

SECURITIES AND EXCHANGE BOARD OF INDIA
EXIT ORDER
IN RESPECT OF MAGADH STOCK EXCHANGE LIMITED (derecognised)

1. Magadh Stock Exchange Limited (hereinafter referred to as “**MdhSEL**”) is a company limited by shares and was formerly recognized as a stock exchange under Section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) for a period of 5 years commencing from December 11, 1986. The said recognition was being renewed from time to time under Rule 7 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “**SCRR**”) and was last renewed vide gazette notification dated December 7, 2005 for a period which was valid up to December 10, 2006. MdhSEL vide letter dated September 26, 2006 submitted an application for renewal of recognition under Section 3 of SCRA. SEBI refused to renew the recognition granted to MdhSEL vide SEBI order SEBI/LE/ 102396 /2007 dated August 30, 2007.
2. SEBI, vide Circular No. MRD/DoP/SE/Cir-36/2008 dated December 29, 2008, issued guidelines laying down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and for the Regional Stock Exchanges (“**RSEs**”) which may want to surrender their recognition. These guidelines were reviewed and modified by SEBI vide Circular No. CIR/MRD/DSA/14/2012 dated May 30, 2012 (hereinafter referred to as “**Exit Circular**”). In terms of clause 2.4 of the Exit Circular, Stock Exchanges, which are already de-recognized as on date, shall make an application for exit within two months from the date of aforementioned Exit Circular and upon failure to do so, the de-recognized exchange shall be subject to compulsory exit process. As no application was received from MdhSEL, therefore, the compulsory exit process was initiated.
3. Accordingly, I now proceed to deal with the compulsory exit of MdhSEL in terms of clause 2.4 of the Exit Circular. I note that as per the Exit Circular, the de-

recognised/non-operational stock exchanges seeking exit are, *inter alia*, required to, comply with the following conditions:

- (a). Distribution of its assets subject to certain conditions as laid down in the Exit 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 exiting 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 exiting stock exchange:
 - (i) Statutory dues including that of Income Tax;
 - (ii) Transfer of Investor Protection Fund, Investor Services Fund, 1% security deposit available with the exiting Stock Exchange to SEBI Investor Protection and Education Fund (hereinafter referred to as the 'SEBI-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 stock 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 shall 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 SEBI-IPEF taking into account *inter alia* the governance standards of the derecognised stock exchange and estimation of future liabilities.

- (e). The companies exclusively listed on a stock exchange which is 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 recognised Stock Exchange with nationwide trading terminals. The exiting stock exchange as well as the exchange providing dissemination board to the listed companies of the exiting exchange 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(s) 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 stock broking entity.
4. I have considered the documents available on record for the purpose of considering the case of exit of MdhSEL. 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 pursuant to its corporatisation and demutualization, the following recommendation of Justice Kania Committee, which was the basis for the amendment to section 47(xiii) of 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”.

6. The corporatisation and demutualisation scheme of MdhSEL was approved by SEBI vide notification No. SEBI/MRD/49401/2005 dated September 15, 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 SCRA, utilization of assets and reserves and other matters required for the purpose of and in connection with the corporatisation and demutualisation of MdhSEL.

7. In terms of condition mentioned in para 3(b) above, SEBI on November 20, 2012 appointed M/s R.M. Associates as the Valuation Agency for verification and valuation of assets and liabilities of MdhSEL. The Valuation Agency has submitted its report to SEBI on February 19, 2015.

8. With respect to the compliance of conditions specified in the Exit Circular, 2012 by MdhSEL and settlement of its liabilities as observed by the Valuation Agency, I note that:
 - (a) In compliance with condition mentioned in para 3(c)(ii) above, as advised by SEBI, MdhSEL has transferred the following to the SEBI - IPEF:
 - (i) An amount of Rs. 4,65,483/- which was available in its 'Investor Protection Fund' vide cheque no 189347 dated June 25, 2015.
 - (ii) An amount of Rs. 27,35,487/- which was available in its 'Investor Services Fund' vide cheque no 189348 dated June 25, 2015.
 - (iii) An amount of Rs.1,00,058/- towards 1% security deposit vide cheque no 189349 dated June 25, 2015

 - (b) In compliance with condition mentioned in para 3(d) above, MdhSEL transferred an amount of Rs. 1,00,000/- towards SEBI IPEF on March 07, 2019.

 - (c) With respect to compliance of condition mentioned in para 3(c)(iii) above, it is noted that MdhSEL has no outstanding dues to SEBI pertaining to 10% of the listing fee and the annual regulatory fee. An amount of Rs. 1,37,46,599/- of stock broker dues was outstanding, of which MdhSEL has made part payment for an amount of Rs.79,18,669/- vide various instruments/ electronic transfers and Rs 58,27,930/- is the amount of outstanding brokers fee. Out the said Rs. 58,27,930/-, Rs. 5,28,576/- has been disputed by the members of MdhSEL

which is under examination, and subject to resolution of the same, MdhSEL will be liable to pay the disputed amount if the resolution casts the liability on MdhSEL. No further disputes or waivers towards the fee would be admitted after the Exit Order is issued. Also, MdhSEL or concerned broker shall provide the requisite assistance to SEBI to resolve the disputed fee liability.

- (d) Based on the networth certificate as on March 31, 2018, submitted by MdhSE the networth of MdhSE is Rs. 40,50,969/- with no liquid assets. In view of the same, MdhSE vide letter dated September 17, 2018 has submitted an undertaking that:
- (i) It will pay the dues from the proceeds of sale of their assets within a period permitted by SEBI.
 - (ii) The stock brokers, whose dues remain pending, will not get share from the assets of the MdhSEL till their dues are paid to SEBI.
- (e) While processing exit of MdhSEL certain complaints regarding bad deliveries have come to the notice of SEBI. The exchange was advised to take appropriate action as per its bye-laws and regulations. In order to ensure that these complaints are resolved, a specific undertaking was obtained by SEBI from MdhSEL. It is observed that the complaints are reflected in the undertaking submitted.
- (f) MdhSEL has submitted an undertaking dated April 15, 2019, inter alia, stating that:
- (i) MdhSEL will clear the liabilities mentioned in the balance sheet and other financial records as on March 31, 2018 and any additional amount that may become liable to be paid on account of the said liabilities. MdhSEL further, indemnifies SEBI on account of the above liabilities.
 - (ii) MdhSEL has no investor complaints / arbitration disputes pending.
 - (iii) The details of cases lodged against MdhSEL and as submitted by it to SEBI are the only cases pending before various legal fora and that it assumes 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.

9. With regard to point 8(d)(i) above a time period of 3 years has been granted to the MdhSEL to sell its assets and pay the dues of SEBI.
10. From the valuation report and undertaking of MdhSEL, it is observed that all the known liabilities have been brought out and that there is no future liability that is not known as on date. I note that MdhSEL has substantially complied with the conditions contained in Exit Circular, 2012 subject to its undertakings. Therefore, I am of the view that there is no need for MdhSEL to continue as a recognised stock exchange more so, when the exchange is not operational since December 11, 2006. Therefore, it is a fit case to allow exit to MdhSEL in terms of clause 8 of the Exit Circular, which will also enable it to liquidate its assets post their exit as an exchange, to pay their outstanding dues as per their undertaking submitted to SEBI.
11. 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 Magadh Stock Exchange Limited (derecognised) 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 in case, after exit as a stock exchange, it continues as a corporate entity under the Companies Act, 2013, not use the expression 'stock exchange' or any variant in its name or in the name of its subsidiary so as to avoid any representation of present or past affiliation with the stock exchange;
 - (e) provide required information to the Ministry of Corporate Affairs on identifying any vanishing company which was listed on Magadh Stock

Exchange Limited (derecognised) for inclusion in the list of vanishing companies maintained by the Ministry of Corporate Affairs.

- (f) pay the outstanding stock brokers' fees as per direction at paras 8 and 9 above.

12. This order shall come into force with immediate effect.

13. In case of breach of any undertaking/ directions as mentioned in this order, SEBI or relevant Authorities may take appropriate actions under laws against MdhSEL and its Directors.

14. A copy of this order shall be forwarded to the Income Tax Authorities and the State Government of Bihar and the Ministry of Corporate Affairs intimating the exit of Magadh Stock Exchange Limited (derecognised) and for appropriate action at their end as per applicable laws.

DATE: May 08 ,2019

PLACE: MUMBAI

**S. K. Mohanty
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**