

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

Against

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
Tradebulls Commodities Broking Private Limited	INZ000079832

In the matter of trading at the National Spot Exchange Limited

BACKGROUND

1. The Securities and Exchange Board of India (for brevity's sake, hereinafter referred as the "**SEBI**") appointed on September 21, 2018 a Designated Authority (for brevity's sake, hereinafter referred to as the "**DA**") to enquire into and to submit a report on the activities of Tradebulls Commodities Broking Private Limited (for brevity's sake, hereinafter referred to as the "**Noticee**") as a stock broker bearing Registration No. INZ000079832 (since then merged with Tradebulls Securities Private Limited bearing Registration No. INZ000171838 vide the order of the National Company Law Tribunal dated December 18, 2018) in the matter of its trading on the spot exchange platform provided by the National Spot Exchange Limited (for brevity's sake, hereinafter referred to as the "**NSEL**"). These trades were alleged to be violative of Regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (for brevity's sake, hereinafter referred to as the "**Stock Brokers Regulations**") read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (for brevity's sake, hereinafter referred to as the "**Intermediaries Regulations**").

2. The Noticee applied for settlement under the SEBI (Settlement Proceedings) Regulations, 2018 (for brevity's sake, hereinafter referred to as the "**Settlement Regulations**") vide letter dated January 30, 2019 which was however rejected by the competent authority of SEBI and communicated vide letter dated July 08, 2019, Noticee was informed of the rejection of its settlement application.
3. Upon conclusion of the proceedings before the DA in the manner envisaged under Regulation 25 of the Intermediaries Regulations, the DA submitted a report dated December 30, 2020 (for brevity's sake, hereinafter referred to as the "**Enquiry Report**") in terms of Regulation 27 of the Intermediaries Regulations as it read at the relevant point of time prior to its amendment on January 21, 2021 vide SEBI (Intermediaries) (Amendment) Regulations, 2021. The DA recommended that the registration of the Noticee as a stock broker may be cancelled.
4. The relevant excerpt of the Enquiry Report is reproduced below:

"60. In view of the facts and circumstances of the case and material placed before me, I am of the view that the Noticee 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 Tradebulls Securities Pvt. Ltd. [Registration No. INZ000171838], into which Tradebulls Commodities Broking Pvt. Ltd. has merged, as a commodity derivatives broker may be cancelled."

5. A notice dated January 20, 2021 (for brevity's sake, hereinafter referred to as the "**SCN**") enclosing the Enquiry Report and certain other documents referred to in the said SCN, was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations, as applicable at the relevant time, calling upon it to show cause as to why the recommendation of the DA cancelling the certificate of registration or any other action as may be considered appropriate, should not be initiated against it. Noticee was further advised to submit its reply, if any, within 21 days from the date of receipt of the said SCN.

6. At this juncture, it would be relevant to refer to certain developments that ensued and have a bearing on the case under consideration. Against five separate orders earlier passed by SEBI in February 2019 rejecting the applications filed by five separate entities seeking registration as commodity brokers on the ground of being involved in the trades on the platform provided by NSEL, the five entities filed five separate appeals before the Securities Appellate Tribunal which, vide its common order dated June 9, 2022, remanded the SEBI orders for being reconsidered within six months from June 9, 2022 and, *inter alia*, held as under:

“42...The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice...”

7. On the basis of this order and other orders subsequently passed on similar lines by the Tribunal in a set of other cases, the Noticee was provided the relevant additional documents/ material vide a supplementary notice dated February 17, 2023 (for brevity's sake, hereinafter referred to as the “**SSCN**” which along with the original notice, is collectively referred to as the “**SCNs**”) with an advice to submit its reply/ comments/ clarifications in addition to its earlier replies, if any, within 15 days of the receipt of the SSCN. Noticee filed its submission vide reply dated May 18, 2023.
8. From the records it is noted that the Noticee subsequently resubmitted their earlier filed settlement application vide letter dated March 7, 2023, which was expectedly not considered by SEBI. Vide email dated March 24, 2023, Noticee was informed of the rejection of its settlement application.
9. The Noticee was granted an opportunity of personal hearing on June 02, 2023 which was availed as per their choice through video conferencing. On the scheduled date of hearing, the authorised representatives of the Noticee

appeared and made their submissions in line with the earlier responses and further requested that all the replies be read in conjunction. Based on their request, the Noticee was granted additional opportunity for making post hearing submissions. The Noticee sent its additional submissions vide letter dated June 15, 2023.

10. Vide the replies dated May 18, 2023 and June 15, 2023, the Noticee while denying all the allegations, primarily submitted as under:
 - a. In 2018, Tradebulls Commodities Broking Private Limited and Tradebulls Securities Private Limited had both filed application before the Ahmedabad Bench of National Company Law Tribunal (for brevity's sake, hereinafter be referred to as the "**NCLT**") for amalgamation of Tradebulls Commodities Broking Private Limited with Tradebulls Securities Private Limited.
 - b. NCLT issued directions on August 01, 2018 for serving a copy of Scheme of Amalgamation upon the stock exchanges and SEBI.
 - c. In terms of the SEBI Circular dated September 21, 2017, all the concerned stock exchanges, viz. BSE, NSE, MCX, NCDEX and MSEI had granted their prior approval and no objection to the Scheme of Amalgamation.
 - d. Considering the entire facts and circumstances of the case and on the satisfaction of the requirements of Sections 230 and 232 of the Companies Act, 2013, NCLT vide its order dated December 18, 2018 sanctioned the Scheme of Amalgamation of both the companies, with effect from April 01, 2017.
 - e. Copy of the Company Master data of the Noticee as downloaded from the website of MCA, evidences the status of Noticee as 'Amalgamated'.
 - f. It is a settled law that upon amalgamation, the transferor company (i.e. the Noticee in these proceedings) ceases to exist and all its rights and liabilities pass on to the transferee company.
 - g. The order dated December 18, 2018, passed by NCLT provided that the Noticee viz. Tradebulls Commodities Broking Private Limited stands dissolved without winding up.

- h. The Noticee viz. Tradebulls Commodities Broking Private Limited (since amalgamated) has neither made an application of registration nor is it registered with SEBI as on date.
- i. In this context, Clause 7 of Schedule II to the Intermediaries Regulations is not applicable.
- j. In view of the aforesaid submissions, the present proceedings have become infructuous.
- k. The transferee company, a new entity, viz. Tradebulls Securities Private Limited is registered with SEBI as a stock broker, portfolio manager and research analyst and also registered as a trading member with NSE, BSE, MCX and NCDEX. It is also registered as a depository participant with CDSL.

CONSIDERATION OF ISSUES

- 11. I have carefully perused the contents of the Enquiry Report, the SCNs issued to the Noticee, the replies dated May 18, 2023 and June 15, 2023, the oral submissions advanced on its behalf during the personal hearing and other material/ information available on record.
- 12. Upon a careful consideration of the same, the principle issue which arises for my consideration is whether the present proceedings for determining the 'fit and proper' status of the Noticee is maintainable, given that it has been amalgamated with Tradebulls Securities Private Limited, and whether the consequences of such determination may be applied to Tradebulls Securities Private Limited.
- 13. The records available with SEBI indicate that the Noticee with registration number INZ000079832, is still registered with SEBI. During the personal hearing when the Noticee was advised to provide its status of registration, the Noticee submitted that since it was registered with MCX and NCDEX to act as a commodity derivatives broker, both the exchanges had advised the Noticee to surrender its certificate of registration dated September 15, 2016 in order to permit it to transfer its business to Tradebulls Securities Private Limited.

14. The Noticee has submitted that in response thereto both MCX and NCDEX vide their letters dated August 07, 2018 and August 29, 2018 respectively, granted prior approval to the Scheme of Amalgamation. Thereafter, NCLT passed an order dated December 18, 2018 sanctioning the Scheme of Amalgamation of the Noticee with Tradebulls Securities Private Limited. This fact is validated from the MCA website where the Noticee's status is shown as 'Amalgamated'.
15. Noticee also submitted that it is a settled law that upon amalgamation, the transferor company i.e. the Noticee in this case, ceases to exist and all its rights and liabilities pass on to the transferee company.
16. I would like to test this proposition by referring to certain orders of 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], the Hon'ble Supreme Court held that under the order of amalgamation, the transferor company ceases to be in existence in the eyes of the law and that it effaces itself for all practical purposes. This Hon'ble Court held that after the amalgamation of two companies, the transferor company ceases to have any identity and the amalgamated company acquires a new status.
17. I further note that in the case of *Saraswati Industrial Syndicate v C.I.T.* [Judgment dated September 04, 1990], the Hon'ble Supreme Court was pleased to hold as under:
- “.....
- 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.”*

18. The implications of amalgamation have also been outlined by the Hon'ble Supreme Court of India in the matter of *Bhagwan Dass Chopra v. United Bank of India and Others* [1987 (Supp) SC 536] as under:

".....

In the circumstances it is reasonable to hold that in every case of transfer, devolution, merger, takeover or a scheme of amalgamation under which the rights and liabilities of one company or corporation stand transferred to or devolve upon another company or corporation either under a private treaty, or a judicial order or under a law the transferee company or corporation as a successor-in-interest becomes subject to all the liabilities of the transferor company or corporation and becomes entitled to all the rights of the transferor company or corporation subject to the terms and conditions of the contract of transfer or merger, the scheme of amalgamation and the legal provisions as the case may be under which such transfer, devolution, merger, take over or amalgamation as the case may be may have taken place. "

19. Further, 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] observed 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."

20. The Hon'ble Supreme Court in *Singer India Ltd. vs. Chander Mohan Chadha*, [(2004) 7 SCC 1] held that as a result of amalgamation of two companies into one, *"the Transferor Company loses its entity as it ceases to have its business"*.

21. In light of the observations of the Hon'ble Supreme Court as has been cited, it is clear that the respective rights or liabilities between the amalgamated entities are determined under the Scheme of Amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective. The transferor in such a case merges with the transferee who becomes the successor of the assets, liabilities and business to the extent contemplated in the Scheme of Amalgamation.
22. In this regard, 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 is applicable at the time of application of registration and during the continuity of registration of the intermediary. Thus, the "fit and proper" criteria is an essential condition to be met for continued recognition of an entity as a SEBI registered intermediary. But, in my view, "fit and proper" is a "status" and cannot be treated either as an asset or a liability.
23. Given this understanding of the "fit and proper" criteria, when a transferor company amalgamates with the transferee company, the "fit and proper" status of a transferor company however does not pass on to the resultant company. Consequently, if the resultant entity is/ seeking to be an intermediary, it would have to separately fulfil the "fit and proper" criteria. As a corollary to that, even when the transferor company is not a "fit and proper" person, the resultant company would have to separately ensure that it is "fit and proper" in adherence with the requirements under the Intermediaries Regulations. Any disqualification of the transferor entity, that gets amalgamated, would not have a bearing on the 'fit and proper' person status of the resultant entity. Considering the above, I find that the determination of the "fit and proper" status of the transferor company (i.e. Tradebulls Commodities Broking Private Limited), that has ceased to exist pursuant to the NCLT order dated December 18, 2018, is not required and hence the exercise is redundant.

24. In light of the above discussion and the dicta of the Hon'ble Supreme Court as reproduced earlier, I disagree with the recommendation of the DA.

ORDER

25. For the reasons above stated, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Intermediaries Regulations, I therefore hold that in the facts and circumstances of the present case, no adverse inference can be drawn against the Noticee, namely, Tradebulls Commodities Broking Private Limited (SEBI Registration No. INZ000079832).
26. It is however clarified that this order is without prejudice to any other proceedings that are or may be initiated against the Tradebulls Commodities Broking Private Limited by SEBI or any other authority in accordance with law in respect of the trades executed by it on the spot exchange platform provided by the NSEL.
27. A copy of this order shall be served upon the Noticee and all the recognized Stock Exchanges and Depositories for their records.

Sd/-

Place: Mumbai

Date: July 20, 2023

**BABITHA RAYUDU
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA**