

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under section 12(3) of Securities and Exchange Board of India Act, 1992 read with regulations 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and Regulation 27 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

In respect of

S. No.	Name of the Noticee	SEBI Registration No.
1	K R Choksey Commodity Brokers Private Limited	INZ000032234

In the matter of National Spot Exchange Limited

Background

1. National Spot Exchange Limited (hereinafter referred to as 'NSEL') was incorporated in May 2005 with a purpose to develop an electronic Spot Exchange for trading in commodities. In order to promote and to develop such a market, the Central Government of India, using the powers conferred upon it under Section 27 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "FCRA"), exempted all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of FCRA *vide* a gazette notification dated June 05, 2007 (hereinafter referred to as 'Exemption Notification'). However, the said exemption was subjected to certain conditions which were mentioned in the aforesaid gazette notification. The conditions relevant for the purpose of present proceedings were as follows:

- *no short sale by the members of the exchange shall be allowed*

- *all outstanding positions of the trades at the end of the day shall result in delivery.*
- *All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

On the basis of the afore-stated exemptions, NSEL commenced its operations in October 2008 by providing an electronic trading platform to participants for spot trading of commodities such as bullion, agricultural produce, metals, etc.

2. In the backdrop of the payment default by certain entities that caused a severe payment crisis, the examination revealed that in September 2009, NSEL introduced the concept of 'paired contracts' for trading which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and *vice versa* at the same time and at a pre-determined price. It was further noticed that trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at same time and at different prices, involving the same counterparties.

3. For the purpose of examination, Forward Markets Commission (hereinafter referred to as '**FMC**'), the then regulator of Commodities futures market, was appointed as 'Designated Agency' by Central Government vide notification dated February 06, 2012 to collect all the information and returns relating to the trades executed on the spot exchanges including NSEL. FMC, on the basis of its analysis of the trade data collected from NSEL, observed that the trades executed through such 'paired contracts' were in violations of the conditions prescribed by Central Government vide the Exemption Notification. Accordingly, on the basis of such findings by FMC, Department of Consumer Affairs i.e. the Ministry which had granted exemption to NSEL from the operations of FCRA vide the aforesaid Exemption Notification issued a letter

dated July 12, 2013 thereby directing NSEL not to launch any further/fresh contracts until further instructions and to settle all existing contracts on their respective due dates. 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 INR 5500 Crores.

4. It is noted that vide 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 under Section 131(5) read with Section 132 of the Finance Act, 2015. As per the Finance Act 2015 (vide which the FMC was merged with the SEBI), 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 the aforesaid SEBI Registration Number on December 28, 2016 to operate as a commodity derivatives broker in the Securities market. The *Noticee* was however a member of NSEL at the relevant point of time when the Settlement default occurred and after the merger of FMC with SEBI it got itself registered with SEBI as a commodities derivatives broker having registration number INZ000032234.

5. As noted above, from the examination of trade data submitted by NSEL to FMC, it was observed that NSEL was organizing trading in 'paired contracts' in violation of the notification dated June 05, 2007, wherein it was continuously facilitating the entities in entering into short selling (which was prohibited under the Exemption Notification) as well as to trade in contracts with settlement period going beyond 11 days which was also not permitted under the said Exemption Notification. The Trading Members and Clearing members of the

NSEL facilitated and/or participated in trading in such 'paired contracts' in alleged violation of the conditions stipulated under the Exemption Notification dated June 05, 2007 issued under the FCRA. Thus, it was alleged that, by participating in/facilitating trading in such 'paired contracts', such Trading Members of NSEL who also become registered intermediaries in securities market acted in a manner detrimental to the interest of securities market.

6. As per the information available with SEBI, a number of such entities, including the *Noticee*, who had applied for registration to SEBI and got themselves registered with SEBI as trading members/clearing members, were also members of the NSEL and had either themselves participated or had facilitated their clients in trading in those illegal 'paired contracts' on the platform of NSEL markets and such a conduct on their part had allegedly led to violation of regulation 5(e) of Securities and Exchange Board of India (Stock Broker) Regulations, 1992 (hereinafter referred to as '*Stock Broker Regulations, 1992*') read with Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as '*Intermediaries Regulations, 2008*') and regulations 9(b) and 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II of the *Stock Broker Regulations, 1992* thereby rendering such entities including the *Noticee*, to be an entity not 'fit and proper' to continue to hold its registration as Trading or Clearing Member under the *Stock Broker Regulations, 1992*.

Initiation of proceedings against the Noticee

7. In view of the aforesaid acts of the *Noticee* committed on the platform of NSEL allegedly in violations of the conditions stipulated under the Exemption Notification dated June 05, 2007, a proceeding in terms of the *Intermediaries Regulations, 2008* was initiated by SEBI against the *Noticee*, being a registered stock broker in commodity derivative segment having a SEBI registration number INZ000032234. Pursuant to the same, SEBI, vide an Order dated

September 21, 2018, appointed a Designated Authority (hereinafter referred to as 'DA') under regulation 24(1) of the *Intermediaries Regulations, 2008* to enquire into the violations alleged to have been committed by the *Noticee* by trading on the platform of NSEL and to submit a report in accordance with the provisions of the *Intermediaries Regulations, 2008*.

8. The DA issued a show cause notice dated September 26, 2018 to the *Noticee* under regulation 25(1) of the *Intermediaries Regulations, 2008* (as applicable at the relevant time) asking the *Noticee* to show cause as to why appropriate recommendation should not be made against it under regulation 27 of the *Intermediaries Regulations, 2008* (as applicable at that time) read with Section 12(3) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '*SEBI Act, 1992*'). In response to the same, the *Noticee* submitted a letter dated October 15, 2018 requesting the DA to grant an extension for a period of 90 days for submitting a detailed reply with necessary documents. Accordingly, vide letter dated October 19, 2018 additional time up to November 12, 2018 was granted by the DA to the *Noticee* to submit its reply. Vide letter dated November 9, 2018 the *Noticee* submitted its preliminary reply in response to the show cause notice and sought relevant information and data from the DA. Accordingly, the DA vide letter dated March 25, 2019, forwarded the relevant documents that were relied upon in his show cause notice to the *Noticee*. Subsequently, vide letter dated April 11, 2019 the *Noticee* submitted its additional reply to the show cause notice.

9. On the basis of the aforesaid factual details, the DA, after considering the replies filed by the *Noticee*, submitted an Enquiry Report dated April 30, 2019 (hereinafter referred to as "*Enquiry Report*"), *inter alia*, making the following observation and recommendations in the said *Enquiry Report*:

44. *In view of the aforesaid, the close association of the Noticee with NSEL, and the adverse observations made by various authorities and courts against NSEL,*

the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee is put into question. As these are key considerations for determining fit and proper status of an intermediary, I am of the view that the Noticee is not fit and proper to continue to hold its certificate of registration as a commodity derivatives broker."

10. Thus, I note that the DA has recommended that the Noticee is not 'fit and proper person' to continue to hold the certificate of registration as commodity derivatives broker and has held that the Noticee is liable for action under section 12(3) of the SEBI Act, 1992 read with regulation 27(iv) of the Stock Brokers Regulations, 1992 and Chapter V of the Intermediaries Regulations, 2008. In the light of the aforesaid findings and observations and in accordance with regulation 27 of the Intermediaries Regulations, 2008 vide Enquiry Report, the DA has recommended that the certificate of registration of the Noticee, as a commodities derivative broker (under certificate of Registration ref. INZ000032234) be cancelled.

Issuance of Show Cause Notice

11. After considering the Enquiry Report, a Show Cause Notice dated June 28, 2019 (hereinafter referred to as "SCN") enclosing therewith the Enquiry Report of the DA along with certain material/information as specified therein, was issued to the Noticee under regulation 28(1) of the Intermediaries Regulations, 2008 (as applicable at the relevant time) calling upon it to show cause as to why based on the aforesaid materials/information as have been brought out in the SCN alongwith the Enquiry Report concerning the fit and proper person criteria, the action as recommended by the DA or any other direction/measure as may be deemed fit, should not be passed against /imposed on it by the Competent Authority. The SCN further advised the Noticee to submit its reply, if any within 21 days of receipt of the said SCN. Subsequently, some more relevant material such as letter dated December 30, 2014, Judgment dated April 30, 2019 passed

by the Hon'ble Supreme Court of India 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*, which were viewed relevant for the purpose of the present proceedings, have been forwarded to the *Noticee* vide supplementary SCN dated September 20, 2019.

12. I note from the records available before me that the *Noticee* has submitted its written response to SCN and supplementary SCN vide letters dated July 24, 2019, August 17, 2019, October 10, 2019 and November 04, 2019. After receipt of the afore-stated written submissions the *Noticee* was provided with an opportunity of personal hearing on January 15, 2020, which was attended by Shri Rajiv Choksey (Director) and Ms. Mona Dalal (Executive) on behalf of the *Noticee* during which the submissions already made by the *Noticee* vide its abovementioned letters were largely reiterated. Further, during the course of personal hearing, *Noticee* was asked to submit separate details of the trades executed by it in 'paired contracts' through its proprietary account and on behalf of its clients. In this regard, I find that the *Noticee* vide letter dated January 29, 2020 has made certain additional submissions.

13. Thereafter, considering the prolonged lockdown imposed on account of COVID-19 pandemic from March 2020 onwards, another opportunity of personal hearing was granted to the *Noticee* on October 28, 2021, which was attended by Shri Rajiv Choksey (Director) and Ms. Mona Dalal (Executive) on behalf of the *Noticee* through Webex (video conferencing). Pursuant to the aforesaid hearing, *Noticee* vide letter dated October 29, 2021 also filed additional submissions with SEBI. The arguments made by the *Noticee* through all the afore-noted written as well as oral submissions during the personal hearings are summarized below:

- a) The *Noticee* has submitted that various materials including the trade / order logs pertaining to the details of alleged trades on NSEL have not

been provided by the DA at the time of issuing the show cause notice and such act of non-supply of relevant documents is against the principles of natural justice. *Noticee* has further contended that the reliance placed by the DA on the observations of the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh vs. Directorate of Enforcement [(2010) 2 SCC 497]* while conducting enquiry proceedings, is wrong, contrary to the facts and legally untenable.

- b) The *Noticee* has also raised an objection regarding the irregularity involved in appointment of DA for the enquiry proceedings. It has submitted that the DA in the enquiry proceedings for the instant matter was appointed by the Whole Time Member of SEBI whereas regulation 24(2) of the *Intermediaries Regulations, 2008* provides for appointment of a designated authority by the Executive Director. In this regard, *Noticee* has referred to Section 3(1) of the SEBI (Delegation of {Powers} Order, 2015 to further buttress its arguments.
- c) *Noticee* has further submitted that when the trades were carried out on NSEL, it was not a SEBI registered intermediary at that point in time, hence the provisions of the *Intermediaries Regulations, 2008* were not applicable to the *Noticee*.
- d) The *Noticee* has submitted that commodities brokers came under the umbrella of SEBI regulations only after September 28, 2015. Therefore, it cannot be made liable for violation of SEBI Regulations for its acts or omissions prior to September 28, 2015 and that SEBI regulations cannot be made applicable retrospectively. *Noticee* has further referred to letter dated November 20, 2015 of the Ministry of Finance which, *inter alia*, states that “SEBI is not expected to deal with matters which were not dealt with by the erstwhile FMC.... It is further clarified that since spot markets / ready delivery contracts were not being regulated by the FMC, SEBI is not expected to

take upon itself any regulatory function with regard to such markets."

Therefore, the *Noticee* has contended that SEBI has no jurisdiction to initiate proceedings over the alleged trades of the *Noticee* executed in the NSEL.

- e) The findings of the *Enquiry Report* are based on observations of the Hon'ble Supreme Court and the Hon'ble Bombay High Court in cases pertaining to 63 Moons Technologies and Jignesh Shah and report of EOW. It is not clear as to how the observations of the aforesaid courts and agencies on the role of NSEL or the mismanagement of NSEL by its promoters /can have any bearing on the *Noticee's* status as a fit and proper person. It has further submitted that as it was not party to the said cases and that none of the agencies and courts has taken the name of *Noticee* and/or has found it to be in violation of any provision of law, hence it is unfair to selectively quote from the said judgements.
- f) *Noticee* has further submitted that it had no say in matter of designing the commodities contract including the alleged 'paired contracts', as it was entirely within the domain of NSEL. The *Noticee*, although a member of NSEL, was required to trade on trading platform provided by NSEL in compliance of the latter's bye-laws, business rules and circulars. Thus, it is unfair to blame the members of NSEL for the product which was introduced by NSEL with the concurrence of FMC. The *Noticee*, as a commodity broker, in the normal course was not required to assess the legality of the product introduced by the exchange but was required to facilitate the trading on the platform of NSEL.

Consideration of issues

14. I have carefully perused the SCN including the *Enquiry Report* issued to the *Noticee*, the written and oral replies made by the *Noticee* and other materials/information as made available to the *Noticee* vide supplementary SCN

or as available in the public domain. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN, the issue which arises for my consideration in the present proceeding is as under:

Whether continuance of the Noticee as a market intermediary, in the light of its alleged involvement in trading / facilitation of trading in 'paired contracts' on the exchange platform of the NSEL, if in violation of the conditions of the 2007 Exemption Notification and also of the applicable provisions of FCRA, is detrimental to the interest of the Securities Market and thus whether the Noticee is a 'fit and proper' person for holding the certificate of registration as a registered market intermediary in terms of regulation 5(e), 9(b), 9(f) read with regulation 27(iv) of the Stock Brokers Regulations, 1992?

15. Before dealing with the aforementioned issues and the replies/arguments of the *Noticee* on charges on merit, I deem it necessary to deal with the preliminary objections raised by the *Noticee*, in the subsequent paragraphs.

16. The *Noticee* has submitted that various materials including the trade / order logs pertaining to the details of alleged trades have not been provided by the DA while issuing the show cause notice and such act of non-supply of relevant documents is against the principles of natural justice. However, contrary to the above stated claim, I note that the DA has already supplied the documents that have been relied upon by him while issuing the show cause notice. Such documents include copies of FMC order dated December 17, 2013, Grant Thornton Report, Report of the Economic Offences Wing, *vide* Gazette Notification No. SO 906(E) dated June 05, 2007, copy of Finance Act, 2015 etc. It is further noted that vide the supplementary SCN dated September 20, 2019 additional material such as letter dated December 30, 2014, Judgment dated April 30, 2019 passed by the Hon'ble Supreme Court of India 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*, which were viewed relevant for the purpose of the present proceedings have also been forwarded to the *Noticee*.

17. Regarding the argument of the *Noticee* that it has not been provided with the trade / order logs of the alleged trade, I note that during the personal hearing dated January 15, 2020, *Noticee* was asked to submit details separately, for trades executed in 'paired contracts' through its proprietary account and on behalf of its clients. In this regard, *Noticee* vide letter dated November 04, 2019 has submitted the following trade details pertaining to the alleged 'paired contracts' executed on NSEL:

Trade executed by	Turnover for the period December 2011 to July, 2013 (in INR Crores)
Clients of the <i>Noticee</i>	1259.19
Proprietary Account of the <i>Noticee</i>	161.77
Total	1420.96

18. The aforesaid details evidently exhibit that the *Noticee* was undisputedly involved in the trades in the 'paired contracts' on the platform of NSEL, for which it already has the necessary trade data in its possession.

19. With regard to the contention of the *Noticee* regarding reliance placed by the DA on the observations of the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh vs. Directorate of Enforcement* [(2010) 2 SCC 497], I note that the DA has rightly placed reliance on the observation of the Hon'ble Supreme Court of India while discussing principles of natural justice in the matter of *Kanwar Natwar Singh (supra)*, wherein it has been held, "...Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based

on which the law has been set into motion would meet the requirements of principles of natural justice..."

20. In view of the above, in my opinion, the argument made by the *Noticee* regarding non supply of documents is not tenable, since all the relevant material relied upon by SEBI in support of the allegations made in the SCN have already been provided to the *Noticee*. Therefore, the principles of natural justice have been sufficiently adhered to both during the Enquiry proceedings as well as while conducting the instant proceedings before me.

21. The *Noticee* has further contended that the power to appoint a Designated Authority has been vested in the Executive Director while in the instant case the DA has been appointed by the Whole Time Member of SEBI thereby raising a concern about the irregularity in the Appointment of DA. In this regard, I note that the Section 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order, 2015 specifically provides that, "*The powers and functions delegated to any member or officer of the Board or authority under the Order can be exercised by any officer or authority higher in grade or rank or position to him*". Thus, in presence of a valid delegation conferred upon by the statute, I find that the *Noticee's* challenge to the appointment of DA by the Whole Time Member of SEBI (who is a higher authority over the Executive Director of SEBI) is just an afterthought to evade the outcome of this proceedings.

22. It is the case of the *Noticee* has further contended that commodities brokers came under the umbrella of SEBI regulations only after September 28, 2015 and therefore, it cannot be made liable for violation of SEBI regulations for its acts or omissions prior to September 28, 2015 and that SEBI regulations cannot be made applicable retrospectively. In this regard, it is pertinent to note that the jurisdiction of SEBI upon the *Noticee* has been conferred upon by the enactment of the Finance Act, 2015. As the Finance Act, 2015 *inter alia* conferred the power of regulation of intermediaries dealing in commodity derivatives to SEBI, SEBI

is well within its rights to determine whether the *Noticee* who was trading in the illegal 'paired contracts' on NSEL and then came to be registered by SEBI is a *fit and proper* person to continue holding such registration, after its post illegal trading activities have come to light.

23. Now moving on to the charges against the *Noticee* vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the securities laws, which are alleged to have been violated by the *Noticee* and are referred to in the present proceedings. The same are reproduced below for ease of reference:

THE SEBI Act, 1992

Registration of Stock Brokers, sub-brokers, share transfer agents, etc.

12(3). *The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:*

Provided *that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

THE STOCK BROKER REGULATIONS, 1992

Consideration of application for grant of registration.

5. *The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-*

(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

Conditions of registration.

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;
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; or

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

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

THE INTERMEDIARIES REGULATIONS, 2008

Action in case of default.

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

(i) suspension of certificate of registration for a specified period;

(ii) cancellation of certificate of registration;

(iii) prohibiting the noticee to take up any new assignment or contract or launch a new scheme for the period specified in the order;

- (iv) *debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;*
- (v) *debarring a branch or an office of the noticee from carrying out activities for the specified period;*
- (vi) *warning the noticee.*

SCHEDULE II

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)

REGULATIONS, 2008

(See regulations 7)

Criteria for determining a 'fit and proper person'

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

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

24. I note that the Noticee is registered as a stock broker in terms of *Stock Broker Regulations, 1992* under Registration No. INZ000032234. In order to continue to hold certification of registration from the SEBI, the Noticee is required to satisfy the conditions of eligibility, which *inter alia* included continuance at all times of its status as a 'fit and proper' person. The above condition to be 'Fit and Proper' is not a onetime requirement, applicable only at the time of seeking registration. Rather, the provisions governing the 'Fit and Proper' criteria show that each and every entity is required to qualify those criteria on a continuous basis as long as

the entity wishes to remain associated with the Securities Market as a registered intermediary.

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

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

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

26. Therefore, it is clear that the criteria of 'fit and proper' person, is an ongoing compliance requirement throughout the period the *Noticee* remains operational in the securities market as a registered intermediary. In case, pursuant to the grant of registration by the SEBI, any evidence comes to the notice of the SEBI that casts a doubt on the integrity, reputation and character of a registered intermediary, SEBI is well within its powers to examine the 'fit and proper' status of such entity based on various parameters including the following parameters provided under Schedule II of the *Intermediaries Regulations, 2008*.

- (a) integrity, reputation and character;
- (b) absence of convictions and restraint orders;
- (c) competence including financial solvency and networth;
- (d) absence of categorization as a willful defaulter.

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

"It is true that these are only allegations made in the charge-sheet and we are conscious that these are yet to be established in a court of law but from what is stated in the charge-sheet liaison between Shri Mukesh Babu and the chairman of the bank prima facie appears to be established. ... The charges leveled are indeed serious and if established, they involve moral turpitude..."

I, therefore, note that the Courts have held that good reputation and integrity are critical facets of the 'fit and proper' criteria laid down in the *Intermediaries Regulations, 2008*. It has also been held by the Courts that while determining as

to whether an entity enjoys a good reputation, the *prima-facie* observations made by courts and other regulatory authorities would be relevant.

28. Considering the aforesaid deliberations, I am of the view that the existence of any material on record which questions the integrity, reputation or character of the *Noticee*, or that proves a close association of the *Noticee* with any person who does not enjoy a good reputation, is a parameter good enough to determine if the *Noticee* is found to be not 'Fit and Proper' person to continue to operate anymore as a registered intermediary in the Securities Market. Further, the statutory requirements to be 'fit and proper person' as a precondition to obtain a certificate of registration as laid down under various provisions of the *Intermediaries Regulations, 2008* and the *Stock Broker Regulations, 1992* is applicable to and required to be complied with by the *Noticee* not only at the time of making such application and obtaining such registration, but also subsequently at all-time as long as the entity remains associated with the Securities Market as a registered intermediary.

29. Having discussed the scope, nature and requirement of the criteria for determining an intermediary as a 'fit and proper' person, I will now proceed to deliberate on the allegations levelled against the *Noticee* in the instant matter. It is noted that the main allegation against the *Noticee* is that by participating/facilitating in the trading in 'paired contracts' on the NSEL platform during the relevant period as a Trading Member/Clearing Member (which were not permitted in terms of the Exemption Notification), the *Noticee* has, *prima facie*, violated the conditions of the said Exemption Notification and consequently also has violated the provisions of the FCRA. Therefore, it is alleged in the SCN that the continuance of the registration of the *Noticee* as a commodity derivatives broker is detrimental to the interest of the securities market and the *Noticee* can no longer be considered to be a 'Fit and Proper' person for holding the certificate of registration as a commodity derivatives

broker in the securities market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the *Stock Broker Regulations, 1992* read with Schedule II of the *Intermediaries Regulations, 2008* and regulations 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the *Stock Broker Regulations, 1992*.

30. At this stage, it is pertinent to throw light on the concept of 'paired contracts' and the settlement default scam that was perpetrated by NSEL by allowing trading in such contracts on its platform in which, the various trading and clearing members, including the *Notices* participated. In these 'paired contracts', NSEL used to launch two contracts simultaneously, one short term contract (T+2/T+3 duration) and another long duration contract (T+26/T+30/T+36 duration) in different commodities. All the investors, who were trading on NSEL through various brokers, including the *Notices*, were buyers on short term contracts and sellers in long term contracts. On the other hand, certain big entities (hereinafter referred to as '*Defaulters*') were sellers in those short term contracts and were buyers of the long term contracts as counterparties to the investors and by trading in such manner, these defaulters were borrowing and repaying from their counterparty investors on a continuous basis through those 'paired contracts'. These contracts were not traded on free market basis and prices of these two contracts were managed in such a way that the investors were getting annualized return of 13-18% from trading in those contracts. On the other hand, the *Defaulters* were getting money on easy terms from trading in those contracts, that too without giving delivery or taking delivery of the goods in terms of those contracts. Thus, under the garb of commodities spot market, NSEL was running a range of financing transactions.

31. Subsequently, when NSEL stopped trading in those 'paired contracts' after getting a letter dated July 12, 2013 from Department of Consumer Affairs, all the *Defaulters*, who were buyers in long term contracts, failed to pay the

consideration to the investors (from whom they had borrowed through the short term sell contracts) triggering a default approximately to the tune of INR 5500 Crores. At that stage, it was found from the inspection of warehouses, where the commodities were required to be kept by those *Defaulters* (at the time of selling the short term commodity contracts) for effecting delivery of good against their sell transactions in those short term contracts, that the required underlying commodities were not physically available. Ever since the NSEL settlement scam broke out, the common investors, who were lured by NSEL with a promise of 'assured returns' with the help of the brokers who facilitated those transactions, including the *Notices*, are running from pillar to post to recover their hard earned money that has been locked up in the aforesaid Settlement default.

32. I also note that the FMC, in its order dated December 17, 2013, has held that, using the 'paired contracts', NSEL was continuously violating the following two conditions stipulated in the Exemption Notification:-

"a. Short Sale

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

b. Contracts with Settlement Period going beyond 11 days

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

33. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the SCN are as under:

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

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

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

"85] The very offer of T+18, T+25 or T+36 contracts by NSEL prima facie constituted breach of the condition that the exemption from applicability of

FCRA was only in respect of contracts of one day's duration. There is really no dispute, either in facts or in law on this aspect because even FTIL in its list of dates and events at entry 4 against date 05.06.2007, accepts this position...

86] Further, apart from the note against entry 8 (November 2011 onwards) in the list of dates and events of FTIL, there is ample material on record which establishes that NSEL offered 'paired contracts' at its exchange from 2009 itself. Further, the record indicates and it has not been disputed that by the year 2013 the volume of paired contracts constituted almost 99% of the turnover at the NSEL exchange. In monetary terms, this turn over from 2009 to 2013 was in the region of Rs. 1,34,000 crores. Therefore, to say that all this was without the involvement or even knowledge of FTIL and NSEL and to attempt to blame 'certain trading clients, commodities sellers or brokers' is just not prima facie acceptable.

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

89] The record indicates and it has not been disputed that by the year 2013, the volumes of paired contracts constituted almost 99% of the turnover of the NSEL Exchange. In monetary terms, this turnover of paired contracts was in the region of Rs.1,34,000 crores between the years 2009 to 2013. This means that the entire operations at the NSEL Exchange, which was meant to be a

commodities stock exchange, were entirely subverted in gross disregard of the conditions of the exemption notification dated 5th June 2007 and consequently, the FCRA itself.

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

35. The Economic Offences Wing, 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 (EOW C.R. No. 89/2013). 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."*

36. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*¹ (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), wherein it *inter alia* observed that:

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

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

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

I find that, even six years and several litigations later, the above observations

¹ (2019)18 SCC 401

of the Hon'ble Bombay High Court stand their grounds and haven't been overturned by any judicial forum.

38. In view of the aforesaid observations and findings of the various courts and authorities, I note that by engaging in trading in 'paired contracts', which was in reality a financing transaction wherein fixed rate of return was assured by the sellers (*Defaulters*) under the garb of offering 'paired contracts' for the buyers (investors), NSEL has acted in violation of the conditions of exemption mandated to it for compliance under 2007 Exemption Notification issued under the FCRA and instead has used its platform to provide services which were specifically barred under the FCRA. I note that the *Noticee* was one of the commodity derivatives brokers that facilitated its clients to trade on the platform of the NSEL in those illegal 'paired contracts', which have attracted serious adverse charges from several authorities and courts as discussed in detail above. Thus, I am of the view that the very association of the *Noticee* with such illegal trading on the exchange platform of the NSEL would be crucial to determine the 'fit and proper' status of the *Noticee*.

39. The *Noticee* has not disputed executing trades in its proprietary account as well as on behalf of its clients. I note that the *Noticee*, was a commodity derivatives broker and at the same time also represented the face of the NSEL for its regular investors. The execution of the trades in 'paired contracts' by the *Noticee* shows the participation of the *Noticee* in the fraudulent scheme perpetrated by the NSEL to provide its platform for financing activities by way of alleging trading in 'paired contracts' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb spot trading in commodities. Therefore, the *Noticee* by its conduct has acted as an instrument of the NSEL in promoting 'paired contracts' which were in the nature of financing transaction as already held by the Hon'ble Supreme Court of India as noted above. The *Noticee*, by providing a facility for

taking exposure to 'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have neither statutory sanction nor regulatory approval thereby raising doubts on the competence and honesty or intent of the *Noticee* to act as a bonafide & disciplined registered Securities Market intermediary. I am therefore of the view that the trading activities of the *Noticee* in 'paired contracts' on the NSEL platform have raised serious implications on the conduct of the *Noticee* amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* as a registered intermediary in the Securities Market.

40. Looking holistically at the aforestated alleged indulgence of the *Noticee* on NSEL platform in trading in a commodity contract that was primarily offering assured returns to its clients, I find that by no standard, the aforesaid conduct of the *Noticee* can be said to be fair and honest and rather the said conduct overwhelmingly proves that the *Noticee* has not acted with due skill, care and diligence in the conduct of its broking business as required under Schedule II of the *Intermediaries Regulations, 2008* and therefore the said conduct of the *Noticee* was certainly detrimental to the interest of the investors as well as against the integrity of the Securities Market being not in conformity with the applicable code of conduct. It may be noted here that the scope of the instant proceeding is not to analyze the actual adverse impact and consequence of the conduct of the *Noticee* on the Securities Market but to examine as to whether or not, the *Noticee* has acted in a manner that was expected of a well governed market intermediary and the answer to the same manifestly goes against the *Noticee*. In my considered view, it is immaterial if the *Noticee* has no outstanding investor obligation on NSEL as on date or has not taken any undue advantage of its investors by facilitating them to trade on the NSEL or by guiding them to trade on NSEL. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in 'paired contracts' on the NSEL is certainly a

conduct which was not permitted by the 2007 Exemption Notification and nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on the NSEL platform was certainly not conducive to the interest of the investors and was also detrimental to the interest of the Securities Market.

41. In view of the foregoing observations and admission by the *Noticee* having traded in these 'paired contracts' on the NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in 'paired contracts' on the NSEL platform during the relevant period as a Trading Member/Clearing Member and thereby has proactively joined NSEL in violating the conditions of the 2007 Exemption Notification and at the same time being a SEBI registered intermediary has violated the provisions of the FCRA as well. Therefore, the continuance of the registration of the *Noticee* as a SEBI registered commodity derivatives broker can prove to be detrimental to the interest of the Securities Market as the *Noticee* after having committed such grave misconduct can no longer be called a 'fit and proper person' for holding the certificate of registration as a commodity derivatives broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e), regulations 9(b) and 9(f) of the *Stock Brokers Regulations, 1992* read with the provisions of Schedule II of the *Intermediaries Regulations, 2008*.

42. Before summarizing my observations and discussions in the foregoing paragraphs, I must note here that an entity which is granted registration to operate as a commodity derivatives broker is required to act in a manner and to comply with all applicable regulatory requirements which are in the best interests of the Securities Market and its investors so as to uphold the integrity of the Securities Market. As the expanse of Securities Market is fundamentally vast and complex, the *Stock Brokers Regulations, 1992* have prescribed broad checks and balances so as to keep the interest of the investors protected from

any kind of misconduct or undisciplined act on the parts of unscrupulous commodity derivatives brokers and also to uphold the integrity of the Securities Market. The Code of Conduct spells out the general duties of a commodity derivatives broker to exercise due skill, care and diligence in the conduct of its business so as to serve the best interest of the clients in a fiduciary manner.

43. In the context of Securities Market, I note that the role of a registered intermediary including a registered commodity derivatives broker is not only sensitive and predominantly fiduciary in nature but also demands from it at all times honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the *SEBI Act, 1992* is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including commodity derivatives broker, which are not only required to act as an intermediary simpliciter i.e., a bridge or a connector between regulator and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors, as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market. Thus, undisputedly a commodity derivatives broker is obligated to act in a transparent manner and at all times be aware of and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

44. However, contrary to the aforesaid expected role, the conduct displayed by the *Noticee* as a market intermediary, by indulging in participation/facilitation in the trading in 'paired contracts' on the NSEL, by turning a blind eye to all the illegalities associated with those contracts and the fraudulent manner which trading in those 'paired contracts' taking place on the exchange

platform of the NSEL, has seriously belied the trust of the Regulator in the integrity and intent of the *Noticee*. Therefore, the continuation of the *Noticee* in Securities Market as an intermediary which has a propensity to indulge in and mislead its clients to indulge in such trades that are not permitted under law, does not appear to be in the interest of investors and the Securities Market since such misconduct has apparently amounted to serious violation of regulation 5(e) read with Clauses A(1), (2) and A(5) of the Schedule II of the *Stock Brokers Regulations, 1992* and regulations 9(b) and 9(f) of the *Stock Brokers Regulations, 1992* read with Schedule II of the *Intermediaries Regulations, 2008*. It would not be material for the *Noticee* to submit that there is no loss caused to the investors on account of its trades since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of the NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA so as to on the possibilities of decide its continuous association in the Securities Market. From the aforesaid, it is clearly evident that NSEL through its trading members had indulged in running a scheme of circumventing the conditions stipulated in the Exemption notification by allowing trading in 'paired contracts' in commodities contrary to the activities as permitted to it by the Central Government thereby misusing its platform for financing transactions. Such illegal activities as resorted to by NSEL as well as participation by the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market and are antagonistic to the interest of the investors.

45. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward

contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions, then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only subject to strict compliance with the said conditions.

46. It further needs appreciation that the issue under consideration here is not to assess the actual profit/loss incurred or likely to be incurred by an individual, as the limited scope of the present proceedings is to see as to whether the indulgence, engagement and promotion of such activities like active participation in trading of those 'paired contracts' could be held to be beneficial to the development of Securities Market or whether said trading activities indulged in by the *Noticee* can be stated to contain elements that are potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed facts that the scheme of 'paired contracts' traded on the NSEL ultimately caused huge loss to the investors to the extent of INR 5,500 Crore itself cast serious aspersion on the conduct, integrity and reputation of all the associated persons like the *Noticee* who participated in such 'paired contracts' and therefore, continuous association of such intermediaries like the *Noticee* herein, with the Securities Market cannot be viewed as good and congenial the interest of the investors.

47. As noted earlier, adherence to the Code of Conduct is an ongoing requirement but the conduct displayed by the *Noticee* in performing its functions of an commodity derivatives broker, including its act of indulging in the trading in 'paired contracts' on the NSEL platform is certainly not in the interest of investors and the Securities Market and in my view such misconduct leads to serious violation of regulation 5(e) read with Clauses A(1), (2) and A(5) of the Schedule II of the *Stock Brokers Regulations, 1992* and regulations 9(b) and 9(f) of

the *Stock Brokers Regulations, 1992* read with Schedule II of the *Intermediaries Regulations, 2008*.

48. Under the circumstances, I am constrained to hold that the *Noticee* is not a 'fit and proper' person in terms of regulation 5(e) read with regulation 27(iv) of the *Stock Brokers Regulations, 1992* read with Schedule II of the *Intermediaries Regulations, 2008* and hence, the continuance of the *Noticee* as a commodity derivatives broker will be detrimental to the Securities Market. Therefore, such activities of the *Noticee* as a registered commodity derivatives broker cannot be condoned and have to be visited with appropriate remedial measure to prevent for such wrong doings from recurring to the detriment of the interest of the Securities Market.

Order

49. In view of the foregoing deliberations and my observations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the *SEBI Act, 1992* read with regulation 27 of the *Intermediaries Regulations, 2008* and upon considering the gravity of the violations committed by the *Noticee* viz. **K R Choksey Commodity Brokers Private Limited.**, I hereby cancel the registration of the *Noticee* viz. **K R Choksey Commodity Brokers Private Limited** (SEBI Registration no. **INZ000032234**).

50. The *Noticee* shall, after receipt of this order, immediately inform its existing clients about the aforesaid direction in paragraph 49 above.

51. Notwithstanding the direction at paragraph 49 above, the *Noticee* shall allow its existing clients to withdraw or transfer their securities or funds held in its custody, within 60 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 60 days, the *Noticee* shall transfer the funds and securities of such clients to another broker within a period of 30 days thereon, under advise to the said clients.

52. The Order shall come into force with the immediate effect.

53. It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the *Intermediaries Regulations, 2008*, powers that were exercised under regulation 28 of the *Intermediaries Regulations, 2008* are now being exercised under regulation 27 of the *Intermediaries Regulations, 2008*.

54. A copy of this order shall be served upon the *Noticee*, all the recognised Stock Exchanges and Depositories.

Sd/-

Date: February 18, 2022

S. K. Mohanty

Place: Mumbai

Whole Time Member