

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of SEBI Act, 1992 read with Regulation 28 (2) of SEBI (Intermediaries) Regulations, 2008 in the matter of Mukesh Babu Securities Limited.

	NOTICEE	PAN	SEBI REGISTRATION NO	CATEGORY
1.	Mukesh Babu Securities Limited	AAACM6030F	INB 230598238	NSE- Cash Segment
2.	Mukesh Babu Securities Limited	AAACM6030F	INF230598238	NSE- Derivatives Segment
3.	Mukesh Babu Securities Limited	AAACM6030F	INB010598234	BSE- Cash Segment
4.	Mukesh Babu Securities Limited	AAACM6030F	INB010598234	BSE- Derivatives Segment
5.	Mukesh Babu Securities Limited	AAACM6030F	INB 200598234	OTCEI
6.	Mukesh Babu	--	INB 031073019	CSE
7.	Mukesh Babu	--	INB021073011	ASE
8.	Mukesh Babu Stock Broking Private Ltd.	--	INS010550734	BSE-Sub-broker
9.	Mukesh Babu Stock Broking Private Ltd.	--	INS230550738	NSE-Sub-broker
10.	Mukesh Babu Management Consultants Private Ltd.	--	INS010577935	BSE-Sub-broker
11.	Mukesh Babu Management Consultants Private Ltd.	--	INB2305598238	NSE-Sub-broker

Background

1. Mukesh Babu Securities Limited (hereinafter referred to as the 'Noticee'/MBSL) was registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI")

as a stock broker and was a member of the National Stock Exchange Ltd. (NSE) and the Bombay Stock Exchange Ltd.(BSE). The Noticee was also registered with SEBI as a Depository Participant and had entered into an agreement with both NSDL and CDSL. Apart from the this, the Noticee had membership with the BSE, CSE, ASE and OTCEI. Four sub-broker registrations were also linked with the Noticee.

2. SEBI vide order dated WTMO/26/MIRSD/2/04 dated February 12, 2004 rejected the application filed by the Noticee for renewal of certificate of registration as a Depository Participant of NSDL on the ground that the same would not be in the interest of investors in the securities market. SEBI had passed the order based on the finding that Mukesh Babu, Chairman of MBSL, was taken into custody by CBI in connection with Madhavpura Mercantile Cooperative Bank(MMCB) scam and therefore failed to satisfy the 'fit and proper criteria' in terms of Regulation 19(cc) of the SEBI (Depository and Participants) Regulations, 1996 read with Regulations 3(2)(f) and 3(2)(h)of the Securities and Exchange Board of India (Criteria for Fit and proper Person) Regulations, 2004.
3. Subsequently, vide order dated January 19, 2007, SEBI rejected the application filed by the Noticee seeking renewal of certificate of registration as a Participant of CDSL on the same grounds. Simultaneously, enquiry proceedings under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") was initiated against the Noticee to enquire into whether the Noticee was a 'fit and proper person' in respect of the other certificate of registrations held by it in the securities market. Consequent to this, a Show Cause Notice (SCN) dated September 07, 2004 was issued to the Noticee to show cause as to why action under Regulation 13 (1) of the Enquiry Regulations should not be taken against the Noticee.
4. While these proceedings were pending, the Enquiry Regulations were repealed on May 26, 2008, by the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "the

Intermediaries Regulations"). Accordingly, the Enquiry Officer/Designated Authority (hereinafter referred to as the "DA") continued with the proceedings in terms of Regulation 27 read with 38(2) of the Intermediaries Regulations and Regulation 13(1) of the Enquiry Regulations.

5. Noticee preferred an appeal before the Hon'ble Securities Appellate Tribunal against the said SEBI orders rejecting the renewal of certificate of registration as a participant with CDSL and NSDL. SAT vide common order dated December 10, 2007 upheld the said SEBI Orders. The Hon'ble Tribunal had held that,-
6. "In our opinion, the Board was justified in keeping the company out of the market as a risk containment measure in order to maintain its integrity and in the interests of investors. In view of the aforesaid, we answer the question posed in the earlier part of the order in the negative and hold that the Board has not erred in holding that the company is not a 'fit and proper person'."
7. I therefore note that the basis of the present proceedings is the prima facie finding that the Noticee failed to comply with the fit and proper criteria following the arrest of Mukesh Babu, Chairman and Managing Director of the Noticee, by the CBI, in connection with the MMCB Scam. The scope of the present proceedings cover the certificates of registrations granted by the Board to the Noticee to act as stockbroker in the cash and derivative segment of NSE, in the cash and derivative segment of BSE, as a stockbroker with OTCEI, CSE, ASE and four sub-broker registrations associated with the Noticee.
8. I note that on completion of proceedings before the DA, a report dated June 28, 2010 (DA's Report) was submitted to the Board recommending that the certificates of registrations granted Noticee be cancelled as the Noticee had failed to comply with the fit and proper criteria on account of the arrest of its chairman and managing director by the CBI.

9. I note that subsequent to the report of the DA, the Noticee vide letter dated February 02, 2012, forwarded a copy of the order passed by the L'd Chief Metropolitan Magistrate, Court No. 2, Ahmedabad, dated November 30, 2011, discharging Mukesh Babu from the criminal case No. 132 of 2004 filed by CBI in connection with the MNCB Scam. Thereafter, SEBI vide letter dated October 25, 2012 requested CBI to furnish details on whether any appeal/revision was preferred against the order passed by the L'd Chief Metropolitan Magistrate discharging Mukesh Babu. CBI vide letter dated November 30, 2012, informed SEBI that CBI had filed a Criminal Revision Application No. 6/2012 against the order before the Hon'ble Sessions Court at Ahmedabad.
10. In view of the revision application preferred by CBI against the discharge of Mukesh Babu, the present proceedings were kept pending awaiting the decision of the Hon'ble Session Court in the revision application filed by CBI.
11. Pursuant to this, CBI vide letter dated June 1, 2015, informed SEBI that criminal revision application is fixed for final hearing on June 05, 2015 before CBI Court No. 2 at Ahmedabad.
12. Thereafter, despite repeated reminders, the status or outcome of the criminal revision application could not be obtained from CBI and it is noted from the website of the Hon'ble Sessions Court, Ahmedabad that the said application is still shown as pending.
13. In view of the same, given that considerable time has elapsed since the filing of the criminal revision application by CBI, SEBI decided to proceed with present proceedings independent of the outcome of the revision application.
14. Accordingly, the Noticee was given an opportunity of personal hearing on September 28, 2020, wherein Mukesh Babu, Chairman and Managing Director, appeared on behalf of the Noticee via video conferencing and made the following submissions, -

- i. Madhavpura Mercantile Cooperative Bank (MMCB) and its chairman were their clients during the period 2001-02.
 - ii. The Chairman of the Bank funded some of his personal trades executed through the Noticee using the bank's funds.
 - iii. CBI filed a criminal case against Mukesh Babu, Chairman and Managing Director, alleging that he was part of 2001 securities market scam.
 - iv. The competent court had discharged him in 2011 on merits.
 - v. The revision petition preferred by CBI against his discharge is still pending.
 - vi. In 2017, he entered into a settlement agreement with MMCB and agreed to pay Rs. 102.5 crores to the bank as part of the settlement. Of this amount, 67 crores has already been paid.
15. I have considered the Report submitted by the DA, oral and written submissions of the Noticee along with the documents contained therein and other material available on record. I note that the only issue for consideration is whether the Noticee adheres to the fit and proper criteria specified under the erstwhile Securities and Exchange Board of India (Criteria for Fit and proper Person) Regulations, 2004.

Consideration –

16. I note that the present proceedings emanate from the arrest of Mukesh Babu, Chairman and Managing Director, of the Noticee, by the CBI, in connection with the MMCB Scam. Subsequent to the said arrest, SEBI rejected the application filed by the Noticee seeking grant of renewal of certificate of registration as depository participant of CDSL and NSDL on the grounds that “when serious charges are pending against the dominant shareholder who is at the helm of affairs of the entity” it would not be in the interests of investors in securities market to grant such renewal.

17. As stated in para 1.5 above, the Hon'ble SAT vide order dated December 10, 2007 had upheld the SEBI orders refusing the renewal of the certificate of registration of the Noticee to Act as a participant of CDSL and NSDL. Thereafter, the present enquiry proceedings commenced and the DA in its report had made a similar finding and held that the Noticee is not a fit and proper person and recommended the cancelation of the certificates of registration granted to the Noticee.
18. I note from the records that subsequent to the conclusion of the proceedings before the DA, Mukesh Babu, the Chairman and Managing Director, of the Noticee has been discharged under section 239 of the Criminal Procedure Code, 1973, in the criminal case No. 132 of 2004 filed by CBI, by the L'd Chief Metropolitan Magistrate, Court No. 2, Ahmedabad, vide order dated November 30, 2011. I also note that the Criminal Revision Application No. 6/2012 filed by CBI before the Hon'ble Sessions Court at Ahmedabad, has been pending for the last 8 years.
19. The limited question for consideration in the present matter is whether an entity which has been held to be not 'fit and proper' on the basis of the arrest/charge sheet being filed against its chairman and managing director, continues to be not fit and proper, post the discharge of the said person by a competent court. In this regard, I am of the view that there is no merit in considering such an entity to be not fit and proper post such discharge by a competent court only because a revision application had been preferred against the discharge order. This is especially true in the present matter considering eight years have elapsed since filing the revision application.
20. In view of the foregoing, I find that post the discharge of the chairman and managing director of the Noticee by a competent court, there is no material available on record, as on date, to hold that the Noticee is not a fit and proper person as per the criteria specified under the erstwhile Securities and Exchange Board of India (Criteria for Fit and proper

Person) Regulations, 2004. This order would, however, be subject to outcome of the Criminal Revision Application No. 6/2012 pending before the Hon'ble Sessions Court at Ahmedabad.

Order –

21. I, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby conclude the proceedings against the Noticee without passing any adverse directions.

Place: Mumbai
Date: December 17, 2020

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA