

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of Securities and Exchange Board of India Act, 1992 read with regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

Name of the Noticee	SEBI Registration No.	PAN
Prudent Comder Private Limited	INZ000085833	AABCN5461G

In the matter of National Spot Exchange Limited

BACKGROUND

1. **Prudent Comder Private Limited** (hereinafter referred to as the “**noticee/ Prudent Comder**”) is registered with Securities and Exchange Board of India (hereinafter referred to as the “**SEBI**”) as a stock broker under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Brokers Regulations**”). As per the available records, the noticee is a member of Multi Commodity Exchange of India Ltd. (hereinafter referred to as the “**MCX**”). The noticee was earlier a member of the National Spot Exchange Limited (hereinafter referred to as the “**NSEL**”).
2. As noted above, noticee was earlier a member of NSEL and pursuant to the merger of Forward Market Commission (hereinafter referred to as the “**FMC**”) with SEBI (with effect from September 28, 2015), in terms of the provisions of the Finance Act, 2015, the noticee applied for registration with SEBI. Accordingly, SEBI granted certificate of registration to the noticee with registration number INZ000085833), as a commodity derivatives broker subject to the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the “**Intermediaries Regulations**”).

3. As the noticee was a member of NSEL and had participated in / facilitated trading in paired contract(s) on the NSEL platform, SEBI initiated proceedings against the noticee under Chapter V of the Intermediaries Regulations and appointed a Designated Authority (hereinafter referred to as the “DA”) on September 21, 2018, to enquire into whether the noticee was ‘fit and proper’ to continue to hold the certificate of registration as a commodity derivatives broker, in view of the alleged violation of regulations 5(e), 9(b), 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Brokers Regulations read with Schedule II of the Intermediaries Regulations. The DA issued a show cause notice dated September 25, 2018 to Prudent Comder. Pursuant thereto, Prudent Broking Services Private Limited (hereinafter referred to as the “**Prudent Broking**”), vide letter dated October 15, 2018, *inter alia*, submitted that the noticee, i.e., Prudent Comder had amalgamated with Prudent Broking with effect from May 3, 2018.
4. Upon completion of the enquiry, Enquiry Report dated December 31, 2019, was submitted by the DA, observing that Prudent Broking was not a ‘fit and proper’ person in terms of regulation 5(e) read with regulation 27(iv) of the Brokers Regulations and Schedule II of the Intermediaries Regulations. Accordingly, the DA, in terms of regulation 27 of the Intermediaries Regulations, recommended as under:

“44. In view of the facts and circumstances of the case and material placed before me, I am of the view that Prudent Broking Services Private Limited is not a ‘fit and proper’ person in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that the registration of Prudent Broking Services Pvt. Ltd. [Registration No. INZ000166234] as a commodity derivatives broker may be cancelled.”
5. Pursuant to the above, a post enquiry SCN dated January 28, 2020, was issued to Prudent Comder, under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time), to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Competent

Authority, should not be taken against Prudent Comder. A copy of the Enquiry Report was also forwarded to Prudent Comder. Pursuant to the same, Prudent Broking filed a reply on merits in the matter, on behalf of Prudent Comder.

6. While the extant proceedings in the present matter were ongoing, SEBI passed five separate orders during February, 2019, rejecting the applications filed by five entities (involved therein) for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**SAT**"). The Hon'ble SAT, vide its common order dated June 9, 2022 (hereinafter referred to as the "**SAT order**"), remanded the aforesaid orders to SEBI to decide these matters afresh within six months from the date of the said SAT order.

HEARING, SUBMISSIONS AND ADDITIONAL MATERIAL

7. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the noticee before concluding the present proceedings against the noticee. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as "**SSCN**") provided some additional material viz. a copy of SEBI's complaint letter dated September 24, 2018 to EOW, and a copy of FIR dated September 28, 2018 registered by EOW and amended Schedule II of the Intermediaries Regulations was also provided to the noticee along with an intimation that the hearing in the matter has been scheduled on December 6, 2022.
8. Prudent Broking, vide letter dated October 18, 2022, reiterated the submissions made in its earlier replies dated October 16, 2018, November 19, 2019 and May 31, 2021.
9. The hearing in the matter was held as scheduled and Mr. Nilesh Panchal, Authorised Representative of Prudent Broking appeared and made submissions on the line of replies submitted earlier. As requested, Prudent Broking was granted

time till December 16, 2022 to file post hearing submissions in the matter. Vide letter date December 16, 2022, Prudent Broking filed post hearing submissions in the matter. Further, vide letter dated April 18, 2023, Prudent Broking filed additional reply in the matter and submitted that on account of amalgamation of Prudent Comder with Prudent Broking, the instant proceedings are liable to be disposed of/ dropped.

10. The submissions made by Prudent Broking, vide its letter dated April 18, 2023, are summarised as under:

- a) Pursuant to order dated May 3, 2018 passed by the Hon'ble National Company Law Tribunal, Principal Bench, Ahmedabad, (hereinafter referred to as the "**NCLT**"), Prudent Comder was amalgamated with Prudent Broking Services Private Limited (hereinafter referred to as the "**Prudent Broking**");
- b) Prudent Comder is no longer in existence and is deemed to be dissolved without the process of being wound up;
- c) SEBI was requested to drop proceedings initiated by issuance of SCN dated January 28, 2020 as proceedings get abated on the ground that Prudent Comder ceased to exist with effect from May 3, 2018;
- d) A copy of Company Master Data of Prudent Comder, downloaded from the Ministry of Corporate Affairs (hereinafter referred to as the "**MCA**") website, showing the company status as "Amalgamated" was also enclosed with the reply.

Accordingly, all allegations along with the proceedings against Prudent Comder which has amalgamated with Prudent Broking may be dropped off.

CONSIDERATION AND FINDINGS

11. It is noted that Prudent Comder was amalgamated with Prudent Broking pursuant to the order dated May 3, 2018 passed by NCLT (with effect from February 14, 2018). On the MCA website also, the status of Prudent Comder is

shown as 'Amalgamated'. As stated earlier, the DA was appointed on September 21, 2018 and the show cause notice was issued by the DA to Prudent Comder on September 25, 2018.

12. As regards the effect of amalgamation, it is a settled law that upon amalgamation, the transferor company *ceases to exist* and all its rights and liabilities pass on to the transferee company. The Hon'ble Supreme Court in the case of *M/s. General Radio and Appliances Co. Ltd. & Ors. v. M.A. Khader (dead) by Lrs.* [Judgment dated April 17, 1986] held that under the order of amalgamation, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. The Hon'ble Court laid down that after the amalgamation of two companies, the transferor company ceased to have any identity and the amalgamated company acquired a new status.
13. In view of the above, I note that after the amalgamation of Prudent Comder with Prudent Broking, pursuant to the NCLT order dated May 3, 2018, Prudent Comder ceased to have any identity of its own and therefore, the present proceedings against Prudent Comder cannot continue. Accordingly, the issue that now arises for consideration is whether the present proceedings for determining whether Prudent Comder was a 'fit and proper' person can be passed on to, and have to be continued against the resultant entity after the amalgamation (i.e. Prudent Broking).
14. In this context, I find it appropriate to refer to the judgment of Hon'ble Supreme Court of India in the case of *Saraswati Industrial Syndicate v C.I.T.* [Judgment dated September 04, 1990], wherein it was held that "*the true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.*"

15. Further, the implications of amalgamation have been outlined by the Hon'ble Supreme Court of India in the matter of *Principal Commissioner of Income Tax (Central) – 2 Vs. Mahagun Realtors (P) Ltd.* [judgment dated April 5, 2022] as under:

“18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues-enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the transferee company ... Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.”

16. In this context, it is pertinent to mention that in terms of clause 7 of Schedule II of the Intermediaries Regulations (as amended vide the SEBI (Intermediaries) (Third Amendment) Regulations, 2021, with effect from November 17, 2021), the 'fit and proper' person criteria are applicable at the time of application of registration and during the continuity of registration of the intermediary. Thus, 'fit and proper' criteria have to be met for continued recognition of an entity as a SEBI registered intermediary. In other words, the intermediary has to maintain the 'fit and proper' status throughout the continuity of its registration. However, insofar as the question of determining the 'fit and proper' status of the resultant entity, i.e., Prudent Broking, is concerned, the 'fit and proper' status of the transferor company cannot be treated either as an asset or a liability which may get transferred to the resultant entity. Thus, when a transferor company amalgamates with the transferee company, the 'fit and proper' status of the transferor company does not pass on to the resultant company. Consequently, if the resultant entity already is or is seeking to be an intermediary, it will have to fulfil the "fit and proper" criteria separately. Likewise, even when the transferor company is not a 'fit and proper' person, the resultant company will be separately assessed as to whether it is 'fit and proper' in accordance with the requirements under the Intermediaries

Regulations and any disqualification of the transferor entity, which gets amalgamated, will not have a bearing on the 'fit and proper' person status of the resultant entity.

17. Considering the above, I disagree with the views of the DA that Prudent Broking is not a "fit and proper" person in terms of regulation 5(e) read with regulation 27(iv) of the Broker Regulations and Schedule II of the Intermediaries Regulations.

ORDER

18. I, in exercise of powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 of the Intermediaries Regulations, hereby dispose of the instant proceedings against the noticee, namely, Prudent Comder Private Limited (SEBI Registration No. INZ000085833) without issuing any directions.
19. This order is without prejudice to any action that may be taken against the noticee by SEBI or any other authority in accordance with law.
20. A copy of this order shall be served on Prudent Broking Services Private Limited and upon all recognized Stock Exchanges and Depositories for their record.

Sd/-

DATE: JULY 04, 2023

PLACE: MUMBAI

ANAND R. BAIWAR

EXECUTIVE DIRECTOR

SECURITIES AND EXCHANGE BOARD OF INDIA