

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 SECURITIES AND EXCHANGE BOARD OF INDIA
(INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF

NOTICEE	SEBI REGISTRATION NO.
BRH WEALTH KREATORS LTD.	INZ000184733

IN THE MATTER OF BRH WEALTH KREATORS LTD.

BACKGROUND

1. BRH Wealth Kreators Ltd. (formerly BMA Wealth Creators Ltd.) ("**BRH**") is a SEBI registered Stock Broker having registration number INZ000184733. BRH was a member of the National Stock Exchange of India Ltd. ("**NSE**"), in Equity, Equity Derivatives, Currency Derivatives and MFSS segments, and BSE Ltd. ("**BSE**"), in Equity, Equity Derivatives, and Currency Derivatives segments.
2. Based on *prima facie* violations observed in a report submitted by NSE vide e-mail dated October 04, 2019, SEBI passed an *Ex Parte Ad Interim Order no. WTM/AB/SEBI/ERO/25/2019* dated October 7, 2019 ("**Interim Order**") against BRH and 7 related entities *inter alia* directing:-
 - i. "*BRH Wealth Kreators Ltd. (formerly BMA Wealth Creators Ltd.), Shiv Kumar Damani, Anubhav Bhatler, Murgesh Devashrayi, BRH Commodities Private Ltd. (formerly BMA Commodities Pvt. Ltd.), Prosperous Vyapaar Pvt. Ltd., Polo-Setco Tie Up Pvt. Ltd. and Parton Commercial Pvt. Ltd. are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in*

- securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;*
- ii. The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*
 - iii. The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of NSE and BSE;”*
3. The exchanges, clearing corporations and depositories were also directed to appoint a forensic auditor to track misuse of clients’ funds /securities and identify the net assets /liabilities of BRH and submit a report to SEBI within 90 days.
4. Thereafter, vide *Order no. WTM/AB/MIRSD/HO/40/2019–20 dated January 2, 2020 (“Confirmatory Order”)*, the directions issued vide the Interim Order were confirmed against all the persons covered in the Interim Order.
5. NSE, thereafter, submitted the final forensic audit report (“**FAR**”) in the matter to SEBI on March 3, 2020. The period covered under the audit was from April 1, 2016, to September 30, 2019. An Inspection of the books of accounts and other records of BRH, for the period April 1, 2017, to July 25, 2018, was carried out by SEBI, along with BSE, NSE, CDSL and NSDL, between October 1, 2018, and October 5, 2018 (“**Inspection**”).
6. Based on the *prima facie* findings in the FAR and the Inspection Report, SEBI issued a Show Cause Notice dated October 29, 2021 (“**SCN**”), *inter alia* alleging that the Noticee had misutilised clients’ funds and securities. Subsequently, a Final Order in the matter was passed on January 11, 2023, wherein it was held that the charges alleged against the Noticee in the SCN stood established.

7. Simultaneously with the aforesaid proceedings, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") and appointed a Designated Authority ("**DA**") to enquire into whether the alleged violations by the Noticee warranted suspension or cancellation of the Certificate of Registration granted by SEBI or any other action provided in Chapter V of the Intermediaries Regulation. On completion of the proceedings, the DA submitted a report dated June 30, 2022 ("**DA Report**") recommending that the Certificate of Registration granted to the Noticee be cancelled.
8. Pursuant to this, a post enquiry SCN ("**P-SCN**") dated July 19, 2022, was issued to the Noticee, under Regulation 27(1) of the Intermediaries Regulations, to show cause as to why action as recommended by the DA or any other action as considered appropriate by the Designated Member should not be taken against the Noticee. A copy of the DA Report was also forwarded along with the P-SCN and the Noticee was advised to file its reply, if any, within 21 days from the date of receipt of the said SCN.
9. The P-SCN was served on the Noticee at the address available on record with SEBI. The Noticee, however, did not submit any reply to the P-SCN. SEBI, thereafter, vide an e-mail dated October 10, 2022, forwarded a copy of the P-SCN to the e-mail id of the Noticee available with SEBI. Thereafter, vide e-mail dated December 9, 2022, SEBI intimated the Noticee that an opportunity of personal hearing is being provided in the matter on January 17, 2023. On the date of the hearing, Mr. Amit Agarwalla, Advocate, entered appearance on behalf of the Noticee and submitted that the reply submitted in response to the SCN dated October 29, 2021, issued in the 11B proceedings (wherein a Final Order was passed on January 11, 2023), be adopted in the present matter also.
10. In the interest of compliance with the principles of natural justice, the Authorised Representative was informed during the course of the hearing that in case the Noticee wishes to file any additional submissions, the same may be made prior

to January 20, 2023. Subsequently, the Noticee vide e-mail dated February 5, 2023, submitted additional written submissions.

11. The summary of the submissions made by the Noticee is given below: -

- a. *Noticee started its business in the year 2005–06 and since then it was disclosed in the balance sheet and other records of the Company that clients' shares are pledged with banks.*
- b. *Noticee had undergone several inspections by SEBI, NSE and BSE where these facts had been verified.*
- c. *Within the deadline mentioned in the June 2019 Circular for de-pledging the shares of clients, the Company saw the erratic behaviour of HDFC Bank holding the pledge and so it requested SEBI, NSE and BSE to freeze its accounts on September 30, 2019, which was not done and instead, a Suspension Order was first passed on that same date and then the Interim Order was thereafter passed by SEBI imposing certain restrictions.*
- d. *HDFC Bank Ltd. went ahead and sold almost all the shares in a surreptitious manner. The Company challenged such illegal act before Hon'ble High Court at Calcutta and an appeal is still pending in respect thereof.*
- e. *Noticee had own fund to the tune of over Rs. 243 Crores and BRH Commodities had over Rs. 211.64 Crores aggregating to Rs. 454.64 Crores in 2019 at the time of closure.*
- f. *Noticee denied that there was either diversion or misutilisation of client funds or that it had wrongly pledged clients' shares. It was submitted that pledge of shares was with the consent of clients for providing them with margin to trade in stock market*
- g. *It was further submitted that amounts received from banks against loans availed were used to make payment of clients' pay out and margin money to stock exchanges for trading purposes and no part of that was siphoned.*

- h. *In respect of the allegation that there was a mismatch in the data reflected in its books and the demat statements, it was submitted that the CDSL data showing the total pledge of BRH for approximately INR 175 Crore was the correct figure and numbers reflected in the BRH office record was incorrect due to a software error.*
- i. *As regards the allegation that the Noticee had not cooperated with the audit and inspections teams and it had failed to redress investor grievances, it was stated that it was made known to NSE and the Forensic Auditor that after the closure of business September 30, 2019, there was massive chaos in their offices when almost all employees left. However, despite that, support was provided to NSE and the Forensic Auditor.*
- j. *It was also denied that there was non-redressal of grievances of investors by BRH, and it was stated that the compliance team provided full support and resolved all grievances of the investors in 2017-18.*

CONSIDERATION

12. Having considered the FAR, the DA Report, the P–SCN issued to the Noticee and other material available on record, I shall now proceed to deal with the violations alleged in the P–SCN *in seriatim*.

A. Misutilisation of Client Securities by BRH.

13. The P–SCN has alleged that the securities of clients were pledged by BRH and funds including amounts raised through such loans against securities (“**LAS**”) were diverted. I note from the FAR and the DA Report that as per the pledge information submitted by BRH, there was a substantial increase in pledge during the quarter ended (“**QE**”) December 2018. The clients’ securities that were pledged, which stood at Rs. 169 Crore at the end of QE June 2018, increased to Rs. 448 Crore by the end of December 2018. The corresponding debit

balance, which was owed by its clients, was only Rs. 156 Crore in QE December 2018. This mismatch of Rs. 292 Crore (Rs. 448 Crore – Rs. 156 Crore) between the client securities pledged and clients having debit balance, I note, indicated that BRH was pledging securities of clients not having any debit balance.

14. The pledge details for two sample dates (September 28, 2018 and September 30 2019) is extracted from the FAR and reproduced below:

September 28, 2018

- Securities worth approximately Rs. 45 Crore belonging to 9,493 clients having credit balance were pledged by BRH.
- BRH pledged approximately Rs. 130 Crore, which was more than the client indebtedness amounting to approximately Rs. 35 Crore (5,965 debit balance clients.)

September 30, 2019

- Securities worth approximately Rs. 107 Crore belonging to 7,451 clients having credit balance were pledged by BRH.
- BRH pledged approximately Rs. 68 Crore, which was more than the client indebtedness amounting to approximately Rs. 7 Crore (2,819 debit balance clients).

15. From the FAR, it is also observed that in certain instances, clients' securities were transferred from clients' demat accounts to the demat account of BRH and thereafter, to the account of a related party for pledging.
16. Based on securities pledged data received from CDSL, it was observed that BRH had pledged client securities with six Financial Institutions ("FIs") (HDFC Bank, JM Financial, Bajaj Finance Ltd., ICICI Bank, Axis Bank and ICCL) for availing LAS facility. I note that LAS statements of three out of six banks /NBFCs, which had extended loans to BRH was analysed in the FAR. It was noted that Rs. 513 Crore was disbursed by these three FIs to BRH and one of

its related party as LAS during the period April 1, 2016 to September 30, 2019. It is also noted that the FAR identified 23 instances where LAS funds totalling Rs. 150.13 Crore were transferred to seven related parties of BRH, the details of which are given below:

- i. Rs. 80.61 Crore (54%) to Polo Setco Tie Up Pvt. Ltd.
- ii. Rs. 50.67 Crore (34%) to Parton Commercial Pvt. Ltd.
- iii. Rs. 8 Crore (5%) to Agarwallas (Subodh Agarwalla, Subhas Chandra Agarwalla and Prahlad Rai Agarwalla)
- iv. Rs. 5 Crore (3%) to Prosperous Vyapaar Pvt. Ltd.
- v. Rs. 4 Crore (3%) to BRH Stainless Ltd.
- vi. Rs. 1.80 Crore (1%) to AB Investments
- vii. Rs. 0.05 Crore to East West Infra Projects Pvt. Ltd.

17. The Noticee in its reply has accepted that it was pledging the securities of its clients. The contention that has, however, been raised is that this fact was publicly disclosed and enjoyed the implicit approval of the clients. I am unable to accept this contention as it is noted that SEBI has put in place stringent norms providing the limited purposes for which clients securities can be pledged. It was noted that contrary to the provisions of the SEBI Circulars, the Noticee was pledging securities of clients who had a credit balances and even in the case of clients having debit balances, the quantum of securities pledged were much larger than the debit balance of such clients. Further, even if, for the sake of argument, it is accepted that such practices were with the consent of the clients, it would still not absolve the Noticee from liability for contravening mandatory provisions of securities laws.

18. In view of the same, I find that BRH had misutilised clients' securities and also misappropriated clients' funds and securities through its related parties and thus violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

B. Misutilisation of clients' funds by BRH.

19. As per principles and guidelines stipulated in clause 3 of *“Enhanced Supervision of Stock Brokers/ Depository Participants”* Circular dated September 26, 2016, the total available funds and cash equivalents with the stock broker and with the clearing corporation /clearing member should always be equal to or greater than the clients' funds as per the ledger balance. It is however noted that in 37 out of 38 sample instances examined during the Inspection, funds of clients with credit balance were misutilised for meeting the obligations of debit balance clients and /or for Noticee's own purposes. The amount of misutilisation ranged from Rs. 1.45 Crore to Rs. 8.00 Crore.
20. I note that the Noticee has not furnished any specific reply in respect of this allegation other than bland assertions that there was no diversion of funds as alleged in the P-SCN. I am however unable to accept this contention as it is noted from the sample analysis that in the overwhelming majority of the cases that were analysed, it was observed that BRH had misutilised funds of its clients having credit balances. In view of the same, I hold that BRH has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

C. Wrong /Non-submission of data by BRH.

21. It is alleged in the P-SCN that there was a discrepancy in the data related to pledged securities, value of client security holdings and client fund balances reported by BRH to NSE. I note from the records that as on September 30, 2019, as per CDSL's data, the total pledge of BRH amounted to approximately Rs. 175 Crore whereas as per BRH's submission to NSE, it amounted to Rs. 246 Crore. It was, therefore, noted that there was a mismatch between the data submitted by BRH to the exchanges and the data available with CDSL.

22. Similarly, I note that as of September 30, 2019, the value of securities as per the back office statement of holding was Rs. 320 Crore (25,631 Clients holding 2,653 scrips) whereas in the submission made to NSE, the value of securities was reported as Rs. 278 Crore (28,666 Clients holding 2,661 scrips).
24. Even in respect of client balances, it is noted that there was a mismatch between the data recorded in the back office system of BRH and the data reported to NSE. The details of the same as on September 30, 2019, are given in the table below:

PARTICULARS	AS PER BACK OFFICE	AS PER BRH'S SUBMISSION TO NSE
TOTAL CLIENT COUNT	1,22,935	2,30,511
CLIENT HAVING CREDIT BALANCES (PAYABLE TO CLIENTS)	RS. 205 CRORE	RS. 152 CRORE
CLIENT HAVING DEBIT BALANCES (RECEIVABLE FROM CLIENTS)	RS. 88 CRORE	RS.73 CRORE

25. It is further alleged in the SCN that there was a mismatch in the details of the DP accounts and bank accounts disclosed by BRH to the exchanges and the information obtained during the Inspection. I note from the records that on verification of the list of DP accounts reported by BRH to the exchange as of November 5, 2019, with the back office master data, it was observed that 6 DP accounts of BRH, 25 bank accounts of BRH was not reported to the exchanges.
26. I note that the only defence offered by the said Noticee was that the mismatch of data was due to issues with their backend software, and Noticee have accepted that there was a mismatch in data as pointed out by the FAR. In view of the same, I am constrained to note that BRH has wrongly reported or not reported pledge data, funds and securities balance of clients, details of bank and demat accounts, PAN of directors and Key Managerial Personnel and weekly enhanced supervision data, and thus violated SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

D. Non-cooperation by BRH.

27. As stated in the preceding paragraphs, SEBI had vide the Interim Order directed the exchanges to “*appoint [a] forensic auditor to track misuse of client’s funds/securities and to identify the net assets/liabilities of Noticee no. 1 and Noticee no. 5*”. As per the FAR, the forensic auditor had requested for the data /information during the review conducted from November 6, 2019 to December 24, 2019 along with access to the employees /Directors for obtaining the necessary information /clarification. However, I note from the records that the following information was not provided even after repeated follow-up:

- a) Audited financials for the FY ending 2017, 2018, 2019 and unaudited financials as of September 30, 2019.
- b) List of bank accounts operated by members and corresponding bank statements.
- c) Employee master data.
- d) BRH did not provide access to any of the employees or process owners for an explanation of the processes being followed.
- e) KYC documents for select Clients.
- f) Loan sanction letters /agreements with various banks for all facilities (LAS, OD, term loans, WC, etc.)
- g) Net worth of BRH as of September 30, 2019.
- h) BRH did not provide access to finance and operations personnel during the on-site visit of the auditor.
- i) BRH has taken significant time to provide key data. BRH was unable to provide support for generating reports through its back office vendors.

28. In the matter of ***Dalmia Industrial Development Ltd. v. SEBI***¹, the Hon’ble Securities Tribunal had upheld the finding by SEBI against the Noticee in that matter for failing to cooperate with the auditor appointed by the Exchange on the directions of SEBI.

¹ Appeal No. 471 of 2022 | Date of decision September 01, 2022

29. In view of the above, I noted that BRH had failed to produce to the inspecting authority such books, accounts and other documents in its custody or control and failed to furnish to the auditor appointed on the directions of SEBI, the statements and information sought by them and therefore, has not complied with Regulation 21 read with Regulation 24 of the SEBI (Stock Brokers) Regulations, 1992 ("**Stock Brokers Regulations**").

E. Non-redressal of grievances of investors by BRH.

30. Regulation 9(e) of the Stock Brokers Regulations provides that any registration granted by the Board to a stock broker shall be subject to the stock broker taking adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complaint. It is observed that BRH has not redressed the grievances of investors within one month from the date of receipt of complaints in 19 instances.
31. I note that the Noticee, in its reply, other than stating that there has been no delay in redressing investor grievances has not provided any material to support the said claim. In view of the above, I am constrained to go by the findings made in the FAR and hold that BRH has failed to redress investor complaints within the stipulated time and thereby contravened Regulation 9(e) of the Stock Brokers Regulations.
32. I shall now proceed to consider the directions that should be issued against Noticee that would be commensurate with the violations established in this Order. A stock broker plays a critical role in the securities market as it acts as an interface for retail investors and is therefore required to maintain high standards of integrity and fairness in the conduct of its business dealings, and uphold the trust reposed by investors who hold their funds and securities with it. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and ensure that their rights are protected. I also note that the

Noticee has been declared a defaulter and expelled by BSE on February 17, 2020, and by NSE on February 13, 2020. Given the above, I am inclined to accept the recommendation in the DA Report that the registration granted to the Noticee be cancelled.

DIRECTIONS

33. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, hereby cancel the Certificate of Registration of **BRH Wealth Kreators Ltd.** (INZ000184733).
34. Irrespective of the cancellation the Certificate of Registration, the Noticee shall continue to be liable for anything done or omitted to be done as a Stock Broker and continue to be responsible for payment of outstanding fees and dues if any, payable to SEBI.
35. This Order shall come into force with immediate effect.
36. A copy of this Order shall be served upon the Noticee and all recognised Stock Exchanges for information and necessary action.

Place: Mumbai
Date: February 27, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA