

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**EXIT ORDER IN RESPECT OF:**

**MADRAS STOCK EXCHANGE LIMITED.**

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1. Madras Stock Exchange Limited (hereinafter referred to as the 'MSE') was initially incorporated as an Association of Persons on September 04, 1937 in the name of Madras Stock Exchange Association (P) Limited. Later, it was converted into a company limited by guarantee under the provisions of the Companies Act, 1956 without share capital on April 29, 1957. It was converted as a company limited by shares and obtained re-registration under section 32 of the Companies Act, 1956, from the Registrar of Companies on November 18, 2005. MSE was granted permanent recognition vide Notification No. SOI 11 (E) dated March 01, 1982 issued by the Ministry of Finance, Government of India.
2. 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dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition.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 "Exit Circular, 2012"). In terms of clause 2.2 of Exit Circular, 2012, a stock exchange, where the annual trading turnover on its platform is less than ₹1000 crore, can apply to SEBI for voluntary surrender of recognition and exit, at any time before the 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 failed to achieve a turnover of ₹1000 crore, it would be subject to compulsory exit process.
3. Vide letter dated May 26, 2014, MSE made a request to SEBI for its exit as stock exchange and intimated that the majority of the shareholders in its Extra Ordinary General Meeting of the Shareholders on May 26, 2014 passed the special resolution for voluntary exit of the stock exchange.
4. I note that as per the Exit Circular, 2012, *inter alia*, the following conditions are required to be complied by the de-recognised/non-operational stock exchanges for seeking exit:
  - (a) Permission to distribute its assets would be subject to certain conditions laid down in the Circular as well as other guidelines that may be issued by SEBI, Government 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.
5. I have considered all relevant documents available on record for the purpose of considering the exit of MSE. 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);"*

6. In respect of the tax treatment to a stock exchange post its corporatisation and demutualization, the following recommendation of 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 corporatized 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”.*

7. The corporatisation and demutualisation scheme of MSE was approved by SEBI vide notification SEBI/MRD/48108/2005 dated August 29, 2005 (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 Securities Contracts (Regulation) Act, 1956 (the SCRA), utilization of assets and reserves and other matters required for the purpose of and in connection with the corporatisation and demutualisation of MSE.
8. In terms of condition mentioned in para 4(b) above, SEBI in consultation with MSE appointed M/s Sekar & Mohan on July 02, 2014 as the valuation agency for verification and

valuation of assets and liabilities of MSE. The valuation agency submitted its report vide letter dated July 22, 2014.

9. With respect to the compliance with conditions specified in the Exit Circular, 2012 by MSE and settlement of its liabilities observed by the valuation agency, it is important to note that following: -
- (a) In compliance of condition mentioned in para 4(c) (ii) above, as advised by SEBI, MSE has transferred an amount of ₹2,34,14,968/-available in its "Investor Protection Fund" vide Cheque No. "575423" dated December 08, 2014 and ₹30,69,967/- vide Cheque No. "575449" dated February 19, 2015. An amount of ₹4,02,15,032/- available in its "Investor Services Fund" vide Cheque No. "002460" dated September 02, 2014 and 1% security deposit available with the MSE ₹1,15,94,426/- vide Cheque No. "002461" dated September 02, 2014 to SEBI Investor Protection and Education Fund (IPEF).
  - (b) In compliance of condition mentioned in para 4(c)(iii) above, MSE has paid necessary dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee. MSE has paid the outstanding registration fees amounting to ₹94,15,611/- of brokers dues and ₹2,08,500 sub-brokers dues as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition, vide Cheque Nos. "002642" and "002643" both dated November 28, 2014, and "002693" dated December 24, 2014 respectively.
  - (c) In compliance of condition mentioned in para 4(c)(iv) above, MSE has given an undertaking dated April 22, 2015 (hereinafter referred to as the "undertaking") that it will not distribute any assets before clearing the liabilities in that regard.
  - (d) In compliance of condition mentioned in para 4(d) above, MSE has contributed an amount of ₹15,00,000 through RTGS dated March 10, 2015 towards SEBI IPEF.
  - (e) In compliance of condition mentioned in para 4(e) above, MSE in its undertaking has stated that it has taken necessary steps in terms of the SEBI Circular dated May 30, 2012 and May 22, 2014 and other circular/directions issued by SEBI from time to time. It has further undertaken to extend all the co-operation to SEBI and other regulatory authorities with regards to any matters /issues that may arise subsequently. Further, MSE has undertaken to extend all cooperation to SEBI and other authorities with regard to any matters/issues that may arise in connection with one of the exclusively listed company which has not been transferred to the Dissemination Board of the National Stock Exchange of India Ltd. (NSE), as the company has obtained interim injunction from the Hon'ble High Court of Madras and the same is under *sub-judice*.

- (f) In compliance of condition mentioned in para 4(f) above, MSE in its undertaking dated April 22, 2015 that there are no arbitration cases pending disposal in respect of any of the defaulted members.
- (g) With regard to its other liabilities and contingent liabilities as pointed out by the valuation agency, MSE has given the undertaking dated April 22, 2015 to clear the said liabilities before the distribution of its assets. Further, MSE in its undertaking has stated that it undertake to clear any additional amount that may become liable to be paid on account of any of the stated liabilities in the undertaking.
- (h) In compliance of the condition mentioned in para 4(g) above, vide its undertaking, MSE has declared that MSE Financial Services Limited, a functional subsidiary, is a corporate member of the NSE and BSE Ltd. providing trading facilities to MSE Members who opted for the same. Further, MSE vide e-mail dated January 30, 2015, *inter alia*, confirmed that MSE-NSE MOU in terms of section 13 of the SCRA, 1956 has ceased to exist.
- (i) MSE has also given an undertaking dated April 22, 2015 stating that the details of cases as submitted to SEBI lodged against it are the only cases pending before various legal fora and it has 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.
10. I note that MSE has transferred all the beneficiary demat accounts to its subsidiary company, MSE Financial Services Ltd. on March 27, 2015. I also note that the demat account of M/s. Unique Consulting & Trading Private Limited, a registered stock broker of MSE, was frozen pursuant to the directions issued by SEBI vide order dated April 21, 2014. In this regard, I note that MSE, vide its aforesaid undertaking dated April 22, 2015, has undertaken to facilitate transfer of the securities to their rightful beneficiary owners, including the admitted claimants, from the "*House Demat Account*" of the said trading member, as and when suitable direction is given by SEBI in this regard.
11. From the valuation report and undertaking of MSE, it is observed that all the known liabilities have been brought out and there is no other future liability that is known as on date. I note that MSE 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 MSE in terms of clause 8 of the Exit Circular, 2012.
12. I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with 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 Securities Contracts (Regulation) Act, 1956 allow the exit of

Madras 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 Exit Circular, 2012;
- (d) 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;
- (e) provide required information to Ministry of Corporate Affairs on identifying vanishing companies which were listed on Madras Stock Exchange Limited for inclusion in the list of vanishing companies maintained by Ministry of Corporate Affairs.

13. The order shall come into force with immediate effect. A copy of this order shall be forwarded to the Income Tax Authorities, State Government of Tamil Nadu and the Ministry of Corporate Affairs intimating the exit of MSE and for appropriate action at their end as per applicable laws.

Sd/-

**DATE: MAY 14<sup>th</sup>, 2015**

**PLACE: MUMBAI**

**RAJEEV KUMAR AGARWAL**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**