

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

In respect of:

Sl. No	NAME	SEBI Registration No
1.	Aasmaa Commodities Private Limited	INZ000076031

In the matter of National Spot Exchange Limited (NSEL)

BACKGROUND

1. Aasmaa Commodities Private Limited (hereinafter referred to as “**ACPL**”/ “**Noticee**”) was registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker bearing SEBI registration no. INZ000076031. ACPL was earlier a member of National Spot Exchange Limited (hereinafter referred to as “**NSEL**”).
2. The present proceedings originated from the enquiry report dated July 31, 2020 (hereinafter referred to as “**DA Report**”), submitted by the Designated Authority (hereinafter referred to as “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021. The DA, based on findings recorded in the said DA Report, recommended that the registration of ACPL as a stock broker may be cancelled.

SHOW CAUSE NOTICE, REPLY AND HEARING:

3. Pursuant to the DA Report, a post enquiry show cause notice dated August 17, 2020 (hereinafter referred to as “**SCN**”) was issued to the Noticee, alongwith copies of (i) the aforesaid DA Report; (ii) Finance Ministry letter dated December 30, 2014 to Forwards Market Commission (hereinafter referred to as “**FMC**”); (iii) Hon'ble Bombay HC's order in criminal bail application no. 1263 of 2014 in Jignesh Prakash Shah vs. State of Maharashtra dated August 22, 2014. In response to the SCN, the Noticee filed a reply dated September 09, 2020.
4. After considering all material / documents available on record including Noticee's reply, Designated Member / Whole Time Member (hereinafter referred to as “**DM**” / “**WTM**”) vide order dated October 29, 2021 (hereinafter referred to as “**October 2021 SEBI Order**”) held that Noticee was not a 'fit and proper' person and thereby cancelled Noticee's certificate of registration as commodity derivatives broker. Aggrieved by the said October 2021 SEBI order, Noticee preferred an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as “**Hon'ble SAT**”).
5. While the aforesaid enquiry proceedings were pending, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble SAT. The Hon'ble SAT vide its common order in the matter of Geofin Comtrade Ltd. And Ors. vs. SEBI (Appeal no. 214 of 2019) dated June 09, 2022 (“**June 2022 SAT Order**”), remanded the aforesaid SEBI orders to decide these matters afresh within six months from the date of the said order. While remanding the said SEBI orders, the Hon'ble SAT *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.....”

6. In the appeal filed by Noticee, Hon’ble SAT vide its order dated July 20, 2022 had remanded the matter back to SEBI to decide the matter afresh in terms of direction given in aforesaid June 2022 SAT order.

SUPPLEMENTARY SCN:

7. Pursuant to the June 2022 SAT Order, it was felt necessary to furnish certain additional documents/material to the Noticee and grant an opportunity of personal hearing. Accordingly, a supplementary SCN dated February 27, 2023 (hereinafter referred to as “**SSCN**”) was served on the Noticee along with the following documents:
 - 7.1. Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing (hereinafter referred to as “**EOW**”);
 - 7.2. Copy of FIR dated September 28, 2018 pursuant to the complaint filed by SEBI under section 154 of Criminal Procedure Code, 1973 (hereinafter referred to as “**CrPC**”); and
 - 7.3. Amended Schedule II of Intermediaries Regulations.

HEARING:

8. Vide letter dated July 13, 2023, Noticee submitted reply to the SSCN. In compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on September 12, 2023 through video conferencing. The Authorized Representative (hereinafter referred to as "**AR**") of the Noticee appeared online before me on September 12, 2023 and reiterated the content of the reply dated July 13, 2023. During the course of hearing, the AR stated that Noticee was merged with Aasmaa Securities Private Limited and submitted a copy of compilation of orders relied upon in the matter. During the course of hearing, AR was advised to submit the details of directors / KMPs of the Noticee and Aasmaa Securities Private Limited, as on date of merger. However, I note that till date Noticee had not submitted said details.

REPLY AND WRITTEN SUBMISSION:

9. The reply filed by the Noticee dated July 13, 2023 are summarized hereunder:
- 9.1. Vide Order dated January 06, 2020 of the National Company Law Tribunal, Hyderabad (hereinafter referred to as "**NCLT**"), Noticee was amalgamated with Aasmaa Securities Private Limited (hereinafter referred to as "**ASPL**") pursuant to Scheme of Merger dated November 28, 2018 executed between Noticee and ASPL.
- 9.2. The Noticee is no longer in existence. Company Master Data of the Noticee in Ministry of Corporate Affairs (**MCA**) website reflects the Noticee / Company Status as "Amalgamated".
- 9.3. In this regard, Noticee placed reliance on the following orders passed by the Executive Director, SEBI, wherein the proceedings against the entity was disposed of without issuing any direction.
- 9.4. Order dated March 01, 2023 passed in respect of Smart Commodity Brokers Pvt. Ltd. in the matter of NSEL.

9.5. Order dated July 04, 2023 passed in respect of Prudent Comder Private Limited in the matter of NSEL.

9.6. In view of the aforesaid, the Noticee request to drop the proceedings initiated by issuance of Show Cause notice dated August 17, 2020 and Supplementary Show Cause Notice dated February 27, 2023, since proceedings initiated against the Noticee gets abated on the ground that Noticee ceased to exist w.e.f. January 01, 2020.

CONSIDERATION OF ISSUE AND FINDINGS:

10. I have carefully perused the SCN, SSCN, Enquiry Report, reply submitted by the Noticee and other materials/information as available in the public domain. After considering the same, the issue which arises for consideration in the present proceedings is *whether the instant enquiry proceedings for determining the 'fit and proper' status of the Noticee is maintainable, given that it has been amalgamated with ASPL, and whether the consequences of such determination may be applied to ASPL, and if so, whether the Noticee satisfies the 'fit and proper' criteria as laid down in schedule II of the Intermediaries Regulations.*
11. As per available record, the Noticee was only a member of Multi Commodity Exchange of India Limited ((hereinafter referred to as “**MCX**”). Therefore, MCX was asked to provide the status of Noticee's membership. In reply, MCX stated “....*Pursuant to the said merger, Aasmaa Commodities Private Limited ceases to be the member of the Exchange and Aasmaa Securities Pvt. Ltd. the Transferee entity was admitted as the member of the Exchange. Further, subsequently, Aasmaa Securities Pvt. Ltd. applied for surrender of membership on April 16, 2021 and the said application was kept on hold by the Exchange due to SCN issued by SEBI to Aasmaa Commodities Private Limited (Erstwhile Transferor entity) in the matter of NSEL...*”

12. It is noted that the pursuant to merger, Noticee ceased to be a member of MCX. I note that NCLT vide order dated January 06, 2020 sanctioned the Scheme of Amalgamation of the Noticee with ASPL. This fact is corroborated from the MCA website where the Noticee's status is shown as 'Amalgamated'. Membership of an exchange is an essential condition for registration of any entity as a stock broker.
13. 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. Hon'ble Supreme Court vide order dated April 17, 1986 in the matter of *M/s. General Radio and Appliances Co. Ltd. & Ors. v. M.A. Khader (dead) by Lrs.* 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. This 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.
14. Hon'ble Supreme Court vide order September 04, 1990, in the matter of *Saraswati Industrial Syndicate v C.I.T.* 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. 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. "

16. Further, Hon'ble Supreme Court of India vide order dated April 05, 2022 in the matter of *Principal Commissioner of Income Tax (Central) – 2 Vs. Mahagun Realtors (P) Ltd.* held that:

"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."

17. 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".
18. In light of the above observations of the Hon'ble Supreme Court, 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.

19. 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*, w.e.f. 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, "fit and proper" criteria is an essential condition to be met for continued recognition of an entity as a SEBI registered intermediary. But, "fit and proper" is a "status" and cannot be treated either as an asset or a liability.
20. Given this understanding of the "fit and proper" criteria, 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 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 was not a "fit and proper" person, the resultant company would have to separately ensure that it is "fit and proper" in adherence to 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. I have also considered earlier orders passed by SEBI in respect of Smart Commodity Brokers Private Limited decision dated March 01, 2023, Prudent Comder Private Limited decision dated July 04, 2023 and Tradebulls Commodities Broking Private Limited decision dated July 20, 2023, which have also arrived at the same conclusion noted above.

21. Considering the above, I find that determination of the “fit and proper” status of the transferor company (i.e. the Noticee), who had ceased to exist pursuant to the NCLT order dated January 06, 2020 discussed earlier in this, would be infructuous.
22. In light of the above discussion and the judgments of the Hon’ble Supreme Court as reproduced earlier, I do not agree with the recommendation of the DA.

ORDER:

23. In view of the facts and circumstances of the case and the conclusions arrived at discussed above, I, in exercise of powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act and regulation 27 of the Intermediaries Regulations, hereby dispose of the instant proceedings and the SCN read with SSCN against Aasmaa Commodities Private Limited (bearing registration no. INZ000076031) without issuing any directions.
24. It is however clarified that this order is without prejudice to any other proceedings that are or may be initiated against the Noticee 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.
25. A copy of this Order shall be served on the Noticee and upon all recognized stock exchanges and depositories.

DATE: SEPTEMBER 28, 2023

PLACE: MUMBAI

-Sd-

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA