WTM/GM/MIRSD/DOP/13685 /2021–22

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

FINAL ORDER

UNDER SECTION 19 READ WITH SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN THE MATTER OF –

	NOTICEE	SEBI REGISTRATION NO.
1.	**CELEBRUS COMMODITIES LTD.**	**INZ000048935**

BACKGROUND:

1.1 Celebrus Commodities Ltd. ("**Celebrus Commodities/Noticee**") is registered with Securities and Exchange Board of India ("**SEBI**") as a Stock Broker under the SEBI (Stock Brokers and Sub–brokers) Regulations, 1992 ("**Stock Brokers Regulations**"). Celebrus Commodities was earlier a member of the National Spot Exchange Ltd. ("**NSEL**"). The registered office of Celebrus Commodities is at 27/540, 3rd Floor, EAK Towers, Panampilly Nagar, Cochin–682036, Kerala.

1.2 NSEL was incorporated in 2005 as an electronic platform for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs, Government of India, issued a Notification under Section 27 of the Forward Contracts (Regulation) Act, 1952 ("**FCRA**") granting conditional exemption from the provisions of FCRA for forward contracts of one–day duration for sale and purchase of commodities traded on NSEL. The conditions *inter alia* placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day, must result in delivery of commodities. 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. Thereafter, NSEL commenced operations in October 2008.

1.3 In September 2009, NSEL introduced, on its platform, the concept of '*paired contracts*', which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract and *vice versa*, with the same counterparty at the same time. In other words, the *paired contracts* involved two simultaneous transactions being undertaken at the same time

with the same counterparty – one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL.

1.4 On February 6, 2012, the Department of Consumer Affairs, Government of India, vide Gazette Notification S.O. 228(E) partially amended the Notification dated June 5, 2007, to the effect that "*all information or returns relating to the trade as and when asked for shall be provided to the Central Government or Forward Markets Commission, Mumbai*".

1.5 Pursuant to the said Notification, Forward Markets Commission ("**FMC**") called for trade data from NSEL. On analysis of the data received from NSEL, FMC observed that *"55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA"* and *"the condition of 'no short sale by members of the exchange shall be allowed' was not being met by NSEL"*.

1.6 Subsequently, vide an Order No.4/5/2013-MKT-1/B dated December 17, 2013, FMC had *inter alia* held that the contracts traded on NSEL violated the following conditions stipulated in the aforesaid Notification SO906(E) dated June 5, 2007:

a. **Short Sale:** 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 NSEL shall be allowed"* was not being met by NSEL.

b. **Contracts with Settlement Period going beyond eleven (11) days:** Some of the contracts offered for trade on NSEL had settlement periods exceeding eleven days and 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 eleven days of the trade and hence, the contracts traded on NSEL which provided a settlement schedule for a period exceeding eleven days were not allowed under the aforesaid Notification.

1.7 As the Noticee was a member of NSEL and had participated in/facilitated trading in *paired contracts* on NSEL platform, SEBI had initiated enquiry proceedings against the Noticee in terms of Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**").

Accordingly, vide an Order dated September 21, 2018, under Section 19 of the SEBI Act, 1992 ("**SEBI Act**") read with Regulation 24 of the Intermediaries Regulations, SEBI had appointed a Designated Authority ("**DA**") to enquire into (i) whether the Noticee was *'fit and proper'* to continue holding the Certificate of registration as a Trading and Clearing Member in terms of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations and (ii) the alleged violations by the Noticee of Regulation 9(b), Regulation 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and to submit the Report with recommendations in terms of the Intermediaries Regulations. The provisions of law alleged to have been violated by the Noticee are reproduced below:

TABLE I – PROVISIONS OF LAW ALLEGED TO HAVE BEEN VIOLATED BY THE NOTICEE	
SR. NO.	**DETAILS**
1.	***Stock Brokers Regulations*** ***Consideration of application for grant of registration.*** *5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-* *(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;* ***Conditions of registration.*** *9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-* *(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;* *(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;* ***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.* *(3) ...* *(4) …* *(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
	Criteria for determining a ''fit and proper' person'
10.	*For the purpose of determining as to whether an applicant or the intermediary is a ''fit and proper' person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter] and the key management persons by whatever name called –* *(a) integrity, reputation and character;* *(b) absence of convictions and restraint orders;* *(c) competence including financial solvency and networth;* *(d) absence of categorization as a wilful defaulter.*

ENQUIRY BY THE DESIGNATED AUTHORITY:

2.1 A Show Cause Notice dated September 25, 2018 ("**Enquiry SCN**"), was issued to the Noticee under Regulation 25(1) of the Intermediaries Regulations. The Noticee was called upon to show cause as to why appropriate recommendations for the alleged violations (see paragraph 1.7) should not be made against it, by the DA, in terms of the Intermediaries Regulations. The Noticee was also advised to submit its reply along with documentary evidence(s), if any, within 21 days from the date of receipt of the Enquiry SCN. The Noticee replied to the Enquiry SCN vide a letter dated October 16, 2018.

2.2 Thereafter, the DA had issued a Notice dated January 14, 2019, *inter alia* advising the Noticee to submit the following information:

i. Details of trading in *paired contracts* through proprietary account or on behalf of client(s) in NSEL during the period September 2009 to August 2013.

ii. To comment on the outstanding position/traded through proprietary account or on behalf of clients in *paired contracts* in NSEL.

2.3 Vide a letter dated January 25, 2019, the Noticee replied to SEBI and provided the information sought at paragraph 2.2 above, as under:

i. ***Details of trading in paired contracts through proprietary account or on behalf of client(s) in NSEL during the period September 2009 to August 2013.***

PARTICULARS	***CLIENT CODE***	***9–10***	***10–11***	***11–12***	***12–13***	***13–14***
TURNOVER IN PAIRED CONTRACTS (BUY & SELL TOGETHER)						
	G01BR34	*0*	*0*	*0*	*707,000*	*25,38,230*
	C01H02	*0*	*0*	*0*	*0*	*96,82,520*
	C04V09	*0*	*0*	*0*	*0*	*95,39,390*
AMOUNT DUE AS ON 25.01.2019						
	G01BR34	*0*	*0*	*0*	*0*	*1,51,843.27*
	C01H02	*0*	*0*	*0*	*0*	*22,10,798.64*
	C04V09	*0*	*0*	*0*	*0*	*44,65,406.60*

ii. ***To comment on the outstanding position/traded through proprietary account or on behalf of clients in paired contracts in NSEL.***

Though our company became a member of NSEL, we had not induced anyone to do the alleged trades which resulted into paired contracts on the NSEL platform even in spite of the constant persuasion by the exchange Officials to popularize the product amongst our clients and to bring in large volume. Except for three clients, no other client did the trades of the sort alleged in your notice. As regards those who carried out the trades of the sort alleged in your notice, it was not because we persuaded them to do the said trades. It is pertinent to note that out of our three clients, one client was our Director (client code: C04V09) at that point of time and another client was his wife (client code: CO1H02). These two codes contribute the 97.78% of the outstanding position. We ensured that we informed them of the risk involved in the same as we perceive; and clearly told them that if they want to do any such trade from the exchange officials the pros and cons and the risk involved. Therefore, we had not committed nor had we any intention to commit any offence for pecuniary or other gains. Further we did not have, as explained below any ground or reason to suspect that a product available in the platform of an approved exchange is ultra vires the powers of the exchange.

2.4 Upon completion of the enquiry, an Enquiry Report dated May 24, 2019 ("**Enquiry Report**") was submitted by the DA to the Designated Member. In the Enquiry Report, the DA had *inter alia* noted that the Noticee was not a *'fit and proper'* person in terms of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, as indicated at Table I. In accordance with the Intermediaries Regulations, the DA recommended the cancellation of the Certificate of registration of the Noticee.

POST–ENQUIRY PROCEEDINGS BY THE DESIGNATED MEMBER ("DM"):

3.1 A post–enquiry Show Cause Notice dated June 28, 2019 ("**SCN**"), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of Regulation 28(1) of the Intermediaries Regulations as to why action as recommended by the DA should not be taken against it in terms of the said Regulations, as deemed fit by the DM. Thereafter, a Second SCN dated September 20, 2019, was issued to the Noticee *inter alia* highlighting the observations made by the Hon'ble Supreme Court and the Hon'ble Bombay High Court in respect of *paired contracts* offered on the NSEL platform.

3.2 Subsequently, an opportunity of personal hearing was granted to the Noticee on **September 8, 2021,** through video conferencing on the WebEx App. The Noticee appeared for the hearing and was represented by its Director, Giby Mathew and Madhusudhanan E. P., Company Secretary. The Noticee reiterated the submissions contained in its reply dated October 16, 2019. After hearing the Noticee, it was directed that the hearing stood concluded and further, time till September 15, 2021, be granted to the Noticee to file written submissions on merits, in the matter. Accordingly, the Noticee had filed additional written submissions vide a letter dated September 13, 2021.

CONSIDERATION OF ISSUES AND FINDINGS:

4.1 I have considered the material available on record i.e. Enquiry Report, the SCN along with the Second SCN, Noticee's replies dated October 16, 2019 and September 13, 2021. In its replies, the Noticee had *inter alia* submitted as under:

i. Celebrus Commodities acquired the membership with Spot Exchange on September 28, 2012 (after issuance of the Circular indicating that the FMC will be the regulatory Authority) but the first trade in paired contract was executed only on March 19, 2013.

ii. Though our company became a member of NSEL, we had not induced anyone to do the alleged trades which resulted into Pair Contracts on the NSEL platform. Except for 3 clients, no other client did the trades of the sort alleged in your notice. Even of the aforementioned 3, one was a Director of the Company and the other was his wife. As regards those who carried out the trades of the sort alleged in your notice, it was not because we persuaded them to do the said trades. What really happened was that the exchange was conducting seminars/conferences/meetings to promote their newly introduced product referred to above. A few such seminars/conferences/meetings were carried out at our city too. After the seminar, the officials of the exchange had one to one meeting with those clients who showed interest. Accordingly, 3 clients executed the trades referred to above and they did so not based on any persuasion or assurance from our Company but based on the assurances and promises given by the exchange officials. We ensured that we informed them of the risk involved in the same as we perceive. Therefore, we had not committed nor had we any intention to commit any offence for pecuniary or other gains. Further we did not have, as explained below any ground or reason to suspect that a product available in the platform of an approved exchange is ultra vires the powers of the exchange.

iii. Also, there never arose any situation for us to suspect that the exchange having nationwide terminals and executing such trades through the said terminals, was not authorized to carry out such trades.

iv. As your good selves are aware, prior to bringing in the commodity derivative trading and the exchanges including NSEL under regulatory frame work of SEBI, the Forward Market

Commission was made the designated authority, though for a brief period, in 2012. The point to be noted herein that we have taken the membership after this and the alleged trades were carried out in the exchange platform even after the exchange was brought under the surveillance of Forward Market Commission, and even the said Forward Market Commission did not warn or caution us of the fact that the trades of the sort executed were not permitted trades or were ultra vires the powers of the exchange. Thus, we had no ground or reason to suspect that the alleged trades were ultra vires the powers of the exchange and hence one should not indulge in such trades.

v. *All what is stated above goes only to prove that neither did the company have any intention to do any unlawful trade in NSEL or for that matter in any exchange platform nor did the company persuade any person to do any such transaction. Further, the contracts of the sort (Paired Contract) referred to in your letter had happened in 3 clients accounts. As all transactions were put through by the client in the exchange platform, our company was under the genuine impression that they were approved trades only. Further, as the trades were carried and approved by the exchange, we had no reason to suspect that the exchange did not have necessary approval to carry out such contracts in the exchange platform. As stated above, our company had no motive or intention to indulge in any unlawful trades or to induce anyone to carry out such trades.*

vi. *It is also pertinent to note that we had earned only ₹24,089.78 as brokerage revenue from the alleged paired contracts trade which does not work out to even 0.02% of the total brokerage of ₹12,55,70,242.74 earned by the Company as brokerage for the financial years 2012–13 and 2013–14. It therefore, cannot be said that we permitted the said trades with an intention to augment the brokerage earnings of the Company.*

5.1 Having considered the allegations levelled against the Noticee in the SCN along with Second SCN, the submissions made by the Noticee and other materials available on record, I note that the limited issue that arises for consideration is whether the Noticee having traded/facilitated trading of its clients in *paired contracts* offered on the NSEL platform is *'fit and proper'* to continue to hold the Certificate of registration as a stock broker in terms of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations and Regulations 9(b), 9(f), Clauses A(1), A(2) and A(5) of the Code of Conduct specified in Schedule II of the Stock Broker Regulations.

5.2 I note from the material available on record that the Noticee was granted registration as a member of NSEL on September 28, 2012 and had allowed its clients to trade in *paired contracts* on NSEL platform from March 19, 2013 till the exchange had halted trading of *paired contracts* in August 2013. I also note that the Noticee had not executed proprietary trades or trades on its own behalf during the said time.

5.3 In its reply, I note that the Noticee has contended that it had not promoted or in any way induced its clients or members of the public for executing any traded in *paired contracts*. In this regard, even accepting the submissions made by the Noticee, the fact remains that the Noticee had provided a trading platform for over a period of five months, which allowed/facilitated its clients to take exposure to the *paired contracts* offered on NSEL platform. Since the *paired contracts* were violative of the conditions stipulated in the Government Notification dated June 5, 2007, I am of the opinion that once as a member of NSEL, the Noticee executed trades either on its own behalf or on behalf of its clients, the quantum of such trades or number of occasions on which such trades were executed becomes immaterial, for the purpose of determining the compliance of the Noticee with the *'fit and proper'* criteria.

5.4 The criteria for *'fit and proper'* person which has to be complied by registered securities market intermediaries is provided under Schedule II of the Intermediaries Regulations. Regulation 5(e) of the Stock Broker Regulations mandate that *'fit and proper'* criteria are not just an eligibility criteria that needs to be satisfied when an entity seeks registration with SEBI, but also a continuous requirement that has to be complied with as long as the entity is registered with SEBI (see Table I).

5.5 The criteria provided in Schedule II of the Intermediaries Regulation are not exhaustive; they are more in the nature of indicative parameters that determine the *'fit and proper'* aspect of entities. These parameters include *(a) integrity, reputation and character; (b) absence of convictions and restraint orders; (c) competence including financial solvency and networth; (d) absence of categorization as a wilful defaulter*.

5.6 The Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of ***Jermyn Capital LLC vs. SEBI*** had interpreted the scope of *'fit and proper'* criteria laid down by SEBI and had observed that: *"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. ..."

5.7 I note that this issue has also been considered by the Hon'ble SAT in the matter of ***Mukesh Babu Securities Limited vs. SEBI (Appeal No. 53 of 2007)***, wherein it 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 CBI has alleged that there was criminal conspiracy among all the accused and that they have committed illegal acts which have resulted in wrongful loss to the depositors of the Bank and corresponding gain to the accused. The charges levelled are indeed serious and if established, they involve moral turpitude. We are unable to agree with the learned counsel for the appellant that the criminal case pending against Shri. Mukesh Babu and others has no concern with the securities market. It is through the terminals of the company that the chairman of the Bank had traded and incurred losses through speculative trading which losses have been made up by overdrawing money from the Bank. In these circumstances, the Board was entitled to take the view that the company was not a 'fit and proper' person. It could not be said that Shri. Mukesh Babu or the company enjoyed good reputation within the meaning of the Fit and Proper Person Regulations."*

5.8 I, therefore, note that Courts have held that good reputation and integrity are critical facets of the *'fit and proper'* criteria laid down in the Intermediaries Regulations. It has also been held by Courts that while determining whether an entity enjoys a good reputation, the observations, even if *prima facie*, made by Courts and other regulatory authorities would be relevant.

5.9 I note that it is not disputed that the Noticee was a member broker of NSEL and was providing a trading platform enabling its clients to access NSEL platform. It is also noted from the material available on record that by 2013–14, *paired contracts* represented 99% of the turnover of NSEL (excluding E–series). The details of the same are given in the table below:

TYPE OF CONTRACT	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14 (APRIL–JULY)
TURNOVER EXCLUDING E–SERIES	763	3,359	14,032	59,981	73,390	38,520
PAIRED CONTRACTS	0	848	6,207	18,100	71,127	38,204
% OF *PAIRED CONTRACTS* TURNOVER	0%	25%	44%	30%	97%	99%

5.10 The role of NSEL in the matter of *paired contracts* has been examined by multiple agencies and Courts, extracts of which are reproduced below:

i. **Observations of the FMC:** Vide an Order dated December 17, 2013, FMC had *inter alia* observed: *"... 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 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).

ii. **Observations of Department of Economic Affairs, Ministry of Finance ("DEA"):** Vide a letter dated December 30, 2014, the DEA had observed that: *"This department is in agreement with FMC that NSEL has violated the first two conditions of exemption granted to it under section 27 of FCRA making it liable for appropriate action including penal action under section 21 of FCRA. Further, this department is also in agreement with the observations of Special Team of Secretaries that by offering contracts having settlement beyond 11 days, without obtaining recognition and/or registration, NSEL has also violated the Provisions of sections 5, 6, r/w 14A also making it liable for appropriate action including penal action under section 21 of FCRA."*

iii. **Observations of Economic Offences Wing, Mumbai ("EOW"):** Vide a letter dated April 4, 2015, EOW had forwarded an Interim Report on the investigation conducted to identify the role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). EOW in its report had mentioned that a settlement obligation amounting to ₹5403.59 Crore was due on the date of the closure of the business of NSEL. Relevant extracts of the report are as follows:

*"IV. **Objectives of this investigation into the brokers' role:***

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

The actual role of the brokers was:

- *To bring in investors to invest in 'pair trades' promising them assured returns and the investors got about 13-16% p.a. for investing in the commodity*
- *The sellers got finance at 18-20 or more % by pledging their commodity in NSEL warehouses*

They got brokerage from investors on NSEL platform, and those brokers who their NBFCs had 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."*

iv. **Observations of the Hon'ble Bombay High Court:** The Hon'ble Bombay High Court, while deciding Writ Petition No. 2743 of 2014 dated December 4, 2017, in the matter of ***63 Moons Technologies Limited vs. Union of India*** had observed: *"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 5.06.2007, 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 NSEL exchange. In monetary terms, this turn over from 2009 to 2013 was in the region of ₹1,34,000 Crore. 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, 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. …

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 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 NSEL Exchange. Even otherwise, there is extensive material on record in the form of Grant Thornton Report etc. which establishes that the operations at NSEL Exchange were inconsistent with the conditions of the exemption Notification dated 5th June 2007 and consequently the FCRA itself. …"

Further, the Hon'ble High Court in the matter of ***Jignesh Prakash Shah vs. The State of Maharashtra (Criminal Bail Application No. 1263 of 2014),*** had observed: *"… 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..."*

v. **Observations of the Hon'ble Supreme Court:** These *paired contracts* were entered into between the same counterparties at a pre-determined price in such a manner that it always resulted in registering a profit on the long term position. The Hon'ble Supreme Court in the matter of ***63 Moons Technologies Ltd. and Ors. v. Union of India (UOI) and Ors., (2019)18SCC401,*** had observed: *"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".*

5.11 It can, therefore, be noted from the above that multiple authorities including the Hon'ble Supreme Court, have observed that NSEL was in effect running a financing transaction assuring a fixed rate of returns under the garb of *paired contracts*. Further, as stated above, such paired transactions

represented an overwhelming majority of the trades on NSEL by 2013–14 and the Noticee was one of the commodity brokers that facilitated clients to trade in *paired contracts* on the NSEL platform.

5.12 In this regard, I also note that the admissibility of the *prima facie* observations as valid ground while determining the compliance with the *'fit and proper'* criteria has been accepted by the Hon'ble SAT in the matter of ***Mukesh Babu Securities*** and the relevant portions of the Hon'ble SAT's Order have already been reproduced in paragraph 5.7 above.

5.13 It is further noted that 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 Ministry of Consumer Affairs permitted NSEL to only offer spot delivery contracts. The Notification issued by the Ministry 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. The Noticee, by providing a platform for taking exposure to *paired contracts* has exposed its clients to the risk involved in trading a product that did not have regulatory approval, thereby raising doubts on the competence of the Noticee to act as a registered securities market intermediary.

CONCLUSION:

5.14 The confidence of the investors in the integrity of the securities markets is critical for its orderly functioning. Stock Brokers play a vital role in this regard as they are not just the first point of contact for ordinary investors, but are also entrusted with clients' monies and securities. In view of the same, it becomes imperative on the part of the SEBI to ensure that only entities enjoying good reputation and having competence i.e. satisfying the *'fit and proper'* criteria, act as stock brokers. The Noticee by allowing its clients to trade in *paired contracts,* which were *ex facie* illegal as noted above and that too for a period of over five months, has failed in conducting its business in conformity with the standards expected to be maintained by registered securities market intermediaries.

5.15 In view of the aforesaid, I note that the reputation, competence, fairness, honesty, integrity and character of the Noticee is put into question by such dealings. The Noticee has fallen short of satisfying the aforesaid criteria, to the extent of its association with NSEL and the consequent exposure of its clients to *paired contracts*. I, therefore, find the Noticee not *'fit and proper'* in terms of Schedule II of the Intermediaries Regulations.

ORDER:

6.1 In view of the above, I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act and Regulation 27 of the Intermediaries Regulations, hereby cancel the Certificate of registration granted to the Noticee, **Celebrus Commodities Ltd. (SEBI REGN. NO. INZ000048935).**

6.2 The Noticee shall, after receipt of this Order, immediately inform its existing clients about the direction at paragraph 6.1 above.

6.3 Notwithstanding the direction at paragraph 6.1 above, the Noticee shall allow its existing clients to withdraw or transfer their securities or funds held in its custody, within sixty (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 sixty days, the Noticee shall transfer the funds and securities of such clients to another registered stock broker within a period of thirty (30) days thereon, under advice to the said clients.

6.4 This Order shall come into force with immediate effect.

6.5 A copy of this Order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories.

PLACE: MUMBAI
DATE: OCTOBER 7, 2021

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA