

IN THE SECURITIES APPELLATE TRIBUNAL AT  
MUMBAI

DATED THIS THE 5<sup>Th</sup> DAY OF DECEMBER, 2024

**CORAM: Justice P. S. Dinesh Kumar, Presiding Officer  
Ms. Meera Swarup, Technical Member  
Dr. Dheeraj Bhatnagar, Technical Member**

**Appeal No. 207 of 2023**

**Between**

Multi Commodity Exchange of India Ltd.  
Exchange Square, Suren Road,  
Chakala, Andheri East,  
Mumbai – 400 093.

.... Appellant

Mr. Venkatesh Dhond, Senior Advocate with Ms. Shruti Rajan, Mr.  
Anubhav Ghosh, Mr. Anurag Gupta, Mr. Vivek Shah, Advocates i/b  
Trilegal for the Appellant.

**And**

Securities & Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400 051.

.... Respondent

Mr. Vishal Kanade, Advocate with Mr. Bhushan Shah, Mr. Akash Jain, Mr. Mohammed Lokhandwala, Advocates i/b. Mansukhlal Hiralal & Co. for the Respondent.

**THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED JANUARY 4, 2023 (EX-A) PASSED BY AO, SEBI.**

**THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON JULY 25, 2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS 5<sup>TH</sup> DAY OF DECEMBER 2024, THE COURT MADE THE FOLLOWING :**

### **ORDER**

**[Per: Dr. Dheeraj Bhatnagar, Technical Member]**

This appeal is filed against the order of the AO<sup>1</sup> of SEBI<sup>2</sup> dated January 4, 2023 under Section 15-I of the SEBI Act<sup>3</sup> and Section 23(I) of the SCRA<sup>4</sup>, by which a penalty of Rs. 2 lakhs has been levied under Section 15HB of the SEBI Act.

2. Brief facts of the case are as under :-

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<sup>1</sup> AO - Adjudicating Officer

<sup>2</sup> SEBI – Securities & Exchange Board of India

<sup>3</sup> SEBI Act – Securities & Exchange Board of India Act, 1992

<sup>4</sup> SCRA – Securities Contracts (Regulation) Act, 1956

- i. The appellant MCX<sup>5</sup> is a registered stock exchange mandated for trading of commodity derivatives.
  - ii. A Writ Petition was filed before the Hon'ble High Court of Judicature at Madras seeking directions to the SEBI to appoint an external audit agency with regard to a software contract awarded by the appellant to a London-based firm M/s. PSEB.
  - iii. In response, SEBI sought explanation from the appellant. On consideration of the appellant's reply dated March 22, 2022, SEBI appointed the AO. In view of the finding of the investigation, a Show Cause Notice (SCN) was issued on October 17, 2022.
  - iv. Thereafter, the impugned order was passed on January 4, 2023, which is subject-matter of this appeal.
3. The sole issue in dispute is as under:-
- i. The appellant engaged a UK-based firm M/s PSEB to develop a software to allow it to handle Spot Exchange platform for commodities. The existing software of the Exchange allowed trading of commodity derivatives but not of commodities *per se*. The explanation of the appellant is

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<sup>5</sup> MCX - Multi Commodity Exchange India Ltd.

that, this initiative of the Exchange was in the nature of advance preparedness of the Exchange, keeping in view the signals given by the Government for integration of the spot market and derivatives market.

- ii. It was learnt that in the budget speech for the financial year 2017-18, the Finance Minister of India had announced proposal for integrating the spot market for commodities with the derivative market for commodities. In this regard, an Expert Committee set up by Government under Prof. Ramesh Chand, Member, NITI Aayog, in its report of February 2018 had concluded that integration of these two markets was imperative and one of the ways of operationalizing the same was through creating an electronic spot market platform.
- iii. In view of this, as a preparatory step, the appellant entered into an agreement on October 16, 2018 with PSEB for development of software for spot trading platform, in pursuance of which payment of Rs. 8,46,59,480/- was made on October 17, 2018 and further payment of Rs. 7,43,46,480/- was made on February 25, 2019.

- iv. Admittedly, the appellant took the decision of engaging PSEB and signed agreement/made payment without seeking approval of SEBI or informing the latter anytime.
- v. In SEBI's interpretation of Regulation 38(2) of SECC Regulations 2018 read with Regulation 41(3) of SECC Regulations 2012<sup>6</sup>, appellant required to take prior approval of SEBI. Since the appellant failed to do so, penalty of Rs. 2 lakh was levied under Section 15HB of the SEBI Act.

4. We have heard Mr. Venkatesh Dhond, learned senior Advocate with Ms. Shruti Rajan, Mr. Anubhav Ghosh, Mr. Anurag Gupta, Mr. Vivek Shah, learned advocate for the appellant and Mr. Vishal Kanade, learned advocate with Mr. Bhushan Shah, Mr. Akash Jain, Mr. Mohammed Lokhandwala, learned advocate for the respondent.

5. Before us, Shri Venkatesh Dhond, learned senior advocate for the appellant submitted that in view of the policy statement of the Finance Minister in the budget speech, which was followed by a Report of a high-power Committee constituted by the Government, the appellant took preparatory steps towards anticipated integration of 'Spot' and 'Commodity derivative' products to be traded on its

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<sup>6</sup> SECC Regulations – Securities Contract (Regulation) (Stock Exchange and Clearing Corporations) Regulations, 2012

Exchange. At the relevant time, the software deployed at the appellant Exchange was only capable of handling commodity derivatives and was not equipped to deal with spot trades. The appellant was, therefore, required to put in place a new software and/or modify the existing software to ensure that the trading platform and infrastructure could seamlessly handle both commodity derivative and spot trades. Towards this end, the appellant floated a Request for Proposal inviting offers/quotations from persons having specialized domain expertise in this behalf. After a comprehensive review of applications received, appellant selected PESB as the most suitable entity, with whom a contract was signed on August 16, 2018.

5.1 At this point of time, the relevant regulations were the SECC Regulations, 2012, which were later replaced by SECC Regulations, 2018. The material difference between the SECC Regulations, 2012 and the SECC Regulations, 2018 was that the latter explicitly provides that any activity involving deployment of funds, which is unrelated/not incidental to stock exchange activity shall be done through a separate legal entity and with the approval of SEBI.

5.2 It was submitted that the fact of appellant engaging PESB for creating such software was publicly disclosed by the appellant in its regulatory filings including Annual Reports, from 2018.

6. In response, the respondent submitted that the said contract was an “unrelated activity” for the stock exchange and is rightfully governed by the provisions of SECC Regulations, 2012 read with SECC Regulations, 2018. Our attention was drawn to the following definition of ‘stock exchange’ under Section 2(j) of the SCRA:

- (a) “Any body 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,-  
for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.”

6.1 It was submitted that a stock exchange can take up activities only for the purposes of ‘*assisting, regulating or controlling the business of buying, selling or dealing in securities*’. The term “securities” as defined under Section 2(h) of the SCRA, does not

include 'spot delivery contract' as a security. On the contrary, Section 18 of the SCRA excludes spot delivery contracts from the Regulations.

6.2 In view of this, it was pleaded that since a 'spot contract' is not a "security" under Section 2(h) of the SCRA, any 'activity' pertaining to spot delivery of contracts cannot be 'a related activity' under the terms of the SCRA and hence development of software for spot trading platform does not fall within the ambit of a "related activity".

6.3 Our attention was drawn to Regulation 41 of the SECC Regulations, 2012, titled '*Equal, fair and transparent access*' and in particular to its sub-regulation (3), which states that recognised stock exchange shall not engage in activities that are 'unrelated or incidental' to its activity as a stock exchange except through a separate legal entity and as permitted by the Board.

It was submitted that in order for the recognised stock exchange to continue such an activity, it must comply with this dual and interconnected conditions. In view of this, the appellant was obligated to obtain prior approval from SEBI for entering into such contract.

6.4 It was also submitted that the said SECC Regulations, 2012 were replaced by the SECC Regulations, 2018, Regulation 38 of which corresponds to the provisions of Regulation 41 of the erstwhile SECC Regulations, 2012.

The said Regulation 38 reads as under :-

“38. (1) ....

(2) *The recognised stock exchange or recognised clearing corporation shall not carry on 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 corporations;*

*Provided further, that the recognized stock exchange and recognized 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 through a separate legal entity and subject to approval of the Board.”*

6.5 It was also submitted that the repeal of SECC Regulations, 2012 by SECC Regulations, 2018 would in no manner whatsoever, have effect on the instant case as Regulation 52(2) of the SECC Regulations, 2018 contains the following Repeal and Savings Clause:

“52. ....

*(2) Notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations and circulars before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of these regulations”.*

6.6 Mr. Kanade submitted that without prejudice, both SECC Regulations, 2012 and SECC Regulations, 2018, stipulated the above two conditions for a stock exchange to carry out unrelated or non-incidental activities, namely, that i) it must do so through a separate legal entity, and ii) with the permission of the SEBI. Admittedly, the appellant did not seek approval of SEBI to engage in the unrelated or incidental business, nor created a separate legal entity for this.

In view of the same, it was submitted that since the appellant failed to obtain requisite approval from SEBI prior to entering into a contract with PSEB, it has violated the provisions of SECC Regulations, 2012 read with SECC Regulations, 2018.

7. We have carefully considered the facts of the case in the light of the rival submissions.

7.1 Undisputedly, the impugned action of the appellant MCX of engaging PSEB for developing software for integration of ‘spot delivery’ and ‘commodities derivative’ trade on the exchange platform, was without seeking prior approval of SEBI nor any separate entity was created in this regard. The process of engagement took place in August, 2018, while the erstwhile SECC Regulations, 2012 were applicable.

In view thereof, the alleged default needs to be examined in the light of applicable provisions of SECC Regulations, 2012, read with the “Repeal and savings” provisions of SECC Regulations, 2018.

7.2 The provisions of Regulation 41(3) of SECC Regulations 2012, which are applicable to the appellant’s case, read as under:-

***“Equal, fair and transparent access***

*41(1) .....*

*(2) .....*

*(3). The recognized stock exchange and recognized 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.”*

7.3 It is evident that the provisions of regulation 38(2) of SECC Regulations, 2018, which substituted the Regulation 41(2) of SECC Regulations, 2012 are far more rigorous, in as much as provides that ‘the recognized stock exchange shall not carry on any activity (whether involving deployment of funds or otherwise) without prior approval of the SEBI’. These provisions are under the heading **‘Utilization of profits and investments’**, whereas the erstwhile provisions under SECC Regulations, 2012, which are under the heading “Equal, fair and transparent access”.

However, since the alleged default took place in August, 2018, the applicable provisions are regulation 41(3) of SECC Regulations, 2012. Evidently, even these provisions require that a recognized stock exchange shall not engage in activities that are unrelated or not incidental to its activity as a stock exchange except through a separate legal entity and on approval by the Board.

Keeping in view sub-regulation (2) of Regulation 52, it is evident that any action taken under the 2012 regulations, which stand repealed, shall be deemed to have been done under the corresponding provisions of the 2018 regulations.

7.4 The issue in dispute is whether the engagement of PSEB (UK) by the appellant Exchange tantamount to engagement in an activity that may be called as ‘unrelated’ or ‘not incidental’. The term ‘Activity’ is not defined under the SEBI Act or SECC regulations.

As per the Black’s legal dictionary, the term ‘activity’ means-

*‘Work performed to create a result. Actions done to help ABC computations. The smallest task done in a time, in relation to others, resources, and costs. AKA task’.*

Admittedly, the appellant Exchange had planned to make advance preparations for setting up development of a Commodity Spot Exchange platform, which required developing appropriate software for which it engaged PSEB through signing agreement and released funds for that purpose, however, without taking SEBI’s approval.

We find that Section 2(h) of the SCRA, which defines “securities” does not include a ‘*spot delivery contract*’ and despite the announcement made by the Government, there has been no corresponding amendment in the definition of the term “securities”.

7.5 In view of this, though the expenditure by the appellant of engaging PSEB for software development was a bonafide capital

expenditure, it cannot be held to be ‘for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities’, as the term ‘securities’ did not include a spot delivery contract. Therefore, we are in agreement with the respondent that the expenditure incurred on development of software for Commodity Spot Exchange platform by the appellant was an ‘*unrelated*’ activity and hence the appellant was required to obtain prior approval from the Board before entering into the said agreement.

8. In the result, the following order :-

**ORDER**

(1) The appeal is *dismissed*.

(2) No costs.

Justice P. S. Dinesh Kumar  
Presiding Officer

Ms. Meera Swarup  
Technical Member

Dr. Dheeraj Bhatnagar  
Technical Member

05.12.2024  
PTM