questioning the veracity of the reports of EoW and FMC in the aforementioned context, would not be permissible and is irrelevant. The reliance in these proceedings is on the observations and conclusions drawn by the Hon'ble Supreme Court in the Merger Petition case.
15. 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 DA Report was submitted on September 30, 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 Intermediaries Regulations require the Competent Authority to grant an opportunity of personal hearing if the DA has recommended cancellation or if the Competent Authority is of the view that it is a fit case for cancellation of certificate. Accordingly, adequate personal hearing opportunity was provided to the Noticee which was

availed by it. From the above, I note that there is no defect in the process followed in the present enquiry proceedings.

16. The Noticee has highlighted that the DA Report is dated September 30, 2019 and if the Noticee was given time to present its response till September 30, 2019, the DA could not have issued the DA Report on September 30, 2019 itself which shows pre-judgment by the DA. Further, it has also argued that the DA has not considered the submissions made by the Noticee vide its letter dated October 15, 2019. In this regard, I note that the DA in paragraph 14 of the DA Report has recorded that *"It is noted that the aforesaid Notice was duly served on the Noticee. However, the Noticee failed to submit any reply or the information sought from it and sought further extension vide its letter dated September 30, 2019. Therefore, considering the facts and circumstances of the case, I am of the opinion that it is a fit proceed further based on the material available on record"*. I note that the DA, who is required to submit his recommendations, had already recorded his satisfaction of the opportunity provided to the Noticee to submit reply or information. In the present stage of enquiry proceedings leading up to this Order, sufficient opportunities to present its case have been afforded to the Noticee which has been availed by it, by filing written replies and making oral submissions before me, which have all been taken into consideration while passing this Order. Hence, I find that principles of natural justice have been complied with *qua* the Noticee.
17. Before moving forward to examine the 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 the 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.

18. Coming to the merits of the case, I note that after issuance of the 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, also cannot 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 (*supra*) was held to be in relation to an Interim Order passed by SEBI, and the Hon'ble Tribunal was of the view that 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 (*supra*) 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.

19. Further, I note that Hon'ble SC in Merger Petition, *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 Eseries 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. I note that the Noticee in its replies has not stated that it had not traded in "paired contracts". In this regard, I note from the EoW report that the Noticee had a client exposure of Rs.2,24,53,728. In view of the above, transactions on NSEL facilitated by the Noticee, could not have been anything but "paired contracts".

20. Noticee has argued that the rule of estoppel applies in the present case as at the time of granting registration to the Noticee, there was sufficient material on record for SEBI to determine the application of registration of the Noticee. If SEBI had the slightest of doubt regarding the “fit and proper person” status of the Noticee, it could have granted the Noticee a conditional certificate of registration or sought more clarification on the matter. In this regard, it is pertinent to note 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. Pursuant to the grant of registration by SEBI, if any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the ‘fit and proper’ status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the ‘fit and proper person’ criteria when SEBI granted certificate of registration, such an intermediary can still be assessed on being ‘fit and proper’ at a later date. Furthermore, as and when the ‘fit and proper’ criteria changes, the Noticee will be required to comply with the revised criteria, and in the instant case, criteria as revised *vide* the amendments in November 2021. Thus, Noticee’s contention that due to estoppel it cannot be held liable for any wrongdoing committed before its registration is rejected.
21. The Noticee has argued that the DA has failed to acknowledge that the finality of the paired contracts is *sub judice* and so the matter should not be proceeded further till the finality is reached. In this regard, I note that no directions have been issued by Hon’ble Bombay HC to SEBI to keep the present proceedings in abeyance. On the other hand, Hon’ble SC in the Merger Petition judgment has commented on the illegal nature of ‘paired contracts’ as follows:

“55.3. We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts. There is no doubt that such paired contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in

commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA.....”

Thus, in my view, this submission of Noticee does not merit any further discussion.

22. The Noticee has submitted that (i) the revenue earned by it from paired contracts was negligible; (ii) it cannot be held liable in absence of evidence showing collusion on part of the Noticee; (iii) being a member of the exchange, it could not have been expected to doubt the competency of NSEL; (iv) non-action of Central Government for 6 years after the exemption was granted gave an impression that the paired contracts were in consonance with the 2007 Exemption Notification; (v) it had exercised adequate due diligence as was reasonably expected from a prudent broker; (vi) the stage of verification of commodities in the warehouse was the responsibility of NSEL / clearing member; (vi) it had no role in issuing warehouse receipts pursuant to the alleged paired contracts; (vii) there has been no inquiry or proceedings against the clearing banks or the board of NSEL or the board of FMC or the 800 brokers or its clients; (viii) it had not traded in proprietary account; (ix) it had traded on NSEL on the instructions of its clients; (x) there is no material on record which depicts that the Noticee had marketed the products or services to any of its clients. The Noticee has relied on the decisions of Hon'ble SAT in JM Financial Asset Management Pvt. Ltd. (supra) and Imperial Corporate Finance and Services Pvt. Ltd. (supra) to buttress its submission that at the relevant time there was nothing to excite the Noticee's suspicion as a broker that the said paired contracts were illegal. The Noticee has also provided declarations from its clients to show that they had traded on NSEL based on their own volition and the Noticee did not induce them about the products at NSEL.
23. In relation to the above, I note that the long leg of the paired transaction involved contracts being settled on a T+25 or T+36 basis, whereas the exemption granted *vide* the 2007 Exemption Notification permitted NSEL to only offer spot delivery contracts. The 2007 Exemption Notification was available in the public domain and even basic due diligence would have shown that the paired contracts were *per se* in violation of the said notification. Therefore, I am of the view that while participating

in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of “paired contracts” which were not essentially spot contracts. The Noticee cannot turn a blind eye on the actions of its clients and claim that it had exercised due diligence reasonably expected from a broker or that it had no role in issuing warehouse receipts *etc*, especially when it has earned a brokerage from those trades on NSEL whether the said brokerage is meagre or not. For the clients, the face of the NSEL and the 'paired contracts' was the Noticee itself and the 'paired contracts' could not have been executed in large volumes, across several clients without the actions and facilitation of the Noticee.

24. The Noticee has also relied upon the decisions of Rakhi Trading (supra), Network Stock Broking Ltd (supra), Kasat Securities Pvt Ltd (supra) and Kishore Ajmera (supra) to submit that in order to hold a stock broker liable, it must be proved that it knowingly participated in the illegal contracts and merely executing trades on behalf of their clients will not make the brokers liable. In this regard, as stated above, paired contracts have been held to be in violation of the 2007 Exemption Notification by the Hon'ble SC in the Merger Petition case. Further, as brought above, due diligence about the nature of paired contracts is found to be wanting on the part of the Noticee.
25. The Noticee has argued that evidence and cases referred to in the DA Report *viz.* observations of FMC order dated December 17, 2013 and observations in EoW interim report dated April 04, 2015, cannot be taken into consideration as the Noticee was neither a party to the said proceedings nor the fitness, reliability *etc* of the said reports have been tested before an authority or court. Here, as stated before, it is pertinent to mention that the said order / report of the authorities have been considered in the present proceedings in order to state that the 'paired contracts' executed on the NSEL platform were in violation of the 2007 Exemption Notification. Therefore, even though the Noticee was not a party to the proceedings which led to the said orders / report, mention of such orders and reports of other authorities are relevant to the proceedings. Further, it has submitted that the said report / order was

not provided in entirety to the Noticee. I note that the entire report / order was provided to the Noticee vide letter dated September 23, 2019. It has also submitted that reliance placed by the DA on Hon'ble SAT's order in Jermyn Capital LLC (supra) and Mukesh Babu Securities Ltd (supra) to question the good reputation, competence, integrity and character of an entity is not correct in light of the view expressed by Hon'ble SAT in June 2022 SAT Order. In relation to the above, considering the findings of Hon'ble SAT with respect to the said orders in the June 2022 SAT Order, I find that the said cases are not relevant for consideration in the present matter.

26. The Noticee has contended that the name of the Noticee does not appear as an accused in the charge sheet (final report) filed by EoW dated January 19, 2023 before Hon'ble Court of the Special Judge, Greater Bombay for the same alleged violations of FCRA, therefore, if after due investigation, the appropriate authority has not found anything amiss in the acts of the Noticee, then the complaint filed by the SEBI and the FIR registered by EoW should not be taken on their face value. In this regard, it is pertinent to note that the said FIR is validly subsisting and has not been challenged, quashed or stayed by any competent court *qua* the Noticee. Hence, I this argument of Noticee is not tenable.
27. The Noticee has argued that regulation 27 of the Intermediaries Regulations itself does not provide for reliance on any other document or information after the submission of the DA Report as proposed to be done in the present case. Hence, reliance on additional documents / information outside the scope of the DA Report is in contravention to the law and wrongly interferes with a judicially accepted principle that when a particular act is defined and mentioned to be done in a particular way, such an act should be done according to the procedure already set or should not be done at all. I have gone through the decisions cited by the Noticee in support of the above, namely, Shantilal Mangaldas (supra) and India Cements Investment Services Ltd. and Ors. (supra). In this regard, it is noted that while the instant matter was under consideration, the Hon'ble SAT *vide* the June 2022 SAT Order remitted certain orders pertaining to some other brokers who had also participated in paired contracts on NSEL to SEBI to decide the matter afresh. The

Hon'ble SAT left it open to SEBI to rely on other material like EOW charge sheet, complaint letters *etc.*, after providing the same to the appellants therein. In line with the aforesaid order of the Hon'ble SAT, SSCN was issued to the Noticee along with the FIR and complaint. Therefore, present proceedings cannot be considered in violation of regulation 27 of Intermediaries Regulations as documents were supplied in compliance with the order of Hon'ble SAT and in order to enable the Noticee to defend itself.

28. The Noticee has sought to distinguish its case from the brokers whose appeals were decided through the June 2022 Order by stating that one of such broker, namely, India Infoline Commodities Ltd, was never granted a registration certificate, and there were several documents which were not provided to the appellant broker. In this regard, I note that similar set of documents were provided to the Noticee and the appellant brokers concerned in the June 2022 Order, therefore, when Hon'ble SAT remanded the matter to SEBI to decide afresh, along with the appellant brokers, SSCN was issued to the Noticee as well.
29. Noticee has argued that the criteria for "fit and proper person" laid out in Schedule II of Intermediaries Regulations took effect from November 17, 2021 which is after the cause of action arose and present proceedings were initiated. Further, it has argued that the notification dated November 17, 2021 of the SEBI (Intermediaries) (Third Amendment) Regulations, 2021 states that the said regulation shall come into force on the date of their publication in official gazette. Thus, SEBI is trying to retrospectively apply Intermediaries Regulations with respect to the Noticee.
30. In this regard, in my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of distinctly identifiable parameters, which existed even before the amendment. I note that the above condition to be a "fit and proper person" is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the securities market. Therefore, as stated before, even if the Noticee was found to have

fulfilled the 'fit and proper person' criteria while granting the certificate of registration, such an intermediary can still be assessed on being fit and proper at a later date. Furthermore, as and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in this instance criteria as revised *vide* the amendments in November, 2021. Thus, this argument of Noticee is not maintainable.

31. The Noticee has contended that the documents provided vide the SSCN are only "preliminary" and "prima facie" in nature, correctness of whom in respect of the corresponding violations yet needs to be established before the appropriate authority / court and hence does not warrant to be relied upon. Further, it also cannot be relied upon as it would be in gross violation of principle that a person/ entity is considered innocent until proven guilty. In this regard, as stated before, the FIR is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the Noticee. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemptions from such criteria has been provided. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field which is binding upon SEBI, and arguments to the contrary are not maintainable. As a consequence, once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. It is, therefore, noted that the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the Noticee.
32. In view of the above, I note that the Noticee has traded in "paired contracts" on behalf of its clients on NSEL. The execution of such paired contracts shows participation of the Noticee in the said scam which raises questions regarding the integrity, honesty, ethical behavior, reputation, fairness and character of the Noticee. I have perused the orders / judgments cited by the Noticee, namely, M.J Patel (supra), Nirmal Bang Securities Pvt. Ltd. (supra), Radar Securities Ltd. (supra), Industrial Credit and Investment Corporation of India Ltd. (supra), L.K Ratna (supra), Hindustan Steel (supra), Ex-Naik Sardar Singh (supra), and Ranjit Thakur (supra).

33. I note that a FIR has been registered with the MIDC Police Station, Mumbai, *inter alia*, against the Noticee on September 28, 2018 and the same is pending as on date and is subsisting and has not been quashed or stayed by any competent court *qua* the Noticee. Since the FIR is still pending for final determination by a Court of competent jurisdiction, the disqualification specified in clause 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked. 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 orders previously passed by SEBI in the context of similar facts and circumstances, namely, R. Wadiwala Commodities Private Limited (order dated September 26, 2023) and Adroit Commodities Services Pvt. Ltd. (order dated September 01, 2023), wherein the registration of the said entities has been suspended for 3 months or till the said entity is acquitted by an order of a Court, whichever is later.
34. 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.

E. ORDER

35. 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) read with section 19 of the SEBI Act and regulation 27 of the Intermediaries Regulations, hereby suspend the certificate of registration of Hem Multi Commodities Pvt. Ltd. bearing registration no. INZ000091331 for a period of 3 (three) months from the date of this Order or till an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.
36. The Noticee shall, after receipt of this Order, immediately inform its existing clients about the aforesaid direction in the paragraph above.

37. The Order shall come into force with the immediate effect.
38. 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.
39. A copy of this Order shall be served on the Noticee and upon all recognized stock exchanges and depositories.

DATE: November 21, 2023

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA