

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

FOR WITHDRAWAL OF THE RECOGNITION OF THE INDIAN COMMODITY EXCHANGE LTD.

In respect of:

Name of Noticee	PAN
Indian Commodity Exchange Limited	AABCI9479D

1. BACKGROUND

- 1.1. Indian Commodity Exchange Ltd. (hereinafter referred to as “ICEX” or “the Exchange”) is a company limited by shares and was recognized as an exchange under Section 6 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “FCRA”), vide notification S.O. No. 2565 (E) dated October 9, 2009 by Central Government, on a permanent basis, in respect of forward contracts in all the commodities in which Section 15 of FCRA was applicable and the commodities to which neither section 17 nor section 15 of FCRA was applicable.
- 1.2. The said recognition was granted subject to the condition that the Exchange shall comply with such directions as may be issued from time to time by the erstwhile Forward Markets Commission (hereinafter referred to as “FMC”). As per Section 28A (1) of the Finance Act, 2015, pursuant to the merger of FMC with Securities and Exchange Board of India (hereinafter referred to as “SEBI”), all the associations recognized under FCRA were deemed to be recognized Stock Exchanges under the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”) and hence, ICEX became a deemed recognized stock exchange under the SCRA.
- 1.3. As a Market Infrastructure Institution (hereinafter referred to as “MII”), every recognized Stock Exchange is required to comply with provision(s) of various SEBI Regulations/Circulars/Guidelines. ICEX, being a recognized Stock Exchange, is also required to comply with provision(s) of Securities Contracts (Regulation) (Stock Exchanges and Clearing

Corporations) Regulations, 2018 (hereinafter referred to as “SECC Regulations”) as well as requirements/directions issued through various SEBI circulars as applicable to it. Further, Every MII is required to submit data to SEBI, on a monthly basis, *inter-alia*, with regard to trading, status of compliance of various SEBI circulars/regulations/directions vide Monthly Development Report.

1.4. The present proceedings emanate from the Show Cause Notice (hereinafter referred to as “SCN”) dated January 27, 2022 issued by SEBI to ICEX in terms of Section 5 of SCRA read with Rule 13 of Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as “SCRR”) asking ICEX as to why the recognition granted to it under SCRA should not be withdrawn owing to alleged non-compliance with net-worth requirement, SEBI Circulars, SEBI Inspection Observations and infrastructural requirements prescribed under the SECC Regulations.

1.5. The charges in the SCN are as follows:

1.5.1 Non-compliance with net-worth requirements

As per audited Net-worth certificate dated November 1, 2021, issued to ICEX by Chaturvedi & Shah LLP, Chartered Accountants, net-worth of ICEX was INR 93.43 crores. The said net-worth is not in compliance with Regulation 14(1) of SECC Regulations. Regulation 14(1) states that *every recognized stock exchange shall have a minimum net-worth of one hundred crore rupees at all times.*

1.5.2 Non-compliance with SEBI Circulars

In addition to the aforesaid non-compliance with the net-worth requirement, the Exchange was non-compliant with SEBI Circulars, details of which are given as under:

Table 1 - Non-compliance with following SEBI Circulars:

Sr. No.	Subject Matter	Date of SEBI Circular
<i>i.</i>	<i>clubbing of members’ position</i>	<i>September 27, 2016</i>

ii.	<i>Regaining of matched order book</i>	<i>March 03, 2020</i>
iii.	<i>Monitoring of client's funds lying with the stock broker by the stock exchanges and G-Negative</i>	<i>September 26, 2016</i>
iv.	<i>Upfront collection of Margins from clients in Cash & Derivatives segment</i>	<i>July 20, 2020</i>
v.	<i>Unique Client code and mandatory requirement of Permanent Account Number</i>	<i>March 08, 2021</i>
vi.	<i>Running Account Settlement</i>	<i>June 16, 2021</i>
vii.	<i>Business Continuity Plan(BCP) & Disaster Recovery(DR) of Market Infrastructure of Institutions(MIIs)</i>	<i>March 22, 2021</i>

1.5.3 SEBI Inspection Observations:

SEBI inspected ICEX in the years 2018-19 and 2019-20. The observations/suggestions pointed out in the Inspection carried out in the years 2018-19 and 2019-20 were forwarded to ICEX on May 19, 2020 and July 12, 2021 respectively. The observations/suggestions, which have not yet been complied with by the Exchange are tabulated as under:

Table 2 - Observations from the inspection carried out by SEBI in the year 2018-19 not complied by the Exchange:

Sr.No.	Observations
<i>i</i>	<i>No separate Variable pay component in the compensation structure of Head of Departments/Key Management Personnel (hereinafter referred to as "KMP")/ Managing Director & Chief Executive Officer - non-compliance with Regulation 27(3) read with, Schedule II {Part I} of SECC Regulations.</i>
<i>ii</i>	<i>Only one IT personnel is deployed at Disaster Recovery site.</i>
<i>iii</i>	<i>VAR calculation is manual</i>

<i>iv</i>	<i>Non-implementation of an alert w.r.t. concentration of client open interest in the new Commodity Watch System (CWS)</i>
<i>v</i>	<i>Reversal of trades is not being monitored wherein more than two clients acting in concert are involved</i>
<i>vi</i>	<i>Exchange is not carrying out analysis of Trading Pattern of new clients/members or trading by existing clients under any new client code</i>
<i>vii</i>	<i>Market intelligence and gathering of knowledge pertaining to participation of major players in physical market</i>

Table 3 - Observations from the inspection carried out by SEBI in the year 2019-20 not complied by the Exchange:

Sr.No.	Observations
<i>i</i>	<i>No Shareholder Director (SHD) on the board of ICEX from November 7, 2020 till February 26, 2021 - non-compliance with Regulation 23(1) of SECC Regulations.</i>
<i>ii</i>	<i>Non Compliance with clause 5.2.3 of Nomination and Remuneration Committee (NRC) policy - Regulation 24(9) of SECC Regulations.</i>
<i>iii</i>	<i>In case of admission of Vega Jeweldiam Pvt. Ltd. as new member, the exchange took 36 days to forward the application form to SEBI, instead of 30 days as mandated in Regulation 3(3) of SEBI (Stock Brokers) Regulations, 1992.</i>
<i>iv</i>	<i>Only 2 PIDs in IPF Trust - non-compliance with SEBI Circular dated June 13, 2017, on IPF, ISF and other related matters.</i>
<i>v</i>	<i>Non-constitution of Product Advisory Committee for certain products - non-compliance with SEBI Circular dated August 7, 2019, on Product Advisory Committee.</i>

<i>vi</i>	<i>Manual intervention in relaxing the Daily Price Limit (DPL)</i>
<i>vii</i>	<i>Manual intervention in monitoring and clubbing of persons acting in concerts (PACs).</i>
<i>viii</i>	<i>Only one PID meeting was held during the inspection period- non-compliance of Schedule-II, PART-A (2(b)) of SECC Regulations w.r.t. code of conduct for the Public Interest Directors.</i>

Abovementioned inspection observations remained non-complied even after several follow up by SEBI with the Exchange vide emails/telephonic conversations resting with last email dated December 16, 2021.

1.5.4 Non-compliance with Infrastructural Requirements

In addition to the abovementioned non-compliances, by its own admission, the Exchange was non-compliant with Regulation 12(5) read with Regulations 7(2)(e), 7(2)(f), 7(3)(a), 7(3)(c), 7(3)(j), 7(3)(k) of SECC Regulations, in view of the following:

- i. The exchange is managing with the bare minimum staff who do not possess domain knowledge as close to 98% of the experienced staff has left the exchange.
- ii. Net balance of corporate funds available as on July 15, 2021 is INR 0.17 crore.
- iii. Total Cost required for implementation of Business Continuity Plan & Disaster Recovery set up is approx. INR 5 crore.
- iv. Staff in all Regulatory Departments are inadequate.
- v. Almost all the old and experienced staff have left the organization
- vi. No single old and experienced staff is there in IT Department. Entire staff are new and IT department is a cause of concern.
- vii. Staff having exchange background are reluctant to join ICEX
- viii. Trading and Surveillance Department is also a cause of concern due to all new staff.
- ix. Non-availability of Minimum required staff for Disaster Recovery (DR) set up at Chennai.

Regulation 7 of SECC Regulations, *inter-alia*, prescribes for certain infrastructural requirements to be complied with by a recognized stock exchange which are not complied with by ICEX. The details of the said provision(s) have been discussed in the later part of this order.

2. Reply to SCN, Personal Hearing and Further Submissions:

2.1 Vide SCN, ICEX was advised to file its reply to the SCN, by February 17, 2022. Accordingly, the Exchange submitted its reply vide letter dated February 17, 2022. Relevant Extracts of submissions of the Exchange are given as under:

Net-worth of Stock Exchange:

2.1.1 *The Exchange submitted that the current net-worth (unaudited) as on January 31, 2022 is INR 86.45 crore. In addition to this figure, the Exchange has also contributed INR 20 crore towards core SGF. Considering the addition of core SGF of INR 20 crore, the Exchange currently complies with the requirement of INR 100 crore net-worth as on date. It was further stated that, in the meantime, the board of the Exchange has already taken a decision to raise the funds to augment the net-worth requirement, for which the efforts are already underway.*

Infrastructure Requirements as per SECC Regulations

2.1.2 *To implement all the non-compliances by automating the system which requires a minimum of INR 5 crore, besides pending payment of INR 8 crore to the application vendor. Therefore, the Exchange vide letter dated August 3, 2021 had requested Regulator to give those concessions/adequate time to comply or to alternatively refund SGF of INR 34.74 crores to Exchange to enable the Exchange to enhance the system to comply with the SECC Regulations immediately. However, our request was not acceded by the Regulator and as result those non-compliances continued even to date.*

Under these circumstances, the board of the Exchange recommended to the shareholders to suspend the commodity segment temporarily while continue with Mutual Fund Transactions. Shareholders passed a resolution that the Exchange should request regulator to consider allowing ICEX to suspend commodity segment temporarily and allow to continue operating Mutual Fund Transactions. This will not only generate revenue from Mutual Fund transactions but also cut down the cost drastically whilst keeping requirements of SECC Regulations pertaining to compliances in commodity segment in abeyance temporarily. The Exchange will make sincere efforts to raise funds in a short period and again restart the commodity segment.

SEBI Inspection Observations:

- 2.1.3 ICEX submitted that the majority of SEBI inspection observations require system development which again requires substantial funds. In view of the paucity of funds, non-compliances as pointed out in the letter referred as above could not be complied. Due to the unusual and unfortunate events that took place at the exchange, the observations of SEBI Inspection carried out in the year 2019-20 could not be discussed for implementation by the relevant committee. However, the said shall be discussed and implemented at the earliest.*

Non-compliance with Infrastructural Requirements

- 2.1.4 As regards to the requirement of 7(2)(f) of SECC Regulations regarding the requisite capability including its financial capacity, functional expertise and infrastructure, the exchange does not have full capability at present and unless the Exchange raised fund it would be difficult to build such capability at present at the optimum level. However, it is pertinent to mention that the Exchange was fully compliant on the above mentioned parameters till 2019.*

- 2.1.5 *As far as regulation 7(3)(a), 7(3)(c), 7(3)(j) and 7(3)(k) are concerned, the Exchange submitted that though basic infrastructure is in place, and the Exchange was fully compliant till 2019, but unfortunately the Exchange has faltered on implementing subsequent SEBI directives pertaining to on-line surveillance watch system, requisite infrastructure for BCP and DR. Poor growth prospects and un-remunerative pay-package in last two years forced experienced staff to exit the exchange. At the same time, industry experienced personnel were reluctant to join the Exchange because of the mentioned reasons. It is understood that regulation 12(5) of SECC Regulations mandates that the Exchange has to comply with the provision(s) of regulation 7(3) of SECC Regulations.*
- 2.1.6 *The Exchange further submitted looking into the non-compliances as mentioned in the SCN, the board of exchange in its meeting dated February 15, 2022 after deliberating re-iterated that the regulator should once again be requested to look into our request made vide letter dated December 3, 2021. In case regulator concedes to the request then all these compliances shall be kept in abeyance for a short period of time. Once exchange raises the fund then the exchange will comply with all these requirements and will seek regulator's nod to re-start the commodity segment within the prescribed time frame as mandated by regulator through its circulars.*
- 2.1.7 *The Exchange further submitted that it would not be out of place to mention to the regulator the reasons for the predicament in which the Exchange, unfortunately, has now come to. The Exchange, which till recently, was getting rave review from the regulator (CDAC/SEBI), market participants, and even Ministry of Finance for its unique contracts suddenly became victim of extraneous events, beyond its control and making, and unfortunately, come to this pass.*
- 2.1.8 *Unprecedented, Covid-19 pandemic induced lockdown which forced the closure of underlying physical market indefinitely, thus impacting the discovery of spot market*

price, gravely affecting the ICEX derivatives. Since all ICEX contracts were delivery based, liquidity and volume of the derivatives were impacted negatively. For an Exchange focusing on unique, innovative delivery-based contracts, which were in tandem with the regulator's thought process and were so relevant to the Indian physical market commodity eco-system; this once-in-a century global crisis was too severe not to impact the fledgling Exchange. ICEX volume soon dried up, thus severely impacting the revenue.

2.1.9 ICEX stroke with misfortune did not end there. Strategic investment from Delhi based leading commodity exchange which was on final stages of completion went on a back burner due to the crisis of trust that the exchange went through.

2.1.10 It is with this background that the regulator is humbly requested to consider our proposal favourably. The ICEX Board is confident that given a chance, we shall revive the Exchange within a period of one year.

2.1.11 In view of the abovementioned submissions the Exchange requested SEBI:

2.1.11.1 To consider the Exchange letter dated December 3, 2021 for allowing the Exchange to suspend commodity segment temporarily and to permit continuation of Mutual Fund transactions for a period of one year. By suspending commodity segment temporarily, the requirements of SECC Regulations shall be kept in abeyance. This will reduce the cost and increase the revenue of the Exchange. This will also help in enhancing the valuation of the exchange, thereby also attracting new investors, to raise the requisite funds.

2.1.11.2 To release SGF for working capital requirements of the Exchange.

2.1.11.3 In case, the regulator is averse to the request of the Exchange then considering the seriousness of the matter, it is requested to the regulator to

give an opportunity for personal hearing to the Board for further discussion on the matter at a convenient date and time.

2.2 Subsequently, vide letter dated February 24, 2022, the Exchange was given personal hearing in the matter on March 8, 2022. However, due to some work related exigencies, the hearing was rescheduled to March 22, 2022.

2.3 Following personnel from the Exchange attended the hearing on March 22, 2022:

- I. Mr. Vijay Kumar Sharma (Chairman)
- II. Ms. Chitra Shringare (Public Interest Director)
- III. Mr. Sanjit Prasad (Managing Director and Chief Executive Officer)
- IV. Ms. Vaishali Kale (Shareholder Director)
- V. Mr. Suresh babu Konakanchi (Shareholder Director)
- VI. Mr. Ranjit Samantaray (Chief Regulatory Officer)

2.4 During the personal hearing, submissions made in the reply to SCN were reiterated. Upon completion of personal hearing the Exchange desired to submit written submissions. Time till March 29, 2022 was granted, to submit the written submissions.

2.5 Before making the Post-hearing written submission, ICEX vide its letter dated March 28, 2022 intimated SEBI that they have voluntarily suspended trading operations at the exchange including Mutual Funds transactions in view of their current financial situation. It was further informed that the Exchange will take necessary steps to raise the funds on an urgent basis after which the Exchange will seek prior approval of SEBI to re-start the trading operation within a year in accordance with Exit Circular dated January 11, 2016 (hereinafter referred to as “Exit Circular”) which, inter-alia, states that if there is no trading on the platform of Exchange for more than a year, the Exchange is liable for exit. The Exchange issued a circular dated March 29, 2022 in this regard, under provision(s) of its Bye-laws, Rules and Regulations.

2.6 Subsequently, vide letter dated March 29, 2022, ICEX, made its post hearing submissions. Relevant extracts of the same are produced as under:

- 2.6.1 *ICEX is a small Exchange working on a shoe-string budget with a sole objective of launching innovative contracts which would serve economic benefits to the underlying commodity users. The ICEX board in its wisdom had taken a deliberate decision to launch delivery-based contracts vis-à-vis cash settled contract, though knowing fully well that the delivery-based contracts are more difficult in getting success as compared to cash settled contracts, and it is a treacherous path that the exchange would be embarking upon but still chose this path since the objective and thought process aligned with that of regulator. It was such that the contracts can serve the purpose of price discovery and hedging. Launch of world's first Diamond derivatives, where India being globally the largest manufacturer of cut and polished diamonds, was a first step in that direction.*
- 2.6.2 *Similarly, subsequent to launching of Diamond Contract, the Exchange launched steel, Rubber and Paddy Basmati, all delivery based contracts that served the objectives the Regulator and the Govt. of India.*
- 2.6.3 *The Exchange's research dept. was always vying for such innovative contracts with economic value and bring its benefit to the industry and society at large which did meet success in the initial period.*
- 2.6.4 *Since, ICEX was always working on a shoe-string budget, and as is well known that operating revenue for an exchange is always muted in initial years of its formation, hence raising fresh equity capital was foremost in the minds of board members. It was with the view that the Board enhanced the authorized capital in August 2019 and directed MD & CEO to look for potential investors. It is in this pursuit that ICEX was able to identify IEX as a strategic investor, which would not only bring fresh capital but also pave path to launch of new products like electricity futures. The discussions on stake-sell had almost reached its finality with IEX appointed legal firm, J Sagar & Associate sharing draft Term Sheet with ICEX which was subsequently*

vetted by ICEX's legal firm – ELP (Economic Law Practice).

2.6.5 In 2020, Exchange had planned to raise INR 200 crore from the market. Unfortunately, extraneous factors such as pandemic induced lock down, forensic audit on alleged anonymous complaints, and closure of spot commodity market brought the Exchange operations into stand still and the investment proposal from IEX was put on a back burner. These extraneous factors were beyond the control of the exchange and brought the exchange to a financial distress.

2.6.6 The Exchange was fully compliant till March 2020 and the operations were going as in expected line. Had it not for the external factors, the Exchange was well poised to serve the objectives of the Regulator.

2.6.7 It was further submitted that the shareholders believe in the potential of the Exchange and are talking to few potential investors who are interested to invest in ICEX. It is humble plea from them to consider for suspension of trading operations rather than withdrawing the recognition so that the Exchange will get some time to raise fresh funds in order to re-start the trading operations.

2.6.8 The board members further re-iterated that SEBI may consider the plea of the shareholders. It was further emphasized that the Exchange will take immediate steps to suspend the trading operations and shall, on our own, by call an emergency board meeting for the same.

2.6.9 It was further stated that the SEBI observations for non-compliances, the submissions made in Exchange letter dated February 17, 2022, majority of non-compliances require system enhancements which is at present not likely unless we raise funds on an immediate basis.

2.6.10 Considering the above submission, it is requested that the Regulator gives the

exchange an opportunity to suspend the trading operations under the provisions of SCRA 1956, SEBI Act 1992, SECC Regulations, 2018 and also under the proviso 6 read with proviso 4 of SEBI Circular CIR/CDMRD/DEA/01/2016 dated January 11, 2016 instead of considering the withdrawal of recognition under the proviso 7 of said circular of SEBI.

- 2.7 Subsequent to post hearing submissions, the Exchange vide email dated April 6, 2022 informed that Shri. Sanjit Prasad, MD & CEO of the Exchange has resigned and he has been relieved with immediate effect.

3 Consideration of Issues and findings:

- 3.1 I have carefully considered the facts and circumstances of the case and the material available on record which includes the show cause notice, replies and the documents submitted by ICEX as well as the oral submissions made before me during the personal hearing.
- 3.2 I note that the charges made in SCN can be categorized under four heads viz., non-compliance with Net-worth requirement, non-compliance with SEBI Circulars, non-compliance with SEBI inspection observations and non-compliance with infrastructural requirements. I would now deal with each of the above vis-à-vis the submissions of the Exchange:

Non-compliance with Net-worth Requirement:

- 3.2.1 Regulation 14(1) of SECC Regulations states that *Every recognised stock exchange shall have a minimum net-worth of one hundred crore rupees at all times:*

In the Explanation I to Regulation 14(5) of the SECC Regulations, it is stated that 'net-worth of a stock exchange' means the aggregate value of paid up equity share capital plus free reserves (excluding statutory funds, benefit funds and reserves created out of revaluation) reduced by the investments in businesses, whether related or unrelated, aggregate value of accumulated losses and deferred

expenditure not written off, including miscellaneous expenses not written off.

3.2.2 I note that as per Networth certificate dated November 21, 2021, the Networth of ICEX was INR 93.43 crore. The said Networth, as per reply dated February 17, 2022 of ICEX, has further reduced to INR 86.45 crore as on January 31, 2022.

3.2.3 The Exchange in its submissions has stated that after adding INR 20 crores (part of SGF), net-worth is more than INR 100 crore and hence, the Exchange is complying with Regulation 14(1) of SECC Regulations. The Exchange has further submitted that it has decided to raise funds for augmenting its net-worth.

3.2.4 It is to be noted from the above mentioned Regulation 14(1) of SECC Regulations that while calculating the net-worth, paid up equity share capital and *free reserves* can only be accounted for. Further, funds like SGF have been specifically excluded from the ambit of “*Free Reserves*”. Therefore, the contention of ICEX that amount lying in SGF forms part of its net-worth is not tenable.

3.2.5 Even otherwise also, Section 2(43) of Companies Act, 2013 defines *free reserves* as under:

“free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or*
- (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;*

3.2.6 With regard to establishment and utilization of SGF, relevant provision(s) of Regulation 31 and 37 of SECC Regulations, are as under:

Contribution to the Settlement Guarantee Fund

31(1) The contribution to the Fund as specified in regulation 37 shall be made by the recognized stock exchange, the recognized clearing corporation and the clearing members, in the manner as may be specified by the Board from time to time.

Fund to Guarantee settlement of trades

37(1) Every recognized clearing corporation shall establish and maintain a Fund by whatever name called, for each segment, to guarantee the settlement of trades executed in respective segment of a recognized stock exchange:

37(2) In the event of a clearing member failing to honour his settlement obligations, the fund shall be utilized to complete the settlement.

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37(5) The utilization of the Fund shall be in accordance with the norms specified by the board.

3.2.7 The abovementioned provisions of SECC Regulations mandates a recognized stock exchange and clearing corporation to set up SGF which shall only be used in the event of a clearing member failing to honour his settlement or in accordance with the norms specified by the Board. Furthermore, it is to be noted that, as per Regulation 37(1) of SECC Regulations, SGF is maintained by Clearing Corporation though in terms of Regulation 31(1), contribution to SGF is required to be made by the recognized Stock Exchange and therefore SGF is not available with stock

exchange. Hence, the contribution of stock exchange lying in the SGF is not available with stock exchange for distribution of dividend or for any other purpose and therefore, the same cannot be termed as *free reserve* in terms of Section 2(43) of Companies Act, 2013. In view of this, a recognized stock exchange cannot include its contribution towards SGF while calculating its net-worth.

3.2.8 Therefore, the contention raised by the Exchange that they are complying with the net-worth requirement does not hold any substance.

Non-Compliances with SEBI Circulars :

3.2.9 SEBI, in exercise of powers conferred under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the *Act*) periodically issues circulars to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. It is alleged that the Exchange has failed to comply with several SEBI circulars as detailed in Table-1 under para 1.5.2 of this order.

3.2.10 In this regard, I note that, in its reply dated February 17, 2022, ICEX has not disputed the violation of the circulars as alleged against it in the SCN. However, the Exchange has stated that they require funds in order to comply with the non-compliances and due to precarious financial situation, the Exchange does not have requisite funds. Therefore, the Exchange vide its letter dated August 3, 2021 had requested SEBI to give concessions w.r.t compliances of SEBI circulars/Inspection Observations or alternatively, refund the amount of SGF to enable the exchange to enhance the system to comply with the SECC Regulations immediately.

3.2.11 As mentioned earlier, SGF being a specific purpose fund can exclusively be used to undertake commitment to complete clearing and settlement without affecting the normal settlement process. SGF is maintained to ensure that there is no delay in

settlement due to failure of any member to honor its commitment to the Exchange on time as failure of one member may have cascading effect on others as well. I note that SGF cannot be dipped into to meet the day to day needs of a stock exchange. Considering this, SEBI has rightly not acceded to this request of the Exchange. I also note that, vide letter dated October 21, 2020, ICEX was permitted as a onetime measure to utilize an amount of INR 22.5 crores earmarked for but not credited to SGF, to attempt to restore its business. Despite having used approximately INR 9 crores till July 2021, there was no visible improvement in the business operations of ICEX as it was envisaged and assured by ICEX at the time of seeking approval for utilization of the aforesaid earmarked funds.

3.2.12 Further, as regards giving special concessions to the Exchange for non-compliances with SEBI Circulars/ Inspection Observation, it is pertinent to note that the Exchange in its reply had not provided a specific timeline or a plan in order to comply with the said requirements and rather merely sought for concessions. Moreover, the Exchange was no longer compliant with the provisions of SECC Regulations to operate as a stock exchange since it is not fulfilling the eligibility criteria of minimum required net-worth. In view of this, their request seeking concessions w.r.t. non-compliances was not acceded to.

Addressing Non- Resolution of SEBI Inspection Observations:

3.2.13 With regard to non-compliance with SEBI Inspection observations, as mentioned in Table -2 and 3 under para 1.5.3 of this order, in its reply dated February 17, 2022, ICEX has not disputed the allegations made in the SCN in this regard. However, ICEX once again re-iterated that majority of these observations require system development which again requires substantial funds and in view of the paucity of the funds, these observations could not be complied.

3.2.14 In this regard, I note that ICEX has once again not provided any timelines for complying with these Inspection Observations and merely stated that they would

require funds for the same. It is further stated that they would raise funds for the same. However, the Exchange has not provided any plan as to how they are going to raise these funds in such a precarious situation of the Exchange.

3.2.15 It is further submitted by the Exchange that due to unusual and unfortunate events that took place at the Exchange, the observations of SEBI Inspection carried out in the year 2019-20 could not be discussed for the implementation by the relevant Committee and the same shall be discussed and implemented at the earliest. In this regard, I note that the Exchange has once again not given any timeline for the said, considering the fact that these observations were forwarded to the Exchange in July 2021 and are still to be complied with even after several reminders by SEBI in this regard.

Non-Compliances with infrastructure requirements :

3.2.16 I note that SCN alleges non-compliances with regulation 12(5) read with regulations 7(2)(e), 7(2)(f), 7(3)(a), 7(3)(c), 7(3)(j), 7(3)(k) of SECC Regulations. Issues which led to alleged non-compliance with these provision(s) have already been detailed at Para 1.5.4 of this order. ICEX in its reply dated February 17, 2022 has not disputed any of these allegations made in the SCN. Before proceeding further with the examination of the submissions of the Exchange in this regard, it would be appropriate to refer to the following provision(s) of Regulation 7 of SECC Regulations:

Regulation 7(2) of SECC Regulations, mandates an applicant seeking recognition as a stock exchange or clearing corporation to inter-alia comply with the following conditions, namely:

Regulation 7(2)(e): the applicant satisfies the net worth requirements specified in these regulations;

Regulation 7(2)(f): the applicant satisfies the requisite capability including its financial capacity, functional expertise and infrastructure.

Regulation 7(3) of SECC Regulations, mandates an applicant seeking recognition as a stock exchange shall, in addition to the above mentioned conditions to inter-alia, comply with the following conditions, namely:

Regulation 7(3)(a): the applicant has the necessary infrastructure for the orderly execution of trades;

Regulation 7(3)(c): the applicant has an online surveillance capability which monitors positions, prices and volumes in real time so as to ensure market integrity;

Regulation 7(3)(j): the applicant has adequate systems' capacity supported by a business continuity plan including a disaster recovery site;

Regulation 7(3) (k): the applicant has in its employment, sufficient number of persons having adequate professional and other relevant experience;

Regulation 12(5) of SECC Regulations, states that the recognized Stock Exchange/Clearing Corporation shall comply with the applicable conditions specified in regulation 7(3), on a continuous basis.

3.2.17 I note that, these provision(s), inter-alia, prescribes certain infrastructural requirements including net-worth, to be complied by a recognized stock exchange as well as by the stock exchanges, who are applying for recognition to SEBI. Therefore, these are very basic requirements every exchange has to comply with for orderly execution of trades on its platform. The Exchange was observed to be non-compliant with these provision(s) as detailed at para 1.5.4 of this order which, inter-alia, states that the exchange does not have sufficient number of experienced

staff and requisite financial capacity.

3.2.18 It is also noted that none of the contracts being run on the Exchange were showing any significant volume. The compliance and regulatory issues as well as lack of staff for most important functions such as surveillance made the situation at the Exchange very precarious, making its continued survival questionable and a risk for Securities Market as a whole.

3.2.19 In this regard, the Exchange has submitted that regarding the requisite capability including its financial capacity, functional expertise and infrastructure, the Exchange does not have full capability at present and unless Exchange raises funds it would be difficult to build such capability at the optimum level.

3.2.20 I further note that Exchange has once again expressed its inability to comply with these requirements owing to paucity of funds and stated that they have to raise funds for complying with these non-compliances.

3.2.21 In this regard, the Exchange has reiterated its request made vide letter dated December 3, 2021 to permit them to suspend trading operations and refund the SGF so that they can comply with these requirements. It is also stated that if this is permitted these requirements can be kept in abeyance for time being. It is further stated that they would raise investment and would revive the Exchange within a period of one year after complying with all the existing non-compliances. This request was not acceded to by SEBI and the same was communicated to the Exchange, vide letter dated February 23, 2022.

3.2.22 I note that the submissions of Exchange are vague as there is no plan as to how the Exchange is considering to raise funds from the market. It is pertinent to note that the Exchange in their submission has highlighted certain failed instances of its

endeavors to raise funds in the last two years.

3.2.23 It is to be noted that as per Exit Circular dated January 11, 2016 if an exchange has no trade on its platform for a period of one year, such exchange is liable to exit. In this regard, the Exchange has submitted that they would raise investment and re-start the trading within one year. However, as stated above no action plan has been submitted.

3.2.24 It is noted that the MD & CEO has now resigned from the Exchange. Further, the Exchange has mentioned that experienced personnel are not willing to join the Exchange. In such a situation, it would be highly unlikely that the Exchange would be able to find suitable Key Management Personnel (KMPs) and consequently, making the task of raising funds further unlikely. Therefore, it does not appear that the Exchange would be able to raise required funds for its revival as other directors such as Public Interest Directors are there to oversee the functioning of exchange and cannot be involved in a managerial task such as raising funds.

3.2.25 It is also noted that out of three incumbent PIDs, two have already resigned from the board of the Exchange. However, they have been asked to continue till suitable replacements are found. Considering the present situation of the Exchange, it would be difficult to find suitable replacements and consequently, the board of Exchange might become defunct. Therefore, without a Managing Director, other KMPs and requisite number of members on its board, it would be a difficult task for the Exchange to raise funds and revive its trading operations.

3.2.26 With regard to proposal of raising funds, it is pertinent to note that there are certain shareholders of Exchange holding more than 5% of exchange's equity as against maximum 5% permitted by the SECC Regulations. Such shareholders were directed by SEBI in the year 2019, to divest their excess shareholding. However, they are unable to sell their stake for more than two years, due to Exchange's precarious

financial situation. Considering the above, it appears that it would be highly unlikely that the Exchange now would be able to find new investors.

3.2.27 It is observed that the Exchange had also suspended its trading operations in 2013, due to erosion of net-worth and it took them more than 3 years to revive the trading. Therefore, it is highly unlikely that they would be able to do so within a period of one year, this time around.

4 Order

4.1 Considering the current scenario of the Securities Market, where only those institutions, which are capable of adapting to the rapidly changing market structure, alone can survive, ICEX with the aforesaid inadequacies even in the basic requirements to exist as a stock exchange, would only find itself redundant. If ICEX is allowed to function in the present manner without any immediate remedial action, it would not only lose its relevance as a public institution but also erode the confidence of the investors, which would in turn compromise on the orderly development of the securities market.

4.2 In view of the above facts and circumstances, and in exercise of the powers under Section 11(2)(j) of the Securities and Exchange Board of India Act, 1992 read with Section 5(1) of the Securities Contracts (Regulation) Act, 1956 and the Government of India Notification No. F. No. 1/57/SE/93 dated September 13, 1994, in the interest of the trade and in the public interest, the recognition granted to ICEX stands withdrawn. This direction shall come into force on the date of the Notification of withdrawal of recognition granted to the ICEX in the official gazette.

4.3 In view of this Order, since ICEX shall cease to be a recognized stock exchange, it is imperative to pass necessary directions in the interest of investors/shareholders of ICEX and in the overall interest of the securities market. Following consequential directions are issued:

- 4.3.1 The money available in the Investor Protection Fund and Investor Services Fund of ICEX lying un-utilized shall be transferred to SEBI Investor Protection and Education Fund within 15 days from the date of the Notification of withdrawal of recognition granted to the ICEX in the official gazette.
- 4.3.2 ICEX 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 investors complaints/grievances lying with the exchange, on the date of the Notification of withdrawal of recognition granted to the ICEX in the official gazette.
- 4.3.3 ICEX shall pay the dues outstanding to SEBI and the annual regulatory fees including balance in the account w.r.t. regulatory fees foregone.
- 4.3.4 Trading Members of ICEX shall be liable to pay SEBI registration fees as per SEBI (Stock Brokers) Regulations, 1992 till the date of the Notification of withdrawal of recognition granted to the ICEX in the official gazette, if any.
- 4.3.5 Pursuant to withdrawal of recognition to ICEX, the Exchange is directed to refrain from using the expression 'stock exchange' or any variant in its name or in its subsidiary company's name.

-Sd-

Date: 10th May, 2022
Place: Mumbai

V. S. Sundaresan
Executive Director
Securities and Exchange Board of India