

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In continuation of orders dated March 2, 2016 , May 24, 2016 and December 23, 2016 in the matter of trading in Castor Seed Contracts at National Commodity & Derivatives Exchange Limited (NCDEX)

In respect of:

Sr. No.	Noticees	PAN
Category : Commodities Trading Member		
1.	Neer-Ocean Multitrade Private Limited	AADCN3061E
2.	Investsmart Commodities Limited	AAECM3447N
3.	Mid India Commodities Private Limited	AABCT1983F
4.	Leo Global Commodities Private Limited	AAACL6967A
Category : Clients/Trading Entities		
5.	Secunderabad Oils Limited	AACCS8208H
6.	UKS Oils Private Limited	AAACU4566C
7.	Ruchi Global Limited	AAACR7202A
8.	Sisne Polymers Private Limited	AAPCS4092L
9.	Mr. Anuj Jain	ABEPJ8083F
10.	Bharat Foods Co-Operative Limited	AAAAB3160D
11.	Tanisha Multitrading Private Limited	AAECT2559E
12.	Mr. Vijay Saraf	AERPS2485J
13.	Vartika Trading Private Limited	AAECV0551G
14.	Piyali Trading Pvt Ltd	AABCR1604D
15.	Stride Multi Trade Pvt Ltd	AAGCS5768N
16.	National Steel and Agro Industries Limited	AAACN3548H
17.	Ruchi Soya Industries Limited	AAACR2892L
18.	Mr. Narsinpuria Korodimal	AGXPK2223Q

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

1. Securities and Exchange Board of India ("SEBI"), vide ad interim ex-parte order dated March 2,

2016 (hereinafter referred to as “***the first interim order***”), restrained 16 entities, from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, till further directions. The *first interim order* was passed pursuant to preliminary examination that revealed that highly concentrated positions in Castor Seed Contracts were taken by 4 Commodity Trading Members for 12 clients who defaulted in payment of margins and sought squaring off of positions. The *first interim order* concluded that *prima facie* four Commodities Trading Members and their defaulting clients had disturbed market equilibrium and sought to manipulate the market thereby contravening the provisions of the Securities and Exchange Board of India Act, 1992 (“***the SEBI Act***”) and attracting the prohibitions enshrined in section 12A (a), (b) and (c) of the SEBI Act and Regulations 3(d), 4(1) and 4(2) (a) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“***PFUTP Regulations***”).

2. Subsequently, a preliminary examination of the bank statements of the aforesaid 16 entities, *prima facie* revealed circulation/transfer of funds for creating position in Castor Seed Contracts. In view of the findings, SEBI vide its letter dated May 5, 2016 communicated this additional information (hereinafter referred to as “***Additional observations***”) to respective clients and their trading members, which included the finding that the aforesaid 16 entities were connected to each other and to Ruchi Soya Industries Ltd. by virtue of transfer of fund inter se common director, common addresses etc.
3. After preliminary examination of bank statements of the concerned suspected entities SEBI also passed an *ad interim ex-parte* order dated May 24, 2016 (hereinafter referred to as “***the second interim order***”) against National Steel and Agro Industries Ltd. (“***NSAIL***”) and Ruchi Soya Industries Ltd. (“***Ruchi Soya***”) (i.e Noticees 16 and 17 shown in the table above). The orders observed inter alia that Ruchi Soya, who was holding significant position in Castor Seed Contracts, had transferred funds of around ` 76.77 crore during the period from January 01, 2015 to January 27, 2016 to 5 entities who were the clients of the trading members against whom, the first interim order had been passed. The said 5 entities namely, NSAIL, Mr. Anuj Jain, Sisne Polymers Private Limited (“***Sisne***”), Bharat Foods Co-Operative Limited (“***BFCL***”) and Stride Multi Trade Pvt Ltd (“***Stride***”) also held significant position in Castor Seed Contracts

during the relevant period of time. NSAIL was also found prima facie to be a Ruchi Group Company (as per website of Ruchi group), the Independent Director Mr Navin Khandelwal also being common to both NSAIL and Ruchi Soya. A prima facie view was taken that Ruchi Soya provided funds to the aforesaid entities for creating / maintaining open position in long side of Castor Seed Contracts. (*All 6 entities i.e. Ruchi Soya and the 5 entities are collectively referred to as "**Ruchi Group entities**"*). Open positions held by 'Ruchi Group Entities' were treated as clubbed position in view of the fact that, though the position in Castor Seeds were taken by different clients through different Commodity Trading Members, there was a meeting of minds and intention to corner the market on long side of Castor Seed Contracts by 'Ruchi Group Entities' on account of clubbed position held by 'Ruchi Group Entities' in Castor Seed Contracts. Accordingly vide the second interim order, Ruchi Soya and NSAIL were also restrained from accessing the securities market and prohibited from buying, selling or dealing in securities till further directions.

4. For the purpose of this Order, the first interim order, Additional observations and second interim order are collectively referred to as "***interim orders***".
5. The persons against whom the interim orders were passed (collectively hereinafter referred to as "***the Noticees***") were advised to file their objections, if any, within twenty one days from the date of the orders, respectively, and if they so desire, to avail themselves of an opportunity of personal hearing before SEBI. All the Noticees were granted opportunity of personal hearings on several dates. Several Noticees filed their replies in the said matter and availed opportunity of personal hearing on several dates and filed additional written submissions after personal hearings. The Noticees who sought inspection/information/documents during the proceedings were provided inspection of documents and were also provide copies of the documents which were relied upon by SEBI for passing the interim orders.

6. The dates on which the Noticees appeared before me and the dates on which written submissions were filed in relation to the interim orders are as follows:

Sr. No.	Noticee	Date of Hearing	Date of Written Submissions	Additional Submissions filed post hearing
1.	Neer-Ocean Multitrade Private Limited	December 22, 2016	<ul style="list-style-type: none"> • Reply dated 23/03/2016 received on 29/03/2016 • Reply dated 16/5/2016 received on 20/5/2016 • Reply dated 20/6/2016 received on 22/06/2016 • Reply dated 27/09/2016 received on 27/09/2016 	Reply dated 11/01/2017 received on 11/01/2017.
2.	Investsmart Commodities Limited	February 8, 2017	<ul style="list-style-type: none"> • Reply dated 18/05/2016 received on 18/05/2016. 	Entity has not submitted any additional reply.
3.	Mid India Commodities Private Limited	December 20, 2016	<ul style="list-style-type: none"> • Reply dated 25/03/2016 received on 28/03/2016 • Reply dated 24/10/2016 received on 02/11/2016 	Reply dated 05/01/2017 received on 09/01/2017
4.	Leo Global Commodities Private Limited	February 8, 2017	<ul style="list-style-type: none"> • Reply dated 10/05/2016 received on 10/05/2016 • Reply dated 20/5/2016 received on 24/05/2016 • Reply dated 24/06/2016 received on 05/07/2016 	Reply dated 13/02/2017 received on 13/02/2017
5.	Mr. Narsinpuria Korodimal	Did not appear for hearing.	<ul style="list-style-type: none"> • Reply dated 12/03/2016 received on 17/03/2016 	Entity has not submitted any additional reply.
6.	Secunderabad Oils Limited	February 8, 2017	<ul style="list-style-type: none"> • Reply dated 10/05/2016 received on 10/05/2016 • Reply dated 20/5/2016 received on 24/05/2016 • Reply dated 09/06/2016 received on 11/06/2016 	Reply dated 13/02/2017 received on 13/02/2017
7.	UKS Oils Private Limited	February 8, 2017	<ul style="list-style-type: none"> • Reply dated 10/05/2016 received on 10/05/2016 • Reply dated 20/5/2016 received on 24/05/2016 • Reply dated 09/06/2016 received on 11/06/2016 	Reply dated 13/02/2017 received on 13/02/2017
8.	Ruchi Global Limited	December	<ul style="list-style-type: none"> • Reply dated 18/05/2016 received 	Reply dated

		22,2016	on 19/05/2016	27/01/2017 received on 02/02/2017
9.	Sisne Polymers Private Limited	December 20,2016	<ul style="list-style-type: none"> • Reply dated 15/04/2016 received on 18/04/2016 • Reply dated 08/06/2016 received on 20/06/2016 • Reply dated 12/09/2016 received on 14/09/2016 	Reply dated 10/01/2017 received on 13/01/2017
10.	Mr. Anuj Jain	Did not appear for hearing.	• Reply dated 07/06/2016 received on 21/06/2016	Entity has not submitted any additional reply.
11.	Bharat Foods Co-Operative Limited	December 20, 2016	<ul style="list-style-type: none"> • Reply dated 28/03/2016 received on 30/03/2016 • Reply dated 10/09/2016 received on 19/9/2016 	Reply dated 09/01/2017 received on 16/01/2017
12.	Tanisha Multitrading Private Limited	December 23, 2016	<ul style="list-style-type: none"> • Reply dated 18/05/2016 received on 19/05/2016 • Reply dated 4/10/2016 received on 18/10/2016 	Reply dated 09/01/2017 received on 17/01/2017
13.	Mr Vijay Saraf	December 20, 2016	• Reply dated 21/03/2016 received on 28/03/2016	Reply dated 11/01/2017 received on 17/01/2017
14.	Vartika Trading Private Limited	February 8, 2017	• Reply dated 07/06/2016 received on 21/06/2016	Entity has not submitted any additional reply.
15.	Piyali Trading Pvt Ltd	February 8, 2017	• Reply dated 07/06/2016 received on 08/06/2016	Entity has not submitted any additional reply.
16.	Stride Multi Trade Pvt Ltd	February 8, 2017	• Reply dated 16/01/2017 received on 18/01/2017	Reply dated 13/02/2017 received on 15/02/2017
17.	National Steel and Agro Industries Limited	December 22,2016	<ul style="list-style-type: none"> • Reply dated 28/07/2016 received on 28/07/2016 • Reply dated 19/08/2016 received on 22/08/2016 • Reply dated 27/10/2016 received on 02/11/2016 • Reply dated 15/11/2016 received on 17/11/2016 • Reply dated 5/12/2016 received on 07/12/2016 	Reply dated 09/01/2017 received on 13/01/2017
18.	Ruchi Soya Industries Limited	February 7, 2017	• Reply dated 12/09/2016 received on 12/09/2016	Reply dated 15/02/2017 received on 16/02/2017

7. The Summary of the written and oral submissions made by the Noticees are as follows:

I. Commodity Trading Members:

(1) Neer Ocean Multitrade Private Limited (Neer Ocean) - represented by Deepak Soni, Director; and Advocates Vinay Chauhan and Ayush Agarwal

- (a) The interim order violates principles of natural justice since no opportunity of hearing was provided and the facts of the matter did not justify passing of *ex parte* directions.
- (b) All the three clients of Neer Ocean had the financial capability to meet the financial requirement of the positions taken by them. Same is amply demonstrated by the payments made by them towards Initial margin for taking the positions and by payment of MTM from time to time consequent to fall in price of the contracts.
- (c) There is nothing abnormal or unusual about delays in payment of margins. For the alleged delayed payments of MTM by the said clients to Neer Ocean, NCDEX has already penalized Neer Ocean through disablement charges and overnight charges.
- (d) By letter dated January 25, 2016 (post the Castor Seed Contracts hitting lower circuit) Neer Ocean had *inter alia* stated that the clients have "*expressed inability to provide mark to market requirements due to continuously falling market and today hitting the lower circuit filters*" and that we "*request the exchange to kindly close all the outstanding Contracts of clients..... at today's closing price to fulfill all the mark to market requirements*".

Neer Ocean had no role/ involvement in the decision of the said clients to trade in the Castor Seed Contracts. It had no proprietary position nor did it play any advisory role. It is the client's prerogative to place the order and the broker has no *locus standi* in the said decisions of the client except to execute the orders as per the instructions of the clients. Neer Ocean had exercised due diligence as reasonably expected from a prudent broker. It had ensured that their clients do not exceed permissible limits as stipulated by the Exchange. It had also ensured that their accounts always remain in credit in excess of all pay-in obligations.

- (e) Ms. Neha Saraf is a professional and a qualified MBA, who started Neer Ocean in the year 2010-11 out of her own funds. Though Ms Neha Saraf is the daughter of Mr Sureshchandra Shahara, her father has no role in her business affairs. Mr Sureshchandra Shahara's brother *viz* Mr Dinesh Shahara is involved in the business affairs of Ruchi Soya.
- (f) At best, the allegation against Neer Ocean pertains to the Commodities Market and not

to the Capital Market and there is nothing adverse, even remotely, *qua* Neer Ocean's capital market trading as a client. Restraining Neer Ocean even from selling the shares to liquidate its portfolio would be unjust and unduly harsh. Alternatively, Neer Ocean may be permitted to liquidate the stocks lying in their demat account and utilize the same for loan repayment to Kotak Mahindra Investments Limited.

(2) Investsmart Commodity Private Limited (ICPL) - represented by Narendra Jain, MD; and, Advocates R.S. Loona and Abbishek Borgikar

- (a) ICPL cannot be governed and/or regulated by the Stock Broker Regulations in view of section 28A (3) and (4) of the Forward Contracts (Regulations) Act, 1952 ('FCRA'), till they are given a certificate of registration as a stock broker under Section 12(1) of the SEBI Act.
- (b) ICPL had written letter dated January 27, 2016 to inform the exchange its inability to collect MTM obligation from its clients for which it was duty bound in accordance with exchange bye law 10.4. However the clients against whom orders have been passed by SEBI, have been clients of ICPL for the last 3-7 years. There has never been instances of default or, non compliance with mandate of networth and KYC obligations.
- (c) It is submitted that there were only two instances of shortfall before January 27, 2016, i.e. delay for 3 minutes on January 21, 2016 and delay for 121 minutes on January 22, 2016. The defaults on January 27, 2016 was the day on which ICPL informed the exchange its inability to make pay-in because of non-receipt of pay-in obligations from clients and default on January 28, 2016 cannot be considered as defaults since the NCDEX had suspended all the Contracts of Castor Seed on January 27, 2016.
- (d) Against the eligible position of 120000 MT, the ICPL's total open position as a broker was only 43130 MT which was approximately 35.19% of the position allowed. The clients have not violated the prescribed client level position limits at any time during the period of January 01, 2016 to January 27, 2016. ICPL's clients were having sufficient financial capability and experience in trading. In routine market practice, when clients suffer losses in excess of their present liquidity, member/clients square off positions and get margins released to pay MTM on time which could not be done in the instant case due to lack of liquidity in the market.
- (e) ICPL did not have any proprietary position and was not aware of any positions taken by

other entities. ICPL has no connection with any of the entities mentioned in the *interim order* except with its own clients.

- (f) Systemic risk in trading can arise in any of the commodities on account of lack of liquidity and cannot be specifically linked only with Castor Seeds Contracts.

(3) Mid India Commodities Private Limited (MCPL)- *represented by Manohar Pawar (Director); Advocates KRCV Seshachalam and Sayan Hate*

- (a) No opportunity of hearing was granted before passing of the interim order and there was no emergent situation to pass an ad-interim ex-parte order.
- (b) MCPL cannot be held responsible for the fall in prices as MCPL held long/ buy positions and neither MCPL nor its clients had physical market positions.
- (c) The Code of Conduct mentioned in the *interim order* is not applicable since MCPL is not yet registered under SEBI (Stock broker and Sub Broker) Regulations. Without prejudice to this, it is submitted necessary care and diligence was exercised. MCPL had obtained the necessary know your client documents from the Clients and their ability to pay was not doubtful. MCPL also had comfortable liquidity to meet the MTM liability if any in case of further fall in the prices. Their account with the Exchange was always in credit. MCPL submits that there were no defaults in MTM payments and there was only delay on 17 occasions in first run. MTM was paid on the scheduled day without any default. However, since the fall in prices was unusual and unpredictable MCPL and its clients wanted to square off their positions. MCPL had placed orders to square off its positions on 25th January, 2016. On both 25th and 27th January, 2016 the market was on lower circuit and there were no buyers. MCPL therefore addressed a mail dated 26th January, 2016 requesting the exchange to square off outstanding positions.
- (d) MCPL did not represent to NCDEX that it was not in a position to pay MTM nor did it express that it was insolvent.
- (e) MCPL was holding approximately 0.69% of the cumulative OI as on 27th January, 2016. MCPL did not act as a part of any group and therefore treating it as part of 62.48%, position, is incorrect.
- (f) At the very least the restraints in the directions should be confined to trading in the Castor seed Contracts and not the entire market.

(4) LEO Global Commodities Private Limited (LEO)- *represented by Sr. Advocate Fredun Devitre, Advocates Sandip Bhagat and Ashustosh Kumar; and Sanjana Kochbar*

- (a) Delay in first run shortages on 10 occasions in January 2016, should not be viewed as default. Overnight delay in payment of MTM is not a rare occurrence.
- (b) LEO had nothing to do with the trading strategies, the OI positions or the payment, settlement and liquidity issues of the other members of the NCDEX and their clients.
- (c) NCDEX was expected to release initial margins on January 28, 2016, due to trading in Castor Seed Contracts being suspended. However, the release of margins was delayed by one day and happened only on January 29, 2016. Therefore, the "first run" shortage on January 28, 2016 should not be considered a "first run" shortage as such.
- (d) All payments were made by LEO within the T+1 time- period, as prescribed by the Circulars of SEBI and NCDEX. The fact that LEO had never faced an overnight delay in meeting its MTM pay-in obligations (other than on January 27, 2016) proves that there was no difficulty at all on the part of the Member in meeting its pay-in obligations.
- (e) Due to the fact that the price of Castor Seed Contracts had breached the lower circuit, the clients (SOL and UKS) did not have an opportunity to exit their OI positions.
- (f) There was a temporary liquidity issue of one day and that too only for a part of the amount payable. On January 28, 2016, the Member had a credit balance of Rs 10.84 crore with the NCDEX after clearing all dues on account of MTM pay-in obligations.
- (g) NCDEX had sent an email to the Member on the evening of January 26, 2016, a public holiday, directing the Member to *"meet [its] MTM pay-in obligation before start of the market on 27th January, 2016 failing which Exchange may take appropriate action as deemed fit, including squaring off all your open positions."* As noted above, the Member did make all possible efforts to comply with the directive received from the NCDEX and meet the MTM pay-in obligation on 27th January 2016, which would have been fully met if not for the imposition of additional margins. In light of the pressure exerted by the NCDEX in the morning and afternoon of January 27, 2016, and in view of the directive issued by the NCDEX in its email dated January 26, 2016, the Member thought it prudent to seek the NCDEX's assistance in squaring off its clients' OI positions to ensure that it would meet its commitments. However, in response, the NCDEX stated that it is unable to square

- off the OI positions due to circuit filters on the lower side. The Member accepted this position and prepared itself for the consequence that the OI positions may not be squared off on that day. The Member submits that the above exchange of e-mails should be viewed in light of the fact that the Member, as part of its *bona fide* intentions, paid in cash and release of margins by squaring off OI positions, an amount of Rs.4.88 crore, against its total dues of Rs.6.80 crore on January 27, 2016 which is substantially most of the amount due that day and made payment in full in cash the very next day.
- (h) LEO has no concerted relationship/connection whatsoever with its clients, UKS and SOL, or with any of the other entities mentioned in the SEBI Order. The Member has more than 45 clients across different markets and the total business received from SOL and UKS between FY 2011-2012 and FY 2015-2016 merely constituted approximately 10% of the turnover of the Member. If NCDEX, after reviewing the KYC documents submitted by UKS and SOL at the time they started trading with the Member, determined that their OI positions should be clubbed, then the NCDEX should have communicated this to the Member. NCDEX has never communicated any decision to club OI positions in respect of SOL and UKS to the Member on the basis of ownership or common address, despite having knowledge of these facts.
- (i) The clients of Leo Global namely UKS and SOL are not fly by night operators. Payments were made between entities as part of physical market operations. Payments were infact not even made as advances. They were all pursuant to actual deliveries. Documents proving the same were submitted.

II. Clients / Trading entities :

(1) Mr. Narsinpuria Korodimal:

Mr. Narsinpuria Korodimal has submitted that he is a small trader and never had taken position for more than 50 Ton. It had open long position of only 50 Ton in Castor Seed Contracts at NCDEX and had paid his obligation with regard to debit of Rs 17,666/- to its Member after close out of Castor Seed Contracts at NCDEX.

(2) Secunderabad Oils Limited (SOL)- *represented by Advocates Shabezad Kazi, Sandip Bhagat and Ashutosh Kumar ; and Pradeep Chowdhry and Aksbay Chowdhry*

- (a) Any delay in first run shortages in pay-ins in January 2016 by the should not be viewed as any level of default since it not an uncommon occurrence. Even though pay-in should be made by the first run on T+1 day, delays happen and as long as the payment is made on the same day, the only consequence of the delay is that the member's terminal is put on square off mode till such time. Overnight delay in pay-in of MTM by SOL was only on 27th January,2016 and that too part of the amount. For the delay of overnight pay-in of one day, the member has debited SOL with the penalty as per NCDEX rules.
- (b) SOL promptly paid additional margins on January 25, 2016 and the opening credit balance of January 27, 2016 was adjusted against the MTM requirement. From April 2015 until January 2016, the Company has paid the NCDEX an MTM loss of Rs 13 Crore, on account of trading in castor seed futures. The Company submits that it has never defaulted in paying in MTM at any point of time. Further, in the case of castor seed, NCDEX was well covered with a margin of 14.9% and there was a delay only by a day (and not beyond the prescribed time of T+2) in paying part of the MTM (after arranging the additional margin on the same day).
- (c) SOL did not have physical market long positions in castor seed at the relevant time. A fall in prices was not in its interest since it was holding long positions. It is entirely implausible that the Company (and other persons holding long positions in castor seed Contracts) would seek to implement a manipulative and fraudulent design aimed at instigating a steep fall in the price of castor seed Contracts.
- (d) SOL is not connected or related to Tarulata Trading Private Limited ("Tarulata") or Sankh Impex Private Limited ("Sankh Impex") in any manner. Tarulata is a third party CnF agent appointed by SOL. Transactions between SOL and Tarulata relate only to the physical trade of castor seeds in the ordinary course of business. SOL had received delivery of 2,230.23 MT of castor seed stocks on November 18, 2015 from the NCDEX. SOL appointed Tarulata as its CnF agent to receive the delivery and sell it further on SOL's behalf, as SOL does not have a TIN in Gujarat, where the delivery was received. Out of the above, SOL sold some castor seed through Tarulata to Noble Natural Resources India Pvt Ltd and AgriCore Commodities Pvt Ltd. Noble Natural Resources

India Pvt Ltd and AgriCore Commodities Pvt Ltd remitted the payment to Tarulata for onward remittance to SOL. Therefore receipt of the funds from Tarulata is against amounts due from Noble Natural Resources India Pvt Ltd and Agri Core Commodities Pvt Ltd, parties to whom castor seed was sold.

- (e) SOL and UKS has separate board of directors and separate management. They do not have common directors. Though SOL has an interest of 18.33% in UKS and common address does not mean that the open interest ("OI") positions of these parties should be clubbed together. This information has always been disclosed and available with the Exchange. NCDEX Circular dated January 10, 2012 states that the NCDEX may take suitable measures for clubbing open positions on the basis of other general criteria. If NCDEX had determined that there were specific criteria, such as non-majority ownership or common address, it should have communicated this to all members and clients, including SOL. These criteria cannot be applied retrospectively. If the positions of SOL and UKS were to be clubbed for any reason, NCDEX as per their circular of July 31, 2006, would have squared off the excess position on the very next day of violation. This has never been done by NCDEX.
- (f) SOL has received funds from UKS which were against refund of advances given by SOL to UKS. SOL has never used money of UKS for its castor seed trading positions on NCDEX.

(3) UKS Oils Limited (UKS)- *represented by Advocates Shabezaad Kazji, Sandip Bhagat and Ashutosh Kumar; and Uttam Singhal*

- (a) Delay in first run shortages in January 2016 should not be viewed as default since it is not an uncommon occurrence. No penalty is levied by NCDEX for delays in first run shortages.
- (b) The Company had never expressed inability to pay MTM. It had only applied its stop loss policy and instructed the Broker to square off the positions to the extent possible.
- (c) It is not a defaulting client at all; it has ability to hold long positions on the NCDEX; it has the net-worth to absorb losses, if any, in case of further fall in price even if such fall was more than the fall in the physical price; it has sufficient liquidity to pay MTM; it had deposited around 14.9% as margin for the castor seed and NCDEX was covered at all times; it has not disturbed the market equilibrium; it did not have physical market long

- positions in castor seed at the relevant time; its holding of long positions on the NCDEX has never created any situation of price fall; and a fall in prices is not in its interest since it is holding long positions.
- (d) The Company had long positions in the castor seed Contracts and was reacting to the conditions in the market as a prudent investor. There was no action in concert, fraud or manipulation of the market. UKS is not connected or related to Sankh Impex Private Limited ("Sankh") or Tarulata Trading Private Limited ("Tarulata") in any manner. Sankh is a third party CnF agent appointed by UKS. Transactions between UKS and Sankh relate only to the physical trade of castor seeds in the ordinary course of business. Sankh was paid a commission for the services rendered by them as explained in more detail below. UKS got physical delivery from NCDEX against the November 2015 castor seed contract of 6033.252 MT, amounting to Rs 25.57 crores. UKS does not have a sales tax registration in the state of Gujarat where the physical delivery against sale was to be made. In order to sell the physical castor seed, UKS appointed Sankh as its C&F agent for the purpose of taking the physical delivery and selling the same. The amounts received from Sankh were actually amounts due to UKS from the end buyers of castor seed who had purchased castor seed from UKS through Sankh, as listed above. Therefore, the end buyer paid Sankh who subsequently paid UKS.
- (e) UKS and SOL has separate board of directors and separate management. They do not have any common director. SOL simply having an 18.33% interest in UKS or a common address does not mean that the open interest ("OI") positions of these parties should be clubbed together.
- (f) If NCDEX had determined that there were specific criteria, such as non-majority ownership or common address, it should have communicated this to all members and clients, including UKS. These criteria cannot be applied retrospectively.

(4) Ruchi Global Limited (RGL) - represented by Advocates Prakash Shah and Robin Shah

- (a) The applicable limit on open interest set by the Exchange for clients was 21700 MT (5% of 434600 MT). Therefore, RGL's open position for the purpose of limit on open interest was 16520 MT which was well within the limit prescribed by the Exchange.
- (b) RGL's open interest position was justified based on its networth which was about 42 crore rupees.

- (c) RGL had reduced its open position from 23020 MT existing as on January 14, 2016 to 16520 MT as on January 25, 2016 under the then prevailing circumstances. Therefore it is wrong and erroneous to allege that RGL had failed to assess and anticipate the risk associated with the trading activity in castor seed contract.
- (d) The client is required to pay the MTM margin within T+2 working days.
- (e) RGL was holding a paltry quantity of only around 50 MT in the physical market and hence did not benefit from such position.
- (f) RGL had absolutely no knowledge about amount transferred by Ruchi Acroni Industries Limited (Ruchi Acroni) to Piyali Trading Private Limited (Piyali). However, on enquiry it has been informed that the amount was paid by Ruchi Acroni to Piyali against a contract for sale of Crude degum soybean oil (edible grade) to Ruchi Acroni. The contract was performed by actual delivery. With regard to the registered office address of RGL, it is submitted that RGL is occupying 80 Sq. Ft out of 400 Sq. ft area of the aforesaid premises. However both the companies are functioning independently.

(5) Sisne Polymers Private Limited (Sisne)- *represented by Advocate A Rama Rao*

- (a) It is only when the contract started hitting lower circuits that Sisne instructed its broker to close out Contracts. It should be viewed as a prudent step taken after assessment and anticipation of risk arising from trading in futures contract in castor seed. Sisne strictly complied with the limits on open interest stipulated by the NCDEX.
- (b) There is no basis to say that the market equilibrium was disturbed by Sisne since buy position was held whereas the prices were continuously declining. Heavy losses were suffered on positions taken.
- (c) Sisne has been receiving funds from Ruchi Soya regularly as a part of its normal business of supply of seeds.

(6) Mr. Anuj Jain :

- (a) Ex parte Order has been passed without granting an opportunity of hearing and the same is therefore in violation of principles of natural justice.
- (b) On January 25, 2016 futures price of Castor Seed Contracts touched lower circuit of 4%. The fact that the broker was requested to square off positions to avoid further losses in a

falling market cannot be treated as a manipulation or fraud.

- (c) There is no nexus/ connection with other clients who were holding 62.48 % of Open Position during the relevant time.
- (d) The amounts received from Ruchi Soya relate to the advance/ balance payment received in respect of contracts for supply of the seed. There is only commercial relationship with Ruchi Soya.

(7) Bharat Foods Co-Operative Limited (BFCL)- *represented by Ankur Shah and Advocate KRCV Seshachalam*

- (a) Order was passed after the trades had been done, and hence there was no urgency to pass the Order.
- (b) In view of the peculiar price volatility in commodity in general and castor seed in particular, there was some delay in arranging funds. However, there was never a default in any financial obligation from the side of BFCL side of paying the mark to market margin.
- (c) OI held by BFCL was 4.29%, was well within the limits prescribed by the Exchange.
- (d) BFCL had taken a commercial call to square off its positions on 26th January 2016 and intended to exit futures on 27th January 2016. BFCL as a client of the Trading Member M/s. Investsmart Commodities Ltd. is obligated to pay the margin call within T+2 days and had never defaulted in the said margin calls to be paid to its Trading Member.
- (e) BFCL submits that it was not a defaulting client it is submitted that its holding was only 4.29% and its holding cannot be clubbed up with any other entity as alleged.
- (f) BFCL conducts regular business with Ruchi Soya Industries Limited and amount received from them was against sale of Castor Seed to them. They are not related to any of the entities mentioned in the Order and their position should not be clubbed with any of them.
- (g) Ban on trading of commodities futures may be lifted.

(8) Tanisha Multitrading Private Limited (Tanisha) - *represented by Advocates Prakash Shah and Robin Shah*

- (a) The interim order has been issued *ex parte* without seeking explanation on the subject matter and is in breach of fundamental rights under Article 19 (g) of the Constitution.

- (b) SEBI has not followed due process as laid down in Section 11 (4)(c) of the SEBI Act, 1992 and thereby acted beyond the scope of the powers conferred on it.
- (c) Limit set by NCDEX on open interest was 21,700 MT and Tanisha's position was well within the limits set by NCDEX. Tanisha was having net long position and cannot by any stretch of imagination be made responsible for the fall in prices. Tanisha paid the requisite margins i.e. initial margin, MTM margin within T + 2 working days to the broker as stipulated by various circulars of NCDEX. As per their internal risk management systems, Tanisha decided on January 27, 2016, to immediately square off all their outstanding positions in Castor Seed Contracts as the prices were falling persistently and they did not intend to default on margin payments. Tanisha directed accordingly to their broker who might have communicated the same to the NCDEX.
- (d) With respect to the communication sent by ICL(Tanisha's Broker) to NCDEX wherein inter-alia it has been mentioned that "*We (ICL) have at present short pay in collection from our clients, we are continuously following up with clients but have not received the amount to fulfil the pay in obligation*". Tanisha submitted that as far as their margin payments are concerned, this statement is factually incorrect since they have paid the margins etc. in full to the broker. Tanisha cannot be held liable for shortages/ delays of the trading member. Further, SEBI Circular dated 01.10.2015 bearing reference no. CDMRD/DRMP/01 /2015 stipulates that apart of Initial Margin and Extreme Loss Margin, taking into account the practical difficulties members have to face, they have time till T +2 working days to collect the margins from their clients.
- (e) Tanisha is not connected to the entities from which they have received funds except as a buyer seller relationship. Receipt of funds from Tarulata and Addax was on account of routine business transactions and it has nothing to do with Tanisha's position in Castor Seed Contracts in the commodities market.
- (f) Tanisha may be permitted to buy, sell and deal in commodities so that they can take hedging position against their business products/commodities so as to avert losses due to price fluctuations in commodity market; to buy, sell and deal in shares and securities to avail gainful opportunity of earning by participating in capital market; to subscribe, liquidate and redeem units of mutual funds/liquid funds; and to avail benefits of corporate actions.

(9) Mr Vijay Saraf - *represented by Advocate Sabeena Mahadik*

- (a) Principles of natural justice were violated since no opportunity of hearing was provided.
- (b) Total positions held by him in the Castor Seed only 2.37% of the total OI, which was within the limits prescribed by the Exchange.
- (c) Broker was not asked to write to the Exchange to close out or square off positions.
- (d) There was no default in paying in mark to market margins at any given point of time. In view of the unprecedented price fall, there was delay in pay in, but there was no default of pay in by him.
- (e) The duty to pay to the broker was to pay the margin call within T+1 days which was complied with.
- (f) Price fall could not be attributed to the long positions taken.

(10) Vartika Trading Private Limited (Vartika)- *represented by Ranjit Bhonsale, Counsel*

- (a) Order violates principles of natural justice and is based on surmises and conjectures.
- (b) Vartika's request to their member for closing their position and expressing their inability to pay MTM , was bonafide , and because of the factors beyond their control.
- (c) At the relevant point of time Vartika did not have any physical positions in the market, therefore, the issue of indulging in manipulative and fraudulent design to maintain the price and/or to benefit the positions in the physical market, cannot and do not arise. Long position was taken because of the upcoming lean season. Prices were expected to rise.
- (d) Funds from Tarulata Trading Pvt. Ltd. and Addax Trading Pvt. Ltd. to Vartika were transferred as part of normal commercial relations. The said transactions had no nexus with the transactions executed by Vartika in the Castor Seed Contracts.

(11) Piyali Trading Pvt Ltd (Piyali)- *represented by Advocate Joby Mathew*

- (a) There was no emergent situation so as to warrant *ex- parte* directions; there has been a total disregard of natural justice.
- (b) Various entities mentioned in the Order are neither related to Piyali nor are they concerned with them.
- (c) Company is engaged in import of oil and castor seed processing industry. Demand was expected to peak in February. Hence contracts were entered into in December. Therefore there is an economic/business rationale for investing in the contracts.

- (d) Piyali had regularly paid their MTM obligations on T+2 basis as per the rules and bye-laws of the Exchange. Piyali Trading did have the financial capacity to continue trading, proof of which is submitted through documents. Even after positions were squared off, around 1 crore rupees continues to lie with the broker.
- (e) Piyali's reason to express the inability to pay the MTM obligations was due to irrational, abnormal price fall which was the handiwork of the Sellers.
- (f) On the 25th of January, 2016 there were not enough buyers on the futures market. As a matter of commercial prudence, broker wrote to the exchange to close out the contracts. Attributing fraudulent intent to normal business behaviour is incorrect.
- (g) Piyali only has a commercial relationship with Ahalya and Acroni.
- (h) Piyali raised objections to the clubbing of their open position with all the alleged connected entities, as the same is based on wrongful inferences drawn against them.
- (i) They have inter alia prayed that the exchange be directed to remit the amount of Rs. 1,11,29,506/-, which has been unfairly withheld.

(12) Stride Multi Trade Pvt Ltd (Stride) - represented by Anish Kharidia, Company Secretary

- (a) The cause for action has arisen under the Forward Contracts (Regulation) Act, 1952. The impugned order and the Additional observations could not have been made under SEBI Act, 1992 against the company and therefore the order is void ab initio against the company.
- (b) There is no provision in law permitting SEBI to issue such Additional observations through a letter after over 2 months from the date of issue of the interim order.
- (c) There was no payment default at all on part of the company in its settlement obligations. The default of the broker (Mid-India) cannot be attributed to Stride. Even if the clients had expressed inability to pay MTM, NCDEX was obliged to facilitate its Members to square off trades. Except for two days, though the amount of shortfall was not available in the bank account of Mid India at 9.30 AM, the same was available with the Exchange. The only inference that can be drawn, if any, could be a delay attributable to the clients of Mid India for a mere two days during the period of investigation. However it is reiterated that it has not defaulted on any day during the period of investigation.
- (d) The request to the Exchange to square off positions of clients was a legitimate and legal right and in the given the circumstances was also in the interest of the markets.

- (e) SEBI had not considered the unnatural and persistent downtrend in prices not representing fair value of the deliverable position. The impugned order is vitiated by pre-meditation and excessive reliance on feed-back from NCDEX.
- (f) The inference that position in castor seed contract was taken to benefit the physical position is hypothetical and presumptuous.
- (g) The allegation of huge concentration based on clubbing of open positions of various clients and trading members was without basis and was contrary to the FMC circulars dated 20th October 2014 and 11th December 2014 since the said circulars do not mention clubbing of positions on the basis of connection of clients.
- (h) In addition to the prayer to exonerate the company, SEBI may direct release of Stride's funds impounded by NCDEX.

(13) National Steel and Agro Industries Limited (NSAIL) - *represented by Pankaj Gupta, Company Secretary and Advocates R.S. Loona and Abhishek Borgikar, Pradvanaya Patil, Subham Chatterjee, Ramakant Kini*

- (a) Ruchi Soya Industries Limited and NSAIL both 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. Mr. Navin Khandelwal is a professional Chartered Accountant and is an Independent director on both NSAIL and Ruchi Soya without having any financial interest in any of the companies. NSAIL has no connection of whatsoever nature with Mr. Anuj Jain, Sisne Polymers Private Limited, Stride Multitrade Private Limited and Bharat Foods Co-operative Limited and therefore there is no question of meeting of minds with these entities. SEBI has erroneously clubbed the open interest position of NSAIL with the position of Ruchi Soya, Mr. Anuj Jain, Sisne Polymers Private Limited, Stride Multitrade Private Limited and Bharat Foods Co-operative Limited.
- (b) NSAIL and Ruchi Soya had entered into an agreement whereby NSAIL had confirmed the sale of Yellow Peas to Ruchi Soya. NSAIL received advance payment from Ruchi Soya as per the said Agreement.
- (c) NSAIL has utilised its own funds for Castor Seed Transactions and has not borrowed any money for that purpose.

- (d) NSAIL has paid the MTM on timely basis to the broker Angel Commodities and never defaulted in MTM payment.
- (e) Unlike other entities NSAIL was ready to take physical delivery.
- (f) The order has been passed 4 months after the trading in contract was suspended and there was no emergency to arbitrarily pass such an ad-interim ex-parte order.

(14) Ruchi Soya Industries Limited (Ruchi Soya) - represented by A.B. Rao, VP Legal and R.L. Gupta; and Sr. Advocate P.N. Modi and Advocates Kalpana Desai, Anant Upadhyay, Kyrus Modi and Adwaith Sathe

- (a) There was no emergent situation that had arisen to justify passing an ad-interim ex-parte order. It is vitiated by violation of principles of natural justice since no opportunity of hearing was provided.
- (b) The ad-interim ex-parte order does not identify any reasons as to why the prices fell so steeply; whether the same was normal or manipulated; and if it was a manipulation, then who was responsible for the same.
- (c) Ruchi Soya never funded any clients to trade on behalf of Ruchi Soya. Ruchi Soya had business relations with alleged five clients for long, and have been buying commodities from them. Payments made to them were for purchase of commodities and not for trading on behalf of Ruchi Soya. Therefore, no question could ever arise of clubbing their trades with Ruchi Soya trades or of holding that there was any violation of position limits on the basis of such purported clubbing.
- (d) The said allegations about a meeting of minds and intention to corner the market on Long Side is further belied by the fact that the said Ex parte Order itself alleges that the combined holding of Ruchi Soya and the said 5 clients was less than 40% of the open position in the Feb 2016 contracts. It is untenable to hold that the same amounts to cornering the market.
- (e) The violation is alleged only on the incorrect basis and hypothesis of clubbing our positions with those of the said 5 clients.
- (f) NSAIL cannot be treated as a group company just because some of the members of the Promoter group are common. Ownership and control are different. NSAIL is a professionally managed company having its independent Board of Directors and is independent in all its functioning and decisions. Mr. Navin Khandelwal is an

- independent director in Ruchi Soya and NSAIL, cannot ever be a legitimate basis to allege that NSAIL is a group company of Ruchi Soya. It may also be noted that Mr. Navin Khandelwal does not have any financial stake in either of the companies.
- (g) As regards the allegation that the Ruchi group website shows NSAIL as a Ruchi Group Entity, it is submitted that the same is only because NSAIL is a company promoted by a different branch of the same family as the promoters of Ruchi Soya. The companies were only being loosely referred to as a 'group' on the website, however, it is reiterated that in law they are not "group" companies as aforesaid, and their ownership and control structures are not the same.
 - (h) By debarring Ruchi Soya from dealing in securities market, they have been prevented from entering into genuine 'hedge' transactions in commodities and currency.
 - (i) By imposing a blanket ban, Ruchi Soya stands debarred from entering into legitimate commercial 'hedge' transactions, which are critical for their regular and running business in respect of commodities manufacturing, processing and marketing. This in turn will also adversely affect the interests of the shareholders of Ruchi Soya, which is a listed company and therefore the *ex parte* order will adversely affect investors who are in fact to be protected by SEBI.
 - (j) Pending investigation they may be permitted to take positions on commodity exchanges, at least in commodities other than castor seed, more specifically, in soybean, soy oil, RM seed, CPO, guar seed, and guar gum, up to the prescribed client level limits; they may be permitted to take positions in castor seed for hedging exposure in castor seed and castor oil as and when and where trading in castor seed is permitted and they may be permitted to trade in currencies on recognized stock exchanges.
8. I have considered the allegations levelled against the Noticees in the *interim order*, their replies/written submissions and other material on record. I note that in the instant case, the directions issued against the Noticees are *interim* in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide the *interim order* in the matter in order to protect the interests of investors in the securities market. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the *interim* directions, issued against the Noticees vide the *interim order*, need to be confirmed, vacated or modified in any manner, during pendency of investigation in the matter.

Consideration of issues:

9. Since the replies/submissions are generally on similar lines, the contentions therein are categorised and my observations on the same are discussed in the following paragraphs-

9.1 The Noticees were not connected with each other and were not acting in concert with a fraudulent design

9.1.1 I note that 15 entities mentioned in the interim orders were having position in Castor Seed Contracts at NCDEX (14 clients and 1 Commodity trading Member trading in proprietary account) and their combined position on long side was 77.68% of the open position in Castor Seed February 2016 Contract as on January 27, 2016 (i.e. 220050 MT out of 283260 MT). The interim orders had observed that the manner in which long position limits were together taken/increased/held by the client noticees in Castor Seed Contracts, simultaneous request of 4 trading members expressing difficulty to pay MTM on behalf of their 12 clients and asking the Exchange to square off position of its clients, non payment of MTM till end of the day on 27th January 2016 indicated a meeting of minds among the noticees. Further, reasons for the prima facie view that the noticees were connected were elaborated in the second interim order and Additional observations based on the transfer of funds from Ruchi Soya Industries Ltd. and certain common third party entities to some of the noticees, transfer of funds inter se the Noticees and instances of connections due to common shareholding, common directors, common address etc. As regards fund transfer, it was noted in the set of interim orders that most of the clients who had received funds had negligible or nil position in Castor Seed Contracts prior to receipt of funds and immediately after having received the funds, the same was transferred by clients to their respective trading members allegedly to take or increase position in Castor Seed Contracts.

9.1.2 I am in broad agreement with the contention of the Noticees that inter se connection of the Noticees is one of the fundamental premises of the interim order, since the charge of taking large positions in castor seeds futures in a concerted manner and trying to manipulate the market thereof would only hold true if the allegation of common interest or meeting of minds is proven. In the context of the allegation of connection due to instances of common shareholding/common directors/common address, the Noticees have sought to insist

that - they are separate body corporates and the companies themselves are professionally managed and that the evidence demonstrated of commonality of shareholding, directors or addresses are not substantial enough to show a common intent. In any case, most of these facts were already known to NCDEX and if it was viewed that in such cases, positions held by them must be treated to be combined, in accordance with NCDEX Byelaws, the Exchange should have intimated to the concerned Noticees and taken action in accordance with the said Bye-laws. I note that NCDEX circulars dealing with position limits are issued with the object of providing for a risk management framework in the commodities futures trading platform. The interim orders on the other hand allege concerted action by the noticees which are fraudulent in nature. It was prima facie observed in the interim orders that the manner in which Open Interest positions were held by the Noticees in Castor Seed Contracts alongwith trading pattern, fund transfers, common addresses, common directors, shareholding etc. suggests a pattern of acting together in concert which has a potential of affecting the market balance and integrity.

9.1.3 In the context of the main allegation of suspicious fund transfers inter se, the Noticees have in general sought to rebut the allegation by providing details of documentary proof (such as contract notes, invoices, bills, transportation and warehouse receipts etc.) indicating the existence of trade connections between them for spot market transactions and the settlement thereof. The documents provided to SEBI are voluminous. A decision based on a peripheral examination of the same would not be judicious. A detailed examination of the various aspects of the transactions and documents provided to SEBI is necessary to come to a definitive conclusion as regards veracity of such trade connections as claimed. Therefore, considering that detailed investigation of the entire scheme employed in this case to ascertain the role and connection of the entities is in process, no intervention at this stage is warranted.

9.1.4 The Noticees have contended that they took substantial long positions in Castor Seed Contracts as part of their trading strategy considering market reports and other factors. In this regard, I note that the Noticees were unable to demonstrate reasons as to why any rational investor would continue to hold on to such substantial long positions in Castor Seed futures contracts when there was a continuous price fall. Despite price fall the irrational exuberance shown by the Noticees in holding the substantial long position coupled with the delay in payment of margins on several occasions, cast doubt on the intention and conduct of the Noticees. In my

prima facie view, this type of holding dominant long position indicates that the entities were acting in concert with a common objective. I therefore do not find merit in the Noticees contentions at this stage. In any case, the allegation of fraud in this specific matter, being dependant on proof of connection between the noticees, a final view will emerge only upon conclusion of the investigation.

9.2 The noticees were financially healthy and did not default in payment obligations

9.2.1 SEBI in its interim order had concluded prima facie that the Noticees had taken large buy positions in the castor seeds futures contract, not commensurate to its financial ability and by defaulting on margin payments contributed to a systemic crisis in the castor seeds futures market. Incidentally, NCDEX had issued a notice dated April 13, 2016 to the trading member noticees calling upon them to show cause why they should not be declared as a Defaulter in terms of the provisions of Bye-laws 10.1 and 10.2 of trading bye-laws (Part A) and 3.13 and 7.1 of the Clearing bye-laws (Part B) of NCDEX. I note that upon completion of its proceedings, the Member Default Committee of the Exchange has ruled that the 4 trading members cannot be ruled as defaulter and the said show cause notice against 4 trading members stands withdrawn. NCDEX communicated the said decision to the trading-member noticees vide letter dated February 14, 2017 which was in turn intimated to SEBI by the trading members.

9.2.2 I note, however, that the set of interim orders were not concerned with the factum of whether the Noticee trading members could be declared 'defaulter' in terms of the NCDEX Bye-laws. Such a declaration by the Exchanges is relevant for the purpose of determining a defaulter trading member's payment obligations and for implementation of recovery measures to ensure financial integrity of transactions on an exchange. The focus of the interim orders were on the large buy positions held by the Noticees, despite falling prices both in the physical and futures market, combined with the fact of regular MTM delays and eventually non payment of MTM on 27th January 2016 by all 4 trading members and the alleged coordinated effort to corner the market / acquire dominant market share with common objective or acting in concert, making it a fraudulent and unfair trade for the purpose of the PFUTP Regulations. The noticees have contended in their written and oral submissions that they were in good financial shape and their 'default' should only be construed as delay in payment. The noticees have also contended that squaring off of positions was a consequence of Exchange's communication to them on 25th to

27th of January, 2016 and also in furtherance of their respective risk management measures i.e. to avoid further losses due to falling prices.

9.2.3 However the Noticees have not been able to satisfactorily explain why the delay in payment of margins took place at all. The trading member noticees have attempted to shift the liability for non-payment on the clients. The client noticees' claim that the Bye-laws permit them to pay margins to the broker on a T+2 basis is not entirely correct. I wish to test the claims of the Noticees against the provisions in Clause 8 of the SEBI Circular bearing Reference No. CIR/CDMRD/DRMP/01/2015 dated October 1, 2015 reads as follows:

*“The members are required to collect Initial Margin and ELM upfront from their clients as applicable at the time of the trade. For other margins (MTM margin, Additional margin, delivery margin or any other margin as prescribed by the Exchange) members shall have time till ‘T+2’ working days to collect from their clients. The period of T+2 days has been allowed to members to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and **it should not be construed that clients have been allowed two days to pay margin due from them.**”* (emphasis supplied)

The aforesaid clause makes it amply clear that margins need to be paid in a timely manner, by the clients and the clients cannot take shelter under the T+2 period specified in the aforesaid Circular for delayed payments. Further the contention of the Commodity Trading Members that there was no default to pay MTM on 27th Jan 2016 and their account had credit balance cannot be accepted as their accounts got credit balance due to suspension of Castor Seed Contracts by the Exchange and the consequent release of margins only after close of business hours on 27th Jan 2016 from the Exchange after adjusting the previous MTM obligations against the available initial margin. In other words, as a result of suspension of Castor Seed Contracts by the Exchange, initial margin and other margins of the Members held with the Exchange got released and MTM dues were adjusted with these margins which resulted in the credit balance and same was reflected in their account. In this regard, I note that, initial margin is a mandatory margin for taking position and takes care of the risk associated with the client's position. However, to cover the risk with regard to daily price fluctuation, MTM is levied on all open positions of clients for daily settlement which has to be paid before start of trading on next day. Hence, it cannot be construed that having sufficient initial margin absolves the client from meeting MTM obligations on a day to day basis. I am thus not inclined to accept the submissions by the Noticees that sufficient funds were available with the Exchange in their account.

9.3 Violation of Code of Conduct provisions of Stock Broker Regulations not maintainable against commodity brokers

9.3.1 Some of the noticee trading members have contended that the SEBI has no jurisdiction over the activities of the Commodity Trading Members as they have not been yet registered as a stock broker with SEBI and the code of conduct mentioned in the interim order is not applicable to them since they are not yet registered under SEBI (Stock broker and Sub Broker) Regulations.

9.3.2 I note that in view of the provisions of Forward Contracts (Regulation) Act, 1952 ("FCRA") as amended by the Finance Act, 2015, commodity brokers are permitted to continue to trade till disposal of their registration application by SEBI. The commodity exchanges (recognised associations) under FCRA are now deemed as stock exchanges by virtue of the aforementioned amendment to FCRA. Consequently, all the provisions applicable to stock brokers equally apply to commodity brokers. The provision enabling the existing commodity brokers to continue to act as such by making an application within a specified time limit till the rejection of the same by SEBI shows that the jurisdiction of SEBI would apply to them from receipt of application and they are treated to be governed by the Stock Brokers Regulations from that point of time onwards. As the rights to trade as 'stock brokers' are extended to such commodity brokers, even before the de facto registration, the legal obligations also ensues automatically. SEBI vide a circular dated September 29, 2015, has stated inter alia that any person desirous of becoming a member of any commodity derivative exchange(s), on or after September 28, 2015 shall have to meet the eligibility criteria to become a member of an exchange and conditions of registration as specified in the Securities Contracts (Regulations) Rules, 1957 and the SEBI (Stock broker and Sub Broker) Regulations, respectively. In view of the same, I do not agree with the contention that the trading member noticees are not subject to the statutory duties/liabilities imposed under Stock Brokers Regulations.

9.4 Miscellaneous / Ancillary grounds raised

9.4.1 The noticees in general raised the following grounds along with other grounds which are clubbed up together for a joint consideration as stated below:

- i) That the interim order was not necessitated by any urgency- Principles of natural justice have been violated
- ii) That the directions imposed are penal in nature and whether such directions can be imposed under sections 11(4) and 11B of the SEBI Act;
- iii) That the directions are in violation of Article 19(1)(g) of the Constitution;
- iv) That issuance of Additional observations post the interim order by SEBI demonstrates non-application of mind while issuing the interim order
- v) That the directions are disproportionate.

9.4.2 I note that the interim orders had been passed on the basis of prima facie findings observed during the preliminary examination/inquiry undertaken by SEBI, which indicated that the actions of the Noticees have contributed to a systemic risk in the Castor Seeds futures market. The interim orders have also been issued in the nature of a show cause notice affording the Noticees a post-decisional opportunity of hearing. The directions were necessitated due to suspected role of the Noticees in having manipulated the castor seeds futures market leading to the suspension of trading in castor seeds futures. The detailed role of the Noticees and the grounds for the allegations against them have already been discussed in the foregoing paragraphs. In the interest of brevity, the same is not reiterated here. Suffice to state however that the Noticees being under a cloud of suspicion, there was a need to restrain their activities in the securities market pending investigation, and affirm confidence in the integrity of the markets. It is the well settled legal position that directions under section 11(4) and 11B of the SEBI Act are preventive and remedial in nature and are not vitiated as long as post decisional hearing is granted, which in this case had been granted to all of the noticees. The interim orders in the instant case were preventive in nature and were passed with the objective of securing market integrity and market equilibrium. Consequently, urgent measures by way of restraining the noticees from continued operations in the securities market was considered necessary and in furtherance of the objectives of the SEBI Act.

9.4.3 The interim directions in the nature of those passed in the instant set of facts cannot be assailed on the ground of violation of the fundamental right to practice any profession or to carry on any occupation, trade or business as provided in clause (6) of Article 19 of the Constitution of India. SEBI being under the bounden duty to protect the interests of investors in securities and to promote the development of and to regulate the securities market by such measures as it thinks fit, as envisaged in the SEBI Act, would stand justified if the restrictions are based on a set of facts which casts a doubt on the manner in which the fundamental rights have been exercised by such members/clients. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. I am therefore of the view that the restraint order against the Noticee cannot be construed to be violative of Article 19(1)(g) of the Constitution of India.

9.4.4 Some of the Noticees have contended that it was not open for SEBI to issue additional observations by way of letters dated May 05, 2016, in continuation of the first interim order. According to this contention, SEBI had passed the first interim order after recording reasons and therefore no change can be made in the guise of 'additional observations'. Further, such addition of reasons for issuing the interim order demonstrate that there was non-application of mind when the interim order was passed. I note that the first interim order was also in the nature of a show cause notice as was clearly brought out in the said order. The Additional observations neither added to the restraints already placed on the Noticees, nor did it change the nature of restraints placed. It was intended to communicate the additional facts that came to light post the interim order. The same was conveyed to the noticees to provide an opportunity for them to address the same in their replies. Issuance of a supplementary show cause notice when fresh facts come to light does not fall foul of principles of natural justice. Strengthening the grounds in the interim order by the additional facts furnished to the noticees subsequently, does not vitiate the interim order in any manner.

9.4.5 The Noticees have contended that the directions imposing a blanket restraint from operating in the entire securities market for alleged role in trading in Castor Seed Contracts is disproportionate since the allegations themselves pertain to the commodities market and not to the capital market. The purpose of the interim orders has already been discussed in the foregoing paragraphs. What is relevant for SEBI's consideration is the noticees' activities in the

securities market. The alleged actions or omissions by the Noticees have cast a doubt as to their bonafides. Consequently there was a need to insulate markets regulated by SEBI from possible infractions by the Noticees on an urgent basis. Therefore, I am of the view that the directions passed in the interim orders are not disproportionate to the allegations made therein.

Conclusions /Directions

10. As the Noticees have failed to give any satisfactory explanation for their acts and omissions as described in the interim orders and have not been able to make out a prima facie case for revocation of the interim orders, I wish to keep all questions related to the role of the Noticees in the alleged fraudulent and manipulative activities open and the investigations pending in the matter may not be prejudiced in any manner by this order. I, therefore, in exercise of the powers under sections 11(1), 11(4) and 11B of the SEBI Act, hereby, reject the prayers of Noticees for setting aside the interim orders or for complete removal of restraints imposed by it.
11. The Noticees had also sought several reliefs/relaxations with respect to the direction in the interim orders. After considering all the individual requests, SEBI passed two orders dated December 23, 2016, one, in respect of National Steel & Agro Industries Limited (NSAIL) and the other in respect of all the other Noticees, granting certain relaxations from the interim orders. During the hearings given to the Noticees, the issue of granting further reliefs was raised particularly in the context of the physical market trades that many of the Noticees were carrying out as their business activity. I note that the Noticees in general have made a plea that since they have exposure in physical markets they may be permitted to trade in commodity derivative markets. In this regard, I note that various aspects of trading in commodity derivative markets such as overall position limits, near month position limits, Concentration margin policy, guidelines with respect to 'persons acting in concert' etc. have been strengthened by the SEBI and the Commodity Exchanges vide various circulars which have been issued post the suspension of Castor seed contracts. Further, I note that an entity engaged in trading activity in physical commodities may at some stage need to offset price risks or allow risk reduction/risk containment incidental to its cash or spot operations and thus would need an exposure to derivatives market for bonafide hedging. Therefore, I find it appropriate to accede to the request for relief sought by the Noticees and permit them to trade in commodity derivatives markets for

the limited purpose of hedging their physical market positions under the supervision of the exchanges.

12. One of the Noticees, Mr Narsinpuria Korodimal, has submitted that he is a small trader and had a open long position of only 50 Tons in Castor Seed Contracts at NCDEX. Mr Narsinpuria Korodimal submitted that he had debit of Rs 17666/- to the Member after close out of Castor Seed Contracts at NCDEX and same has been paid by him. I note that the trading pattern of Mr. Narsinpuria Korodimal suggests that he is a small trader and in the present matter long position of 50 Tons held by him in Castor Seed Contracts is insignificant compared to the total position held collectively by the other entities as brought out in the interim orders. Therefore, his long position of 50 MT in Castor seed contract has no impact on overall combined position of all entities which was nearly around 220000 MT. Further, available evidence, in the form of financial transactions or otherwise, does not lead to any suspicion that Mr. Korodimal is connected to the other noticees or that he acted in concert with them. In view of the above, with regard to the entity Mr. Narsinpuria Korodimal, the facts and circumstances of the case do not justify the continuation of the directions issued against him. I, therefore, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act, hereby revoke the directions against Noticee No. 18 (*indicated in the first Table in this Order*) i.e. Mr. Narsinpuria Korodimal (**PAN - AGXPK2223Q**), contained in the ad interim ex-parte order dated March 2, 2016 in the matter of trading in Castor Seed Contracts at NCDEX. The aforesaid entity is hereby directed to ensure that all his future dealings in the securities market are done strictly in accordance with law.
13. In view of the foregoing reasons, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, confirm the directions issued in the ad interim ex parte orders dated March 2, 2016 and May 24, 2016 against Noticees 1 to 17 indicated in the first Table in this Order, subject to the relaxations granted to them stated in para 11 above.
14. This order shall continue to be in force till further directions.

15. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

DATE: March 08, 2017

PLACE: Mumbai

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