

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

EXIT ORDER IN RESPECT OF:

BHUBANESWAR STOCK EXCHANGE LIMITED

1. Bhubaneswar Stock Exchange Limited (hereinafter referred to as the “BhSE”) was incorporated on April 17, 1989 as a public company limited by guarantee. The Central Government had granted recognition to BhSE, as a stock exchange under the provisions of section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the “SCRA”) on June 05, 1989, initially for a period of 5 years, which was subsequently renewed from time to time under rule 7 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “SCRR”).
2. The recognition of BhSE was last renewed by Securities and Exchange Board of India (hereinafter referred to as “SEBI”) for a period of one year commencing on the June 05, 2013 and ending on June 04, 2014. The renewal was, however, subject to condition that *the Exchange can commence trading only after complying with all the regulatory requirements imposed by SEBI.*
3. SEBI, vide Circular No. MRD/DoP/SE/Cir - 36/2008 dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition. The said Guidelines were reviewed and modified vide Circular No. CIR/MRD/DSA/14/2012 dated May 30, 2012 (hereinafter referred to as the “Exit Circular, 2012”). In terms of clause 2.2, a stock exchange, where the annual trading turnover in its platform is less than ₹1,000 crore, can apply to SEBI for voluntary surrender of recognition and exit, at any time before expiry of two years from the date of issuance of the said Circular. In terms of clause 2.3 of the said Circular, if any stock exchange fails to achieve a turnover of ₹1,000 crore, it would be subject to compulsory exit process.
4. BhSE, vide its letter dated January 02, 2014 submitted that on December 24, 2013 the governing board has decided to make application for voluntary surrender of recognition and exit of BhSE as a stock exchange as per SEBI circular dated May 30, 2012 subject to approval of the shareholder of the exchange. Further, BhSE, vide its letter dated February 28, 2014, submitted that the shareholders of BhSE on February 25, 2014 passed resolution for exit and they are applying for voluntary surrender and exit of exchange as per SEBI circular dated May 30, 2012.
5. BhSE vide letter dated February 24, 2014 made an application for renewal of recognition of

the Stock Exchange under section 3 of the SCRA read with rule 7 of the SCRR. In this regard, vide letter dated March 24, 2014, SEBI informed BhSE that its application for renewal of recognition could not be processed as BhSE's application for voluntary exit was under process.

6. Accordingly, I proceed to deal with the exit request of the BhSE in terms of clause 2.2 of the Exit Circular, 2012. I note that as per the Exit Circular, 2012, *inter alia*, following conditions are required to be complied with by the de-recognised/non-operational stock exchanges for seeking exit:

- (a) Permission to distribute its assets subject to certain conditions as laid down in the circular as well as the other guidelines that may be issued by SEBI, Governments or any other statutory body from time to time.
- (b) For the purpose of valuation of the assets of the stock exchange, a valuation agency appointed by SEBI shall submit its report.
- (c) The quantum of assets for distribution will be available after payment of the following by the stock exchange:
 - (i) Statutory dues including Income Tax;
 - (ii) Transfer of Investor Protection Fund, Investor Services Fund, 1% security deposit available with the Exchange to SEBI Investor Protection and Education Fund (hereinafter referred to as the 'IPEF');
 - (iii) The exiting exchange shall pay the following dues to SEBI:-
 - Dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee;
 - The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, till the date of such de-recognition;
 - In case of any shortfall in collection of dues of the brokers to SEBI, the exiting Stock Exchange will make good the shortfall;
 - (iv) Refund of deposit (refundable) to the stock brokers including their initial contribution/deposit to Settlement Guarantee Fund/Trade Guarantee Fund (SGF/TGF).
- (d) Contribution of up to 20% of its assets (after tax) towards IPEF taking into account, *inter alia*, the governance standards of the stock exchange and estimation of future liabilities.
- (e) The companies exclusively listed on the stock exchange seeking exit shall list their securities on any other recognised stock exchange. If such exclusively listed companies fail to obtain listing on any other recognised stock exchange, they will cease to be listed companies and will be moved to the dissemination board by the exiting stock exchange. Such dissemination board would be provided by a Stock Exchange with nationwide

trading terminals. The exiting stock exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily.

- (f) The exiting stock exchange shall set aside sufficient funds in order to provide for settlement of any claims, pertaining to pending arbitration cases, arbitration awards, not implemented, if any, liabilities/claims of contingent nature, if any, and unresolved investor complaints/grievances lying with it.
- (g) The exiting exchange may provide trading opportunity to their trading members to trade on stock exchanges having nationwide terminals through their subsidiary company, which will function as a normal broking entity.

7. I have considered all relevant documents available on record for the purpose of considering the case of exit of BhSE. With regard to the income tax obligation in respect of transfer of capital assets of a stock exchange, I note that section 47(xiii) of the Income Tax Act, 1961 provides as under:-

Section 47 (xiii):

Nothing in Section 45 applies to any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company:

Provided that –

(e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]”

8. In respect of the tax treatment to a stock exchange post its corporatisation and demutualization, the following recommendation of the Justice Kania Committee which was the basis for the amendment in section 47(xiii) of the Income Tax Act, 1961 to provide tax benefit to the corporatised and demutualised stock exchanges is worth mentioning:

“as corporatisation and demutualisation of a stock exchange is essentially a conversion from a not-for profit entity to a for-profit company, and would result in a distribution of assets, the Income Tax Act should be amended if necessary, so that the past profits of an stock exchange which were not taxed when it had the character of a not for profit entity should not be taxed when its character changes. In other words, the accumulated reserves of the stock exchange as on the day of corporatisation should not be taxed. However, there would be no objection to taxation of these reserves, in the hands of the shareholders when these are distributed to shareholders as dividend at the net applicable tax rate; equally all future profits of the stock exchange after it becomes a for profit company may be taxed”.

9. The corporatisation and demutualisation scheme of BhSE was approved by SEBI vide notification SEBI/MRD/DSA/105441/2007 dated October 09, 2007 (hereinafter referred as "the scheme"). The scheme, *inter alia*, provided for the segregation of ownership and management from the trading rights of the members, restriction on voting rights of shareholders who are also trading members, composition of the Governing Board etc. in accordance with the provisions of section 4B(6) of the SCRA, utilization of assets and reserves and other matters required for the purpose of and in connection with the corporatisation and demutualisation of BhSE.
10. In terms of condition mentioned in para 6(b) above, SEBI in consultation with BhSE on April 22, 2014 appointed M/s. GRC & Associates as the Valuation Agency for verification and valuation of assets and liabilities of BhSE. The Valuation Agency submitted its final report to SEBI on June 23, 2014.
11. With respect to the compliance of conditions specified in the Exit Circular, 2012 by BhSE and settlement of its liabilities observed by the Valuation Agency, it is important to note the following:
- (a) In compliance of condition mentioned in para 6(c) (ii) above, as advised by SEBI, BhSE has transferred to SEBI - Investor Protection and Education Fund (IPEF) amounting to ₹59,00,000/- and ₹ 1,30,933.84/- vide demand drafts No. "972427" and "972554", respectively, towards Investor Protection Fund (IPF), ₹58,50,000/- and ₹ 2,05,446.71/- vide demand drafts no. "972472" and "972555", respectively, towards "Investor Services Fund" (ISF) and ₹19,00,085/- vide demand draft no. "972462" - towards '1% security deposit' available with BhSE.
- (b) In compliance of condition mentioned in para 6(c)(iii) above, BhSE has paid the necessary dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee. BhSE has also paid the outstanding registration fees through Real Time Gross Settlement (RTGS) dated December 23, 2014 amounting to ₹41,12,599/- of brokers dues and ₹1,29,000/- sub-brokers dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition.
- (c) In compliance of condition mentioned in para 6 (c) (iv) above, BhSE has given an undertaking dated December 23, 2014 that they will not distribute any assets before clearing the liabilities in that regard.
- (d) In compliance of the condition mentioned in para 6(d) above, BhSE has contributed an amount of ₹10,00,000/- vide RTGS dated January 30, 2015 towards SEBI IPEF.

- (e) In compliance of condition mentioned in para 6(e) above, BhSE has submitted an undertaking that there is no company that is exclusively listed at BhSE.
- (f) In compliance of condition mentioned in para 6(f) above, BhSE has submitted an undertaking dated December 23, 2014 stating that there are no arbitration disputes/investor complaints pending and no cases/claims lodged against it and also stating that it will undertake to clear all the liabilities before distribution of assets of BhSE. BhSE has also undertaken to assume complete responsibility for the financial implication of any claims against it that may arise at any future date as an outcome of the resolution/settlement of those cases.
- (g) With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency, BhSE in its undertaking has stated the extent of discharge of liabilities and has further undertaken to clear the said liabilities before the distribution of its assets. It has also undertaken to clear any additional amount that may become liable to be paid on account of liabilities stated in the undertaking.
- (h) In compliance of condition mentioned in para 6(g) above, vide its undertaking, BhSE has declared that M/s Bhubaneswar Shares and Securities Limited, a functional subsidiary, is a Corporate member of BSE Ltd. (BSE) and is providing trading facilities to all BhSE Members who opted for the same.
12. From the valuation report and undertaking of BhSE, it is observed that all the known liabilities have been brought out and that there is no other future liability that is known as on date. I note that BhSE has substantially complied with the conditions contained in Exit Circular, 2012 subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to BhSE in terms of clause 8 of the Exit Circular, 2012.
13. I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with provisions of section 11(1), section 11(2) (j) of the Securities and Exchange Board of India Act, 1992 and sections 4, 5 and 12A of the SCRA, allow the exit of Bhubaneswar Stock Exchange Limited as a stock exchange and hereby direct it to :-
- (a) comply with its tax obligations under Income Tax Act, 1961;
 - (b) Comply with the undertakings given by it to SEBI;
 - (c) comply with other consequential conditions of 2012 Exit Circular; and
 - (d) to change its name and not to use the expression “Stock Exchange” or any variant of this expression in its name and to avoid any representation of present or past affiliation with the stock exchange, in all media.
14. The order shall come into force with immediate effect. A copy of this order shall also be

forwarded to the Income Tax Authorities, the Ministry of Corporate Affairs and the State Government of Odisha intimating the exit of Bhubaneswar Stock Exchange Limited and for appropriate action at their end as per applicable laws.

Sd/-

DATE: FEBRUARY 9th, 2015

PLACE: MUMBAI

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**