

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

**EXIT ORDER IN RESPECT OF COIMBATORE STOCK EXCHANGE
LIMITED (CSX)**

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1. Coimbatore Stock Exchange Limited (hereinafter referred to as the 'CSX') was incorporated on July 09, 1991 as a joint stock company limited by guarantee under the Companies Act, 1956. The Central Government had granted recognition to CSX, as a stock exchange under the provisions of section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the 'SCRA') on September 18, 1991, initially for a period of 3 years, which was subsequently renewed from time to time under Rule 7 of the Securities Contracts (Regulation) Rules, 1957.
 2. The recognition of CSX was last renewed by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') for a period of one year on September 18, 2005. The renewal was, however, subject to condition that CSX shall comply with the observations/suggestions made in the report of inspection of CSX conducted by SEBI during the period July 19-21, 2004.
 3. On the basis of the findings in the inspection report indicating violation of the SCRA, SEBI Act, 1992, SEBI Circulars by CSX and non-implementation of specific instructions / directives of SEBI issued from time to time by it, SEBI vide Order dated April 17, 2006, *inter alia* issued following directions to CSX:

a)“CSX is refrained from taking any action pursuant to the resolutions passed at the Extra-ordinary General Meetings held on February 15, 2006 & March 31, 2006 and any other decisions that might have been taken without the participation of the Public Representative directors / SEBI Nominee director after the EGM dated February 15, 2006 and from transferring or alienating any movable or immovable property of the exchange in any manner whatsoever, till further orders and also not to do anything which would have the effect of or which is likely to have the effect of altering the basic contours of the exchange as well as the character of the exchange.

b)Pending hearing and final decision in the matter, the day to day functioning of the exchange would be undertaken by a three member Committee consisting of Shri V Selvaraj, SEBI Nominee

Director / ROC, who will be the member chairman of the said committee and Shri C. A. Venkatesan and Shri K. R. Raman, Public Representative Directors.

c) The said committee is authorized to make such expenditures and operate the bank accounts of the exchange for meeting out the day to day expenses, including salary of staff, etc, till further orders."

4. CSX did not apply for renewal of its recognition as stock exchange and renewal granted to it on September 18, 2005 expired on September 17, 2006. In the meantime, vide Circular No. MRD/DoP/SE/Cir - 36/2008 dated December 29, 2008, SEBI issued Guidelines (hereinafter referred to as '2008 Guidelines') and laid down the framework for exit by stock exchanges whose recognition is withdrawn and/or renewal of recognition is refused by SEBI and who may want to surrender their recognition.
5. Vide letter dated January 1, 2009, CSX made a request to SEBI for its exit as stock exchange. Since the resolution pertaining to the exit of CSX passed by its members in their meeting held on December 31, 2008 was not in accordance with the provisions of the Companies Act, 1956, SEBI vide letter dated March 20, 2009 advised CSX to make a request after pass a fresh resolution in accordance with the provisions of the Companies Act, 1956 and forward the same to SEBI.
6. The members of CSX in the Extra Ordinary General Meeting (EGM) held on July 3, 2009 passed another resolution for its exit as stock exchange. The said resolution was challenged by M/s Ellen Venkatesalu Securities (P) Ltd. in a writ petition No. 18314 of 2009 filed before the Hon'ble High Court of Madras on August 17, 2009. In the said writ petition, the Hon'ble High Court of Madras vide order dated September 9, 2009 granted an *interim* injunction restraining CSX from giving effect to the resolution dated July 3, 2009. Accordingly, the request of CSX was kept in abeyance by SEBI.
7. The Hon'ble High Court of Madras vide order dated October 29, 2010 disposed of the writ petition and directed as under:

"the petitioner or any member are directed to send their objections with regard to the resolution dated 03.07.2009, including the points raised in this writ petition to the Coimbatore Stock Exchange, second respondent / vacate stay petitioner herein within a period of seven days from the date of receipt of a copy of the order. On receipt of such objection, the Board of Directors of Coimbatore Stock Exchange, with their opinion, shall forward it to Securities and Exchange

Board of India(SEBI), who in turn shall take a final decision in regard to the exit policy on merits and in accordance with law."

8. Accordingly, CSX vide its letter dated November 19, 2010 forwarded to SEBI the objection/ response received with regard to the resolution dated July 03, 2009.
9. I note from the information/documents forwarded by CSX that while total 87 (eight seven) members have responded in favour of the resolution dated July 03, 2010 only 1(one) has raised objection to it. I, thus, note that majority of members have agreed with the resolution for exit of CSX as stock exchange. Accordingly, I proceed to deal with the request of the CSX.
10. I further note that on review of 2008 Guidelines, SEBI issued new circular for exit of stock exchanges vide Circular No. CIR/MRD/DSA/14/2012 dated May 30, 2012 (hereinafter referred to as '2012 Exit Circular'). This new circular also applies to the "*Stock exchanges that have applied for derecognition/ exit*" as on the date of that circular. Accordingly, the request of the CSX is to be examined in terms of the 2012 Exit Circular.
11. As per the 2012 Exit Circular , *inter alia* , following conditions are required to be complied with by the de-recognised/non-operational stock exchanges for seeking exit:
 - a) Permission to distribute its assets subject to certain conditions as laid down in the circular as well as the other guidelines that may be issued by SEBI, Governments or any other statutory body from time to time.
 - b) For the purpose of valuation of the assets of the stock exchange, a valuation agency appointed by SEBI shall submit its report.
 - c) The quantum of assets for distribution will be available after payment of the following by the stock exchange:
 - i. Statutory dues including Income Tax;
 - ii. Transfer of Investor Protection Fund, Investor Services Fund, 1% security deposit available with the Exchange to SEBI Investor Protection and Education Fund;
 - iii. The exiting exchange shall pay the following dues to SEBI:-
 - Dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee;

- The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, till the date of such de-recognition;
 - In case of any shortfall in collection of dues of the brokers to SEBI, the exiting Stock Exchange will make good the shortfall;
- iv. Refund of deposit (refundable) to the stock brokers including their initial contribution/ deposit to Settlement Guarantee Fund / Trade Guarantee Fund (SGF/ TGF).
- d) Contribution of upto 20% of its assets (after tax) towards SEBI Investor Protection and Education Fund (IPEF) taking into account, inter alia, the governance standards of the stock exchange and estimation of future liabilities.
- e) The companies exclusively listed on the stock exchange seeking exit shall list their securities on any other recognised stock exchange. If such exclusively listed companies fail to obtain listing of any other recognised stock exchange, they will cease to be listed companies and will be moved to the dissemination board by the exiting stock exchange. Such dissemination board would be provided by a Stock Exchange with nationwide trading terminals. The exiting stock exchange as well as exchange providing dissemination board will give wide publicity about the dissemination board in one leading national daily and one local daily.
- f) The exiting entity 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.
12. 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);]”

13. In respect of the tax treatment to a stock exchange post its corporatisation and demutualization, the following recommendation of the Justice Kania Committee which was the basis for the amendment in section 47(xiii) of the Income Tax Act, 1961 to provide tax benefit to the corporatised and demutualised stock exchanges is worth mentioning:

“as corporatisation and demutualisation of a stock exchange is essentially a conversion from a not-for profit entity to a for-profit company, and would result in a distribution of assets, the Income Tax Act should be amended if necessary, so that the past profits of an stock exchange which were not taxed when it had the character of a not for profit entity should not be taxed when its character changes. In other words, the accumulated reserves of the stock exchange as on the day of corporatisation should not be taxed. However, there would be no objection to taxation of these reserves, in the hands of the shareholders when these are distributed to shareholders as dividend at the net applicable tax rate; equally all future profits of the stock exchange after it becomes a for profit company may be taxed”.

14. I note that CSX did not demutualise itself as required under section 4A and 4B of the SCRA and thus, did not comply with condition stipulated in proviso to section 47(xiii) of the Income Tax Act, 1961. Thus, the tax benefit provided in section 47(xiii) of the Income Tax Act, 1961 is not available to CSX accordingly it shall distribute its assets in accordance with the provisions of its articles/ rules and the applicable laws including the Income Tax Act, 1961.
15. In terms of condition mentioned in para-11(b) above, SEBI in consultation with CSX, on November 01, 2012 appointed M/s.KSG Subramanyam & Co., as Valuation Agency, for Verification and Valuation of Assets and Liabilities of CSX. The Valuation Agency submitted the report vide their letter dated December 10, 2012 (received by SEBI on December 24, 2012). The values of the assets and liabilities have been adopted from the unaudited financial statement for the period ending 31.10.2012 certified by two members of the Three Member Committee appointed by SEBI. The relevant observations of the Valuation Agency and the compliances by CSX are as under:

- (a) Value of assets and liabilities including the contingent liabilities has been arrived by the adoption of net asset approach of valuation. The Fair Value of net asset of CSX has been arrived at ₹47.25 Crore.

- (b) It showed that an amount of ₹51,27,493/ as available in its 'Investor Protection Fund' and an amount of ₹32,41,994/ that is available in its 'Investor Services Cell Fund' and under '1% security deposit' an amount of ₹20,73,890/. In this regard, as noted above, CSX has made the payment of these amounts to SEBI, vide Demand Draft no. 190185, 190186, 190189, 190190 dated 07/12/2012 and Demand Draft No 206526 dated 08/12/2012.
- (c) The total value of assets of CSX are ₹26,05,31,561/ as per the Book Value. The fair value of the same is ₹71,02,87,978/. These assets include property, the fair value of which is ₹63,25,00,000/.
- (d) Apart from the above, the Valuation Agency has brought out other liabilities in the Balance sheet of CSX, the details of which are given below:

Particulars	Amount (Fair Value)(₹)
Security Deposits Received representing the Base Minimum Capital	5,44,41,353
Liabilities for Resigned Members	3,72,14,870
Liabilities for members-CFID	7,98,00,000
Payout Guarantee Fund	2,24,69,295
Rental Advance	37,87,042
Liability for others	5,61,800
TOTAL	19,82,74,360

- (e) Other than the aforementioned liabilities, the contingent liabilities of CSX include:
- Contingent liability of service tax on rent amounting to ₹87,75,589/ excluding interest liability, if any, on crystallization of liability.
 - Contingent liability of ₹11.50 lakhs to the receiver appointed by the High Court for sale of movable property available in the office of ATM Infotech at Stock Exchange Building.
 - Claim of ₹3.70 lakhs with interest in respect of services rendered by Reuters India P Ltd. towards price dissemination in the Reuters Terminals.
 - Liability of ₹ 16.75 lakhs towards arbitration award in favour of CCCI Ltd. in respect of capital expenditure on building. CSX has filed a suit against that award and has made a counter claim of ₹20.60 lakhs. The suit is pending.

- v. Estimated statutory dues amounting to ₹4,02,722/towards Provident Fund, Electricity & TDS.
- vi. Liability towards non deduction of TDS amounting to ₹11,67,970/excluding interest liability , if any, on crystallization of liability .
- vii. Income tax liability due to income tax department other than the tax refund receivable.

16. With respect to the compliance by CSX of conditions specified in the 2012 Exit Circular and settlement of its liabilities observed by the Valuation Agency , I note that:

- (a) In compliance of condition mentioned in para-11(c) (ii) above, as advised by SEBI, CSX has transferred an amount of ₹51,27,493/available in its 'Investor Protection Fund' and an amount of ₹32,41,994/ available in its 'Investor Services Cell Fund' and '1% security deposit' amount of ₹20,73,890/- available with it vide Demand Draft no. 206526, dated 08/12/2012 amounting to ₹66,34,672/-,Demand Draft nos.190185, 190186, 190187, 190189, 190190 dated 07/12/2012 amounting to ₹13,08,532, ₹5,08,645/, ₹4,70,841/, ₹4,90,429/, ₹8,58,636/, respectively to the SEBI Investor Protection and Education Fund (IPEF).
- (b) In compliance of condition mentioned in para-11(c)(iii) above,
 - CSX has paid the necessary dues outstanding to SEBI including 10% of the listing fee and the annual regulatory fee vide Demand draft no. 190188 dated 08/12/2012 for an amount of ₹3,82,120/.
 - CSX has paid the outstanding registration fees amounting to ₹2,28,36,251/of brokers/trading members as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition, vide Demand draft no. 207378 dated 22/03/2013 .
- (c) In compliance of condition mentioned in para-11(d) above, CSX has contributed an amount to ₹15,00,000/- vide Demand draft no. 207379 dated 22/03/2013 towards SEBI IPEF.
- (d) In compliance of condition mentioned in para-11(e) above, CSX has submitted an undertaking dated March 21, 2013 stating that there are no exclusively listed companies at CSX.

- (e) In compliance of condition mentioned in para- 11(f) above, CSX has submitted an undertaking dated March 21,2013 stating that there are no arbitration disputes/investor complaints pending and also stating that it will undertake to clear all the liabilities before distribution of assets of CSX.
 - (f) In compliance of condition mentioned in para- 11(c) (iv) above , CSX has given an undertaking dated March 21,2013 that they will not distribute any assets before clearing the liabilities in that regard.
 - (g) With regard to its other liabilities and contingent liabilities as pointed out by the Valuation Agency and mentioned at para 15(d) and (e) above, CSX has given the undertaking dated March 21, 2013 to clear the said liabilities before the distribution of its assets.
 - (f) CSX has also given the undertaking dated March 21, 2013 that the details of cases as submitted to SEBI lodged against it are the only cases pending before various legal forums and it has undertaken to assume complete responsibility for the financial implication of any claims against it that may arise at any future date as an outcome of the resolution/ settlement of those cases.
17. From the valuation report and undertaking dated March 21 , 2013 of CSX 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 CSX has substantially complied with the conditions contained in the 2012 Exit Circular subject to its undertakings. I, therefore, am of the view that it is a fit case to allow exit to CSX in terms of clause 8 of the 2012 Exit Circular.
18. 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 Coimbatore Stock Exchange Limited as a stock exchange and hereby direct CSX to :-
- (a) Comply with its tax obligations under Income Tax Act, 1961;
 - (b) Comply with the undertakings given by it to SEBI; and
 - (c) to change its name and not to use the expression “Stock Exchange” or any variant of this expression in its name and to avoid any representation of present or past affiliation with the stock exchange, in all media.

19. A copy of this order shall also be forwarded to the Income Tax Authorities and the State Government of Tamil Nadu intimating the exit of CSX and for appropriate action at their end as per applicable laws.
20. The Three Member Committee (TMC) appointed by SEBI vide order dated April 17, 2006 and November 01,2010, shall cease to exist and all the powers conferred upon it vide said orders stand withdrawn with effect from the date of this order .

DATE: APRIL 03, 2013

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA