NATIONAL COMMODITY & DERIVATIVES EXCHANGE LIMITED

Circular to all trading and clearing members

Circular No : NCDEX/SURVEILLANCE & INVESTIGATION-069/2020
Date : August 14, 2020
Subject : SEBI order in the matter of trading in castor seed contracts

This is with reference to NCDEX circular no. NCDEX/COMPLIANCE-001/2016/037 dated March 02, 2016 referring to SEBI order no WTM/RKA/ISD/CDD2/26/2016 dated March 02, 2016 and NCDEX circular no. NCDEX/LEGAL-006/2016/118 dated May 25, 2016 referring to SEBI order no. WTM/RKA/ISD/CDD2/55/2016 dated May 24 ,2016.

SEBI, now vide its Order no. WTM/AB/IVD/ID11/8666/2020-21 dated August 12, 2020 has directed that the directions issued against the below entities vide ad-interim orders dated March 02, 2016 and May 24, 2016 and confirmed vide order dated March 08, 2017 are hereby revoked with immediate effect.

Sr. No.	Noticees	PAN
1	National Steel and Agro Industries Limited	AAACN3548H
2	Ruchi Soya Industries Limited	AAACR2892L
3	Ruchi Global Limited	AAACR7202A
4	UKS Oils Private Limited	AAACU4566C
5	Secunderabad Oils Limited	AACCS8208H

Members and their respective clients are requested to note the above.

For and on behalf of
National Commodity & Derivatives Exchange Limited

Avinash Mohan
Executive Vice President

Encl : Annexure

For further information, / clarifications, please contact

1. Customer Service Group on toll free number: 1800 26 62339
2. Customer Service Group by e-mail to : askus@ncdex.com

WTM/AB/IVD/ID11/8666/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee no.	Name of the Noticee	PAN
1.	**National Steel & Agro Industries Ltd.**	AAACN3548H
2.	**Ruchi Soya Industries Ltd.**	AAACR2892L
3.	**Ruchi Global Ltd.**	AAACR7202A
4.	**UKS Oils Pvt. Ltd.**	AAACU4566C
5.	**Secunderabad Oils Ltd.**	AACCS8208H

The aforesaid entities are hereinafter referred to individually, by their respective names/ Noticee numbers and collectively as "the Noticees".

---

1. The present matter emanates from a show cause notice dated February 06, 2019 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to the aforesaid Noticees calling upon them to show cause as to why suitable directions, as may be appropriate under Sections 11(1), 11(4) and 11B of SEBI Act, 1992 should not be passed against them. The SCN is based on an investigation in the trading in Castor Seeds Contract at National Commodity and Derivatives Exchange Ltd. (hereinafter referred to as "**NCDEX**"), for the period January 1, 2016 to January 27, 2016 (hereinafter referred to as "**Investigation Period**").

2. The SCN states that as per erstwhile Forward Markets Commission's (hereinafter referred to as "**FMC**") circulars dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits, the permissible client level position for Castor Seed Contracts was 12,000 MT or 5% of market wide Open Interest (hereinafter referred to as "**OI**"), whichever is higher. SCN alleges that Noticee no. 1 to 3 while dealing in Castor Seeds Contracts on NCDEX, collectively, violated open interest limits for Castor Seeds Contracts laid down vide aforesaid circulars read with FMC's letter dated January 10, 2012, on all the 18 trading days during the Investigation Period. SCN alleges that Noticees no.1 to 3 are connected to each other based on common ownership and control structures, and therefore, the open interest of Noticees no. 1 to 3 were supposed to be clubbed while considering open interest limits. Further, SCN also alleges that Noticee no. 4 and 5 collectively, violated open interest limits laid down in FMC circulars dated October 22, 2014 and December 11, 2014 and FMC's letter dated January 10, 2012, on 13 out of 18 trading days during the Investigation Period. SCN alleges that Noticees no. 4 and 5 are connected to each other based on common ownership and control structures, and therefore, the open interest of Noticees no. 1 to 3 were supposed to be clubbed while considering open interest limits. The SCN also alleges that Noticee no.1 to 5 form part of two distinct groups through common ownership and control structure. The SCN alleges that by taking OI in excess of the prescribed limits, Noticees were able to corner the market at the expense of other clients. Therefore, SCN alleges that the Noticees traded in a fraudulent and deceitful manner and their excess open OI positions created a false or misleading appearance in the market.

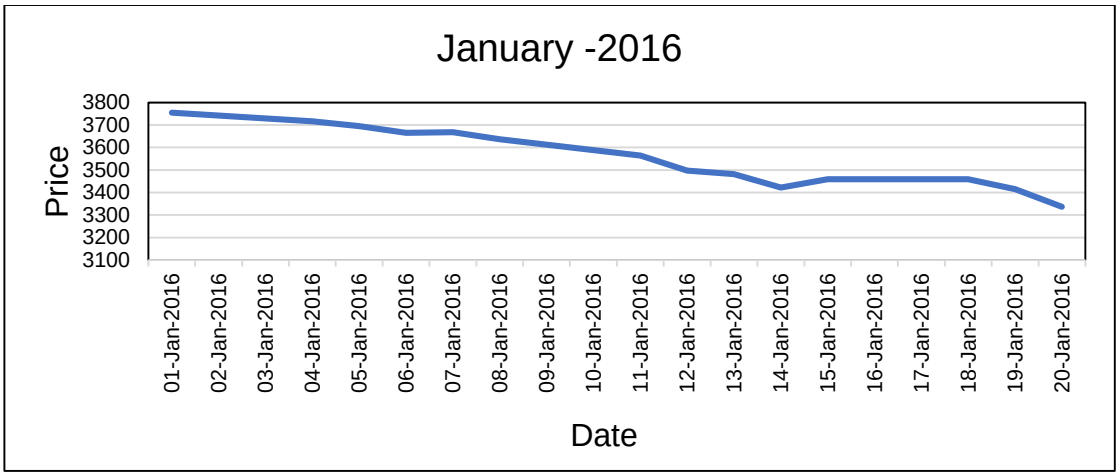
3. Based on the above, the SCN alleges that the Noticees violated FMC's circulars dated October 22, 2014 and December 11, 2014 read with FMC's letter dated January 10, 2012 pertaining to position limits read with

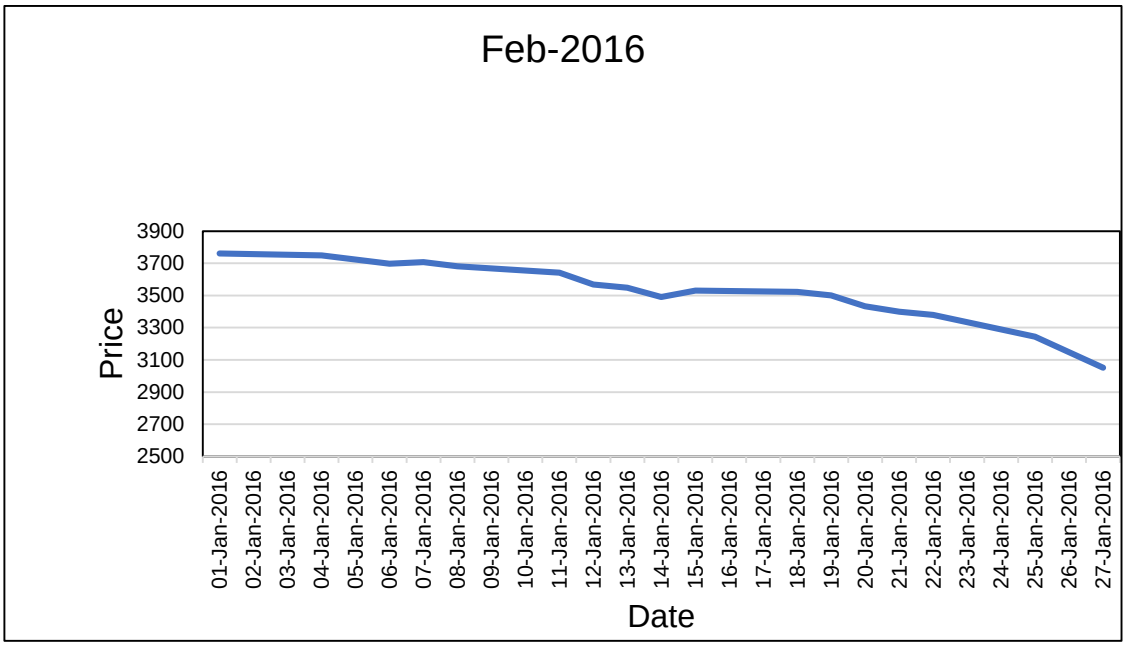
Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP) Regulations**").

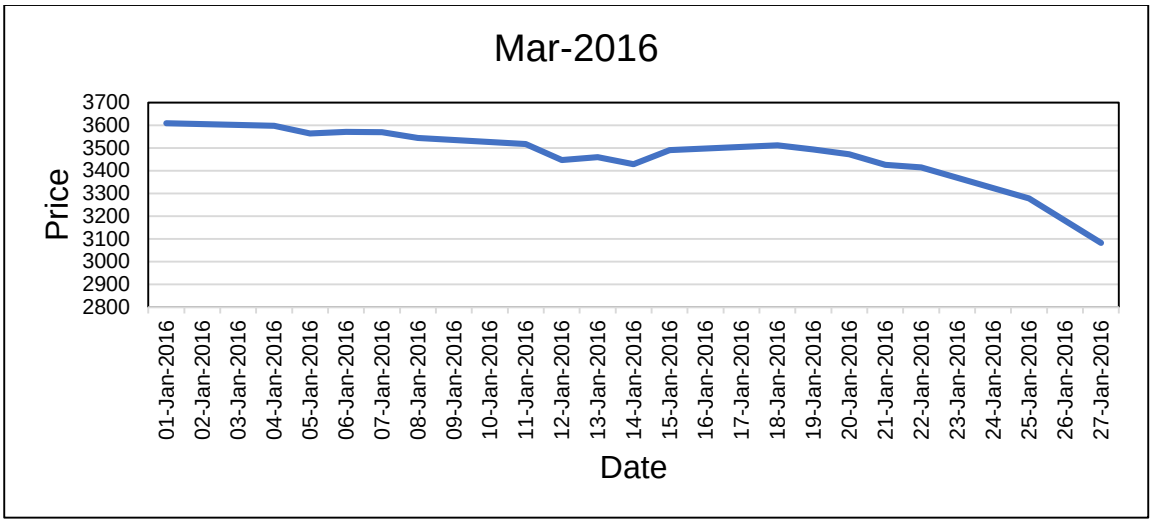
4. The facts of the case as mentioned in the SCN are as follows:

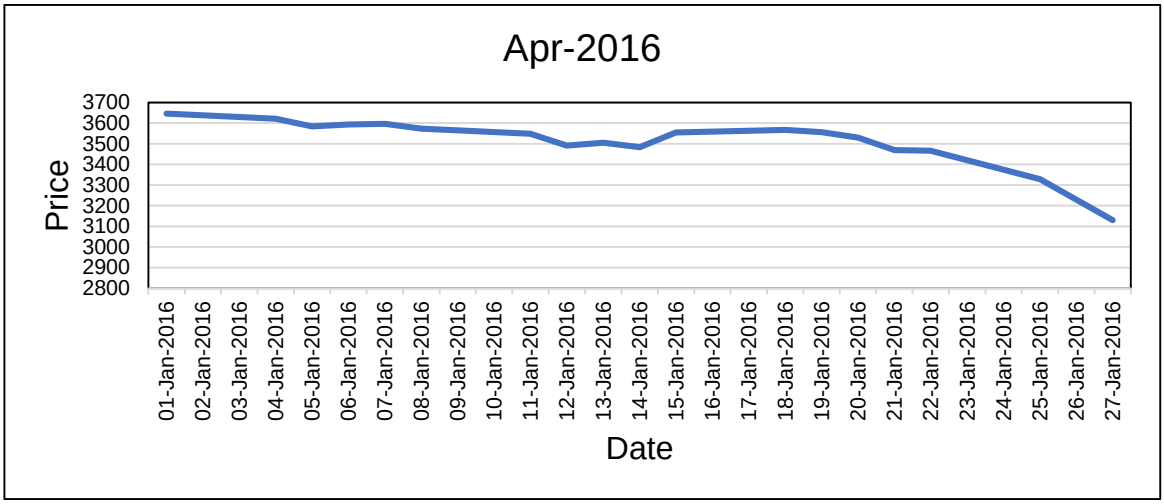
4.1. SEBI conducted a preliminary examination in the trading of Castor Seeds Contract at NCDEX and based on the findings, passed an ad-interim orders on March 2, 2016 and May 24, 2016 *inter alia*, restraining 18 entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner whatsoever, till further directions. These directions were confirmed by SEBI vide order dated March 8, 2017 for 17 entities. Thereafter, investigation in the trading in Castor Seeds Contract at NCDEX was conducted for the period January 1, 2016 to January 27, 2016 to ascertain the violations, if any, of the provisions of SEBI Act, 1992 , PFUTP Regulations and violations of the FMC Circulars pertaining to Client level open position limits. Pursuant to the investigation, interim directions as stated above were revoked vide order dated November 14, 2018 for all entities except for the Noticees in this SCN.

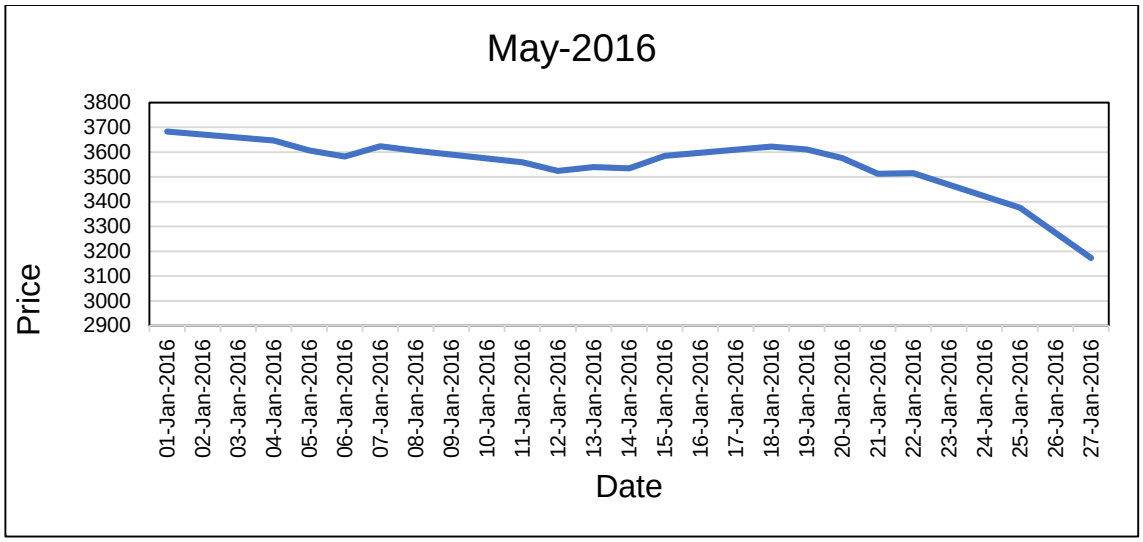
4.2. During the investigation period, the movement in the price (daily settlement price) of Castor Seeds Contract at NCDEX for different expiries, as reproduced in the SCN in forms of graphs is given as under:


January -2016
Price
3800
3700
3600
3500
3400
3300
3200
3100
01-Jan-2016
02-Jan-2016
03-Jan-2016
04-Jan-2016
05-Jan-2016
06-Jan-2016
07-Jan-2016
08-Jan-2016
09-Jan-2016
10-Jan-2016
11-Jan-2016
12-Jan-2016
13-Jan-2016
14-Jan-2016
15-Jan-2016
16-Jan-2016
17-Jan-2016
18-Jan-2016
19-Jan-2016
20-Jan-2016
Date


Feb-2016
Price
3900
3700
3500
3300
3100
2900
2700
2500
01-Jan-2016
02-Jan-2016
03-Jan-2016
04-Jan-2016
05-Jan-2016
06-Jan-2016
07-Jan-2016
08-Jan-2016
09-Jan-2016
10-Jan-2016
11-Jan-2016
12-Jan-2016
13-Jan-2016
14-Jan-2016
15-Jan-2016
16-Jan-2016
17-Jan-2016
18-Jan-2016
19-Jan-2016
20-Jan-2016
21-Jan-2016
22-Jan-2016
23-Jan-2016
24-Jan-2016
25-Jan-2016
26-Jan-2016
27-Jan-2016
Date


Mar-2016
Price
3700
3600
3500
3400
3300
3200
3100
3000
2900
2800
01-Jan-2016
02-Jan-2016
03-Jan-2016
04-Jan-2016
05-Jan-2016
06-Jan-2016
07-Jan-2016
08-Jan-2016
09-Jan-2016
10-Jan-2016
11-Jan-2016
12-Jan-2016
13-Jan-2016
14-Jan-2016
15-Jan-2016
16-Jan-2016
17-Jan-2016
18-Jan-2016
19-Jan-2016
20-Jan-2016
21-Jan-2016
22-Jan-2016
23-Jan-2016
24-Jan-2016
25-Jan-2016
26-Jan-2016
27-Jan-2016
Date


Apr-2016
Price
3700
3600
3500
3400
3300
3200
3100
3000
2900
2800
01-Jan-2016
02-Jan-2016
03-Jan-2016
04-Jan-2016
05-Jan-2016
06-Jan-2016
07-Jan-2016
08-Jan-2016
09-Jan-2016
10-Jan-2016
11-Jan-2016
12-Jan-2016
13-Jan-2016
14-Jan-2016
15-Jan-2016
16-Jan-2016
17-Jan-2016
18-Jan-2016
19-Jan-2016
20-Jan-2016
21-Jan-2016
22-Jan-2016
23-Jan-2016
24-Jan-2016
25-Jan-2016
26-Jan-2016
27-Jan-2016
Date



4.3. As per the erstwhile Forward Markets commission (FMC) circular dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits, the client level position for Castor Seed Contracts was 12,000 MT or 5% of market wide OI, whichever is higher.

4.4. FMC, vide letter dated January 10, 2012 directed the national commodity exchanges including NCDEX to take suitable measures for clubbing of open interest and also include such other criteria as PAN numbers, patterns such as 'acting in concert' through common ownership and control structures and any other relevant criteria. NCDEX issued circular dated January 10, 2012 pertaining to Guidelines for calculation of net open position.

4.5. As per the information available on NCDEX website, the total market wide OI as on January 27, 2016 in Castor Seeds Contract was 4,34,600 MT.

4.6. Based on the KYC details, MCA database and fund transfers, connections were established for 11 entities. The details of these entities is given below:

Table I

S No.	Group	Entity name	Connection
1.	Group 1	Sisne Polymers Pvt. Ltd.	• Entities at sr no 1 to 5 had received funds from entity at sr no 6 • Entity at sr no 9 had received funds from entity at sr no 8 • Entity at sr no 6, 7 and 8 have common director. Entities at sr no 7 and 8 are promoters in Company at sr no 6
2.		Anuj Jain	
3.		Bharat Foods Co-operative	
4.		Stride Multitrade Pvt. Ltd.	
5.		National Steel and Agro Ltd. **(Noticee no.1)**	
6.		Ruchi Soya Industries Ltd. **(Noticee no.2)**	
7.		Ruchi Global Ltd. **(Noticee no.3)**	
8.		Ruchi Acroni Industries Ltd	
9.		Piyali Trading Pvt. Ltd.	
10.	Group 2	Secunderabad Oils Ltd. **(Noticee no.4)**	Entity at sr no 10 is a shareholder in entity at sr no 11.
11.		UKS Oils Pvt. Ltd. **(Noticee no.5)**	

4.7. Out of 9 entities belonging to Group 1, 8 entities had traded in Castor Seeds Contract during the investigation period. It was observed from the shareholding pattern available on BSE website, that Ruchi Acroni, Ruchi Global Ltd (Noticee no.3) and National Steel and Agro Ltd (Noticee no.1) are promoters in Ruchi Soya Industries Ltd (Noticee no.2). Further, as per the submissions made by Noticee no.2, it stated that it is one of the shareholders in Ruchi Acroni Industries Ltd (holding 12.35% of the total paid up equity capital) and it forms a part of the promoter group of National Steel and Agro Ltd (Noticee no.1), holding 1.99% of the total paid up equity capital. It was further observed that Ruchi Global Ltd (Noticee no.3) is one of the promoter group companies of Ruchi Soya Industries Ltd (Noticee no.2), holding 0.22% of the total paid up equity capital and National Steel and Agro Ltd (Noticee no.1) also forms a part of its promoter groups (holding 0.06% of the total paid up equity capital).

4.8. It was observed from shareholding pattern available on BSE website, that Ruchi Acroni and Ruchi Soya Industries Ltd (Noticee no.2) are promoters in National Steel and Agro Ltd (Noticee no.1). Further, as per the submissions made by National Steel and Agro Ltd (Noticee

no.1), it stated that it forms a part of the promoter group of Ruchi Soya Industries Ltd. (holding 0.06% of the total paid up equity capital). It was observed from the submissions that Mr. Umesh Shahra, Director in Ruchi Global Limited holds 0.04% of its paid up equity share capital. It was also observed that Ruchi Soya Industries Ltd. formed a part of its promoter group (holding 1.99% of its total paid up equity capital). Hence, on the basis of common ownership and control structures, it was observed that Ruchi Soya Industries Ltd, Ruchi Global Ltd, Ruchi Acroni Industries Ltd and National Steel and Agro Ltd were connected to each other.

4.9. On the basis of common ownership and control structures, it was observed that Noticees no.1 to 3 are connected to each other but the open positions of Noticees no. 1 to 3 were not clubbed. It was observed from the open positions that, Noticee no.1 to 3 violated open position limits laid down vide FMC circulars dated October 22, 2014 and December 11, 2014 read with FMC letter dated January 10, 2012 on all the 18 trading days as given in Table 2 below:

Table 2

Date	Ruchi Soya (Net OI)	Ruchi Global (Net OI)	National Steel (Net OI)	Total net OI	Commodity Level OI	% of net OI to commodity level OI	Whether in violation of FMC circular
01-Jan-2016	19370	16070	16500	51940	502220	10.34	Yes
04-Jan-2016	19370	16070	17500	52940	499010	10.61	Yes
05-Jan-2016	19700	16070	16900	52670	505910	10.41	Yes
06-Jan-2016	20330	16070	16900	53300	487310	10.94	Yes
07-Jan-2016	21350	15770	17010	54130	478200	11.32	Yes
08-Jan-2016	21770	15770	17010	54550	473610	11.52	Yes
11-Jan-2016	21570	18120	18410	58100	475410	12.22	Yes
12-Jan-2016	21470	18120	17310	56900	470130	12.10	Yes
13-Jan-2016	20390	18120	17810	56320	465980	12.09	Yes
14-Jan-2016	20410	17920	17810	56140	470980	11.92	Yes
15-Jan-2016	20390	17720	17810	55920	475840	11.75	Yes
18-Jan-2016	20260	17220	17810	55290	460890	12.00	Yes

19-Jan-2016	20370	17220	17810	55400	465850	11.89	Yes
20-Jan-2016	20450	16720	17310	54480	450390	12.10	Yes
21-Jan-2016	19950	16720	17310	53980	447890	12.05	Yes
22-Jan-2016	19660	16720	17310	53690	450060	11.93	Yes
25-Jan-2016	19210	16720	17310	53240	444040	11.99	Yes
27-Jan-2016	11400	16520	15310	43230	434600	9.95	Yes

4.10. It was observed from the KYC documents of UKS Oils Pvt. Ltd (Noticee no.5) that Secunderabad Oils Ltd. (Noticee no.4) was holding 18.33% of the shares of Noticee no.5. Further, it was also observed from MCA database that these Noticee no. 4 and 5 have common email and common address and there are two common shareholders viz Jaidev and Sons (HUF) and Sudha Satish between these Noticees. Based on this, it was observed that Noticee no.4 and Noticee no. 5 are connected to each other.

4.11. On the basis of common ownership and control structures, it is observed that Noticee no.4 and 5 are connected to each other but their OI positions were not clubbed. It was observed from the OI positions that Noticee no.4 and 5 violated open position limits laid down in FMC circulars dated October 22, 2014 and December 11, 2014 on 13 out of 18 trading days as given in Table 3 below:

Table 3

Date	Secunderabad Oils (Net OI)	UKS Oils (Net OI)	Total net OI	Commodity Level OI	% of net OI to commodity level OI	Whether in violation of FMC circular
01-Jan-2016	12920	12480	25400	502220	5.06	Yes
04-Jan-2016	12920	12480	25400	499010	5.09	Yes
05-Jan-2016	12920	12480	25400	505910	5.02	Yes
06-Jan-2016	12920	12480	25400	487310	5.21	Yes
07-Jan-2016	11720	12480	24200	478200	5.06	Yes
08-Jan-2016	11720	11480	23200	473610	4.90	No
11-Jan-2016	11720	11480	23200	475410	4.88	No
12-Jan-2016	11720	11480	23200	470130	4.93	No

13-Jan-2016	11720	11480	23200	465980	4.98	No
14-Jan-2016	11720	11480	23200	470980	4.93	No
15-Jan-2016	11890	11980	23870	475840	5.02	Yes
18-Jan-2016	12980	12800	25780	460890	5.59	Yes
19-Jan-2016	14980	14970	29950	465850	6.43	Yes
20-Jan-2016	14980	14970	29950	450390	6.65	Yes
21-Jan-2016	14980	14970	29950	447890	6.69	Yes
22-Jan-2016	17740	17680	35420	450060	7.87	Yes
25-Jan-2016	17740	17680	35420	444040	7.98	Yes
27-Jan-2016	17240	16190	33430	434600	7.69	Yes

4.12. It was observed that Noticee no.1 to 5 form part of two distinct groups through common ownership and control structure. It was observed that by taking OI in excess of the prescribed limits, Noticees were able to corner the market at the expense of other clients. Therefore, it is alleged that the Noticees traded in a fraudulent and deceitful manner and their excess OI positions created a false or misleading appearance in the market.

5. The following Annexures were provided with the SCN:

Annexure	Particulars
Annexure 1	Daily settlement prices of Castor Seeds Contracts at NCDEX
Annexure 2	FMC circular dated October 22, 2014 and December 11, 2014
Annexure 3	FMC letter dated January 10, 2012 and NCDEX circular dated January 10, 2012
Annexure 4	Market wide OI as on January 27, 2016 in Castor Seeds Contract
Annexure 5	Open positions of entities trading during the investigation period
Annexure 6	Documents relating to connection between Noticee no.1 to 3
Annexure 7	Documents relating to connection between Noticee no.4 and 5

6. Subsequent to the issuance of SCN, inspection of documents was sought by Noticee nos. 2, 3, 4 and 5 vide their letters dated February 28, 2019 (from

Noticee no. 2), April 06, 2019 (from Noticee no. 3) and March 04, 2019 (from Noticee nos. 4 and 5). On March 29, 2019, the Authorised Representative (hereinafter referred to as "**AR**") of Noticee nos. 4 and 5 carried out inspection of the following documents:

1.	Daily settlement prices of Castor Seeds at NCDEX
2.	Copy of FMC circular dated October 22m, 2014 and December 11, 2014
3.	Copy of FMC letter dated January 10, 2012 and NCDEX circular dated Jnuary 10, 2012
4.	Market wide OI as on January 27, 2016 in Castor Seeds Contract
5.	Open positions of entities trading during the investigation period
6.	Copies of documents relating to connection between Noticee no. 1 to 3
7.	Copies of documents relating to connection between Noticee no. 4 and 5

7. The AR of Noticee no. 2 also took inspection of documents on the same day and inspected the same documents stated in para 5 above, and sought other additional documents viz: complete investigation report, statements of entities recorded by SEBI, all the documents, statements, data, etc. in relation to the proceedings initiated / conducted by SEBI in the present matter. Vide letter dated April 08, 2019, the Noticee no. 2 was informed that all the documents relied upon in the proceedings have been provided to it while issuing the SCN as Annexures. SEBI has not relied upon the statement of any person while issuing the said SCN. Further, that the SCN contained the relevant extract of the findings of investigation report with regard to the charges levied against Noticee no.2. Noticee no. 3 was provided an opportunity for inspection of documents on April 26, 2019 which was carried out by the AR of the Noticee no. 3 and sought copy of the whole investigation report. Vide letter dated April 26,2019, the Noticee no. 3 was informed that the SCN contained the relevant extract of the findings of investigation report with regard to the charges levied against Noticee no.3. Further, it was also informed that all the documents relied upon in the proceedings have been provided to it while issuing the SCN as Annexures and that SEBI has not relied upon the statement of any person while issuing the said SCN.

8. Meanwhile, it was informed to SEBI vide letter dated May 17, 2019 from the Resolution Professional of Noticee no. 2 that Company Petition No. 1371-1372 of 2017 had been filed before Hon'ble National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "**NCLT**"), against Noticee no. 2 and the same had been admitted and that in terms of Section 17 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**"), the Resolution Professional had taken over the affairs of Noticee no.2 and the erstwhile management and board was replaced by the said Resolution Professional.

9. A hearing was granted to all the Noticees on July 4, 2019. Noticee nos. 1 and 3 attended the hearing on the said date and made submissions. Noticee no. 4 and 5 sought adjournment of the hearing and were granted another opportunity of hearing on July 29, 2019 which they attended. The Resolution Professional ("**RP**") of Noticee no. 2, vide letter dated June 14, 2019 again informed about the insolvency proceedings of Noticee no. 2 and referred to an order dated December 15, 2017 passed by NCLT, in the Company Petition No. 1371& 1372/I&BP/MAH/2017 and stated that the "moratorium" had commenced under Section 14 of the IBC and SEBI may kindly consider keeping its proceedings in abeyance. Thereafter, the RP of Noticee no. 2 filed a Miscellaneous Application No. 2395 of 2019 before NCLT on July 03, 2019 praying, *inter alia*, for an order directing SEBI to not proceed against Noticee no. 2. However, the outcome of said MA has not been informed to SEBI by the RP.

10. The RP of Noticee no. 2, vide email dated September 20, 2019 intimated SEBI about the end of Corporate Insolvency Resolution Process ("**CIRP**") of Noticee no. 2 on September 06, 2019. The Noticee no. 2, afterwards, wrote a letter dated December 24, 2019 informing about the approval of the Resolution Plan and change in control and ownership of Noticee no. 2. It was

informed that in the insolvency resolution process, consortium of Patanjali Ayurved Limited, Divya Yog Mandir Trust (through its business undertaking, Divya Pharmacy), Patanjali Parivahan Pvt. Ltd. and Patanjali Gramudhyog Nyas (hereinafter referred to as "**Successful Resolution Applicant**"), submitted a Resolution Plan in terms of the provisions of the IBC. It was informed that the Resolution Plan submitted by the Successful Resolution Applicant was approved by the Committee of Creditors of Noticee no. 2 on April 30, 2019 under Section 30 (4) of the IBC and subsequently, by the NCLT under Section 31 of the IBC vide orders dated July 24, 2019 read with September 04, 2019. It was also informed that the Resolution Plan has been implemented on December 18, 2019. As a consequence, there was a change in control and ownership of Noticee no. 2, change of directors on the board of Noticee no. 2 and that there is no involvement of any erstwhile promoters or directors in the new management or board of Noticee no. 2. Noticee no. 2, vide the said letter, sought permission from SEBI to hedge commodities on the commodity exchange. It also made the same request vide letter dated January 08, 2020. It was also informed by the lawyer of SEBI that vide order dated September 04, 2019, the main petition pertaining to insolvency of Noticee no. 2 had been disposed of approving the resolution plan by the NCLT and accordingly, the moratorium has come to an end.

11. Thereafter, a hearing was granted to Noticee no. 2 on April 01, 2020 but Noticee no. 2 vide letter dated February 25, 2020 requested pre-ponding of hearing and therefore, a new hearing date was granted on March 23, 2020. However, in view of lockdown imposed in the country due to COVID -19 pandemic, the hearing for Noticee no. 2 was rescheduled to June 24, 2020 which was attended by Noticee no. 2 through video conference facility.

12. Noticee no. 1 submitted reply to the SCN vide letter dated April 22, 2019 and also filed written submissions dated September 06, 2019. Noticee no. 2 submitted reply to SCN vide letter dated February 25, 2019. Noticee no. 3 has filed written submissions in response to the SCN on July 05, 2019. Noticee nos. 4 and 5 have filed common written submissions dated August 05, 2019. Noticee no.2 has filed written submissions in response to the SCN on June 23, 2020.

13. Brief of submissions made by Noticee no. 1 is as follows:

13.1. As far as charge against the Noticee No. 1 that it has received money from Noticee no. 2 is concerned, it has been submitted that there was underlying contract of the Noticee No. 1 with Noticee No. 2 in respect to sale of 6000MT (+/- 10%) of Yellow Peas at Rs. 27750/- per MT to Noticee No.2 vide its Agreement bearing No. NSAILIYP/001 dated November 25, 2015 and against which an advance of Rs. 17.90 Crores from Noticee No.2 in the months of December 2015 and January, 2016 as per the said Agreement dated November 25, 2015 and Addendum dated December 7, 2015. As per the terms of the said Agreement, the Noticee had delivered 5581.8MT Yellow Peas of the value of Rs. 15.49 Crore to Noticee No.2 in March 2016 against the following Invoices:

S.No.	Invoice Date	Invoice No.	Quantity (MT)	Invoice Amount (Rs.)
1	14th March, 2016	KON1905	1345.75	3,73,44,562
2	15th March, 2016	KON1907	1505 78	4,17,85,395
3	16th March, 2016	KON1911	1530.33	4,24,66,658
4	17th March, 2016	KOA/1918	1199.94	3,32,98,335
	Total		5581.80	15,48,94,950

Accordingly, the details of the Delivery Orders (DO) are as under:

S. No.	DO Date	DO No.	Quantity (MT)
1	14th March, 2016	475009074/1.1	1345.75
2	14th March, 2016	475009074/1.2	1505.78
3	14th March, 2016	475009074/1.3	1530.33
4	14th March, 2016	475009074/1.4	1199.94
	Total		5581.80

13.2. It is submitted that the Noticee had issued debit note for storage and warehousing charges of Rs. 14,62,000/- in respect of sold Yellow Peas.

13.3. During the financial year 2015-16, the Noticee sold 5,65,459.88 MT Yellow Peas to various parties for the value of Rs. 1505.82 Crore from sale of Yellow Peas. The sold quantity of 5582 MT of Yellow Peas to Ruchi Soya is only 0.99% of the total quantity of Yellow Peas sold by the Noticee during the financial year 2015-16. The entire transaction of sale of Yellow Peas to Noticee No. 2 was at Arm's Length basis. Further the amount received from Noticee No. 2 by way of sale of Yellow Peas is Rs. 15.49 Crore which is only 1.03% of the total sales realisation of Yellow Peas during financial year 2015-16. The Noticee sold Yellow Peas excluding Noticee No. 2 during the month of November, 2015 at the rates between Rs. 23,500/- per MT to Rs. 27260/- per MT which confirms that the payments received from Noticee No. 2 were strictly towards sale proceeds of Yellow Peas as per the regular course of business. It is submitted that during the financial year 2013-14, the Noticee had also business transaction of sale of Soya Seeds and Steel Products amounting to Rs. 16.09 Crore to Noticee No. 2. The Noticee Nos. 1 and 2 have been maintaining arm’s length relations and has also complied with the provisions of applicable Acts, Rules and Regulations for the Sale of Yellow Peas to Noticee No. 2. Both the Companies are listed entities and have professional management and both the entities have presence

in agro commodities and therefore both are generally involved in buy and sell of commodities but all the transactions between them are executed at arms' length basis.

13.4. The Noticee No. 1 had paid for the Mark to Margin (MTM) on timely basis to Angel Commodities and never defaulted in MTM payment like other entities. Further, neither the Noticee no.1 or its broker Angel Commodities have ever raised any voice on falling prices or expressed any difficulty in payment of MTM like other entities operational in the Caster Seed Contracts during that time.

13.5. The Noticee no.1 had earlier given physical delivery of castor seeds sold through NCDEX. The Noticee had taken long open position keeping in view likely price scenario in physical market as on/around expiry of the contract. Further, based on the price fluctuation of Castor Seeds, the Noticee had from time to time made short positions also to minimize procurement costs of Castor Seeds. In fact, when NCDEX suspended the trading in Castor Seeds on January 27,2016, the Noticee had long position of 26130 MT and short position of 8820 MT of Castor Seeds.

13.6. There were no common Directors on the Boards of the Noticee No. 1, Ruchi Global (Noticee No.3) and Ruchi Soya (Noticee No. 2), except Independent Director - Mr. Navin Khandelwal who was a common director on the Board of the Noticee No. 1 and Noticee No.2 during the alleged period. The Noticee No. 1 and Ruchi Soya (Noticee No.2) are independent legal entities and hence, transaction, if any, between them is entered into at an arm's length basis.

13.7. The Noticee No. 1 is regular in filing required Forms, Returns, Documents, etc. with Registrar of Companies, Stock Exchanges and

other Statutory Authorities. Till date, the Notice No. 1 and/ or its directors have not been prosecuted by statutory authorities and no enquiry of whatsoever nature is pending against the Noticee.

13.8. The Noticee No. 1 had independently traded in the Castor Seed contracts and was also ready to take delivery and has utilized its own funds for Castor Seeds Transactions and has not borrowed any amounts from Noticee No.2 for such purpose. The Noticee's turnover has been Rs. 3750.31 Crores and networth is Rs. 385.02 Crores and therefore the Noticee is commercially sound and not in requirement of any funds.

13.9. It is denied that Noticee no. 2 had received funds from the Noticee No.2 for creating open interest position in Castor seeds contracts. The sum of Rs. 12.90 Crores received by the Noticee from the Noticee No.2 was a part of the consideration amount payable by the Noticee No.2 to the Noticee towards sale of Yellow Peas by the Noticee to Noticee No.2 and it was not funding/ financing amount for enabling the Noticee to create any open interest position. The Noticee had enough funds of its own to create open interest position in castor seeds contracts for its business needs.

13.10. The Noticee has been trading in Caster Seeds since long and in the financial year 2014-15, the Noticee had purchased 8752.06 MT of Castor Seeds @ Rs. 40,4451- per MT and further sold 5797.70 MT of Castor Seed@ Rs. 44,7331- per MT out of which 1977.4MT was sold by the Noticee online through NCDEX and given delivery of physical stock of Caster Seed to various parties. The closing balance of Caster Seed as on March 31, 2015 was 2945.88 MT which was sold by the Noticee subsequently at Rs. 39,0191- per MT. The Noticee has made Rs.2.49 Crore profits from the trading of Caster Seeds during 2014-15

13.11. As per the suggestion of the marketing department of the Agri business of the Noticee and considering the past profitable experience, the procurement department of the Noticee had taken reasoned decision to procure 16000 MT to 18000 MT Caster Seed. The procurement department of the Noticee informed the marketing department about non-availability of physical stock of Caster Seed and availability of castor seed at lower rates in commodity futures on NCDEX as compared to physical spot prices. Considering the same, the marketing department and procurement department decided to create long positions in the caster seeds and the Noticee was ready to take delivery of the same. It is therefore respectfully submitted that taking long positions in castor seeds was the Noticee's decision and did not depend upon the advance payment received from Noticee No.2. The Noticee had from time to time made short position also to minimise procurement cost of Castor Seed.

13.12. SEBI has erroneously clubbed the open interest position of the Noticee with the position of Ruchi Soya (Noticee No.2), and Ruchi Global (Noticee No.3).

13.13. SEBI has wrongly concluded that the Noticee Nos. 1 to 3 and Ruchi Acroni Industries Limited were connected to each other and on the basis of common ownership and control structure the open positions of Noticee No. 1 to 3 deserves to be clubbed. The shareholding of the Noticee No. 1 to 3 is widely held and merely because they happen to be promoter group entities due to nominal cross shareholding their open interest positions cannot be clubbed. The Noticee No. 1 and Noticee No. 2 are listed Companies operating independently under different Boards

constituted with independent Directors as per SEBI Regulations. The Noticee is a company listed on NSE and BSE with 28000 shareholders and professionally managed by its highly skills managerial team. Save and except small percentage of common shareholders amongst Noticees Nos. 1 to 3, SEBI has not shown any evidence which may demonstrate that the Noticee Nos. 1 to 3 were acting in concert for the purpose of creating open interest positions. A grave charge of market manipulation cannot survive merely on sunnises or assumptions. The Hon'ble SAT has laid down such proposition of law in a number of cases which may be cited at the time of personal hearing.

13.14. It is clarified by the Noticee No.1 that it has neither any connections, collusion nor conjoint alibi of whatsoever nature with other entities. Therefore, the open interest positions of the Noticee cannot be arbitrarily clubbed with the open interest positions of above referred entities.

13.15. The Noticee's contention that it has not acted in concert with Noticee No. 2 and 3 can be amply demonstrated from the fact that the other entities had failed to pay MTM to the brokers and their brokers expressed their inability to pay MTM to NCDEX vide certain letters. These entities desperately wanted to square off the positions. Contrary to this, the Noticee had paid MTM in timely manner without any delay or demur and was ready to even take physical delivery.

13.16. It is denied that the Noticee traded in a fraudulent and deceitful manner and that the excess open interest positions taken by the Noticee Nos, 1 to 3 created a false or misleading appearance in the market. It is further denied that the Noticees have violated FMC Circulars dated October 22, 2014 and December 11, 2014 read with FMC Letter dated January 10, 2012 pertaining to position limits read with Regulations of SEBI (PFUTP)

Regulations as alleged. It is respectfully submitted that there has been no violation by the Noticee which may invite any directions under the SEBI Act as alleged.

13.17. Vide written submissions dated September 06, 2019 Noticee no. 1 has reiterated its above-mentioned submissions and added as follows:

"It was alleged on the basis of purported common ownership and control structures that Noticee No.2, Noticee No.3, Ruchi Acroni Industries Limited (Ruchi Soya Group Entities) and this Noticee were connected to each other and thereby violated FMC circulars dated October 2, 2014 and December 11, 2014 read with FMC letter dated January 10, 2012 since the open positions of the Noticee No. 1 to 3 after clubbing were in excess of the limits prescribed by FMC vide the aforesaid circulars and letters. However, the Noticee's independent open position was well below 5% and hence there is no violation of any rules and regulations.

….

Details of common shareholding of the Noticee with Ruchi Soya Group Entities were annexed with the said Show Cause Notice as Annexure 6 at Page 22. However, as per the details produced in Annexure 6 the aggregate percentage of common shareholding in the Noticee Company alleged to be 22.47% only. However, both entities are listed and independent entities with large public shareholding and common shareholding is a miniscule and cannot have control on the management and operations of the Noticee or the Noticee No.2.

The Noticee submits that as per the FMC letter dated January 10, 2012 for clubbing of open positions of the entities it is necessary that criteria of "acting in concert" through common ownership and control structure be satisfied. In the present case without prejudice, even if the common

shareholding is considered it only amounts to 22.47% which is in no manner adequate to control the Ruchi Soya Group Entities. Further, the actions of the Noticee were diagonally opposite to the actions of other entities in respect to payment to MTM etc. and hence the Noticee cannot be deemed as acting in concert."

14. Brief of the submissions made by Noticee no. 2 is as under:

14.1. The Resolution Plan submitted by the Successful Resolution Applicant was approved by the Committee of Creditors of Noticee no. 2 on 30.04.2019 under Section 30 (4) of the IBC and subsequently by the Hon'ble NCLT. The Resolution Plan has been implemented on 18.12.2019. As a consequence, there was a change in control and ownership of Noticee no. 2, change of Directors on the board of the said Noticee. There is no involvement of any erstwhile promoters or directors in the new management or board of Noticee no. 2. In this regard, it had submitted an application with the Hon'ble Board seeking change in Promoters.

14.2. Under the scheme of corporate insolvency resolution process, upon admission of an application to initiate the process, an Interim Resolution Professional is appointed. In terms of Section 17 of the IBC, from the date of appointment of the said Interim Resolution Professional, the management of the Corporate Debtor i.e. RSIL/Noticee no. 2 herein, starts to vest with in Interim Resolution Professional. The Interim Resolution Professional or Resolution Professional, as the case may be, continues to exercise the management of the affairs and powers of the board of directors, until a Resolution Plan is approved (and implemented) under Section 31 of the IBC, unless the insolvency process is

withdrawn under Section 12A of the IBC or an order under Section 33 of the IBC is passed initiating liquidation of the Corporate Debtor.

14.3. It is imperative to mention that by virtue of Section 29A of IBC, a Resolution Plan in relation to a particular Corporate Debtor, cannot be submitted by a person who has been a Promoter or in the management or control of the Corporate Debtor. The negative language couched under Section 29A stipulating ineligibility to submit a Resolution Plan is for the reason that the essence of IBC is to replace the erstwhile management and board which led the Corporate Debtor into insolvency. In the present facts and circumstances, upon approval of the Resolution Plan submitted by the Successful Resolution Applicant i.e. Patanjali Ayurved Limited and its consortium, the erstwhile management and board of Noticee no. 2 has been completely replaced.

14.4. The Show Cause Notice dated 06.02.2019, in relation to which the present proceedings have been initiated, makes a categorical mention of the involvement of erstwhile management of Noticee no. 2 and also that the restriction imposed by SEBI is in relation to structure of Noticee no. 2 and other entities it has been alleged to transpire with. The said common ownership and control structure, no longer exists. The other Noticees also, Ruchi Global Limited and National Steel and Agro Industries Limited, are no longer Promoters of Noticee no. 2. Upon successful implementation of the Resolution Plan submitted by Patanjali Ayurved Limited, the erstwhile management which purportedly coincided with other Noticees, has been completely replaced, changed and restructured.

14.5. While drafting the Resolution Plan, the present proceedings were in the knowledge of the Successful Resolution Applicant, which identified these

proceedings in its Schedule 10 to the Resolution Plan. In the said Resolution Plan at Clause 6.1.1.1 (h), the Successful Resolution Applicant categorically sought the following in relation to all pending inquiries, investigations, notices, causes of action, claims, disputes, etc:

> *"All inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future and the proceedings, including but not limited to the litigations mentioned in Schedule 10, in relation to any period on or before the Effective Date, shall be settled at NIL value as against any amount, determined to be paid by the Corporate Debtor and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the list of Creditors, shall be written off in full against a NIL value. By virtue of the order of NCLT approving this Plan, all new inquiries, investigations, notices, suits, disputes, litigation, arbitration or other judicial, regulatory, or administrative proceedings in relation to any period on or before the Effective Date shall be settled at NIL value as against any amount, determined to be paid by the Corporate Debtor."*

14.6. The present proceedings have specifically been identified in Schedule 10 of the Resolution Plan. The Effective Date mentioned in the Resolution Plan herein means:

> ***"Effective Date"*** *means the date on which this Resolution Plan is approved by the NCLT in accordance with section 31 of the Code.*

14.7. In the order dated 24.07.2019 approving the Resolution Plan, the following paragraphs clarifies that the above relief sought in relation to pending inquiries, investigations, etc., has been allowed:

> "*40. (..) In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan."*

14.8. In the order dated 04.09.2019, finally approving the Resolution Plan, the following paragraph is relevant to be noted:

> *"However, it is to be made clear that while approving the resolution plan, we have dealt with every aspect of the resolution plan in details and all the claims which have been admitted during CIRP are being dealt with by us in terms of the resolution plan. Anyone who has not filed its claim then he will not have any right to agitate the same after the approval of the resolution plan."*

14.9. The present proceedings, having been identified under the Resolution Plan and in relation to Noticee no.2, by virtue of approval of the order dated 24.07.2019, ought to be settled.

14.10. It is trite law that a Resolution Plan approved under Section 31 of the IBC is binding on corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. To address the issues of liability of Corporate Debtor after approval of a Resolution Plan, the Parliament by Insolvency and Bankruptcy (Amendment) Act, 2020 introduced Section

32A. In the present facts and circumstances, upon approval of Resolution Plan by the Adjudicating Authority (NCLT, Mumbai) vide orders dated 24.07.2019 read with 04.09.2019 and that the Resolution Plan changes the management and control of the Corporate Debtor, the provisions of Section 32A become squarely applicable. Since present proceeding which relate to an offence purportedly committed before commencement of the corporate insolvency resolution process (i.e. 08.12.2017 r/w 15.12.2017), the liability of the Corporate Debtor i.e. Noticee no. 2 herein shall cease and the Noticee no. 2 shall not be prosecuted for any offence arising out of the present proceedings.

14.11. The interim order dated 05.05.2016 passed by SEBI, which has imposed restrictions on Noticee no.2, is causing severe hardships for the Noticee as well the Successful Resolution Applicant, since it has the task of reviving the earlier debt Corporate Debtor/Noticee into a successful profit making company. Due to the restrictions, the revival of the Corporate Debtor has become a matter of immediate concern.

14.12. Noticee no. 2 is engaged in the manufacture of edible oils, soya foods value added products, palm plantations, wind energy and other agriculture businesses. It is one of India's largest players in the edible oil sector with refining capacity of 3.3 million MTPA and oilseed extractions capacity of 3.7 million MTPA. It also has 22 manufacturing plants spread at various locations India.

14.13. It is responsible for around 15% of the Indian edible oils &crushing industry in terms of procurement, crushing and exports in the oilseeds, edible oils, soya food and soya meal industry. With this market size, it handles around 1.0 million tons of soya bean &mustard seeds,

around 1.2 million tons of edible oils and 0.50 million tons of oil meal. The imports account for nearly 65-70% of the total edible oil consumption in India.

14.14. It has 7 port based edible oil refineries and is required to keep a pipeline inventory of almost 50,000 mts at any given point of time at its various manufacturing plants which exposes it to both inventory price risk as well as foreign exchange currency fluctuation risk. Keeping in mind the low margins in the edible oil industry (PAT margin of less than 1 %) even a 50 BPS fluctuations in the inventory prices or currency fluctuations can impact the profitability of Noticee no.2.

14.15. Noticee no. 2 also has oilseed crushing capacity of 3.7 million TPA. The soya and mustard crop are seasonal, which requires large inventory of 350,000 MTS to 450,000 MTS to be maintained to ensure optimal capacity utilization. This again exposes it to price risk on account of fluctuations in inventory prices. Keeping in mind low crushing margins of around Rs 750 Per MT, even 1% fluctuations can erode the margins of the Noticee significantly.

14.16. Due to import of Crude Edible Oil for refining in its refineries in India it is also exposed to the fluctuations in the US Dollar and Indian Rupee . The imports of the Crude Edible Oil are made in US Dollar and despite exports of Soya Products in US Dollar , due to the large quantum of crude edible oil imports , Noticee no. 2 is exposed to fluctuations in the US Dollar and Indian Rupee , even 1% fluctuations can erode the margins of the Noticee significantly.

14.17. Noticee no.2 has a branded edible oil and soya food sales of Rs 9537.48 crores as at 31.03.2019 and its portfolio of brands of various edible oils

and soya foods are consumed at large by consumers. To meet the growing consumer demand, the Company has set up over 80 depots, more than 4000 distributors and presence in over 1 million retail outlets in the country. Its portfolio of brands comprises of – Ruchi Gold, Nutrela, Mahakosh, Sunrich, Ruchi Star, Ruchi No. 1 across the products segments of edible oils, soya foods, Vanaspati & Bakery fats

14.18. Noticee no. 2 is also one of the largest exporters of Soya products from India. It has over 50,000 Ha of palm plantation at various locations in India which supports over 10,000 palm farmers. It also has 85 MW wind power business vertical. Noticee no. 2 through its various businesses impacts the lives of more than 1 million palm, soya and mustard farmers across the country.

14.19. In addition to the above facts, it may be noted that the profit margins reported by the edible oil industry were the weakest in the Financial Year 2015-16 as compared to past 4 years 2011-15. The Industry's Operating Margin stood at 2.05% while it has remained in the range of 3.1 % to 3. 6% in each of the past 4 years. Similarly, the industry made losses at net level in 2015-16 compared to net profit made in each of the year during 2011-15.

14.20. In view of the above, SEBI may allow Noticee no.2 to trade in commodity derivative markets for the limited purpose of hedging their physical market positions under the supervision of the Exchanges, subject to necessary approvals.

15. Brief of the submissions made by Noticee no. 3 is as under:

15.1. By its letter dated April 06, 2019, Noticee no. 3 had made request to grant it an opportunity of inspection of documents and copies thereof. But it was provided only with inspections of the Annexures which are enclosed to the SCN. Indicative list of documents which the Noticee had sought but not provided to it are as under:

i) Investigation Report of the investigation conducted by SEBI.
ii) Copy of documents collected and information gathered during the course of investigation conducted by ·SEBI.
iii) Copy of statement recorded of persons during the course of investigation conducted by SEBI.
iv) Copy of all communication exchanged between SEBI and other co-noticees as may be relevant to us.
v) Copy of all communication exchanged between SEBI and other relevant Authorities during the course of investigation conducted by SEBI as may be relevant to us.

15.2. All the information pertaining to the shareholding of Noticee no.3 and directorships of company along with changes if any have always been communicated to its broker in timely manner, which is required to be uploaded on the exchange data base. Clubbing of any open position of an entity is online monitored by the Exchange (NCDEX) surveillance system and whenever necessitated the broker is advised to club position of various persons/entities. In this Noticee's case, at the relevant time, exchange data base, though uploaded with all the information related to directorship and shareholding, never considered the factors as mentioned in SCN and pointed out for clubbing of the open positions. Therefore it is not appropriate for SEBI to belatedly take a different view on the same subject matter.

15.3. Though some of the promoters are common between Noticee nos. 1, 2 and 3, their business model and operations are independent and day to day business activities are carried out without any reference or recourse to activities carried out by any other entity including c-Noticees no. 1 and 2.

15.4. The alleged common directorship is with respect to independent director Ms. Ishita Khandelwal, who is not involved in the day to day affairs of the company. Therefore, no adverse inference can be drawn against it in this regard. Further, it is submitted that Section 149 of the Companies Act, 2013 provides for stringent criteria and guidelines for appointing independent director. The procedure of selection of independent director is prescribed by the Central Government. At least one director who meets the said criteria norms is required to be woman. Given a small pool of available woman directors, company has been able to identify Ishita Khandelwal as the eminently suitable woman who could be appointed as independent director. In view of the aforesaid, clubbing our open· interest with other entities with whom Ishita Khandelwal is independent director would certainly be inconsistent with the letter and spirit of Para b) of the FMC's letter no. 6/1/2007-MKT-11 (VOL-II) dated July 26, 2007 which states as under:

> *"b) As a practice of Good Corporate Governance, the Companies now have independent Director on their Board with no financial interest in the Company. Similarly, Companies also have Govt./ Financial Institution nominated Directors without any financial interest in the company. In such cases, when the Directors don't have any financial interest in the company, the Commission has taken a view that the position of such Companies/ Corporate may not be clubbed just because they have common Directors."*

15.5. Further, with regard to the allegation that Noticee no.3 is promoter of Ruchi Soya (Noticee no. 2) since it is holding 0.22% of the total paid up equity capital, it is submitted that Noticee no. 3 is disclosed as promoters by Ruchi Soya in the disclosures filed by them. However, under SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 (ICDR Regulation), the promoter is defined as a person who is in control of the Company. In fact, Noticee no. 3 as a so called promoter entity is not in control of Noticee no. 2 in any manner therefore cannot be made basis of clubbing the open position in castor seeds contract.

15.6. In Para 8 of SCN, there is reference that one of the directors viz. Mr. Umesh Shahra holds 0.04% of paid up capital of National Steel and Agro Industries Limited (Noticee no. 1). The aforesaid shareholding and classification of person/ entity as promoter does not lead to prove and establish in any manner the allegation of common ownership and common control under any parameters of law.

15.7. With regard to allegation of trading in commodity market at the expense of other clients of commodity market, the open position of Noticee no.3 of 16 to 18 thousand MT against the market open interest (OI) position of around 5 lakh MT does not support the said allegations since its meagre OI cannot have impact on market. Importantly under Para 5 of the SCN, it is mentioned that wide OI as on January 27, 2016 in Castor Seed contract was 4,34,600 MT.

15.8. It is pertinent to mention that, as on January 27, 2016 Noticee no. 3's OI position was only 16,520 MT i.e. 3.8% of total OI. Further, the commodity market of castor seeds is always driven by physical market since the overall limit prescribed for market open position is not

significant portion of physical market of castor seed. In this regard, Noticee no. 3 relied on Order dated March 12, 2019 passed by the Hon'ble Tribunal in North End Foods Marketing Pvt. Ltd. & Anr. Vs SEBI [Appeal bearing no. 80 Of 2019] along with other appeals in the matter of trading in Mentha Oil Contracts at MCX.

15.9. As per the ex-parte ad interim Order, the allegation was that, Noticee no. 3 had adopted manipulative and fraudulent design to maintain the price and/ or to benefit the position that it was having in physical market. The said finding does not hold good in this Noticee's case since it was holding a paltry quantity of only around 50 MT in the physical market hence the question of benefitting from any such position does not seem logical or credible.

15.10. *Further, there is a categorical finding that "Prima Facie no apparent pattern of receiving funds from entities and thereafter immediately transferring to the member could be observed"* Therefore, it is admitted position and undisputed fact that Noticee no. 3 had not been acting in concert with any other persons/ entities.

15.11. Noticee no. 3 had taken long position in Castor Seed Contract in normal and ordinary course of its business activity. At relevant time, it had a net-worth of about Rs.42.89 crores and working capital of Rs. 324 crores was sanctioned by the banks. Therefore, its position in Castor Seed Contract was very well within its financial and risk bearing capacity. At the relevant time, it was net-buyer in Castor Seed Contracts and thus it could not have contributed to fall in price of Castor Seed Contracts. It was trapped in said transactions due to seller driven precipitous fall in price of Castor Seed Contracts for which it suffered heavy losses due to lack of liquidity created by counterparties i.e. by

sellers who preferred to keep away from squaring up their positions. Noticee no. 3 duly paid its margins.

15.12. Noticee no. 3 started making persistent, honest and genuine attempts to close its open position. In fact, it reduced its position from 18,120 MT as on January 11, 2016 to 16,520 MT as on January 25, 2016. It placed order to square off our position in Castor Seed Contract at the beginning hours on January 27, 2016. However, the same could not be executed due to illiquidity in market. Hence, as measure of last resort, it took a decision to inform the broker to cut off and settle all outstanding open position so as to safeguard itself, broker, exchange and market from any contingency. Noticee no. 3's communication to broker on January 27, 2016 was much later than other entities mentioned in the ex parte order and same was after due and reasonable efforts to close its position in Castor Seed Contract. Its action was in good faith, intention and to safeguard the integrity of market. In fact, in Castor Seed Contract it had to incur heavy losses and also pay huge sums in order to fulfil its obligation.

15.13. Its long position always remained within 5% of total market wide position and thus there was no violation of open interest position on its part. The aforesaid long position was well within the prescribed limit set by the Exchange and therefore there was no violation of any nature in this regard.

15.14. There is a proper Chinese wall in respect of internal functioning of Noticee no. 3 and other Noticee Companies in Group 1. Moreover, there is categorical finding that "*Prima Facie no apparent pattern of receiving funds from entities and thereafter immediately transferring to the member could be observed".*

15.15. Noticee no. 3 has also submitted case law in support of its contention that a charge of fraud must be proved based on cogent materials and beyond reasonable doubt.

16. Brief of the submissions made by Noticee no. 4 and 5 is as under:

16.1. SEBI's allegation is that the circulars of the FMC dated October 22, 2014 and December 11, 2014 clearly indicate the client level position for trading in Castor Seeds contacts at the relevant time was 5% of the market wide OI. Neither has the SCN alleged nor is it factually correct that that Noticeeno.4 and 5 have individually breached the prescribed OI limits on any days during the Investigation Period.

16.2. Even assuming whist denying that the trades Noticee no. 4 and 5 could be clubbed the extent of the excess over the 5% limit is minuscule and insignificant and does not warrant any penalty or a charge a fraud.

16.3. It is evident that even after clubbing for the 13 trading days during the Investigation Period, when it is alleged that the OI positions where in excess the extent of the excess was minimal:

- On seven days the excess OI position was less than 1% and on five days out of the seven days the excess OI positions was less than even 0.1%
- On three days the excess OI positions was between 1% and 2%
- On three days the excess OI positions was between 2% and 3%

16.4. The FMC letter dated January 10, 2012 lays down certain criteria that the national commodity exchanges may rely on for clubbing of OI however it also clarifies that the responsibility of monitoring the OI positions and

trading activity of clients on a real time basis was that of such exchanges. The FMC circulars referred to in the SCN do not make any reference to clubbing of OI positions, they only set out the client level limits. The FMC gave the NCDEX the responsibility to club OI positions where the circumstances warrant such action and also laid down guidelines that the exchanges should follow for clubbing. Admittedly the NCDEX while carrying out such responsibility did not club the OI positions of Noticee nos. 4 and 5 at any time during or before the investigation. This was in spite of the fact that the NCDEX had all the material and information regarding the two companies with it and was monitoring their trading on a real time basis. NCDEX correctly did not club the OI positions of Noticees 4 and 5 as the criteria for clubbing at the relevant time did not warrant such clubbing.

16.5. The information and factors on the basis of which SEBI has clubbed the OI positions of Noticee nos. 4 and 5 in the present SCN had been disclosed to were always available with NCDEX since 2012 when Noticee nos. 4 and 5 submitted the KYC documentation for registration. SEBI excepts the fact that Noticee nos.4 and 5 did not conceal any information and has relied on such disclosures at Annexure 6 and 7 to the present SCN. In view of the same, it will not be proper for SEBI now to retrospectively seek to club the OI positions of Noticee nos. 4 and 5 to show as if there was an alleged breach of the letter.

16.6. Noticee nos. 4 and 5 did not and do not have any common directors thus there can be no question of any common management control. They are not under common ownership and they are not owned or controlled by the same person or entity. Two shareholder M/s Jaideva and Sons HUF and Ms. Sudha Satish are not related or connected to each other.

16.7. Further, the fact that Noticee no. 5 holds 18.32% in Noticee no. 4 does not satisfy the criteria of common ownership or common control. Legally and factually such minority shareholding does not mean you exercise control. Noticee no. 4 does not hold any shareholding in Noticee no.5 and does not control it or vice versa. The term control has a very defined meaning in securities law and it means effective control or the ability to control the appointment of the Board of Directors. It means positive control as opposed to mere negative control power that is the power to block resolution. Based on the above, Noticee nos. 4 and 5 have no structures for common ownership or common control.

16.8. Even assuming that Noticee nos. 4 and 5 have common ownership and control structure the mere existence of such structure cannot warrant clubbing of the OI positions of Noticee nos. 4 and 5. To club OI positions, the criteria mentioned in the FMC letter make it necessary to prove that they have acted in concert. Minimal extent of the excess over 5% negates any such theory and there is simply no evidence to prove that Noticee nos. 4 and 5 acted in concert that there was a meeting of minds to take positions in castor seeds contracts with the objective or purpose of circumventing prescribed position limits.

16.9. Even the factors mentioned in a subsequent circular of NCDEX dated January 16, 2017 does not apply to Noticee nos. 4 and 5.

16.10. It is legally highly unreasonable to infer or conclude on the basis of marginal or insubstantial excess that Noticee nos. 4 and 5 could be in a position to corner the market at the expense of other clients or they traded in fraudulent or deceitful manner. The SCN does not specify anything on how Noticee nos. 4 and 5 cornered the market or what was the fraudulent or deceitful trading or what trades gave rise to an impression of false

trades. It is unreasonable to infer that if Noticee nos. 4 and 5 has held up to 5% OI limits there would be no cornering but 0.06% over the limit was resulting in cornering.

16.11. The standard of proof required to be discharged by SEBI for making good serious charge of fraud and violation of the provision to see of PFUTP Regulations is higher than mere preponderance of the probabilities. Suspicions and surmises are not legally sufficient to sustain such charges.

16.12. Noticee nos. 4 and 5 have already been barred for more than three years, suffered the penalty and bourne the losses. An amount of 1.95 crores has already been appropriated by the NCDEX from Leo Global Commodities Pvt. Ltd, the trading member of Noticee nos. 4 and 5 to compensate the alleged losses to persons affected. This was subsequently reimbursed by Noticee nos. 4 and 5.

16.13. Thus Noticee nos. 4 and 5 should be exonerated form all charges against them in the SCN.

Consideration of submissions and findings:

17. I have considered the SCN along with the annexures thereto, as referred to in para 4 of this order, and submissions made by the Noticees in their replies, written submissions and during personal hearings. At this juncture, it is relevant to note the provisions of law applicable to the present case. It is alleged that the Noticees have violated FMC's circulars dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits for Castor Seed Contracts as well as FMC's letter dated January 10, 2012. It is also alleged that the Noticees have violated Regulations 3(a), 3(b), 3(c), 3(d),

4(1) and 4(2)(a) of the PFUTP Regulations, the relevant extracts of which are as follows:

PFUTP Regulations, 2003

> ***"Regulation 3. Prohibition of certain dealings in securities***
> *No person shall directly or indirectly, -*
>
> *(a) buy, sell or otherwise deal in the securities in a fraudulent manner;*
> *(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
> *(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
> *(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*
>
> ***Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices***
>
> *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
> *(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
>
> *(a) Indulging in an act which creates false or misleading appearance of trading in the securities market;*

18. Before proceeding further, it would be appropriate to deal with a preliminary issue raised by Noticee no.3. Noticee no. 3 has contended that certain document sought by it during inspection of documents have not been provided to it. The list of the said documents and the observations regarding it are as follows:

Sr. No.	Details of documents sought	Observations
1.	Investigation Report of the investigation conducted by SEBI.	Vide letter dated April 26,2019 the Noticee no. 3 was informed that the SCN

		contained the relevant extract of the findings of investigation report with regard to the charges levelled against Noticee no.3. This request is roving in nature. Therefore, the request is not tenable.
2.	Copy of documents collected and information gathered during the course of investigation conducted by SEBI.	Vide letter dated April 26,2019 the Noticee no. 3 was informed that all the documents relied upon in the proceedings have been provided to it while issuing the SCN as Annexures. This request is roving in nature. Moreover, the Noticee has also inspected all the material available on record. Therefore, the request is not tenable.
3.	Copy of statement recorded of persons during the course of investigation conducted by SEBI.	SEBI has not relied upon the statement of any person while issuing the said SCN. This request is roving in nature. Therefore, the request is not tenable.
4.	Copy of all communication exchanged between SEBI and other co-noticees as may be relevant to us.	SEBI has not relied upon any such communication while issuing the said SCN. This request is roving in nature. Therefore, the request is not tenable.
5.	Copy of all communication exchanged between SEBI and other relevant Authorities during the course of investigation conducted by SEBI as may be relevant to us	SEBI has not relied upon any such communication while issuing the said SCN. This request is roving in nature. Therefore, the request is not tenable.

19. In this regard, reference may be made to the order dated February 12, 2020 passed by Hon'ble SAT in Appeal (L) No. 28 of 2020 – Shruti Vora Vs. SEBI, wherein it was observed as under:

> *"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."*

20. The aforesaid observations made in Shruti Vora's case has been reiterated with confirmation by Hon'ble SAT in its order dated July 17, 2020 passed in Appeal No. Anant R Sathe Vs. SEBI wherein it was observed as under:

> *"……..8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence……"*

In the present case also, I find that the Noticee no. 3 has been provided with all the relevant documents relied upon in the SCN which are sufficient for Noticee no. 3 to file an efficacious reply in the matter. I find that Noticee no. 3 has filed its detailed response dated July 05, 2019 to SCN, therefore, the contention of the Noticee no. 3 in this regard is untenable.

21. The present matter has emanated from a preliminary examination in the trading of Castor Seeds Contract at NCDEX, by SEBI. Based on the findings of the preliminary examination, SEBI passed ad- interim orders on March 2, 2016 and May 24, 2016 *inter alia*, restraining 18 entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner whatsoever, till further directions. On December 23, 2016, SEBI passed an order with respect to certain entities including all the Noticees relaxing the interim orders dated March 2, 2016 and May 24, 2016. The directions contained in an ad-interim orders dated March 2, 2016 and May 24, 2016

were confirmed by SEBI vide order dated March 8, 2017 for 17 entities. The investigation in the matter was completed in October 2019. Pursuant to the investigation, interim directions as stated above were revoked vide order dated November 14, 2018 for all entities except for the Noticees in this SCN and the SCN was issued to the Noticees in February 2019.

22. Castor Seeds contract is a futures contract traded on Commodity futures exchanges viz. NCDEX, MCX and NMCE. As per the contract specification available on NCDEX website, at the relevant time, the maximum order size was 500 Metric Tons (MT) and the unit of trading as well as delivery unit was 10 MT. The tick size for the contract is Rs 1. Dessa (Gujarat) was the delivery center. The daily price limit was (+/-) 3%. After reaching the limit of (+/-) 3%, after an interval of 15 minutes, the limit was increased further by 1%.

23. As per the erstwhile FMC circular dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits, the client level position for Castor Seed Contracts was 12,000 MT or 5% of market wide OI, whichever is higher. FMC, vide letter dated January 10, 2012 directed the national commodity exchanges including NCDEX to take suitable measures for clubbing of client level open interest on the basis of guidelines for clubbing of open positions issued on July 20, 2005 and July 26, 2007 by FMC. The relevant extract of the said letter dated January 10, 2012 is as under:

> *"Since it is not feasible to define all parameters/ criteria for clubbing of open interest, the National Commodity Exchanges are therefore directed to take suitable measures for clubbing of open interest on the basis of the criteria laid down in the aforesaid guidelines and also include such other criteria as PAN Nos, patterns such as "acting in concert" through common ownership and control structures and any other relevant criteria to club open interest that may be observed during the course of regular monitoring and surveillance and may appear to compromise market integrity."*

24. In furtherance of the aforesaid letter dated January 10, 2012 issued by FMC, NCDEX issued circular dated January 10, 2012 which was a reproduction of the FMC letter of the same date. The letter dated issued by FMC to NCDEX shows that the criteria being provided in the said letter were indicative and not exhaustive.

25. I note that FMC was established under Section 3 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "**FCRA**") and aforesaid guidelines, circulars and letter were issued by FMC, in discharge of its functions under FCRA. FCRA was amended by Finance Act, 2015 and in terms of Section 131[B] of Finance Act, 2015, Section 28A was inserted in FCRA with effect from September 28, 2015. Sub-section (3) and (4) of the said newly inserted Section 28A of FCRA provided as under:

> *"……(3) The bye-laws, circulars, or any like instrument made by a recognized association under the Forward Contracts Act shall continue to be applicable for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security Board, as if the Forward Contracts Act had not been repealed, whichever is earlier.*
> *(4) All rules, directions, guidelines, instructions, circulars, or any like instruments, made by the Commission or the Central Government applicable to recognized associations under the Forward Contracts Act shall continue to remain in force for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security Board, whichever is earlier, as if the Forward Contracts Act had not been repealed……..."*

26. I note that by virtue of amendment made by Section 132 of the Finance Act, 2015, to FCRA by inserting Section 29A in FCRA, FCRA came to be repealed from September 29, 2015. However, by virtue of Section 28A (4) of FCRA the aforesaid guidelines/letter issued by FMC were to remain in force for one year from the date of repeal of FCRA or till such time as notified by SEBI, whichever is earlier. I note that SEBI issued circular no.

SEBI/HO/CDMRD/DMP/CIR/P/2016/96 dated September 29, 2016 in supersession of all directives issued by erstwhile FMC with regard to *inter alia* matters related to position limits and clubbing of open positions. I further note that Section 29A(2)(c) of FCRA, as inserted aforesaid, provided as under:

> *"……..(2) On and from the date of repeal of Forward Contracts Act–*
> *(a) ……..;*
> *(b) ……..;*
> *(c) anything done or any action taken or purported to have been done or taken including any inspection, order, penalty, proceeding or notice made, initiated or issued or any confirmation or declaration made or any licence, permission, authorisation or exemption granted, modified or revoked, or any document or instrument executed, or any direction given under the Act repealed in sub-section (1), shall be continued or enforced by the Security Board, as if that Act had not been repealed;……"*

27. In view of the discussions in paras 25 and 26, I find that proceedings initiated vide the SCN for violations of the guidelines/circulars of erstwhile FMC, as alleged in the SCN, can be continued.

28. The SCN alleges that the client level OI of Noticee nos. 1, 2 & 3 and Noticee no. 4 & 5, was supposed to be clubbed in line with FMC's above-mentioned letter dated January 10, 2012 and the NCDEX circular dated January 10, 2012. SCN alleges that the combined OI position of Noticee nos. 1, 2 and 3 exceeded the client level OI position limit of 5% of market wide OI on all trading days during the Investigation Period. SCN further alleges that the combined client level OI position of Noticee nos. 4 and 5 exceeded the open position limit of 5% of market wide OI on 13 trading days during the Investigation Period.

29. In response to this allegation, Noticee no. 1 has submitted that Noticee nos. 1,2 and 3 are independent corporate entities and they are not in control of each other and that SEBI has wrongly concluded that the Noticee Nos. 1 to 3 and Ruchi Acroni Industries Limited were connected to each other and on the basis of common ownership and control structure, the open positions of Noticee No. 1 to 3 have been wrongly clubbed.

30. Similar to Noticee no.1, Noticee no. 3 has also contended that though some of the promoters are common between Noticee nos. 1, 2 and 3, their business model and operations are independent and day to day business activities are carried out without any reference or recourse to activities carried out by any other entity including co-Noticees no. 1 and 2. Noticee has also emphasized on the finding of investigation which has mentioned: "*Prima Facie no apparent pattern of receiving funds from entities and thereafter immediately transferring to the member could be observed".*

31. Noticee no. 3 has also submitted that although it is a promoter group entity but it is not in control of Noticee no. 2 in any manner therefore, the same cannot be made a basis of clubbing of their OI positions in castor seeds contract.

32. In this regard, I note that one entity called Ruchi Acroni and Noticee nos. 1 and 3 are promoters in Noticee no. 2. Further, as per the submissions made by Noticee no. 2, it stated that it is one of the shareholders in Ruchi Acroni Industries Ltd (holding 12.35% of the total paid up equity capital) and it forms a part of the promoter group of Noticee no. 1 (holding 1.99% of the total paid up equity capital). It also added that Noticee no. 3 is one of the promoter group companies of Ruchi Soya (holding 0.22% of the total paid up equity capital) and Noticee no. 1 also forms a part of its promoter groups (holding 0.06% of the total paid up equity capital of Noticee no. 2). One of the directors of

Noticee no. 3 viz. Mr. Umesh Shahra holds 0.04% of paid up capital of Noticee no. 1. Therefore, it is observed there is cross holding and cross promotership between Noticee nos. 1, 2 and 3.

33. I note that the directive provided in the aforesaid FMC letter dated January 10, 2012 was with respect to clubbing of client level OI positions and to effectively determine client level OI positions in order to determine client exposure, concentration and risk management. This letter had directed exchanges to club open positions of its members based on certain criteria such as 'acting in concert' through common ownership and control structures as well as other relevant criteria. Criterion provided in the letter and NCDEX circular were not exhaustive and were indicative in nature. In order to determine whether the client level OI positions of Noticee nos. 1,2 and 3 were to be clubbed, the shareholding pattern and control structure of these Noticees were examined. From the shareholding pattern available on BSE for Noticee nos. 1 and 2, it is noted that 41 entities were part of the promoter group of Noticee no. 2 during the Investigation Period and held 54% of the share capital of Noticee no.2. Out of these, 35 entities held 28.75% of share capital of Noticee no. 2 and out of these 35, 16 same entities also held 22.47% of share capital of Noticee no.1 and 3.32% of Noticee no. 3. This connection among Noticee nos. 1, 2 and 3 is also part of the SCN as Annexure 6 and produced below:

	Entity name	Shareholding in Noticee no.2	Shareholding in Noticee no. 1	Shareholding in Noticee no.3
1.	Kailash shahra	0.06	0	0.01
2.	Abha Shahra	1.15	0.34	0
3.	Dinesh shahra	0.63	0.23	0
4.	Dinesh Shahra (HUF)	5.15	0	0
5.	Mridula Shahra	3	0.06	0
6.	Neeta Shahra	0.06	0.03	0

7.	Santosh Shahra (HUF)	0.19	3.41	0
8.	Sarvesh Shahra	1.67	0	0
9.	Savitridevi Shahra	0.25	0.07	0.16
10.	Umesh Shahra	0.16	0.04	0
11.	Ushadevi Shahra	0.2	1.22	0
12.	Amrita Shahra	0.78	0	0
13.	Ankesh Shahra	1.01	0	0
14.	Amisha Shahra	0.91	0	0
15.	Suresh Shahra (HUF)	0.05	0.02	0.01
16.	Manish Shahra	0.05	0.02	0.01
17.	Neha Shahra	0	0	0
18.	Bhawana Goel	0.03	4.72	0
19.	Nitesh Shahra	1.67	0.02	0.01
20.	Kailash Shahra (HUF)	0.03	0	0
21.	Vishesh Shahra	0.03	2.04	0
22.	Mamta Khandelwal	0	0	0
23.	APL International Pvt. Ltd.	2.13	6.65	0
24.	Arandi Investment	2.6	0	0
25.	National Steel	0.06	0	0
26.	Mahakosh papers Pvt. Ltd.	0.99	0	0
27.	Ruchi Acroni	0.4	0.07	0
28.	Shahra Estate	0.3	0	0
29.	Ruchi Global	0.22	0	0
30.	Ruchi Infotech	0.05	0	0
31.	Shahra bros Pvt. Ltd	0.88	0.45	0
32.	Spectra Realities	5.42	0	0
33.	Evershine Oleichem ltd	0.75	0	0
34.	Soyumm marketing pvt ltd	8.72	0	0
35.	Ruchi Infrastructure ltd	2.47	3.08	3.12
	Total	---	22.47	3.32

34. Mr. Umesh Sahra who is a promoter of Noticee no. 2 is also a director of Noticee no. 3 as well as a promoter of Noticee no.1. 15 entities who are promoters of Noticee no. 2 are also promoters of Noticee no.1. Apart from

this, Noticee no. 2 is also a promoter of Noticee no.1 and vice versa. Noticee no. 3 is part of the promoter group of Noticee no. 2 along with Noticee no.1. In other words, these three Noticees have substantial cross holdings and have common promoters and can be reasonably said to be part of the same group. This indicates that any significant impact on one of these three Noticees will have a bearing on the other Noticee. Therefore, I find that due to the connection amongst these three noticees, client level open interest positions of these noticees are to be clubbed in terms of letter of FMC dated January 10, 2012 as well as the NCDEX circular.

35. In view of the same, I find that the client level client level OI positions of Noticee no.s.1, 2 and 3 had to be clubbed while considering the client level OI position limits since such limits have been introduced in order to avoid situations where connected entities could dominate the derivatives market and therefore exercise undue influence on the price of the underlying commodity. This measure is also for determining exposure and concentration levels, in order to enable stock exchanges to monitor and take appropriate risk containment measures. I also note that the Noticee nos. 1,2 and 3 have in fact breached the open position limits on all trading days during the Investigation Period and by a considerable margin. Their combined open positions during investigation period ranges between 9.95% to 12.22% whereas the limit prescribed was 5% of the total market wide OI. In view of the same, I find that Noticee nos.1, 2 and 3 have violated the open position limits laid down by FMC circular dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits, and FMC letter dated January 10, 2012 issued by FMC, read with NCDEX circular dated January 10, 2012.

36. I note that the trading behavior of Noticee 3 has also been unexplained by it and raise suspicion. Noticee no.3 has submitted that it was holding a paltry quantity of only around 50 MT of Castor seeds, in the physical market. I observe that this position of Noticee no.3 in fact provides more strength to the allegations against it in the SCN, since there is no justification as to why it was holding such high OI positions in the derivatives market when it had very small holdings in the underlying and there was no need for hedging or price discovery by it with such high position in derivative market. The justification given by Noticee no. 3 for creating such large positions in breach of the prescribed limits in commodity derivative market is not supported by its positions in the underlying commodity market. The speculators provide liquidity in the market. There may not be any bar in holding higher positions in derivatives without holding commensurate position in underlying commodity, however, no client can breach its exposure/concentration limits, as prescribed by regulators which are for the purpose of risk management and also for preventing cornering and domination for influencing price and volume. However, in such case, if any position taken by such person is not squared and thus remains open on the expiry day, then such person has to give/take delivery of the underlying commodity. Be that as it may be, holding positions in underlying commodity market cannot justify holding positions in commodity derivative market, in violation or by circumventing, of client level open position limits provided for derivative market, by the law.

37. Noticee no. 1 has also submitted that as far as charge against it that it has received funds from Noticee no. 2 is concerned, there was underlying contract of the Noticee No. 1 with Noticee No. 2 in respect to sale of 6000MT (+/- 10%) of Yellow Peas at Rs. 27750/- per MT to Noticee No.2 vide its Agreement dated November 25, 2015 and against which an advance of Rs. 17.90 Crores had been received from Noticee No.2 in the months of December 2015 and January, 2016. In this regard, I note that the investigation has observed that

Noticee no.1 has made similar submission during investigation and submitted supporting documents and that Noticee no. 2 has corroborated the same and produced evidence in support of the same. The investigation concludes as follows:

> *"From the above, it was inferred that National Steel had the financial capacity to take positions in Castor Seeds contract and that funds received by National Steel from Ruchi Soya were part of a commercial transaction between Ruchi Soya and National Steel. No other connection could be established between National Steel and Ruchi Soya apart from the fund transfers from Ruchi Soya to National Steel. … Hence, no adverse inference is drawn against National Steel with regard to alleged use of funds received from Ruchi Soya for taking positions in castor seeds contracts on NCDEX."*

Therefore, I find that the contention of Noticee no. 1 regarding the receipt of funds by it from Noticee no. 2 being based on genuine commercial transaction with Noticee no.2 is acceptable.

38. In addition to the submissions mentioned above, Noticee no. 3 has also submitted that the commodity market of castor seeds is always driven by physical market since the overall limit prescribed for market open position is not significant portion of physical market of castor seed. In this regard, Noticee no. 3 has relied on Order dated March 12, 2019 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT"**) in *North End Foods Marketing Pvt. Ltd. & Anr. Vs SEBI [Appeal bearing no. 80 Of 2019]* along with other appeals in the matter of trading in Mentha Oil Contracts at MCX. I note that in the said order the Hon'ble SAT was discussing the urgency for passing an interim order in that particular matter and had mentioned that there was no *prima facie* finding that by accumulating large stocks of Mentha Oil, the appellant had dominated the market without making any comparison with the total volume of trades in the physical market.

The issue in that particular order was regarding the suitability of an interim order and does not apply to the preset case.

39. Noticee No. 3 has also relied on the judgment of the Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. (2014) 9 SCC 105* to contend that SCNs must disclose particular action which is proposed to be taken. I find that the case is factually distinguishable from the present case and not applicable to the present proceedings. This is for the reasons that in Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of public contract of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract. On the other hand, the present SCN has been issued for breach of provisions of law. In Gorkha Security case, blacklisting was imposed by way of penalty, whereas in the instant proceedings, the purpose of issuing directions, if found necessary, would be preventive and remedial in nature. In Gorkha Security Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. Keeping in view the above points that clearly distinguishes the facts and circumstances of Gorkha Security case from the facts of the present proceedings, reliance placed by the Noticees on Gorkha Security case to contend that SCNs must disclose particular action which is proposed to be taken, is misplaced. Apart from the observations regarding applicability of the Gorkha Security case, I note that Noticees have also relied on the said judgment to contend that it would be incumbent for a show cause

notice to contain the facts of the case in a precise manner. However, Noticees have not specifically shown or pointed out as to which facts are not conveying the charges because of representation of facts in an alleged non-precise manner. Rather, as noted from the SCN and as brought out in para 2 above, I find that the SCN in the present case, clearly brings out the relevant facts and charges levelled against the Noticees as well as the Sections of the SEBI Act, 1992 under which directions are proposed to be issued. I note that after issue of SCN, Noticee no. 3 conducted inspection and after that has filed a detailed reply on July 05, 2019. I also find that the Noticee no. 3 has made submissions in respect of each of allegations as summarised in para 2, above. Such submissions could not have been made, if charges made against the Noticee no. 3 were vague or not specifically made out.

40. Noticee no. 2 has mainly contended that subsequent to the submission of Resolution Plan by the Successful Resolution Applicant, approval of the same by its Committee of Creditors on 30.04.2019 under Section 30 (4) of the IBC, subsequent approval by the Hon'ble NCLT and implementation of the said Resolution Plan on 18.12.2019, there has been a change in control and ownership of Noticee no. 2 , and there is no involvement of any erstwhile promoters or directors in the new management or board of Noticee no. 2 and therefore the present proceedings cannot continue in view of Section 32A of IBC. Noticee no. 2 has submitted that the SCN, makes a categorical mention of the involvement of erstwhile management of Noticee no. 2 and also that the restriction imposed by SEBI is in relation to structure of Notice no. 2 and other entities it has been alleged to have connection with and that the said common ownership and control structure, no longer exists. The other Noticees are no longer promoters of Noticee no. 2 and upon successful implementation of the Resolution Plan submitted by Patanjali Ayurved Limited and its consortium, the erstwhile management which purportedly coincided

with other Noticees, has been completely replaced, changed and restructured. Noticee no. 2 has also mentioned that while drafting the Resolution Plan, the present proceedings were in the knowledge of the Successful Resolution Applicant, which identified these proceedings and that the Resolution Plan stated that the said proceedings shall "be settled at NIL value as against any amount, determined to be paid by the Corporate Debtor….." Noticee no. 2 has contended that since the Hon'ble NCLT has approved the Resolution Plan and the present proceedings are mentioned in such Resolution Plan allocating NIL value to the same, the present proceedings may not continue. Noticee no. 2 has also stated that Noticee no. 2 with its present structure, i.e. new promoters and new management cannot be subjected to the present proceedings since the non obstante clause under Section 32A of the IBC applies to the present proceedings.

41. Before dealing with the said contention of Noticee no. 2, it would be appropriate to refer to Section 32A of IBC which is reproduced hereunder:

*"**32A. Liability for prior offences, etc**.*

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency

resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not-

i. a promoter or in the management or control of the corporate debtor or a related party of such a person; or

ii. a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court…"

42. I find that SCN was issued to Noticee no. 2 on February 06, 2019 for the trades undertaken by it during January, 2012. Now, resolution plan submitted by the successful resolution applicant, i.e. Patanjali Ayurveda Limited and its consortium, has been approved by adjudicating authority i.e. NCLT on September 04, 2019 and the erstwhile management and board of Noticee no. 2 has been replaced. In such a situation, Section 32A provides immunity to Corporate debtor i.e. Noticee no. 2, under its new promoters and management from a) prosecution for an offence committed before the

commencement of the insolvency resolution proceedings and b) any action against its property in relation to an offence committed prior to the commencement of the resolution process wherein the property is part of the of resolution plan. In *Standard Chartered Bank Vs. Directorate of Enforcement (AIR 2005 SC 2622)* it was held that once the ingredient of an offence is established the consequences flowing from the contravention may result in penalty as well as prosecution, thus clearly differentiating between prosecution and civil penalty. The term prosecution has been defined by courts to mean criminal proceedings. In *Thomas Dana vs The State of Punjab (AIR 1959 SC 375)* the Hon'ble Apex Court has observed as follows:

> *"According to Wharton's Law Lexicon, 14th edn., p. 810, " prosecution " means " a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the King is nominally the prosecutor." This very question was discussed by this Court in the case of Maqbool Hussain v. The State of Bombay, with of reference to the context in which the word " prosecution " occurred in Art. 20. In the course of the judgment, the following observations, which apply with full force to the present case, were made:*
> *"..... and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure." In that case, this Court discussed in detail the provisions of the Sea Customs Act, with particular reference to Chapter XVI, headed " Offences and Penalties ". ….."*

43. Therefore, Section 32A (1) provides immunity to corporate debtor from prosecution for an offence committed prior to commencement of CIRP, which is for determining the criminal liability of a person. It does not provide any immunity from civil actions which may arise out of an offence. Another immunity provided under Section 32A(2) of IBC is that no action shall lie against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process if such property is covered under the resolution plan approved by adjudicating authority. I note that present proceedings are under Sections 11 and 11B of the SEBI Act, 1992 under which SEBI can issue different kind of

directions in the interest of investor and the securities market and not only the directions which may result into a claim over property of the corporate debtor. In this regard it is also to be noted that the objectives of the SEBI Act, 1992 and the IBC are in different realms of law and are not in conflict with each other and the provisions of both these laws have to be read harmoniously. In *Kishorebhai Khamanchand Goyal v. State of Gujarat [(1996) IILLJ 943 Guj]* the Hon'ble High Court of Gujarat has observed as follows:

> *"6. There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation….*
>
> *7…*
>
> *8. The matter in each case is one of the construction and comparison of the two statutes. The Court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together."*

44. Therefore, keeping in view the wording of Section 32A of IBC and harmonious interpretation between statues, I am of the opinion that the present proceedings under Section 11B of the SEBI Act, 1992 can continue against the Noticee no. 2. The Noticee no. 2 has cited many case laws in support of its submissions. I have perused these case laws and find that these case laws lay down that any action which affects the assets of corporate debtor is not permitted in view of the scheme of the IBC. Some of the case laws are discussed below:

i) *JSW Steel Limited v. Mahender Kumar Khandelwal, Company Appeal (AT) (Insolvency) No. 957 of 2019* **:** The said judgment observes that: "*In light of Section 32A(1) and (2) the Directorate of*

Enforcement/ other investigating agencies do not have the powers to attach assets of a 'Corporate Debtor', once the 'Resolution Plan stands approved and the criminal investigations against the 'Corporate Debtor' stands abated."

ii) *Ruchi Soya Industries Limited v. The Joint Commissioner of State Tax, Commercial Taxes Department, Bhabua Circle, I.A. No. 978 of 2020 IN C.P.(IB)- 1371& 1372/(MB)/2017:* The matter deals with tax liability of the corporate debtor.

iii) *Securities and Exchange Board of India v. Rohit Sehgal, Civil Appeal No. 5089 of 2019*: While admitting this appeal, the Hon'ble Supreme Court directed that SEBI cannot create any encumbrance on the property of the Corporate Debtor.

iv) *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, 2019 SCC OnLine SC 1478:* In the said matter the Hon'ble Apex Court has stated as follows: *"A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor."*

v) *Ultra Tech Nathdwara Cement Limited, Division Bench Civil Writ Petition No. 9480 of 2019:* This matter relates to claim for GST.

45. In this regard, as already observed present proceedings are under Sections 11 and 11B of the SEBI Act, 1992 under which SEBI can issue different kind of directions in the interest of investors and the securities market and not only

the directions which may result into a claim over or affect, the assets of the corporate debtor. Thus, only if the directions issued under Sections 11 and 11B of the SEBI Act, 1992 results into a claim over or affect, the assets of the corporate debtor then the law laid down in these judgment may come into play. Thus, I find that there is no bar on the continuation of the present proceedings against Noticee no. 2.

46. In view of the findings in paras 32 to 35 above, which concluded that Noticee no. 1, 2 and 3 were holding OI position limits in excess of prescribed limits, I find that Noticee no. 1, 2 and 3, collectively, violated open interest limits of castor seeds contracts, as laid down in circulars dated October 22, 2014 and December 11, 2014 readwith FMC's letter dated January 10, 2012.

47. Noticee nos. 4 and 5 have mainly contended that that FMC vide its letter dated January 10, 2012 had directed the exchanges including NCDEX to club OI positions based on certain criteria and NCDEX correctly did not club the OI positions of Noticees 4 and 5 as the criteria for clubbing at the relevant time did not warrant such clubbing. They have submitted that the information and factors on the basis of which SEBI has clubbed the OI positions of Noticee nos. 4 and 5 in the present SCN were always available with NCDEX since 2012 when Noticee nos. 4 and 5 submitted the KYC documentation for registration and so it is not proper for SEBI now to retrospectively seek to club the OI positions of Noticee nos. 4 and 5 to show as if there was an alleged breach of the letter. Further the fact that Noticee no. 5 holds 18.32% in Noticee no.4 does not satisfy the criteria of common ownership or common control since they have no common directors etc. Noticee nos. 4 and 5 have argued that even if their OI positions are clubbed the extent of the excess over the 5% limit is minuscule.

48. In this regard, I note that the connections which have been established in the SCN and not denied by Noticee no. 4 and 5, between Noticee no. 4 and 5 are that: a) Noticee no. 5 was holding 18.33% of the share capital of Noticee no. 4; b) These 2 Noticees have common email and common address and c) there are two common shareholders viz: M/s Jaidev and Sons (HUF) and Ms. Sudha Satish between these two Noticees. I find that an email address is a specific domain of an entity and generally password is required to access such an email address and it is impossible that two unrelated entitles will share a common email and the same goes for a common address. This fact, combined with the substantial shareholding of Noticee no. 5 in Noticee no. 4 establishes that these two Noticees were connected with each other. As already discussed in para 24 above, the criteria mentioned in the FMC letter dated January 10, 2012 was indicative and not exhaustive and the clubbing of OI positions is one of the risk management measures adopted by the regulator to ensure that the entities do not breach OI position limits for the purpose of exposure and concentration or few entities do not influence the price and volume of derivatives market, in a particular commodity. I also note that M/s Jaidev and Sons HUF which owned 25% of the share capital of Noticee no. 4 also held 6.06% of the share capital of Noticee no. 5. Therefore, 43.33% of the share capital of Noticee no. 4 was either held by Noticee no. 5 or one of the shareholders of Noticee no.5. This indicates that any significant impact on one of these Noticees will have a bearing on the other Noticee. Therefore, I am of the view that due to the connection amongst these Noticees, the letter of FMC dated January 10, 2012 as well as the NCDEX circular of the same date will apply to them.

49. In view of the same, I find that the OI positions of Noticee nos. 4 and 5 had to be clubbed while considering the OI position limits since such limits have been introduced in order to avoid similar situations where connected entities could

have unwarranted exposure or concentration or dominate the derivatives market and therefore exercise undue influence on the price of the underlying commodity. Therefore, in the facts and circumstances of the present case, I find that the Noticee nos. 4 and 5 who were together holding OI positions in excess of the prescribed limits, as depicted in Table 3, breached the client wise OI position limits on 13 trading days during the Investigation Period and thus, have violated FMC circular dated October 22, 2014 and December 11, 2014 pertaining to client level open position limits, and FMC letter dated January 10, 2012 issued by FMC, read with NCDEX circular dated January 10, 2012. Noticee nos. 4 and 5 have also contended that since NCDEX at the relevant time did not take action of clubbing their OI positions, it is not proper to SEBI to take a retrospective action. In this regard, I find that non initiation of any action by NCDEX under its bye-laws, against the Noticees, is not a bar to the initiation of present proceedings by SEBI under Section 11(1), 11(4) and 11B of the SEBI Act, 1992 if it is of the view that the same is detrimental to the interest of investors or securities market. I also note that the action by SEBI was initiated immediately after the violation on the part of the Noticees were noted, with the passing of the interim orders dated March 2, 2016 and May 24, 2016. Therefore, the contention of the Noticee no. 4 and 5 based on the non-initiation of any action by NCDEX is not tenable either in fact or law.

50. In view of the aforesaid findings in paras 48 and 49 above, I find that Noticee no. 4 and 5, collectively, violated open interest limits of castor seeds contracts, as laid down in circulars dated October 22, 2014 and December 11, 2014 read with FMC's letter dated January 10, 2012.

51. Lastly, I note that the SCN has alleged that by taking OI in excess of the prescribed limits, Noticees were able to corner the market at the expense of other clients and thus had traded in a fraudulent and deceitful manner and

their excess OI positions created a false or misleading appearance in the market. Based on the above, the SCN has alleged that the Noticees violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of the PFUTP Regulations. In this regard, I observe that the SCN has noted that Noticee nos. 1, 2 and 3 belonged to one distinct group while Noticee nos. 4 and 5 belonged to another distinct group. In the absence of any material to show that these two distinct groups were connected to each other and traded in the castor seeds contracts in a concerted manner to manipulate the market, it is not correct to allege that the five Noticees together cornered the derivative market in castor seeds contract during the investigation period in violation of PFUTP Regulations, 2003 and at the expense of other clients. I note that the SCN does not provide any details as to whether these two distinct groups had coordinated between themselves to carry out such cornering of the market involving violation of the PFUTP Regulations, 2003. It has already been found in the previous paras of this order that Noticees held open interest in castor seed derivatives, in excess of the prescribed limits, thus in the absence of any other evidence to the effect that such positions were created for the purpose of manipulating or influencing the price and/or volume of the securities, the charge of violation of PFUTP Regulations, 2003 is not sustainable, in the facts and circumstances of the present case. However, as discussed in the foregoing paras, the allegation of holding of positions in breach of the client level open interest positions, as laid down in circulars issued by FMC and letter of FMC dated January 10, 2012, stands established.

52. I note that trades in the contracts were entered into by the Noticees in January, 2016. These contracts have come to an end. The Noticees stand debarred including from trading and hedging in derivatives market till date by virtue of interim SEBI orders dated March 02, 2016 and May 24, 2016 as confirmed by order dated March 08, 2017 passed by SEBI. Therefore, passing

of order further debarring from the market under sections 11 and 11B as proposed in the SCN may not be warranted, in the facts and circumstances of the case, as Noticees have already suffered debarment by virtue of the interim order(s) and not been able to trade or hedge their positions in commodity derivative market, during this period.

Directions:

53. Having regard to all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of thereof, hereby, direct that -

(i) The directions issued against the Noticees vide ad- interim orders dated March 2, 2016 and May 24, 2016 and confirmed vide order dated March 8, 2017 are hereby revoked with immediate effect.

(ii) Noticee no. 1, 2, 3 ,4 and 5 are warned to be careful in all their future dealings in the securities market and ensure that same are done strictly in accordance with law.

54. This Order comes into force with immediate effect.

55. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, for information and necessary action.

-Sd-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: August 12, 2020

Place: Mumbai