BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DP/2022-23/22692]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Multi Commodity Exchange of India Limited
[PAN: AADCM8239K]
Exchange Square, Suren Road,
Chakala, Andheri East,
Mumbai – 400093

In the matter of
Multi Commodity Exchange of India Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a copy of the affidavit filed before Hon'ble High Court of Judicature at Madras in a writ petition no. 2356 of 2022 seeking direction for directing SEBI to appoint an external audit agency having valid credentials to conduct an investigation/audit and seek periodic status reports of the audit into software contract awarded by the 1st Respondent i.e. Multi Commodity Exchange of India Limited (hereinafter referred to as "**Noticee**") to a London based firm PSEB for the purpose of developing software for the spot exchange trading platform and/or pass such other orders as deemed fit. Accordingly, SEBI advised MCX to submit a chronology of events leading to granting the contract to London based firm, PSEB and also the status of the allotment of software contract. MCX submitted its reply on March 22, 2022. Based on the reply received from the Noticee, certain non-compliances of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred to as "**SECC**

Regulations, 2018") and Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (hereinafter referred to as "**SECC Regulations, 2012**") was observed.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed Ms. Asha Shetty as the Adjudicating Officer under Section 15I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "**Rules**") and Section 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with Rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties), 2005 (hereinafter referred to as "**SCR Rules**"), vide communique dated September 16, 2022 to enquire into and adjudge under Section 23H of SCRA read with Section 15 HB of SEBI Act, the alleged violation of Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012 by Noticee. Subsequently, the undersigned has been appointed as Adjudicating Officer vide communique dated October 06, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice(s) dated October 17, 2022 (hereinafter referred to as '**SCN'**) was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on them under Section 23H of SCRA read with Section 15 HB of SEBI Act for the alleged violation of the provisions of SECC Regulations, 2018 read with SECC Regulations, 2012. The SCN, *inter alia*, alleged the following:

   i. As per Regulation 38(2) of SECC Regulations, 2018, a recognized stock exchange, may engage in activities involving deployment of funds that are unrelated or not incidental to its activity as a stock exchange, through a separate legal entity, subject to prior approval of SEBI. Further, Regulation 41(3) of SECC Regulations, 2012 mandates that a recognized stock exchange and recognized clearing corporations shall not engage in any unrelated activity except through a separate legal entity and as permitted by SEBI.

ii. From the reply dated March 22, 2022, of the Noticee and email dated June 15, 2022, it was observed that the Noticee entered into contract with PSEB for development of software for spot trading platform on August 16, 2018. The spot trading in commodities is not covered under the definition of securities under SCRA and hence, any activity with respect to spot trading is considered to be an unrelated activity for a recognized stock exchange. Further, Noticee made first payment of Rs. 8,46,59,480 to PSEB on October 17, 2018 and next payment of Rs. 7,43,64,480 on February 25, 2019. It was alleged that the Noticee did not take prior approval from SEBI under Regulation 41(3) of SECC Regulations, 2012 before entering into contract with PSEB and before deployment of funds to PSEB for development of software for spot trading platform. It was, therefore, alleged that Noticee has violated Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012.

4. Upon receipt of SCN, the Authorised Representative (AR) of the Noticee, vide emails dated November 01, 2022 and November 10, 2022, sought inspection of the investigation report and all other documents and materials which may be relevant in the context of the Noticee. Vide email dated November 10, 2022, Noticee was informed that it can undertake the inspection of the relied upon documents on November 11, 2022. Noticee undertook the inspection of the documents on November 11, 2022.

5. Subsequently, vide email dated November 14, 2022, Noticee was granted personal hearing on November 30, 2022. Vide email dated November 29, 2022, Noticee confirmed the attendance of the personal hearing granted and also requested that they be allowed to attend the hearing physically. The Noticee submitted that Mr. P S Reddy (MD & CEO, MCX), Mr. Manoj Jain (COO, MCX), M. Kaushal Mehta (AVP-Legal, MCX), Mr. Pratham Masurekar (Senior Manager-Legal, MCX) and Mr. Anubhav Ghosh, Counsel, Trilegal will attend the personal hearing on the scheduled date.

6. Further, in response to the SCN, the Noticee vide letter dated November 29, 2022, *inter alia*, submitted the following:

    i. *In the Union Budget for the Financial Year 2017-18, in the budget speech, Hon'ble Finance Minister of India announced to integrate spot market and derivative markets for commodities.*

    ii. *The Government of India set up an Expert Committee under the Chairmanship of Prof. Ramesh Chand, Member, NITI Aayog to examine the legal, technical and operational aspects of the commodity spot and derivatives markets with a view to eliminate the gaps and overlaps that exist between these two markets and recommend requisite measures for achieving the desired integration between the commodity spot and derivatives markets in India. The Committee in its report dated February 2018 concluded that the integration of these two markets was imperative and one of the ways of operationalising the same was by creating an electronic spot market platform, where the price of a commodity from across the country is available.*

    iii. *In fact, around this time, there was a proposal approved by the SEBI Board which contemplated issuance of unified licenses for brokers, integrating their registration for the equity and commodity derivative markets. Thus, it became apparent since this time that spot commodities markets would be materializing soon, which necessitated existing commodities exchanges like MCX to ready itself for such developments.*

    iv. *Further, in terms of its Memorandum of Association, the Noticee is required to evolve necessary information technology solutions as an activity incidental to its mam objective of operating a commodities exchange.*

    v. *It is submitted that exchanges such as the National Stock Exchange of lndia and BSE have the capability to launch a commodity spot trading platform via their existing software. However, since the software which is used by the Noticee was primarily developed to handle commodities derivatives, the same was not customized to be able to offer those features which would be required for a 'spot exchange' platform, while the same would have been inherent in the systems of* *other exchanges. In the instant matter it is clear that, as detailed in the subsequent paragraphs, no 'activity' (as must be understood in the context of the applicable regulations) was undertaken by the Noticee in the present matter. The steps taken by the Noticee, i.e. of entering into the Agreement and making the payments due thereunder, was only for the purpose of developing a software framework.*

vi. *Further, in terms of Section 7(3) and (4) of the SCR Act makes it clear that the presence of appropriate infrastructure is a sine qua non for grant of recognition as a stock exchange. These factors demonstrates that readiness to adapt to a changing regulatory landscape would be necessary for the effective performance of the functions of a stock exchange, which is duty-bound to offer a safe, reliable and transparent trading platform to investors.*

vii. *However, the contract entered into with PESB by the MCX to develop a mere software, cannot be said to have any risk as the same was not an activity meant for profit i.e. preparation of one's information technology infrastructure cannot be termed as conducting business operation for profit and neither was the same an intention of the Regulation. Without prejudice to this contention, your attention is drawn to the definition of "activity" in the Black's Law Dictionary, which clarifies that such a definition ought to cover 'operating a business' with a motive to make profit. This interpretation also clarifies that entering into the Agreement, a merely preparatory step, cannot be taken to be an "activity" which would possibly warrant any business risk to the organization. Also, pertinent to mention is that against net worth requirement of INR 100 crore, MCX's networth was about INR 956 crore for the financial year 2018-19. The amount pointed in the Notice, which was paid by the Noticee to PESB in terms of the Agreement, constitutes merely 1.66% of the networth and therefore could not have entailed any risk on the MII, and hence does not attract the rationale for the said regulation, as envisaged by Hon'ble Bimal Jalan Committee.*

viii. *Regulation 41(3) of the 2012 SECC Regulations prohibit a recognized stock exchange from engaging in activities which are unrelated or not incidental to its activity as a stock exchange, except through a separate legal entity and as* *permitted by SEBI. In the instant case, while the 20 I 2 SECC Regulations were in force, MCX entered into the Agreement with PESB for the development of the Software. It is submitted that entering into an Agreement for this purpose does not amount to an 'activity' in terms of the 2012 SECC Regulations.*

ix. *Admittedly, the 2012 SECC Regulations do not define the term "activity". Thus, internal aids present in the regulations themselves ought to be employed to interpret the meaning of the term, since literal interpretation would render the provision entirely nugatory. In this regard, it is trite law that headings may regarded as key to interpretation of the operative portion of said section. The heading of the Regulation 41 is "Equal, fair and transparent access". Therefore, in this context the term "activity" must inexorably be linked to access of the platform of an exchange. Since the Agreement towards development of the Software does not in any way relate to the access of the platform (since development of the platform would be an act much subsequent to the development of the software), this cannot be considered to be an "activity" within the meaning of the said provision.*

x. *Without prejudice to the same, it is submitted the said provision ex facie also allows the stock exchange to carry on activities which are related and incidental to its activity as a stock exchange. It is submitted that, as aforesaid, developing forward looking technologies aimed at being future ready, even if deemed to be an 'activity' would certainly be related and incidental activities for a stock exchange including and especially in terms of its Memorandum of Association, which requires it to evolve necessary information technology solutions as an activity incidental to its main objective of operating a commodities exchange.*

xi. *From the aforesaid facts, as also from the Notice itself, with reference to Section 23J of the SCR Act, it becomes abundantly clear that the Noticee has not affected the rights of any investor or market participant, nor has it made any unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally. Further, without prejudice to the aforesaid, the Notice itself also does not indicate* *that there was any repetitive default. Additionally, there is also no case of any loss having been caused to anyone on account of the conduct of the Noticee, whether intentionally or otherwise.*

xii. *It is submitted that while both of the regulations have been framed under the SCR Act and the SEBI Act, the subject matter of the present allegations relate to matters which are solely covered under the SCR Act. The SCR Act relates to inter alia the functioning of stock exchanges and their regulation, while the SEBI Act relates to inter alia investor protection and regulation of intermediaries. Indeed, the Notice itself makes reference only to the SCR Act while making the allegations contained in the same. Therefore, it is submitted that, the SEBI Act has no application in the present proceedings.*

xiii. *In this regard, it may be noted that on December 24, 2021 'Electronic Gold Receipts' were notified as 'securities' within the meaning of the SCR Act, by notification in the Official Gazette. To give effect to the same a Circular titled "Framework for operationalizing the Gold Exchange m India" dated January 10, 2022 (SEBIIHO/CDMRD/DMP/CIR/P/2022/07) was issued. Within one month, on February 9, 2022, BSE Limited received an in-principal approval from SEBI to operate a Gold Exchange. Assuming that the in-principal approval would have required the exchange to demonstrate technical readiness, it stands to reason that the necessary software was in place when the in-principal approval was received.*

7. The ARs of the Noticee, appeared for the hearing on November 30, 2022 and during the hearing, the ARs reiterated the submissions made vide reply dated November 29, 2022. The ARs of the Noticee submitted that there was no business risk involved in the software contract awarded to PESB and it was merely 1.6% of its networth. The ARs submitted that building of software (basic infrastructure) cannot be termed as an activity as there was no business risk involved. Further, under the SECC Regulations, the applicants are required to provide the system preparedness before making an application in Form A of the SECC Regulations for undertaking an activity. Additionally, the ARs undertook to file additional written submission

on or before November 10, 2022 and confirm that whether necessary disclosures were made regarding the grant of contract to PESB.

8. Vide letter dated November 10, 2022, Noticee filed additional reply and *inter alia* made the following submissions:

   a. *…the purpose of Regulation 41(3) of the 2012 SECC Regulations is to segregate the risks of taking up activities which are unrelated or not incidental to the activities of an MII. In the instant case, it is submitted that, the Procurement of Exchange Platform for Commodity Spot Agreement ("Agreement") dated August 16, 2018 entered into between the Noticee and PESB, cannot be said to have any risk as the same was not an activity meant for profit i.e. preparation of one's information technology infrastructure cannot be termed as conducting business operation for profit and neither was the same the intention of the said Regulation. The amount pointed in the Notice, which was paid by the Noticee to PESB in terms of the Agreement, constitutes merely 1.66 % of the networth and therefore could not have entailed any risk on the MII, and hence does not attract the rationale for the said Regulation, as envisaged by Hon'ble Bimal Jalan Committee.*

   b. *…the steps taken by the Noticee were merely preparatory, cannot be assumed to be an activity as contemplated in the Charging Provisions and, even if they are, they ought to be considered related and incidental to the activities of the Noticee as a recognised stock exchange. PESB was engaged for development of the Software, which once developed, would enable MCX to have any state of readiness to be able to take the necessary steps, in accordance with law, should it ever intend to undertake business with respect to commodities spot trading.*

   c. *…it is submitted that the scheme of the 2012 SECC Regulations and the 2018 SECC Regulations make it amply clear that technical preparedness and readiness of infrastructure is a sine qua non for approaching SEBI for the 'permission' or 'approval' as contemplated therein. Hence, even if it assumed that the Charging Provisions are applicable in the instant case, the same would only be triggered at a* *stage far later than entering into the Agreement and making of the payments to PESB, which were merely preparatory steps.*

d. *…it is submitted that in terms of the Charging Provisions, if any approval or permission was required to be obtained in terms of the Charging Provisions, the same would have to be obtained in the manner as prescribed in Regulation 7 of either the 2012 SECC Regulations or the 2018 SECC Regulations, as applicable.*

e. *…in the absence of any explicit guidelines from SEBI, the Noticee would have been obliged to approach SEBI, prior to approaching the relevant regulator for such activity, however such stage had not yet been reached (as detailed above). Development of software is only one amongst many preparatory steps required by MII's to be eligible to apply for registration. In the instance case, in terms of the provisions of Regulation 7 of either Regulations, as highlighted above, <u>an applicant can only approach SEBI once it is in possession</u> <u>of the appropriate infrastructure and IT capabilities</u>. Thus, at best, in the case of the Noticee <u>it</u> <u>was only procuring the infrastructure which would have enabled it to approach SEBI thereafter</u> <u>(after also complying with the other prerequisites) for the necessary permission or approval as contemplated in the said Regulations</u>. As such, <u>the stage for seeking permission or approval, as</u> <u>contemplated in the Charging Provisions, had never been reached</u>. In this regard, it is submitted that any other interpretation of the Charging Provisions would render their meaning otiose and would defeat the intent of the same.*

f. *… it is submitted that the Noticee has always kept its shareholders and the public in general abreast of its goal of developing a spot trading platform in Annual Report for FY 2018-19.*

g. *Further, once the disputes with PESB arose, appropriate disclosures were made in the notes to the quarterly financial results of the Noticee during FY 2020-21.*

h. *Even in the Annual Report for FY 2020-21, the fact of the disputes with PESB was adequately disclosed.*

i. *Further, once the dispute was resolved with PESB, appropriate disclosure was made in terms of Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the charges levelled against the Noticee in the SCN, its replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

   I. Whether Noticee has violated Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012?

   II. Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15HB of SEBI Act and 23H of SCRA?

   III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act and 23J of SCRA?

10. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations:

    "*SECC Regulations, 2018*

    38. Utilization of profits and investments

    …

    (2)The recognized stock exchange or recognized clearing corporation shall not carry on any activity whether involving deployment of funds or otherwise without prior approval of the Board:

    Provided that prior approval of the Board shall not be required in case of treasury investments if such investments are as per the investment policy approved by the governing board of recognized stock exchange or recognized clearing corporation;

Provided further, that the recognised stock exchange and recognised clearing corporation may engage in activities whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange or clearing corporation, as the case may be, except through a separate legal entity and subject to approval of the Board.

SECC Regulations, 2012

41. Equal, fair and transparent access.

…

(3) The recognised stock exchange and recognised clearing corporation shall not engage in activities that are unrelated or not incidental to its activity as a stock exchange or clearing corporation, as the case may be, except through a separate legal entity and as permitted by the Board."

I. Whether Noticee has violated Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012?

11. From the reply of the Noticee and the material available on record, I note that admittedly, Noticee had entered into contract with PESB for development of software for spot trading platform on August 16, 2018 and made payments of Rs. 8,46,59,480 and Rs. 7,43,64,480 to PESB on October 17, 2018 and February 25, 2019, respectively.

12. The Noticee has contended that SEBI Act has no application in the present proceedings. In this regard, notice is brought to the preamble of both SECC Regulations, 2012 and SECC Regulations, 2018 which is reproduced as under:

    "In exercise of the powers conferred by sections 4, 8A and 31 of the Securities Contracts (Regulation) Act, 1956, read with sections 11 and 30 of the Securities and Exchange Board of India Act, 1992,the Securities and Exchange Board of India hereby makes the

following regulations to regulate recognition, ownership and governance in stock exchanges and clearing corporations and matters connected therewith or incidental thereto, namely…"

13. It is clearly seen from the preamble that the SECC Regulations, 2012 and SECC Regulations, 2018 have been promulgated under both SCRA and the SEBI Act and therefore, derives its applicability from both SCRA and the SEBI Act. Therefore, I do not find merit in the argument of the Noticee that SEBI Act has no application in the present matter.

14. The Noticee has further contended that Black's Dictionary defines "Activity" as conducting business operation for profit. The Noticee has further contended that entering into the aforesaid contract cannot be named as activity as it was merely developing forward looking technologies aimed at being future ready and therefore, cannot be termed as conducting business operation for profit. Noticee has further contended that the word "Activity" has not been defined anywhere, therefore, one has to rely on Black's Law Dictionary as to what is an "Activity".

15. I have carefully examined the reply of the Noticee and the SCRA read with SECC Regulations. I am of the opinion that to understand the term "Activity", one needs to look at the definition of Stock Exchange as provided in SCRA. Section 2(j) of SCRA defines "stock exchange" as:

    "(a) anybody of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

    (b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise,

    <u>for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities</u>."

16. Though the SCRA and SECC Regulations, 2012 or SECC Regulations, 2018 do not define the term "activity", the definition of the stock exchange clearly gives an idea what activity can a recognized stock exchange undertake. It is clearly seen from the aforementioned definition that stock exchange can take up activities only for the purposes of <u>assisting, regulating or</u>

controlling the business of buying, selling or dealing in securities which squarely cover the activities which can be undertaken by a stock exchange. Further, section 2(h) of SCRA which defines "securities" does not include a spot delivery contract as a security. In fact, section 18 of SCRA excludes spot delivery contracts from the regulation. Therefore, a stock exchange can only take activities which are provided in section 2(j) of the SCRA and such activities can only be undertaken with respect to securities as defined in section 2(h) of the SCRA.

17. The Noticee entered into the contract with PESB for development of software for the spot trading. As spot contract is not a security under section 2(h) of SCRA, it can be inferred that any activity pertaining to spot delivery contracts cannot be a related activity in terms of mandate given to the stock exchanges under SCRA. Therefore, I do not agree with the argument of the Noticee that development of the software was only a technological preparedness. I am of the opinion that even the preparedness of the technological infrastructure can only be related to the securities. Any technological infrastructure preparedness other than for securities can only be an unrelated activity. Therefore, by entering into contract for development of software for spot trading, the Noticee has violated Regulation 41(3) of SECC Regulations, 2012.

18. Noticee has further argued that the deployment of funds was 1.66% of the networth of the Noticee, therefore, did not attract the rationale for the said regulation, as envisaged by Hon'ble Bimal Jalan Committee. In this regard, following observations in Jalan Committee report are emphasized upon:

"It is felt that the risks of taking up activities that are not incidental or those that are unrelated to the activities of the MII must be segregated to a separate legal entity or as may be permitted by SEBI. Such restrictions shall be made applicable to all MIIs."

19. The same principle is resonated in Regulation 41(3) of SECC Regulations, 2012. Therefore, the argument of the Noticee that even Jalan Committee makes a recommendation to segregate the unrelated activities to a separate legal entity subject to the approval of the Board which is not the case in the present matter.

20. Further, Mahalingam Committee Report dated November 09, 2022 on "Strengthening Governance of Market Infrastructure Institutions" also provides that :

"In this regard, the Committee agreed that while the MIIs may continue investing in related areas, after obtaining prior approval from SEBI, their investments in <u>unrelated areas may not be justified</u>."

21. Therefore, it has been a moot point in front both the committees as to whether MIIs can be allowed unrelated activities and both the committees have recommended with negative.

22. The Noticee has further contended that within one month of the circular with respect to Electronic Gold Receipt, BSE Limited received an in-principal approval from SEBI to operate a Gold Exchange. Assuming that the in-principal approval would have required the exchange to demonstrate technical readiness, it stands to reason that the necessary software was in place when the in-principal approval was received.

23. The aforementioned submissions have been verified from the BSE website and it is noted that though BSE Limited had received an in-principal approval from SEBI to operate a Gold Exchange in February 2022, but it received final approval only in the month of September 2022 to operate as a Gold Exchange after the technical system was put in place and the same was inspected by SEBI. The said news was also widely publicized in the newspapers. BSE Limited received the in-principal approval from SEBI to operate as Gold Exchange and build the necessary system thereof. Therefore, I do not agree with the submissions of the Noticee that BSE Limited had received the in-principal approval to operate as Gold Exchange only when the necessary software was already in place.

24. During the personal hearing, Noticee has further contended that as per Form A of the SECC Regulations, 2018 an applicant is required to provide the system preparedness. In this regard, Form A of SECC Regulations, 2018 has been perused and it is noted that it provides the

application for recognition of clearing corporation and part V of Annexure to Form A deals with "Infrastructure" and raises certain questions to the Applicant:

"49. Do you have any machinery for arbitration of disputes between clearing members and/or between clearing members and their constituents and trading member and clearing member? Give details.
50. Have you established connectivity with the depositories, clearing banks, stock exchange and clearing members? Give details.
51.What is the average load that is being handled by your systems? What is the peak load that can be handled and the extent of scalability of the systems in times of stress?
52.What is your business continuity plan? Give details including details of the disaster recovery site.
53.What are the names, qualifications and expertise of your key management personnel?"

25. It is observed from the aforementioned questions that these questions are (a) for the clearing corporation and does not pertain to the Noticee i.e. a Stock Exchange (b) a generic infrastructure requirements and do not, specifically deal with the technical requirements essential for a new segment in the securities market. Therefore, I tend to disagree with the Noticee that Form A of SECC Regulations require the technical preparedness which Noticee was underway in the instant matter without SEBI's approval.

26. I further observe from the provisions of Regulation 38(2) that recognised stock exchange shall not carry on any activity whether involving <u>deployment of funds</u> or otherwise without prior approval of Board. Proviso to the Regulation also provides that recognized stock exchange may engage in activities whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as stock exchange except through a separate legal entity and subject to approval of SEBI. The Regulation thus provides two conditions i.e. (a) prior approval of the Board, and (b) only through separate legal entity.

27. From the above it is clear that the Noticee can deploy funds only through separate legal entity and prior approval of Board. Noticee made payments of Rs. 8,46,59,480 and Rs. 7,43,64,480 to PESB on October 17, 2018 and February 25, 2019, respectively towards the aforesaid

contract. As already discussed in the pre-paras that development of software for spot trading is an unrelated activity for a stock exchange, in terms of Regulation 38(2) of SECC Regulations, 2018, any deployment of funds towards such activity shall be subject to approval of the Board and only through separate legal entity. Therefore, the Noticee by not taking prior approval for payments made to PESB for development of software for spot trading has not complied with the Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012.

28. In view of the same, Noticee has violated Regulation 38(2) of SECC Regulations, 2018 read with Regulation 41(3) of SECC Regulations, 2012 by indirectly engaging in unrelated / non-incidental activities without the approval of the Board.

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15HB of SEBI Act and 23H of SCRA?

29. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.'

30. Sections 15HB of SEBI Act and 23H of SCRA are invoked for the contraventions where no separate penalty has been provided. The two provisions are analogous provisions. Therefore, in my opinion only one penal provision can be invoked for imposing penalty in the present case. Therefore, the aforesaid violations committed by Noticee attract monetary penalty under Section 15HB of the SEBI Act which read as follows:

"***Section 15HB of SEBI Act: -Penalty for contravention where no separate penalty has been provided:***

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

31. While determining the quantum of penalty under, section 15HB of the SEBI Act the following factors have to be given due regard:

Factors to be taken into account by the adjudicating officer under SEBI Act.

15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

32. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. It is not possible from the material available on record to ascertain the disproportionate gain or unfair

advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. I also note that there are no further instances of violation of SECC Regulations, 2018 by the Noticee. Hence the default is not repetitive in nature.

ORDER

33. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in and section 15Jof SEBI Act I, in exercise of the powers conferred upon me undersection 15HB of the SEBI Act hereby impose the penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

34. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

    ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

    In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in

35. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –II of SEBI. Noticee shall provide the following details while forwarding DD/ payment information:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

36. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

37. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz., Multi Commodity Exchange of India Limited and also to the Securities and Exchange Board of India.

Date : January 04, 2023
Place : Mumbai

SAHIL MALIK
GENERAL MANAGER &
ADJUDICATING OFFICER