BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Section 12A of the Securities Contracts (Regulation) Act, 1956 read with Section 11 of the Securities and Exchange Board of India Act, 1992

IN THE MATTER OF DELHI STOCK EXCHANGE LIMITED

In respect of the Governing Board, Delhi Stock Exchange Limited

Date of hearing: December 30, 2013

Appearances:

For Noticee: Mr. Sunil Bhatia, Compliance Officer, Delhi Stock Exchange
Ms. Ginni Singhal, Executive, Delhi Stock Exchange

For SEBI: Mr. Sunil Kadam, General Manager
Mr. Pradeep Kumar, Assistant Legal Adviser
Ms. Laxmi Rampurawala, Assistant Manager

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of a complaint against Delhi Stock Exchange Limited (hereafter referred to as 'DSE') initiated an investigation. On completion of the investigation, SEBI issued a show cause notice dated May 10, 2013 (hereinafter referred to as 'SCN') to the Governing Board, DSE under Sections 12A of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') read with Section 11 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act').

2. The SCN *inter alia* alleged several discrepancies in the functioning of the DSE such as:

a. discrepancies in the creation of membership rights and allotment in rights issue,

b. issuing of false certificate regarding the completion of demutualization process by the 'Appointed Date',

c. irregularity in releasing the commission to the Merchant Banker,

d. advertisement contracts to three media companies during the period of demutualization process, and

e. passing of sensitive confidential information to media.

The SCN also alleged that the acts of the Governing Board, DSE were in violation of the provisions of Section 4A, 4B(8), 5(2) of the Securities Contracts (Regulation) Act, 1956, Regulation 4(b) and 11(1)(b) of the then applicable Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in recognised Stock Exchanges) Regulations, 2006 (hereinafter referred to as 'MIMPS Regulations'), clause 408(a), (c), (d); clause 418(iii) and (iv) of the Code of Ethics for directors and functionaries of exchange. The Governing Board, DSE was advised to reply to the SCN, within a period of fifteen (15) days from the date of receipt thereof. It was also informed that in case of failure to reply, it would be presumed that Governing Board, DSE has no explanation to offer and that SEBI shall proceed in the matter as deemed fit.

3. DSE vide its letter dated May 27, 2013, requested for an extension of time for filing of the reply till July 31, 2013, for the reasons that the alleged events took place about five to six years ago and that the present directors have to make an in-depth study of the old records before forming an opinion in order to deal with the issues forming part of the SCN. The request of DSE was considered and an extension till June 30, 2013, was granted to it for filing of the reply to the SCN. However, DSE again vide its letter dated June 19, 2013, requested for extension of time till July 15, 2013, for the reasons that the final deliberations on the SCN could not be concluded due to the absence of two of its directors. Thereafter, DSE vide its letter dated July 11, 2013, replied to the SCN and requested SEBI for an opportunity of personal hearing. DSE vide another letter dated July 17, 2013, again submitted the reply to the SCN and requested that this reply be considered. Accordingly, an opportunity of personal hearing was granted to DSE on December 30, 2013, before me. On that day, Mr. Sunil Bhatia, Compliance Officer, DSE and Ms. Ginni Singhal, Executive, DSE appeared on behalf of the Governing Board, DSE and submitted that the existing board members were of the opinion that the decisions taken by earlier board were not correct. During the course of personal hearing, the representatives of DSE were asked to explain as to what action the present management has initiated, pursuant to their taking cognizance of the irregularities? The representatives submitted that they have neither tried to hide the facts from SEBI nor have they justified the decisions already taken.

4. Pursuant to the personal hearing, DSE vide its letter dated January 07, 2014, submitted that it has referred the matter to its legal advisors for obtaining the advice on the options available before the exchange and requested for holding back the proceedings. Vide another letter dated January 30, 2014, DSE submitted that pursuant to the personal hearing, various new facts have come to light with respect to the issues raised in the SCN and it sought fifteen days' time to bring these on record. DSE vide its another letter dated February 25, 2014, submitted that DSE is in the advanced stage of reaching an understanding with another stock exchange for merger, which will benefit not only the investors who invested in DSE during the demutualization period, but also the investors of the other stock exchange with whom the merger may take place and requested that no action be taken against it which may affect the interest of stakeholders. It has also been said that as on date, 56.21% of the paid up capital of DSE is held by outside investors. Further, the investments were made by the investors believing that proper procedures in consonance with regulatory provisions are being followed. DSE requested that the decision taken by SEBI should not adversely impact the interest of the shareholders including those foreign shareholders, who reposed their trust during the demutualization period, with their investment in DSE.

5. The submissions of the Governing Board, DSE in brief are:

a. The companies namely Relan Industrial Finance Limited and Jai Ambey Share Broking Limited were registered as members of DSE from August 05, 1969 to December 18, 2002 and they ceased to be members on the later date on execution of the Court decree, as a result whereof the name of Mr. C.B. Jaggi was substituted as a member and no new membership had been created.

b. The Board of Directors of DSE in its meeting held on June 05, 2008 had decided that restoration of membership could not be done in favour of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited, in view of the executed decree in favour of Mr. C.B. Jaggi though the default committee of DSE had recommended the restoration of membership of these two companies.

c. The Board of Directors discussed and accepted the recommendation of the default committee for allotment of equity shares and rights shares to Relan Industrial Finance Limited and Jai Ambey Share Broking Limited and decided to allot 2,000 fresh equity shares and 78,000 right shares to these companies. As no membership of Mr. C.B. Jaggi was transferred to either of

these two companies, they were neither entitled to 2,000 shares nor the rights issue of 78,000 shares each and such action of issuing shares to them was not validly taken.

d. The Board of Directors had transferred the shares to all the applicants approved by SEBI on August 28, 2007. However, the corporate action for transferring the shares into the demat accounts of applicants was initiated later.

e. The list of allottees as on August 31, 2007, includes those who were shareholders as on the said date. Since shares of seven allottees were later allotted to other applicants who were approved by SEBI, the final list differs with the initial list. The seven allottees i.e. Vibha Gupta, Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Private Limited, Kuwait Privatization Projects Holding Company and IKARUS Petroleum Industries Limited were initially allotted shares as on August 28, 2007, however, their shares were later transferred to New Vernon Private Equity Fund, Passport Global Master Fund SPC Limited and LFP DSE Limited. Therefore, the names Vibha Gupta, Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Private Limited, Kuwait Privatization Projects Holding Company and IKARUS Petroleum Industries Limited do not appear in the final list of allottees submitted by DSE. DSE has accepted that a false certificate have been issued to show that demutualization exercise has been completed.

f. Mr. Vijay Mehta (the director of DSE and member of demutualization committee of DSE) is directly connected with Mefcom Capital Market Limited. However, as per the minutes of the meeting of the 'group for revival of DSE and demutualization' held on March 08, 2007, Mr Vijay Mehta disclosed that he is interested in the contract to be undertaken by the exchange with Mefcom Capital Market Limited and did not participate in the discussion and decision making.

g. DSE had paid commission of ₹ 58,79,235 to Mefcom Capital Market Limited, in respect of five applications whose allotment was subsequently cancelled. This payment of commission appears to be irregular as it was made before the money realized from 'LFP DSE Limited' to whom their shares were transferred.

h. As regard advertising contracts to media companies during August, 2009, DSE has said that these contracts were entered and amounts were paid just to complete the exercise of demutualization. It is also a fact that though the advance amount of ₹ 11,37,22,400 was paid from the funds of DSE, no corresponding benefits/ advantages were received by DSE

whereas money put in the escrow account has gone to the shareholders. it does not have doubt that this was done in unfair manner to obtain personal benefits through the process of demutualization.

i. The members of the present Board of Directors of DSE were neither associated nor connected, directly or indirectly with DSE, at the relevant time in any capacity.

j. The statement made by Mr. B.B. Sahny was in his personal capacity, without seeking any authorization from the Board of Directors. Therefore, DSE is not responsible for the statement made by Mr. B. B. Sahny.

6. I have carefully considered the SCN issued to the Governing Board, DSE and the replies/submissions including submissions made during the personal hearing. Considering the above, the charges raised in the SCN are being dealt below *in seriatim*:

a. Discrepancies in the creation of membership rights and allotment in rights issue:

The SCN has alleged that DSE created two membership rights in favour of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited, for one surrendered ticket of one Mr. C.B. Jaggi, without following the due process.

In this regard, I observe that one Mr. C.B. Jaggi, a member of DSE had resigned from the membership of exchange in the year 1969 and thereafter sold two of his membership rights (i.e. ticket no. 160 and 190) on DSE, which were ultimately transferred by DSE to the companies namely Relan Industrial Finance Limited and Jai Ambey Share Broking Limited. Accordingly, DSE registered the names of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited as members of DSE.

Later in the year 1972, C.P. Jaggi filed a case before the District Court at Delhi, pleading therein that his resignation was never accepted, as per the Articles of Association of DSE and he may be permitted to exercise his right as a member of the Exchange. The Learned Court in its Order dated January 23, 1990, held that C.B. Jaggi was entitled to exercise all the rights in the same position as was before August 05, 1969 (i.e. the date of Board Meeting in which his resignation was considered). Against this order, DSE preferred an appeal before the District Court, which was later dismissed. Consequent to this, DSE preferred second appeal before the Hon'ble High Court of Delhi. While the said proceedings were pending, C.P. Jaggi filed an

execution petition for the said order dated January 23, 1990, in which a 'Local Commissioner' was appointed. The 'Local Commissioner' visited the DSE on December 18, 2002 and entered the name of C.B. Jaggi in the register of members of the exchange with regard to the said ticket numbers 160 and 190 which at the time of entry were in the name of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited.

Thereafter, DSE came up with the rights issue in May 2007 and C.B Jaggi, Relan Industrial Finance Limited and Jai Ambey Share Broking Limited had applied for rights shares and deposited ₹ 1,56,000 (for two tickets), ₹ 78,000 and ₹ 78,000 respectively. DSE upon consideration that the appeal filed by it was sub-judice before the Hon'ble High Court of Delhi, in the meeting of its Board dated May 31, 2007, decided to keep the matter of allotment of shares to C.B. Jaggi, Relan Industrial Finance Limited and Jai Ambey Share Broking Limited in abeyance. Meanwhile, C.B. Jaggi approached DSE for the settlement of disputes and offered for surrendering one of his ticket inclusive of the trading right. As per his terms for settlement, DSE in return had to withdraw the appeal pending before the Hon'ble High Court of Delhi and allot 78,000 rights shares to C.B. Jaggi which were kept in abeyance.

As per the SCN, on the claims of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited of having bonafide title of membership, the matter was subsequently placed before the 'default committee' (of DSE) in its meeting held on June 02, 2008, which recommended for restoration of their membership and allotment of 2,000 shares (as part of its demutualization process) along with 78,000 right shares to each of them. The recommendations were then discussed by the Board of DSE in its meeting held on June 05, 2008 and it was decided to allot 2,000 fresh equity shares and right shares (i.e. 78,000 shares) to each of the entities namely Relan Industrial Finance Limited and Jai Ambey Share Broking Limited. However, the offer of Mr. C.B. Jaggi dated May 31, 2008, for settlement of dispute was considered by the 'default committee' (of DSE) in its meeting held only on July 16, 2008. On consideration, it recommended that he should surrender one ticket inclusive of trading right and shares, DSE should withdraw the appeal pending before the Hon'ble High Court of Delhi and allot him 78,000 rights shares. The Board of DSE in its meeting held on September 01, 2008, approved the allotment of 78,000 shares to C.B. Jaggi.

Thereby, DSE for one surrendered ticket of C.B. Jaggi, created two tickets of Relan Industrial Finance Limited and Jai Ambey Share Broking Limited without following the due process of law. DSE in its reply has submitted that Relan Industries Finance Limited and Jai Ambey Share Broking Limited were registered as members from August 05, 1969 till December 18, 2002. They ceased to be the members of the exchange on the date when the Local Commissioner appointed by the Court substituted the name of C.B. Jaggi as a member in place of Relan Industries Finance Limited and Jai Ambey Share Broking Limited and no new membership was created. It has also been said that as no membership of Mr. C.B. Jaggi was transferred to either of these two companies, they were neither entitled to 2,000 shares nor to 78,000 shares in rights issue. DSE itself in its written submissions dated July 17, 2013, has submitted that "*such action of issuing shares to them was not validly taken*". Therefore, there is a clear admission by DSE that it had created membership rights without following the due process of law.

I note that the name of C.B. Jaggi has been entered in the register of members of DSE, pursuant to the order of Court. Later, C.B. Jaggi has surrendered one membership right. In view of the above, it is observed that DSE at best could have transferred the membership rights to one of the said companies. In view of the discussion above, the new membership rights created by DSE are invalid and void *ab-initio*. I note that as per Section 81(1A) of the Companies Act, 1956, further issue of shares to any person is permissible only after passing of a special resolution in general meeting. In the instant case, it is noted that no such special resolution has been passed for allotting shares either to Relan Industrial Finance Limited or to Jai Ambey Share Broking Limited.

b. Issuing of false certificate regarding the completion of demutualization process by the 'Appointed Date'

The SCN has alleged that by the 'appointed date' certain shares belonging to the trading members of DSE were not transferred to the 'escrow account' opened for the demutualization process, and that the final list of allottees differ from the initial list submitted by the 'appointed date'.

As per Section 4A of the Securities Contracts (Regulation) Act, 1956, on and from the 'appointed date', all recognized stock exchanges shall be corporatised and demutualised. The 'appointed date' as per the explanation to the Section 4A of the Securities Contracts (Regulation) Act, 1956, means the date which the SEBI may, by notification in the Official Gazette, appoint. It is observed that the scheme of demutualization of DSE was approved and notified by SEBI on August 29, 2005 and August 28, 2006 was designated as the 'Appointed Date' which was later extended by one more year i.e. till August 28, 2007. As per clause 7.1 of the approved 'scheme of demutualization' of DSE (as notified in the Office Gazette), 'DSE shall ensure that at least 51% of its equity shares are held by public other than shareholders having trading rights in the manner and within the period prescribed in sub-section (8) of Section 4B of the Securities Contracts (Regulation) Act, 1956.' In view of this, DSE was required to complete the process of divestment of 51% share capital to public shareholders on or before the 'Appointed Date' (i.e. August 28, 2007) and also has to continuously ensure the same after the 'appointed date'. It is observed from the SCN that DSE for completion of the demutualization, had taken the following steps:

- DSE in its meeting held on March 05, 2007, had formed a 'committee of demutualization' and decided the scope of work with respect to demutualization and disinvestment. It also decided to get the valuation of DSE done and entrusted this task to the 'Committee of Demutualization'.
- Four Merchant Bankers namely Allianz Securities Limited, Mefcom Capital Market Limited, Nexgen Capital Limited and PNG Gilts Limited were appointed for the 'scheme of demutualization'. DSE had fixed the 2% of the value of funds brought by such Merchant Bankers as their commission. Later, in the meeting held on June 30, 2007, A.K. Capital was also appointed as a Merchant Banker for demutualization, subject to the procurement of offer from minimum two investors.
- DSE then opened 'securities escrow account' with Citi Bank, Depository Participant for depositing the shares tendered by the members and for subsequent transfer of shares to respective allottees. A 'cash escrow account' was also opened by DSE with Citi Bank for receiving the application money from the applicants and for paying the members (sale considerations) after adjustment of various expenses (including commissions to the Merchant Bankers).

- It then invited 'expression of interest' through an advertisement in the newspaper on May 29, 2007, from the strategic investors. In response, DSE had only received one application for 14,96,500 shares (i.e. only 5% of share capital) by June 30, 2007.
- Considering the poor response, the 'demutualization committee' of DSE on July 21, 2007 decided to increase the commission of Merchant Bankers from 2% to 5% of the funds received through them. It was also decided that such fees/ commission to the Merchant Bankers will be deducted from the sale proceeds of the shares tendered by the member shareholders and net amount will be paid to them. The decision of the committee was ratified by the Board of DSE in its meeting held on August 08, 2007.
- Thereafter, DSE received in total 28 applications for 2,67,84,050 shares constituting for around 90% of share capital of DSE. Of these, five entities had withdrawn their offer and other three applications comprising of 11% of the share capital of DSE was pending with Foreign Investment Promotion Board (hereinafter referred to as 'FIPB') for approval.
- DSE as on August 27, 2007, allotted shares to the remaining 20 entities and submitted the list to SEBI vide letter dated August 31, 2007 and confirmed that they have divested 51.50% of shares of existing shareholders having trading right.

Based on the above, it was recorded by SEBI that DSE has demutualized and complied with the provisions of Section 4A of the Securities Contracts (Regulation) Act, 1956. However, a detailed examination in the matter (as also noted in the SCN), brought out additional facts. The same are examined below:

i. **Shares not transferred to the 'Securities Escrow Account'**: The SCN has alleged that out of the total 1,54,12,750 shares divested by DSE, (i.e. 51.5% of the share capital of DSE) 3,12,737 shares (i.e. about 1.05%) were not transferred to the 'securities escrow account' by the 'appointed date' and these were lying with the 'Trading Member Shareholders'. It was also revealed that such shares belonging to the trading members of DSE were allotted to the public shareholders, however, these were not transferred to them by the 'appointed date'. While replying to the SCN, the Governing Board, DSE has submitted that the Board of Directors had transferred the shares to all the applicants approved by SEBI as on August 28, 2007. However, the corporate action for transferring the shares into the demat accounts of respective applicants was initiated later. From the

above, I note that on the 'appointed date', the minimum 51% of the shares of DSE were not available for transfer to the public shareholders.

ii. **Application money not transferred to the 'Cash Escrow Account'**: The SCN has further alleged that only seven (7) allottees had paid the application money before the date of allotment of shares, whereas in the case of all other entities the application money was received after the allotment date. It was also revealed that the cheques have been realized after the allotment date, in respect of the majority of the allottees. Therefore, it can be inferred that the shares have been allotted without realization of funds in the cash escrow account as on the 'appointed date'.

iii. **Difference between the lists of the allottees**: Further, in the SCN, the list of 20 persons/ entities as submitted by DSE to SEBI as on August 31, 2007, constituting the 51.50% of the shares (of existing shareholders having trading right) is alleged to be different from the final list of allottees (submitted during the course of investigation). It has been revealed that the seven (7) allottees viz. Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Pvt. Limited, Kuwait Privatization Projects Holding Company and IKARUS Petroleum Industries whose name had appeared in the initial list were found missing from the final list of allottees. It is noted from the SCN that DSE had rejected the allotment of shares to five entities namely Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Pvt. Limited for the reasons that such applicants had paid only 10% of the application amount and has failed to pay the remaining amount. Further, the entities namely Kuwait Privatization Projects Holding Company and IKARUS Petroleum Industries paid no money towards the application money and each were allotted 5% of the share capital of DSE, later these two entities had declined the offer as on September 06, 2007. In place of these seven persons/ entities, the names of three new entities namely New Vernon Private Equity Fund, Passport Global Master Fund SPC Limited and LFP DSE Limited were found in the final list of allottees, which was submitted during the course of investigation. Hence the difference between the two lists of allottees.

DSE in its reply has submitted that the list of allottees as on August 31, 2007, included those who were shareholders as on the said date. It has been said that the seven allottees i.e. Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Private Limited, Kuwait Privatization Projects Holding Company and IKARUS Petroleum Industries Limited were initially allotted shares on August 28, 2007, however, their shares were later transferred to New Vernon Private Equity Fund, Passport Global Master Fund SPC Limited and LFP DSE Limited. It has also been said that the name of the said seven persons/ entities do not appear in the final list of allottees, as submitted by DSE and the final list differs with the initial list. DSE has admitted that the decision of the board to reject allotment of shares to these seven entities was not uniform and fair.

I note that DSE on the basis of allotment to 20 applicants had confirmed the completion of its demutualization. However, out of these 20 applicants, admittedly two had rejected the offer of allotment and the application of other five allottees were rejected by DSE. From the same, it can be inferred that the allotment was concluded with only 13 applicants. It is seen from the SCN that such 13 applicants had applied only for 36.49% of the share capital of DSE and the transactions with regard to these were also not complete in terms of exchange of shares and consideration as on the 'appointed date'.

iv. **DSE failed to act fairly while considering the applications**: I further note that the rejection by DSE of applications of the said five entities namely Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Pvt. Limited does not appear to be fair as there were other entities like Financial Technologies and Twenty First Century Capital Limited who also had paid only 10% of the total amount, however, their allotment have not been cancelled by the Board of DSE.

I note from the SCN that DSE had rejected the allotment to the said five persons/ entities in its board meeting held on October 18, 2007. From the available records it has been revealed that DSE vide its letter dated December 06, 2007, i.e. after the board meeting, had requested the said five persons/ entities to make the balance payment of ₹ 1,88,09,000. Vinod Gupta and Dev Features Private Limited replied to DSE vide their respective letters

both dated January 15, 2008 and referred to the discussion and understanding with one Mr. Vijay Mehta, a Director of DSE and also a member of the 'Demutualization Committee' of DSE. Vide these letters they had also given the approval to transfer/ sell the shares and requested DSE for refund of the initial payment made by them. It is seen from the SCN that DSE had refunded the money to these five applicants during April-May 2008.

From a reading of the above, it can be said that on the date of communication (i.e. dated December 06, 2007) by DSE to Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited, Dev Features Pvt. Limited, regarding balance payment, the allotment to the said five persons/ entities were already rejected by DSE (in its meeting dated October 18, 2007). The manner in which DSE cancelled the allotment of the said five persons/ entities without any reminder gives an impression that it was not acting fairly while considering the application of these applicants. Further, from the reading of the letter of Vinod Gupta and Dev Features Private Limited suggests that such five persons/ entities were arranged only for the purpose of meeting with the shortfall in the divestment of shareholding to the public and for the purpose of showing completion of the demutualization process before August 28, 2007.

v. **Holding of shares without approval from SEBI**: On rejecting the allotment to the above said five persons/ entities, DSE had *inter alia* allotted shares to LFP DSE Limited who finds mention in the list of allottees provided during the investigation. It is noted that it had applied for the shares of DSE on October 04, 2007 (i.e. after the 'appointed date'). The shares were allotted to it by DSE in its Board Meeting held on October 18, 2007. SEBI had granted the approval for allotment of shares to LFP DSE Limited under the SEBI (Manner of Increasing and Maintaining Public Shareholding in Recognised Exchanges) Regulations, 2006 (hereafter referred to as 'MIMPS Regulations') on April 01, 2008. In view of the same, it can be said that the shareholding of LFP DSE Limited had remained unapproved during the period of October 18, 2007 to April 01, 2008 and DSE was non compliant with the requirement of continuous holding of 51% of share capital of DSE with public shareholders.

vi. While summarising the discussion in the above sub paragraphs, I note the following:

- The holding of trading member shareholders on the 'appointed date' was more than the prescribed limit. Further, the beneficial ownership of such shares was not available with public shareholders as on the 'appointed date'.
- As on the 'appointed date' i.e. August 28, 2007, DSE had not received the full consideration from the applicants in the 'cash escrow account' of DSE. As certain applications were without any application amount and a few of the applicants paid only 10% of the application money.
- As the shareholding of LFP DSE Limited was not approved by SEBI during the period of October 18, 2007 to April 01, 2008, the DSE was not compliant with the requirement of continuous holding of 51% of share capital of DSE with public shareholders.

Having considered the above and the admission of DSE in its reply dated July 17, 2013 that a false certificate has been issued by DSE to show that demutualization exercise has been completed, it can safely be concluded that DSE had not completed the demutualization process as on the 'appointed date' i.e. on August 28, 2007, in terms of the SEBI order dated August 29, 2005 in violation of the provisions of Section 4A, 4B(8) of SCRA and Regulation 4(b) and 11(1)(b) of the MIMPS Regulation. I note that the facts such as rejecting the allotments, non payment of consideration on the appointed date and transfer of shares were not brought to the notice of SEBI by either the earlier Governing Board of DSE or the existing Governing Board of DSE. It is noted that the present Governing Board of DSE has not initiated any action against the erstwhile directors of the Governing Board of the stock exchange who according to it had submitted the false certificate of completion of demutualization process.

c. Irregularity in the payment of commission to the Merchant Banker.

The SCN has alleged that Mefcom Capital Market Limited, one of the Merchant Banker engaged by DSE for its demutualization process, had brought the applications of five entities namely Mr. Vinod Gupta, Ms. Vibha Gupta, Dev Features Pvt. Limited, Amardeep Financial Corp. Limited and Nikki Global Finance Limited (entities whose applications were eventually rejected as discussed in the preceding paragraphs), was directly connected with Mr. Vijay Mehta who was a Director of DSE and also a member of the 'Demutualization Committee' of DSE. On allotment of the shares to the said five persons/ entities, as per the agreed terms of

commission, DSE had paid a commission amount of ₹ 58,79,235 (i.e. ₹ 11,75,847 x 5) to Mefcom Capital Market Limited. As discussed in the earlier sub-paragraphs, the said five persons/ entities had failed to make payment of full consideration. Therefore, the full commission must not have been released to Mefcom Capital Market Limited as the commission of 5% was fixed of the value of funds brought in by the Merchant Bankers. The SCN has alleged that such payment of commission to Mefcom Capital Market Limited was irregular as the application of the said five persons/ entities was ultimately rejected by the board of DSE.

DSE in its reply has confirmed that Mr. Vijay Mehta was directly connected with Mefcom Capital Market Limited. DSE (while relying on the minutes of the meeting of the Board of DSE held on March 08, 2007) has submitted that he had not participated in the discussion and decision of the appointment of Mefcom Capital Market Limited as merchant Banker. DSE has also confirmed that a commission of ₹ 58,79,235 in respect of the applications of the said five persons/ entities have been paid to Mefcom Capital Market Limited. DSE in its reply has also admitted that such payment of commission to Mefcom Capital Market Limited is irregular as it was made before the money realized from LFP DSE Limited to whom *inter alia* the shares of the said five persons/ entities were transferred.

I have considered the admission of DSE, regarding the payment of commission to Mefcom Capital Market Limited being irregular. In this regard, I note that the entity namely LFP DSE Limited had itself applied to DSE for the allotment of shares and had not approached through any Merchant Banker. In such circumstances, no commission was required to be paid to any Merchant Banker and further Mefcom Capital Market Limited was not at all entitled for the commission of ₹ 58,79,235 and the payment of such amount is irregular.

At this stage, I also refer to the discussion in sub paragraph 'b' above, that the applicants namely Ms. Vibha Gupta, Mr. Vinod Gupta, Amardeep Financial Corporation Limited, Nikki Global Finance Limited and Dev Features Private Limited were arranged by Mr. Vijay Mehta for the purpose of meeting with the shortfall in divestment of shareholding to public for the purpose of completing the demutualization process before August 28, 2007. The sequence of events, as discussed above suggests that the said five persons/ entities, Mefcom Capital

Market Limited and Mr. Vijay Mehta were acting in concert for meeting with the shortfall in divestment of the shareholding to public.

d. Advertisement contracts to three media companies during the period of demutualization process.

The SCN notes that the three media companies had applied for about 9% shares of DSE for ₹ 18.89 Crores. These companies were allotted shares in the demutualization process of DSE. DSE had also entered into an advertising contract for three years with these media companies for almost the same amount i.e. ₹ 18.78 Crores. The investigations have revealed that the said ₹ 18.89 Crores paid by the three media companies towards the allotment of shares of DSE was credited to the 'cash escrow account' of DSE. DSE had made a payment to the tune of ₹ 11.22 Crores to the said three media companies towards the advertising contracts, out of the exchange funds which were kept in the fixed deposits. In view of this, the SCN has alleged that the funds of DSE have been diverted to the said media companies solely for completing the demutualization process of the exchange as DSE has allowed the advertising contracts to expire without availing the service/ media space offered by such companies fully.

DSE in its reply has confirmed (while referring to the minutes of the meeting of the Board of Directors held on October 05, 2007) that the contracts were entered with the media companies and the amounts were paid for the same, just to complete the exercise of demutualization. It has also been said that though the advance amount of ₹ 11,37,22,400 (as per SCN the figure is ₹ 11.22 Crores) was paid towards the advertisement contract from the funds of DSE, no corresponding benefits/ advantages were received by it. DSE has confirmed that the same was done in an unfair manner in order to obtain personal benefits through the process of demutualization. It has also been said that none of the members of the present Board of Directors of DSE were involved in the same, directly or indirectly.

As noted from the SCN, DSE had not invited any tenders for awarding the said contracts worth ₹ 19 Crores to the media companies. DSE had made the payment as agreed for such advertising contracts, although services of these companies were not fully availed. I note that DSE in its reply has failed to explain its rationale for arriving at the contract amount with the

media companies, non utilization of the advertisement space and payments towards the contracts immediately after the allotment of shares.

Having considered the above, I find that the application monies received from the media companies for allotment of the shares of DSE have been returned to them under the garb of making payments for advertising contracts. Thus, in the light of the admission of the Governing Board of DSE, I conclude that the media companies were allotted the shares either free of cost or at substantially lower prices. Therefore, the shareholding of such media companies cannot be considered as public shareholding as the shares were made available to them for almost free as a part of the device created to give an impression that demutualization process was completed. Such acts of the then Governing Board of DSE are in violation of the clause 408 (a), (c) and (d) of the code of ethics for the directors and functionaries of the exchange, which reads as under:

> "***408. Objectives and Underlying Principles***
> ... ...
> *(a) Fairness and transparency in dealing with matters relating to the Exchange and the investors.*
> ... ...
> *(c) Exercising due diligence in the performance of duties.*
> *(d) Avoidance of conflict of interest between self-interests of directors functionaries and interests of Exchange and investors.*"

From the available facts, it is noted that had the said three media companies not applied for the shares, DSE would have fallen short of mandatory divestment of 51% of share capital for completing the demutualization process. DSE entered into an arrangement with such media companies for three years and in turn, returned them the approximate amount (out of the exchange fund). The discussed facts suggests that DSE had siphoned off the fund of the exchange under the guise of achieving the divestment target.

I note that DSE in its reply has not denied this allegation, rather said that the media contracts to these companies were awarded in an unfair manner, in order to obtain personal benefits through the process of demutualization. I observe that DSE, even on becoming fully aware of all the said facts, has not taken any action against the erstwhile directors/ governing board.

e. Passing of sensitive confidential information to media

The SCN has noted that DSE in its Annual General Meeting held on April 07, 2007, approved to disinvest the equity share capital in the manner prescribed under the MIMPS Regulations

for demutualization. The 'committee of demutualization' had accordingly appointed an agency to carry out the valuation of DSE, which subsequently submitted its report to the committee. During the investigation, DSE was not able to provide the date of receipt of such valuation report.

As stated in sub paragraph 'b', on May 29, 2007, DSE had issued an advertisement in the Economic Times for seeking 'expression of interest' from strategic investors for subscription to 51% share capital of DSE. The said advertisement also mentioned about the appointment of valuer of DSE. The said newspaper on the same day had also published a media article wherein the valuation of the DSE and the issue regarding listing of DSE was also mentioned. The said article inter-alia stated that "*Chairman of demutualization committee, BB Sahny said that now the company will off load its 51% stake to investors, who do not have trading right in the stock exchange*" and it also mentioned about the valuation of DSE at around ₹ 600 crores. The SCN has alleged that Mr. B.B. Sahny, being aware of the 'price sensitive information' has shared the details with the media which would have influenced the decision of the prospective applicants applying in the shares of DSE.

DSE in its reply has said that the statement made by Mr. B.B. Sahny was in his personal capacity without seeking any authorization from the Board of Directors. It has also been said that DSE is not responsible for the statement made by Mr. B.B. Sahny.

I note that Mr. B.B. Sahny was the Chairman of the 'demutualization committee' and the 'Trading Member Director' of the then board of DSE. Due to his position, it is clear that he was involved right from the stage of decision to value DSE, appointment of valuer, receipt of valuation report, etc. The 'demutualization committee' of DSE, in its meeting held on June 19, 2007 took note of the valuation report of DSE submitted by valuer and decided that the valuation of the exchange should be taken as ₹ 500 crores. Subsequently, the Board of DSEL had deliberated the valuation report as submitted by 'demutualization committee' by which the 'price sensitive information' came in the possession of all the Board members of DSE. Such information was not officially published by DSE through any press release or otherwise. From the same, it can be said that Mr. B.B. Sahny was always in possession of the 'price sensitive information' regarding the valuation of DSE before the publication of the said article in the newspaper.

I note that Mr. B.B. Sahny, was not authorized by the Board of DSE to share any information, however, he being aware of the 'price sensitive information' has shared the details with the media which would have influenced the decision of the prospective applicants applying in the shares of DSE. Such acts of his are against the provisions of the code of conduct as mentioned in the bye-laws of exchange which states that no 'price sensitive information' should be divulged to any person unless and otherwise authorized by the Board. Therefore, by divulging the 'price sensitive information' to media Mr. B.B. Sahny has violated clause 418 (iii) and (iv) of the Code of Ethics for Directors and Functionaries of Exchange, which reads as under:

> "***418. Access to Information***
> ... ...
> *(iii) All such information, especially which is non-public and price sensitive shall be kept confidential and not be used for any personal consideration/gain.*
> *(iv) Any information relating to the business/operations of the exchange, which may come to the knowledge of directors/functionaries during performance of their duties shall be held in strict confidence, shall not be divulged to any third party and shall not be used in any manner except for the performance of their duties."*

DSE has admitted that Mr. B.B. Sahny has made statement in his personal capacity without seeking any authorization from the Board of Directors of the stock exchange. However, I note that the stock exchange has not taken any action against Mr. B.B. Sahny for violation of clauses 418 (iii) and (iv) of the Code of Ethics for Directors and Functionaries of Exchange.

7. From the above discussion, I note that serious irregularities have been found in the functioning of DSE at the time when DSE was taking steps for demutualization. It is seen that for completing the demutualization process the erstwhile board of DSE had overlooked the due transfer of shares in the demat accounts and receipt of the funds by the 'appointed date'. As admitted by the present Governing Board of DSE, a false certificate of completion of demutualization process has been submitted by the erstwhile management of DSE. From the same, it can be concluded that DSE had failed to complete the demutualization process before the 'appointed date'. Therefore, the recognition granted to DSE needs to be withdrawn in terms of the Section 5(2) of the SCRA.

On examination of the facts and issues as described in the paragraphs above, I am convinced that DSE had not acted fairly during its demutualization process. Further, the particular

instances of creation of new membership rights, releasing the funds to the Merchant Banker without receipt of the application money, allotment of shares to media company and in turn awarding them media contract, etc. without any corresponding utilization of media space shows that the functions of DSE were highly irregular.

I note that a stock exchange acts as first level regulator and is expected to set example with its acts and functions. However, DSE in the present case, had done everything contrary to what it is expected from a Stock Exchange. As noted above, the activities of DSE were carried out in a manner contrary to the interest of the investors. It is seen that the present management, even after getting to know about the irregularities committed by the erstwhile management, has not initiated any action.

8. Having regard to the above, I, in exercise of the powers conferred upon me in terms of Sections 11(2)(j) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Section 5(2) and 12A of the Securities Contracts (Regulation) Act, 1956 hereby withdraw the recognition granted to Delhi Stock Exchange Limited. Securities and Exchange Board of India shall take all necessary steps consequential to the derecognition.

9. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions by Delhi Stock Exchange Limited.

10. The order shall come into force with immediate effect.

DATE : November 19th, 2014
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA