

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Trinity Tradelink Ltd. (PAN: AAFCS8117C)

Background of case:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “**SFIO**”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) of protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that companies identified as shell companies by SFIO and MCA, were potentially involved in
 - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) and/or

- (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of listed shell companies including Trinity Tradelink Ltd. (formerly Omnitech Petroleum Limited/ Sharp Trading & Finance Limited) (hereinafter referred to as “**TTL**” / “**Company**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and Exchanges completed their detailed examination of such companies.
6. Pursuant to the same, BSE vide notice dated August 7, 2017, to all its market participants initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.

7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, 1956 whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. Vide its letter dated August 10, 2017, TTL, made a representation and submitted that the company has been put under surveillance grade – IV without giving any proper reason of company being involved in suspected manipulative activities, without any details of company distorting the market equilibrium or any allegation from any investor and without any pending investigation and opportunity of being heard in the matter. Further the Company stated that the Order affects 1109 shareholders and other stake holders and thus they intend to move to Securities Appellate Tribunal for appropriate directions.
9. Thereafter, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, TTL filed an appeal No. 207 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”). The Hon'ble SAT vide order dated August 24, 2017 directed the following:-

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2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of three weeks from today. It is made clear that passing of any order on the representation made by the appellant

would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit.

3. Appellant company has already made a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. SEBI is directed to dispose of the said representation in accordance with law.

It is made clear that this order shall not come in the way of SEBI as well as the stock exchanges to investigate the case of the appellant company and initiate proceedings if deemed fit.....”

10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

11. Pursuant to the Hon'ble SAT directions, the company submitted a representation which included the memo of appeal and the annexed documents filed before SAT in the Appeal No. 207/2017. The main grounds of the appeal was that-

- a. That SEBI has grossly erred in classifying TTL as Shell Company since no criteria of Shell Company is applicable to TTL.
- b. That no purpose or intent of SEBI has been spelt out in the letter issued by SEBI to BSE for classifying TTL as Shell Company.
- c. The Impugned Order is *ultra vires* and bad in law on the sole ground that the SEBI has not followed principles of natural justice i.e. without first setting up a case against TTL, without affording an opportunity to explain its case and without giving

an opportunity of personal hearing to TTL, the securities of TTL has been moved to GSM.

- d. SEBI has failed to appreciate that TTL from time to time has complied with all regulatory compliances as per Listing Agreement and as on date there is no lapse of any nature of whatsoever in this regard

Hearing and Reply:

12. Pursuant to the decision of Hon'ble SAT, an opportunity of personal hearing was granted to TTL on September 05, 2017 when its authorized representative (Mr. Ramesh Chandra Mishra and Mr. Loknath Mishra, Advocate) appeared on behalf of TTL and made the oral submission. The ARs submitted that the company is not a shell company as it has a positive networth, has been doing regular filings in compliance with the applicable requirements, has operational registered and corporate offices and there are no complaints pending against it in SCORES. TTL was advised to provide the information / response on the following points along with supporting documents:

- a) Written confirmation of functioning of both registered and corporate office along with the validity of its existing communication address
- b) Written confirmation of valid email id
- c) Reply to queries sent via SEBI letter dated August 28, 2017 (sent via email also to info@trinitytrade.in)
- d) Details of Sales and turnover for the period 2015-16 and 2016-17
- e) Explain sales mechanism, nature of Sales and details of top 10 clients and their contribution in the sales or clients contributing at least 50 percent of sales along with the supporting sales agreements/contracts (please avoid submitting invoices, challans, delivery receipts etc.)
- f) Details on number of orders received by the company
- g) Explain the nature of business of companies associated either directly or indirectly with Mr. Vikrant Kayan
- h) Full details of Related party transactions for the period 2016-17 and 2014-15 including nature of such transactions and supporting contracts/agreements

- i) Details of any notices served by any Government Agency/Regulatory body from 2010 onwards till date
- j) Details of transactions of Trinity tradelink with Newever trade wings
- k) Brief outline for name changes with reasons and its business links
- l) Full details of Trade payables and Trade receivables along with supporting contracts/agreements and ageing distribution of Trade payables and Trade receivable

SEBI has also sent an e-mail to the company on September 06, 2017 asking for the above information.

13. In response to the above queries sought, the company vide 2 letters each dated September 7, 2017 submitted the following-

- a. That the Corporate office and Registered Office of the company are active and functional. Further majority of the staff and the Board of Directors operates the business activities from the Kolkata office situated at Kolkata.
- b. That the Registered office of the Company is situated at Mumbai as the Company prior to the takeover of the management of the Company through open offer was situated at Mumbai and presently in order to facilitate the shareholders, still continuing in Mumbai.
- c. That the Board of Director of the Company are being managed by Board mainly by Mr. Vikrant Kayan having more than 20 years of experience in import and export business apart from other activities and the company is mainly into Pulses, Dal, Iron Steel and Other Agri Commodities.
- d. That with regard to the Sales mechanism, the Company sources the orders from known vendors. The Board considers the proposals and after due deliberation registers the vendor and thereafter starts the business activities. Sometimes sales are also made through Brokers and necessary brokerage is paid after deducting withholding tax.

- e. That none of the Director or the Key Managerial Personnel of the Company are directly/indirectly associated with any of the companies contributing to the purchase and sales of the Company.
- f. That the Company has received 75 orders during F. Y. 2016-2017
- g. That the Company has received notices from SEBI for violation of Section 56, 60, 67 of the Companies Act 1956; violation of SEBI (ICDR) Regulation, violation of Regulation 29(1), 29(2), read with 29(3) of the SEBI (SAST) Regulation 2011, violation of Rule 19(A)2 of Securities Contracts (Regulations) Rule 1957 read with clause 40 of the Listing Agreement and Section 21 of the SC(R) Act read with clause 35 of the Listing Agreement.
- h. That there was a Survey by Income Tax Department in 2014 and Search and Seizure in December 2016 with respect to Assessee Mr. Vikrant Kayan, the Managing Director of the Company.
- i. That there is no transaction of Trinity Tradelink Limited with Newever Trade Wings Limited.
- j. That the Company was incorporated in the name & style of M/s. Sharp trading & Finance Limited, subsequently the name of the Company changed into M/s. Omnitech Petroleum Limited and thereafter in and around 2014 the name of the Company changed to M/s. Trinity Tradelink Limited. Since the company was no more associated with any petroleum business as the main object of the company is trading in various commodities, agro products, import, export etc. So the name of the Company changed from "Omnitech Petroleum Limited" to 'Trinity Tradelink Limited"
- k. The Company submitted the name top 10 Companies whose contributions to the sales ranged from 0.11% to 52.74%, with Kama raj Traders being top contributor in sales with 52.39% contribution to its total sales.
- l. The Company also submitted the name of top 10 Companies whose contributions to the purchases ranged from 0.47% to 52.39%, with Lokesh Nutrient & Pulses Co. being top contributor in purchase with 52.39% contribution to its total purchases.

14. Pursuant to SEBI's letter dated August 9, 2017, BSE has submitted its report wherein it has NIL reporting for adverse findings for LODR and submitted that the company is yet to provide the Auditor's Report.

Consideration of Issues:

15. On perusal of the materials available on record, the following issues arise for consideration.

- (a) *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
- (b) *Whether there is prima facie evidence the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on them.*
- (c) *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

16. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*

Issue No. 2. *Whether there is prima facie evidence that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on them.*

17. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

- a. It is observed that TTL has huge Trade Receivable and Trade Payables in the year 2015-16 & 2016-17. It is noted from the analysis of financial statements that there is a substantial jump in Trade payables and Trade receivable in the aforesaid years. In this regard details were sought from the company with respect to Trade payables and Trade receivables along with supporting contracts/agreements and ageing distribution of Trade payables and Trade receivable, however in its response the company has provided only list of Sundry creditors and debtors for the period FY 2016-17 and has failed to provide any supporting documents or the ageing analysis.
- b. It is observed that TTL has executed many related party transactions for the year 2014-2015, 2015-2016 and 2016-2017. The company was asked to provide details of Related party transactions including nature of such transactions and supporting contracts/agreements, however apart from the pecuniary amount of related party transactions, no documentary proof has been provided by the company despite being given opportunity for the same. Further it is noted from the Secretarial Audit Report in the Annual Report for 2015-16 that the company has entered into a related party transaction for which prior board approval was not taken in the manner prescribed in Rule 15 of the Companies (meeting of boards and its powers) Rules, 2014. This prima facie raises concern as to whether the transactions were executed in the interest of shareholders.
- c. It is observed that TTL was also asked to provide documentary support on its sales agreement/contracts, details of orders received by the company, however no documentary proof has been provided by the company despite being given opportunity for the same.

18. I note that there is a lack of documents to substantiate the transactions entered into by the company and establish the genuineness of those transactions. I also note that

significant related party transactions have been entered into without due process. Thus, there is prima facie evidence of misrepresentation of business/financials as well as of misuse of funds/ the books of accounts of the company. The directors & KMPs have therefore prima facie failed to discharge their fiduciary responsibility. The company is also liable for the prima facie violations observed and it is imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

19. In view of the prima facie observations on the misrepresentation by the company and misusing of books / funds, the persons who are in control of the company and the directors of the company are prima facie liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.
20. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. However, detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations.
21. Pending, enquiry/ audit, it is appropriate to revert the scrip to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI with applicable price band.

INTERIM ORDER

22. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, modify, subject to para 30(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against Trinity Tradelink Ltd. as under:

- i. The trading in securities of TTL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Exchange shall appoint an independent auditor *inter alia* to further verify:
 - a. Misrepresentation including of financials and/or business of Trinity Tradelink Ltd.;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries.
- iii. The promoters and directors in TTL are permitted only to buy the securities of TTL. The shares held by the promoters and directors in TTL shall not be allowed to be transferred for sale, by depositories.
- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against Trinity Tradelink Ltd..

23. Accordingly the representation of Trinity Tradelink Ltd. is disposed of.

24. The above directions shall take effect immediately and shall be in force until further Orders.

25. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, Trinity Tradelink Ltd. is advised to file its reply/objections to this interim order. The Company, within 30 days from the date of

receipt of this Order, may file its reply, if any, to this Order and may also indicate in the reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. In the event of Trinity Tradelink Ltd. failing to file reply or requesting for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and ad-interim directions at para 22 above shall stand confirmed against Trinity Tradelink Ltd. automatically, without any further orders.

26. Copy of this Order shall be forwarded to the recognized stock exchanges & depositories for information and necessary action.

27. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

DATE: SEPTEMBER 13, 2017
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA