

**THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**EXIT ORDER IN RESPECT OF**

**MADHYA PRADESH STOCK EXCHANGE LIMITED**

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1. 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dated December 29, 2008, issued Guidelines and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition.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, a stock exchange, where the annual trading turnover in its platform is less than ₹1000 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 ₹1000 crore, it would be subject to compulsory exit process as stipulated under clause.2.3 thereof.
2. As provided vide the aforesaid circular, Madhya Pradesh Stock Exchange Ltd. (hereinafter referred to as "MPSE"), vide letter dated May 24, 2014 made a request to SEBI for its exit as stock exchange in accordance with procedure established as per SEBI circular dated May 30, 2012. MPSE intimated that the majority of the shareholders in its Extra Ordinary General Meeting dated June 13, 2014 passed resolution for exit and empowering the board to seek voluntary exit/de-recognition of exchange as per the Exit Circular. MPSE was initially granted recognition as a stock exchange by the Government of India under section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, "SCRA") on December 24, 1958. It was granted permanent recognition on December 22, 1988 by the Government of India vide its notification no. F.1/101/SE/88.
3. Accordingly, I proceed to deal with the exit request of the MPSE in terms of clause 2.2 of the Exit Circular, 2012. I note that as per the Exit Circular, 2012, *inter alia*, the 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 MoU mechanism, if any between stock exchanges having nationwide trading terminal shall be discontinued and the trading members of exiting exchanges will gain access to exchanges having nationwide terminals through membership of exiting

subsidiary company.

- (h) 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.
4. I have considered all relevant documents available on record for the purpose of considering the case of exit of MPSE. 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);]”*

5. 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”.*

6. The corporatisation and demutualisation scheme of MPSE was approved by SEBI vide notification SEBI/MRD/DSA/111917/2007 dated December 31, 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 MPSE.

7. In terms of condition mentioned in para 3(b) above, SEBI in consultation with MPSE on August 01, 2014 appointed M/s. Gupta and Ashok, as the Valuation Agency for verification and valuation of assets and liabilities of MPSE. The Valuation Agency submitted its final report to SEBI on October 08, 2014.
8. With respect to the compliance by MPSE of conditions specified in the 2012 Exit Circular 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 3(c) (ii) above, as advised by SEBI, MPSE has transferred to SEBI - Investor Protection and Education Fund (IPEF) amounting to:
    - ₹14,00,238/- and ₹1,09,88,363/- vide Real Time Gross Settlement (RTGS) dated November 28, 2014 and February 25, 2015, respectively, towards Investor Protection Fund (IPF);
    - ₹76,05,050/- vide RTGS dated November 28, 2014, towards "Investor Services Fund" (ISF); and
    - ₹24,88,532/- vide RTGS dated November 28, 2014, - towards '1% security deposit'.
  - (b) In compliance of condition mentioned in para 3(c)(iii) above:-
    - MPSE has paid the necessary dues outstanding to SEBI including 10% of the listing fee amounting to ₹2,21,964/- on July 07, 2014 vide demand draft no. "036191", ₹491/- on December 16, 2014 vide cheque no. "001222" and ₹61,535/- on March 31, 2015 vide cheque no. "001325", and the annual regulatory fee for the year 2014 - 15 amounting to ₹1,00,000/- vide demand draft no. "001193".
    - MPSE has paid the outstanding registration fees vide demand draft no. "001093" and "001223" amounting to ₹3,44,461/- of brokers dues and ₹10,500/- sub-brokers dues as specified in the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition.
  - (c) In compliance of condition mentioned in para 3(c) (iv) above, MPSE has given an undertaking dated April 22, 2015 (hereinafter referred to as the "undertaking") that they will not distribute any assets before clearing the liabilities in that regard.
  - (d) In compliance of condition mentioned in para 3(d) above, MPSE has contributed an amount of ₹10,00,000/- on April 16, 2015 vide account payee cheque towards SEBI-

IPEF.

- (e) In compliance of condition mentioned in para 3(e) above, MPSE in its undertaking has stated that it has taken necessary steps in terms of the Exit Circular, 2012, SEBI circular dated May 22, 2014 and other Circulars/directions issued by SEBI from time to time. It has further undertaken that it will take adequate measures to comply with the Exit Circular, 2012 and other circular issued by SEBI on completion of exit.
  - (f) In compliance of condition mentioned in para 3(f) above, MPSE has submitted in its undertaking that there are no arbitration disputes/investor complaints pending except three cases against the defaulter broker of the exchange and that it will clear all the liabilities before distribution of assets of MPSE. MPSE 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 the case.
  - (g) With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency, MPSE 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) MPSE in its undertaking stating that there are no cases lodged against it, pending before various legal fora.
  - (i) In compliance of the condition mentioned in para 3(g) above, vide its undertaking, MPSE has declared that in compliance with Para 4.2 of the Exit Circular, the exchange shall discontinue the MoU with BSE and NSE with effect from March 27, 2015.
  - (j) In compliance of the condition mentioned in para 3(h) above, vide its undertaking, MPSE has declared that in compliance with Para 4.2 of the Exit Circular, for the trading members of the stock exchange to gain access to nationwide trading terminals through membership of subsidiary company, MPSE activated the trading membership of MPSE Securities Ltd. MPSE Securities Ltd., continue to function as normal broking entity in compliance with Para 6.3 of the Exit Circular
9. From the valuation report and undertaking of MPSE, 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 MPSE has substantially complied with the conditions contained in the Exit Circular, 2012 subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to MPSE in terms of clause 8 of the Exit Circular, 2012.

10. 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 Madhya Pradesh 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) 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 the Ministry of Corporate Affairs on identifying vanishing companies which were listed on Madhya Pradesh Stock Exchange Limited for inclusion in the list of vanishing companies maintained by the Ministry of Corporate Affairs.

11. 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 Madhya Pradesh intimating the exit of Madhya Pradesh Stock Exchange Limited and for appropriate action at their end as per applicable laws.

Sd/-

**DATE: 9<sup>th</sup> June, 2015**

**PLACE: MUMBAI**

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