

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:

Rainbow Commodity and Derivatives Pvt. Ltd.

SEBI Registration No: INZ000058234

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. Rainbow Commodity and Derivatives Pvt. Ltd. (hereinafter referred to as “**Rainbow**” / “**Noticee**”) was registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker bearing SEBI registration no. INZ000058234. Rainbow was earlier a member of National Spot Exchange Limited (hereinafter referred to as “**NSEL**”).
2. The present proceedings originate from the enquiry report dated December 30, 2019 (hereinafter referred to as “**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 Rainbow as a stock broker may be cancelled.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Pursuant to the DA Report, a post enquiry show cause notice dated February 12, 2020 (hereinafter referred to as “**SCN**”) was issued to the Noticee, along with copies of (i) the aforesaid DA Report; (ii) Finance Ministry letter dated December 30, 2014

to Forwards Market Commission (hereinafter referred to as “**FMC**”); (iii) Hon’ble Bombay High Court’s order in criminal bail application no. 1263 of 2014 in *Jignesh Prakash Shah vs. State of Maharashtra* dated August 22, 2014. In response to the SCN, the Noticee filed a reply dated May 8, 2020.

4. While the aforesaid proceedings were pending, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**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 (hereinafter referred to as “**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 (hereinafter referred to as “**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 (hereinafter referred to as “**EoW**”);

- (ii) Copy of FIR dated September 28, 2018 filed by SEBI under Section 154 of Criminal Procedure Code, 1973 (hereinafter referred to as “**CrPC**”); and
 - (iii) Amended Schedule II of Intermediaries Regulations;
6. The Noticee, in response to the SSCN, submitted another reply *vide* its letter dated March 23, 2023. Thereafter, a hearing opportunity was granted to the Noticee on June 14, 2023. Prior to the hearing, the Noticee submitted another reply dated June 8, 2023. On the date of scheduled hearing, the authorized representative (hereinafter referred to as “**AR**”) of the Noticee appeared before me and reiterated submissions made in the replies. He also stated that he has no additional submissions to make with respect to the Noticee.
7. The written submissions filed by the Noticee dated May 8, 2020, March 23, 2023 and June 08, 2023 have been summarized and examined under the “Consideration of Issues and Findings” part of the Order.

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 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 (hereinafter referred to as “**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 (hereinafter referred to as “**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 (hereinafter referred to as "**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. Before moving forward to examine charges and the evidence available on record, it would be appropriate to 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 Brokers Regulations read with Schedule II of Intermediaries Regulations; and (ii) regulation 9(b), 9(f) read with clauses A(1), A(2) and A(5) of Schedule II of 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.

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.

10. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/ Clearing Member, the Noticee has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that the continuance of the registration of the Noticee as a broker is detrimental to

the interest of the Securities Market and the Noticee is no longer a 'fit and proper person' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents / material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018 etc.) as provided to the Noticee vide SSCN dated February 27, 2023, further alleged that in light of the aforesaid documents filed against the Noticee by SEBI as well as observations / findings against the Noticee in the Enquiry Report dated December 30, 2019, the Noticee is no longer a 'fit and proper person' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

11. I find it appropriate to first deal with the preliminary contentions raised by the Noticee.
12. The Noticee has argued that during the relevant time, the Noticee was not registered as a commodities derivative broker and therefore, the present investigation is retrospective in nature. Further, the provisions of SEBI regulations were not applicable to the Noticee at the relevant time, therefore, the present SCN, and the Enquiry Report of the DA, which seek to invoke and rely on provisions of the SEBI Act and regulations framed thereunder, are without jurisdiction. Moreover, the Finance Act, 2015 also provides that the offences committed under the FCRA are to be governed by the provisions of the FCRA itself and that SEBI may initiate fresh proceedings with respect to such offences within a period of three years from the date on which the FCRA is repealed. However, no such proceedings have been initiated by SEBI against the Noticee till date.
13. In relation to the above, I note that:
 - (i) Before merger of FMC with SEBI, the Noticee was not required to be registered with either FMC or any other regulatory authority under the FCRA for carrying out the alleged paired contracts on NSEL. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be

regulated by SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months' from September 28, 2015. Thus, by virtue of the provisions of the Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration.

- (ii) The Noticee had applied for a certificate of registration as a broker and was granted a certificate of registration by SEBI with effect from December 24, 2015. Therefore, the Noticee had become a SEBI registered intermediary from the said date and falls under the definitions of a "stock broker" and an "intermediary". Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in "paired contracts" for its clients on the NSEL platform affects its ability to be considered as a "fit and proper person".
- (iii) Further, I note that Section 29A(2)(e) of FCRA as inserted by the Finance Act, 2015 empowers SEBI to initiate a fresh proceeding with respect to the offences under FCRA within a period of three years from the date on which FCRA was repealed. Thus, pursuant to the merger of FMC with SEBI, SEBI stepped into the shoes of FMC and was well within its powers to initiate proceedings under Chapter V of FCRA i.e., filing of the criminal complaint to EoW. I note from the complaint dated September 24, 2018 filed by SEBI that EoW was requested to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers / members of NSEL and other persons mentioned in the complaint. However, the aforesaid proceedings are different from the proceedings before me. The present proceedings pertain to adjudging the 'fit and proper person' status specified in the Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to the EoW under Section 154 of CrPC.

The Noticee is obligated to maintain the fit and proper person criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market.

- (iv) Moreover, post the merger of FMC with SEBI and due to Finance Act, 2015, the liabilities of the Noticee with respect to all the omissions and commissions done earlier while dealing with commodity derivatives continued to be subject to the jurisdiction of SEBI.

In light of the aforesaid discussion, the submission of the Noticee that the present proceedings are not maintainable on the grounds of being without jurisdiction and being retrospective in nature, is without merit.

14. The Noticee has argued that there has been an inordinate delay in the present proceedings as the transactions alleged pertain to 10 years ago. It is trite law that in the absence of any period of limitation, it is incumbent upon every authority to exercise the power of adjudication post issuance of SCN within a reasonable period.
15. In this regard, I note that the NSEL scam unfolded in 2013 after which several agencies such as EoW, SFIO, etc. conducted investigations into the activities of NSEL. Further, FMC, Hon'ble Supreme Court and Bombay High Court made important pronouncements relating to different facets of the matter such as whether merger of NSEL with FTIL should be permitted and whether NSEL can be considered as a "financial establishment" under the MPID Act. A large number of brokers had allegedly participated in the illegal contracts at NSEL platform. After the merger of FMC with SEBI on September 28, 2015, some of these brokers applied for registration with SEBI. It is true that the trades and actions pertain to the period from 2009 to 2013. However, the jurisdiction was conferred on SEBI only on September 28, 2015. Thereafter assessing all the factual circumstances available before SEBI and considering the importance of fulfilling "fit and proper person" criteria by brokers, action was duly initiated against the set of brokers who executed the alleged trades. Thus, in absence of any prejudice caused to the Noticee, merely because proceedings were initiated in 2018 by way of DA SCN, I find that the present

proceedings do not stand vitiated. Further, I note that after issuance of DA SCN, June 2022 SAT Order was passed by Hon'ble SAT wherein it set aside the impugned orders of WTM concerning similar facts and evidence as the present case. I find it appropriate here to briefly delve into the grounds on which the impugned orders of SEBI were set aside by Hon'ble SAT leading to the issuance of SSCN. The grounds are as follows:

- (i) The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India* (Writ Petition No. 2743 of 2014 dated December 4, 2017) cannot be relied upon as the said judgement has been set aside in appeal by the Hon'ble Supreme Court in the Merger Petition judgment.
- (ii) The observation from the order dismissing the Writ Petition filed by NSEL against the invocation of the MPID Act in *NSEL vs. State of Maharashtra and Ors.* (Writ Petition No. 1403 of 2015 dated October 01, 2015), cannot be relied upon, as in a subsequent Writ Petition moved by 63 Moons Technologies Ltd., in Writ Petition No. 1181 of 2018, a Division Bench of the Hon'ble Bombay High Court observed that the *prima facie* observations made in its earlier order were not binding and the same was observed since further investigation was in process at the relevant stage.
- (iii) The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*, cannot also be relied upon as such observations were limited to the fact as to whether the bail should be granted or not.
- (iv) Reliance on the SFIO Report was misplaced. The report only directs EoW / Police to initiate appropriate proceedings against NSEL and its Directors / Promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an order dated July 29, 2019, which was challenged due to jurisdiction before Hon'ble Bombay High Court. The Hon'ble Bombay High Court by an order dated January 15, 2020 passed an interim order staying the effect and operation of the impugned order dated July 29, 2019.

- (v) Reliance placed on decisions of the Hon'ble Tribunal in the matter of *Jermyn Capital vs. SEBI* and *Mukesh Babu Securities vs. SEBI* is misplaced as decisions in the said matters are distinguishable on facts. *Jermyn Capital* was held to be in relation to an *Interim Order* passed by SEBI, and the Hon'ble Tribunal was of the view that the criteria for passing an *ad Interim Order* are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of certificate of registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the said matter a criminal complaint was filed against the chairman of the company. The Hon'ble Tribunal noted that with respect to the appellants, there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- (vi) Regarding close association of the appellant with NSEL, forensic report which was made at the behest of SEBI has exonerated the appellant on this charge. This fact has not been considered by the WTM while holding the appellant to be closely connected with NSEL. There is no finding in the impugned cases indicating that the appellants have any control directly or indirectly over NSEL and, therefore, the question as to whether the appellant is a close associate of NSEL has not been considered in the right perspective.
- (vii) In the impugned cases, the application for grant of registration certificate has been rejected without specifying how long the rejection of application would continue. Such rejection cannot continue indefinitely and if an application is rejected, a period should be prescribed within which the broker cannot apply for grant of a fresh registration certificate but after the expiry of the period he could file such an application.

The SSCN issued pursuant to the June 2022 SAT Order takes into consideration additional material available on record. The issuance of SSCN, delivery of SSCN, examining the reply to the SSCN and hearing conducted thereafter, were essential

steps in ensuring that principles of natural justice are being met at the cost of prolonging the conclusion of present proceedings. Therefore, I find that the events detailed above necessitated an extended period for concluding the proceedings.

16. The Noticee has contended that the present proceedings is bad in law, because of the following:

- (i) The Intermediaries Regulations provide that the SCN is to be issued by the Chairman or the Whole Time Member of SEBI. However, in the present case, the SCN has been issued by the General Manager of the Enforcement Department of SEBI.
- (ii) The DA who is a Chief General Manager by designation, has been appointed as the DA by the Whole Time Member. This is in clear contravention of the provisions of the Intermediaries Regulations since the Regulations require the Executive Director to appoint an officer not below the rank of a Division Chief as the designated authority.
- (iii) The DA in the matter does not have the authority to be appointed as a Designated Authority under the SEBI Act and the regulations framed thereunder as he is not a Division Chief.

17. With respect to the aforesaid submissions of the Noticee, I note as follows:

- (i) The SCN, which has been issued to the Noticee, has been approved by the Designated Member / Whole Time Member, after considering the report submitted by the Designated Authority. Hence, I find there is no infirmity in issuance of the SCN by the Operations Department as it is under the approval of Designated Member / Whole Time Member.
- (ii) I note that 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 an authority higher in grade to the Executive Director of SEBI, is devoid of merit. While the Intermediaries Regulations provide for appointment of DA by an Executive Director, the same, when read along with the aforementioned Section 3(2) of the Delegation of Powers Order, empower the Whole Time Member also to make the appointment. Accordingly, the submission of the Noticee in this regard is rejected.

(iii) With respect to the submission of the Noticee that the DA in the present matter does not have the authority to be appointed as a Designated Authority as he is not a Division Chief, is factually incorrect.

18. Now, I proceed to deal with the allegation levelled against the Noticee.
19. Noticee has contended that in its role as a trading cum clearing member, it proceeded on the basis that contracts, which were being traded on NSEL's platform, were in consonance with extant provisions of law. Further, NSEL issued a press release clarifying that NSEL was in compliance of the FCRA and the 2007 Notification. In addition, the lack of action on the part of the Central Government and FMC, the Noticee had no reason to doubt the legality of the instruments, which were being traded on NSEL's platform. Moreover, no cautionary warning, advisory, communication or alarm was raised by NSEL at any point of time. There was nothing in the public domain that there is anything amiss in the matter.
20. With respect to the aforesaid submission of the Noticee that the contracts were available on NSEL's platform and hence were in consonance with extant provisions of law, I am of the view that, the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' becomes applicable in the situation. It is noted that under the FCRA, a "forward contract" is defined as a "contract for delivery of goods and which is not a ready delivery contract". A 'ready delivery contract' is defined as "a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days". Given these definitions in the FCRA, all the

contracts traded on the NSEL, which provided for a settlement schedule exceeding 11 days were treated by the FMC as Non-Transferable Specific Delivery Contracts. It is, therefore, seen that while the Ministry of Consumer Affairs had stipulated in the Exemption Notification that only forward contracts of 'one-day' were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the "forward contract" under FCRA held that the NSEL was allowed to only trade in forward contracts of 'one-day duration' and was obligated to ensure delivery and settlement within 11 days. Thus, 55 contracts of various commodities, having duration longer than 11 days that were executed on the NSEL were paired contracts without regulatory approval and in contravention of the exemption granted to NSEL and thus clearly not in accordance with law. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon'ble Supreme Court held that these contracts were in the nature of financing transactions which were portrayed as spot contracts in commodities. Since trading in 'paired contracts' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said 2007 Exemption Notification cannot be claimed. Therefore, not adhering to the terms of the 2007 Exemption Notification and attempting to deflect the responsibility to NSEL is misplaced, as the primary onus of diligence enjoined on an intermediary, has not been undertaken by the Noticee.

21. In relation to the press release done by NSEL, I note that the the long leg of the paired transaction involved contracts being settled on a T+25 or T+36 basis, whereas the exemption granted by the DCA permitted NSEL to only offer spot delivery contracts. when provisions of law specify 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 any person to perform such acts that are not permissible under an extant legal framework as per his whims and fancies. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions, then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. 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, for the Noticee to state that it relied upon the clarification issued by NSEL, shows that 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. Hence, the Noticee cannot evade its responsibility in execution of the paired contracts by stating that clarification was issued by NSEL or there was lack of action on the part of Central Government and FMC.

22. The submission of the Noticee that there was no cautionary warning or alarm raised by NSEL is untenable. The facts of the matter show that NSEL could not have raised any kind of alarm as it itself was advertising such contracts as an alternative to fixed deposits and the return offered was fixed (e.g. 16%) across all commodities irrespective of the nature of the contract or the duration. The 2007 Exemption was available in public domain and the fact that the contracts were structured in a manner which ensured that the buyer always made pre-determined profit, would make any prudent person (including the Noticee) come to the conclusion that what was being offered were not spot contracts in commodities. Rather it had trappings of a financial product which offered fixed and assured returns, as has been observed by the Hon'ble Supreme Court in the *State of Maharashtra vs. 63 Moons Technologies Ltd.* Therefore, the submission of the Noticee that there was nothing in public to show that there was something amiss in the matter is without any merit.
23. Noticee has argued that SEBI was aware that the Noticee was a commodity derivatives broker at the time of applying for registration and had granted registration as a stockbroker. Thus, the SCN is an attempt on the part of SEBI to revisit its decision of granting registration to the Noticee on the basis of facts which SEBI was aware of at the time of granting the registration. Further, there is nothing stated in the regulations to suggest that SEBI can revisit the decision taken by it while granting registration to an entity unless fresh facts emerge to show that the entity has not conducted itself as a 'fit and proper person' in the past.

24. In this context, as noted above, the Noticee is holding a Certificate of Registration granted by SEBI. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper person is not a one-time condition that is 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 as a registered intermediary. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria while granting the Certificate of Registration, in 2015, such an intermediary can still be assessed on being fit and proper at a later date.
25. The Noticee has argued that the annexures appended to the SCN viz., letter dated December 30, 2014 issued by the Commodity Derivatives Branch, Department of Economic Affairs, Ministry of Finance, Government of India to the Chairman, Forward Markets Commission, the Order dated April 30, 2019 passed by the Hon'ble Supreme Court in Civil Appeal No. 4476 of 2019 and the Order dated August 22, 2014 passed by Bombay High Court in Criminal Bail Application No. 1263 of 2014 do not by any stretch of imagination establish any violation by the Noticee or complicity on its part in any act or omission by the NSEL. Considering the findings of Hon'ble SAT with respect to the above in the June 2022 SAT Order, I find that the said documents are not relevant for consideration in the present matter.
26. Noticee has contended that there is no basis on which it could be said that the Noticee was closely associated with NSEL and the fact that Noticee was a trading

member of NSEL and had done trade on the platform of NSEL, cannot be relied against the Noticee. In this regard, I note that 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. Thus, by virtue of its conduct, trades and being a member of NSEL, the Noticee acted as an instrument in promoting and / or dealing in 'paired contracts' which were in the nature of financing transactions (as held by the Hon'ble Supreme Court of India referred *supra*). I find that such association of the Noticee in 'paired contracts' has seriously questioned the reputation, fairness, honesty, integrity and character of the Noticee in the securities market.

27. The Noticee has submitted that mere filing of an FIR alone cannot be a determinative standard for rendering a decision on an entity not being fit and proper. The purpose of registering an FIR is to set the machinery of criminal investigation into motion. There are no material allegations made except by way of conjectures and surmises. If the FIR is taken as a ground of disqualification against the Noticee, this would be an arbitrary and illegal action. In relation to this submission, I note that an 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. It is incorrect to state that FIR is based on conjectures and surmises as the complaint clearly states that the Noticee had traded / involved in illegal forward contracts organised by NSEL. Further, the disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field till date which is binding upon SEBI, and arguments to the contrary as advanced by the Noticee are not maintainable. 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.

28. It has been contended by the Noticee that SEBI has not provided any evidence or proof to show that the alleged trades were financing transactions particularly in view of the fact that the Noticee executed transactions for (i) Proprietary trades both for delivery as well as squared up (ii) Clients trades for squared up and E-Gold, E-Silver along with other delivery contracts. I find it relevant to refer to the finding of Hon'ble Supreme Court in the Merger Petition, wherein it *inter alia* held that:

"We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding 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. It is not the Noticee's case that the transactions facilitated by it for its clients were only E-series contracts. Accordingly, by inference, transactions on NSEL facilitated by the Noticee, could not have been anything but "paired contracts" apart from few E-series contracts. Further, the Noticee has neither demonstrated by way of illustration as to how the trades executed by its clients in contracts other than E-series are not paired contracts nor has shown by way of documentary evidence as to how it settled its proprietary trades by taking delivery. More so, as it is noted from the trade log that the clients of the Noticee's have bought both buy and sell contracts in the same commodity on the same day at different prices.

29. The Noticee has submitted that the allegations are made ignoring the fact that at the relevant time when the alleged trades were executed there was no such thing as a financing transaction and / or "paired contracts" in existence. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon'ble Supreme Court held that 55 contracts of various commodities, having duration longer than 11 days were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court enlarged the interpretation and held that such transactions come within the definition of 'deposits' under the MPID Act. While extensively referring to the claims made on the website

of the NSEL and the contents of the publicity material and other investor resources, the Hon'ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the 'paired contracts' traded on the NSEL platform where the return offered was the same across the commodities and that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon'ble Supreme Court also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in Steel had the same offered rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon'ble Supreme Court in the MPID matter highlighted how the 'paired contracts' were being marketed as an alternative to fixed deposits wherein the overwhelming majority of the sale leg of the 'paired contracts' which were executed were in fact short sales and further that, the commodities to back such sales were not available at the designated warehouses of the NSEL. Thus, I note that there are no two opinions of the fact that the paired contracts were in existence and were in fact structured in a manner which ensured that the buyer always made pre-determined profits.

30. I also note that the Noticee has submitted that the fact that trades were executed with NSEL's other buyers / sellers at the relevant time clears all the doubts regarding the genuineness and legality of those trades. I am of the view that any argument on the aforesaid lines does not lessen the extent of Noticee's obligations. I note that when provisions of law specify 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 any person to perform such acts that are not permissible under an extant legal framework as per their whims and fancies. As noted above, exemption was granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from the operations of the provisions of the FCRA subject to compliance with certain conditions, which in the instant matter was not complied with. The lack of diligence required to be performed by an intermediary of prudence is indicative of lack of competence and integrity while acting as a registered intermediary. Undoubtedly such activities of the Noticee not only seriously jeopardized the integrity of market and that of its investors but also SEBI's belief in the reputation, character, competence and integrity of the Noticee

and other brokers which compelled SEBI to file the criminal complaint against it as also against several other brokers. Therefore, the fact that the trades were executed does not make the said trades genuine or legal, as has been claimed by the Noticee.

31. In view of the above, I note that the Noticee has traded in “paired contracts” on behalf of its clients on NSEL as well as has executed proprietary trades. 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. The Noticee has also attracted clause 3(b)(ii) of Schedule II to the Intermediaries Regulations which states that pendency of a chargesheet against a person is a ground that SEBI may take into consideration for determining whether any person is a “fit and proper person”.
32. It is a settled position of law that every registered intermediary in the securities market is required to fulfil all the conditions of its registration at all points of its functioning including any additional criteria statutorily provided for, from time to time. Else, there would arise an anomalous situation where an entity that has obtained a certificate of registration after fulfilling the said criteria would fail the test after a period of time and yet continue to function in the securities market despite not fulfilling the required criteria.
33. On this premise, it can be said that the requirement of being a ‘fit and proper’ person, is a continuing ‘eligibility criteria’/ statutory requirement, which ought to be satisfied by all registered entities at all points of time. This condition is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the grant of registration provides that this is a condition which every registered intermediary is required to fulfil, on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. Therefore, the criteria of ‘fit and proper person’, is an ongoing requirement throughout the period during which an entity remains operational in the securities market as a registered intermediary and for this reason, the principles of estoppel do not apply to the instant case of the Noticee. If the continued applicability of the fit

and proper criteria to its functioning is challenged, there would exist a market where the overall interest of the investors would stand compromised.

34. 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. Hence, the continuation of the Noticee as a registered broker will be detrimental to the interest of the Securities Market. Therefore, activities of the Noticee, as discussed in the preceding paragraphs, as a registered broker requires that appropriate measure should be taken against the Noticee to prevent recurrence of such wrong doings which is detrimental to the interest of the Securities Market.

E. CONSIDERATION OF THE RECOMMENDATION OF THE DESIGNATED AUTHORITY

35. In the Enquiry Report, the DA has, after determining that the Noticee is not 'fit and proper person', recommended that Noticee's registration may be cancelled.
36. In this regard, the facts and circumstances in the instant matter lead to the conclusion that since the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the 'fit and proper person' criteria. Once an entity is declared to not fulfil the 'fit and proper person' criteria, in the interest of the securities market, such an entity should not be allowed to continue to act as an intermediary till the time it does not regain its 'fit and proper person' status. In this context, it is pertinent to mention that in several scenarios, a defect, which is the reason for holding an intermediary as not 'fit and proper person', is curable at the hands of the intermediary, while in certain scenarios it is not.
37. In the present case, the conduct, integrity and reputation of the Noticee has been found wanting on account of its involvement in trading of "paired contracts" on the NSEL platform and also for the reason that since SEBI has filed a complaint on the basis of which an FIR dated September 28, 2018 has been registered by EoW, which is yet to be finally determined by a Court of competent jurisdiction, the

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

38. Schedule II of the Intermediaries Regulations, in clause 4 provides that “*Where any person has been declared as not ‘fit and proper person’ by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order*”. This clause, in my view, covers scenarios of ‘cancellation’ or ‘suspension’ of the certificate of registration of the intermediary.
39. Thus, the Intermediaries regulations envisage a deeming time limit of 5 years or specification of a time limit by the deciding authority, within which the intermediary may cure the defects, which led to the determination of its status, if the same is done at its end. The said specification of period also serves as a reformatory direction against the intermediary.
40. Considering the above, the question that now arises for determination is whether the Noticee registration may be cancelled as recommended by the DA or whether it should be suspended for a specific period. A direction to stop its business, even when the EoW charge sheet is the subject matter of *I/s* before the MPID Court, would entail the complete winding up of the business of the Noticee. On the other hand, “suspension for a specific period” would serve the purpose of keeping the Noticee out of the securities market for a specified period, after which, the Noticee may resume its business, upon curing the issues that have led to such an action.
41. Given the peculiar facts and circumstances of the case, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three months or till discharge / acquittal of the Noticee by a Court of competent jurisdiction, whichever is later, would be more appropriate and proportionate to the violations brought out in the present case. This would also suitably address the contention of the Noticee that the DA had recommended harsh and disproportionate measure.

F. ORDER

42. 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, suspend the Certificate of Registration (bearing no. INZ000058234) of Rainbow Commodity and Derivatives Pvt. Ltd. for a period of three months from the date of this Order or till such time an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.
43. The Noticee shall, after receipt of this Order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 42 above.
44. 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.
45. A copy of this Order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories for necessary compliance.

-Sd-

DATE: November 6, 2023

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA