

MCX STOCK EXCHANGE LTD.

BEFORE THE DISCIPLINARY ACTION COMMITTEE

CORAM: Mrs. Asha Das & Mr. Prem Rajani, Members

ORDER UNDER RULES 1 & 2 OF CHAPTER V OF THE RULES OF MCX STOCK EXCHANGE LIMITED

In the matter of Jaypee Capital Services Ltd.

Appearances: Mr. Dr. Anurag Kumar Agarwal, Advocate

Mr. Ankur Arun, Director, JCPL

1. BACKGROUND

1.1. Jaypee Capital Services Ltd. (JCPL or Member) (Member ID 1007) is a Trading-Cum-Clearing Member on the Currency Derivatives (CD) segment of MCX Stock Exchange Ltd. ("the Exchange") and is registered with Securities and Exchange Board of India (SEBI) as a trading member on CD segment of the Exchange with registration No. INE260813938 dated September 29, 2008.

1.2. A regular inspection of JCPL covering the period October 07, 2008 to September 30, 2009, was conducted by the Exchange in November 2009. Various compliances were checked during the inspection including compliance with the requirement of client margin collection. Certain non-compliances were found in respect of which the Exchange proceeded with the normal process of follow up action and eventually imposed a penalty of Rs. 40,000/- which has been paid by the Member, but no discrepancies were observed in the area of client margin collection. The Member subsequently applied for surrender of its membership of the Exchange vide an application dated Jan 21, 2011, which is under process. Trading terminals of the Member were deactivated on March 3, 2011 pursuant to its request for surrender of membership. Public notification advising clients of the Member to submit claims in case they have any dispute/ grievance with / against the Member was issued on April 11, 2011. The sixty day period allowing the clients of the Member to submit their claims (if any) was over on June 10, 2011.

2. Receipt of a Complaint

2.1. On July 27, 2011, the Exchange received an unsigned letter dated July 25, 2011 from one Mr. Ankit Sharma, who claimed to be the former employee of the Member. Mr. Sharma had alleged that the Member had submitted wrong data to the Exchange at the time of inspection, pertaining to margins collected by them from their clients. In his complaint,

Ah.

Mr. Sharma stated that following entries which formed part of ledgers submitted to the Exchange were non-existent:

Client Name	Cheque No.	Cheque date	Amount
Jaypee Financial Services	455937	24-Oct-08	Rs.59.50 lacs
GenX Commodities Ltd. (formerly known as Arora Timbers Ltd.)	90... (not legible)	20-Nov-08	Rs. 7 lacs
Jaswant Timbers Pvt. Ltd.	203917	24-Oct-08	Rs. 40 lacs
Jaswant Timbers Pvt. Ltd.	203920	20-Nov-08	Rs. 61 lacs

3. Communication between the member and the Exchange subsequent to receipt of complaint:

- 3.1. The Exchange, by its letter No. MCX-SX/INSP/837/2011/8362 dated July 28, 2011, sent a copy of the letter received from Mr. Ankit Sharma to the Member and requested the Member to send its detailed comments along with relevant documentary evidence latest by August 5, 2011.
- 3.2. The Member, vide letter dated August 4, 2011 replied to the Exchange letter of July 2011, *inter alia*, stating that it had already submitted application for surrendering the membership of the Exchange, that it does not amount to a clients grievance against it, that it was malicious, that the inspection process has been concluded and hence the complaint from Ankit Sharma may be closed without any comment from the Member.
- 3.3. Since the Member did not address the subject matter of the allegation made in the complaint, i.e. submission of wrong data to the Exchange at the time of inspection, pertaining to margins collected by him from clients in the three identified transactions, another letter No. MCX-SX/INSP/837/2011/9277 dated September 19, 2011 was sent to the Member, wherein it was mentioned that the allegations, if true, will amount to a serious malpractice and that the allegation was serious enough to merit independent consideration, irrespective of the validity of the complaint. The Member was requested to submit the bank statements duly showing receipts of clear funds of the amounts involved in the above mentioned three transactions duly authenticated by their statutory auditor within 15 days from the receipt of the letter. As no reply was received, another reminder letter No. MCX-SX/INSP/827/2011/9802 dated October 19, 2011 was sent to the Member by the Exchange again requesting him to submit the bank details latest by November 5, 2011. It was also mentioned that in case of failure to submit the details, the Exchange would be compelled to refer the matter to the Disciplinary Action Committee.

M.

- 3.4. Vide letter dated November 5, 2011, the Member sent a reply to the Exchange letter of July 2011. However, again the subject matter of the allegation made in the complaint, i.e. submission of wrong data to the Exchange at the time of inspection was not addressed, instead the Member demanded the Exchange to ignore the false statements and process the application for surrender of membership. The Member also submitted letters from his three purported clients, i.e., Jaypee Financial Services Ltd., GenX Commodities Ltd. (formerly known as Arora Timbers Ltd.) and Jaswant Timbers P. Ltd., inter alia, stating that they did not have any pending complaint / grievance against the Member.
- 3.5. The Exchange then wrote letters on November 14, 2011 to these three clients of the Member, namely, Jaypee Financial Services Ltd., GenX Commodities Ltd. (formerly known as Arora Timbers Ltd.) and Jaswant Timbers P. Ltd., on the addresses mentioned in the letters attached by the Member as well as on the addresses submitted by the Member to the Exchange. The Exchange in these letters explained the situation to these clients and requested them to submit following information by November 29, 2011:
- a) Confirm whether the respective cheques were tendered by them to the Member;
 - b) If yes, then whether the cheques given by them to the Member were realized;
 - c) If yes, then requested them to submit their bank statements showing the realization of cheque entries;
 - d) If no, then requested them to state reasons as to why the said cheques were not realized.
- 3.6. No reply was received from any of the three clients to Exchange's above mentioned letters. Hence, a reminder was sent to them again through emails on December 2, 2011 on their email ids available with the Exchange, giving them time till December 12, 2011 to submit the above mentioned information. In spite of the reminders, no reply was received from any of these clients. It is observed that the e-mail IDs of the said three entities bear strong resemblance to member's group's e-mail id.

AK.

4. Issue of Show Cause Notice to the Member and Member's Reply:

4.1. Issue of Show Cause Notice

4.1.1. In view of the Member's continued reluctance and non-co-operation to provide the requisite bank statements of receipt of funds in the above three transactions, and since it appeared that the Member has submitted false information to the Exchange in the margin file upload as well as during inspection, a show cause notice No. MCX-SX/INS/RE/07/2011-12/837/0257 dated January 13, 2012 ("Show Cause Notice") was issued to the Member, showing that he had prima facie violated the following provisions:

- a) Regulation 16.3 of the Regulations-Currency Derivatives Segment of the Exchange, which requires a member to co-operate in inspection and produce books, records and documents. The Member's above conduct appeared to have, on the contrary, been with a view to mislead the inspection team.
- b) Bye-law 7 of Chapter X of the Bye-laws of Exchange which forbids evasion of margin.
- c) Exchange circular no. MCX-SX/C&S/7/2008 dated October 4, 2008 requiring proper submission of client margin reports read with Rule 3(k) of Chapter V of the Rules of the Exchange, which forbids submission of false clearing forms and returns.
- d) Rule 7 of Chapter IV of Rules of the Exchange specifying conditions for clearing membership.

4.1.2. It was put to the Member that wrong reporting of client margins was a serious violation as can be seen from SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011. Hence, the Member was advised to show cause as to why disciplinary action should not be taken against him in accordance with rules 1 & 2 and other applicable provisions of Chapter V of the Rules of the Exchange.

4.1.3. The Member was advised to submit its reply by January 20, 2012. The Member was also offered an opportunity of a personal hearing before the relevant authority of the Exchange. The Member, vide letter dated January 17, 2012, applied for an extension up to February 2, 2012 for submission of

AK.

reply. The same was granted by the Exchange vide letter No. MCX-SX/INS/RE/07/2011/837/0325 dated January 18, 2012.

4.2. Member's Reply to the Show Cause Notice

4.2.1. On February 2, 2012, the Member submitted its reply to the Show Cause Notice. The summary of Member's reply is as under:

- a) There was no irregularity or illegality found during inspection conducted by the Exchange, and same was concluded with charging penalty of Rs. 40,000/-. Hence, there is no justification on the part of Exchange for re-opening the aforesaid matter which is already concluded.
- b) Regarding complaint received from former employee of the member - the letter was concocted by someone who has some grudge against him. Further he has stated that they never had an employee with a name Ankit Sharma.
- c) The Exchange has not informed by which mode the said letter received by the Exchange.
- d) They have already surrendered their membership with MCX-SX and deactivated their terminals w.e.f. March 2011. A public notice was published in news paper whereby objections were invited from clients regarding claims/ dispute/ grievance against them within 60 days on April 11, 2011. Same period was over on June 10, 2011 and no objection/claim/grievance was reported to the Exchange.
- e) As membership was surrendered and no grievance was raised by anybody against them it was not justified to hold disciplinary proceedings against them.
- f) Allegations of malafide on part of the Exchange were also made, stating that there was an intention on part of the Exchange to see that they should not be given a decent exit from membership for reasons best known to them.
- g) SEBI circular dated August 10, 2011 was not applicable to them as the said circular was not applicable during inspection period. As no provision of penalty in such case in clause of the said SEBI circular at the relevant time to deal with such cases. Hence no disciplinary proceeding could be initiated in the absence of the same.

h) The Member further submitted that he had received margin by way of the referred cheques from the three entities and the same was accordingly reported to the Exchange. The Member also submitted that the respective clients requested it not to produce the same in bank and use their money in other accounts maintained with the Member towards margin for transactions on MCX-SX. Accordingly moneys were transferred from the respective clients' NSE-Currency Accounts to MCX-SX Currency account vide transfer entry on the respective referred dates.

i) Further, the Member has stated that the aforesaid position and correspondence was also shown as well as explained to the inspection team and the team was fully satisfied with the aforesaid facts and therefore nothing adverse was mentioned in the inspection report.

j) The Member had requested for personal hearing if case is forwarded to Disciplinary Committee or decided to take any adverse action.

5. Disciplinary Action Proceedings

5.1. Vide letter no. MCX-SX/INS/2011-12/837/1684 dated February 16, 2012, the Exchange granted personal hearing to the Member before the DAC on March 1, 2012. The Member was also advised to send his relevant clients' total exposure, margin liability and deposits available in NSE & BSE, on the said dates, duly authorised by a CA, so that the Exchange may be able to see the correct position of free available funds on other Exchanges as suggested by the member. The Member was advised to submit the said information to the Exchange by February 23, 2012.

5.2. The Member had replied to the above mentioned notice vide letter dated February 23, 2012, submitting inter alia as follows:

5.2.1. The Member expressed his inability to appear before the DAC on March 1, 2012 and requested to grant him hearing on some other dates mentioned by him.

5.2.2. With the said letter he also submitted data regarding the relevant clients' total exposure, margin liability and deposits available in NSE & BSE, purporting to be duly certified by a Chartered Accountant, as advised by the Exchange.

5.2.3. The Member further requested the Exchange to provide copy of Gazette Notification for grant of Recognition of MCX Stock Exchange Ltd and Grant notification in relation to Rules/ Bye-laws framed by the Exchange.

AK

- 5.3. Mr. Ankur Arun, the designated director of Jaypee Capital Services Limited, appeared before the Committee and requested the Committee to adjourn the hearing to a further date.
- 5.4. The Committee had acceded to his request and adjourned the case to a future date, to be intimated later.
- 5.5. Vide letter no. MCX-SX/INS/2011-12/837/2096 dated March 5, 2012, the Member was informed about adjournment of the case and it was also informed to the Member that the next date of the meeting shall be separately communicated to them.
- 5.6. Vide letter No. MCX-SX/INSP/837/2012/3900 dated May 7, 2012, the Exchange informed the Member regarding the date of the present meeting.
- 5.7. Vide letter dated February 23, 2012, the member submitted data regarding the relevant clients' total exposure, margin liability and deposits available in NSE & BSE, purporting to be duly certified by a Chartered Accountant, as advised by the Exchange. As per the certificate submitted by the member, the clients had adequate funds available in other Exchanges.
- 5.8. Pursuant to the above details submitted by the member, the Exchange advised the Member to submit following information by May 16, 2012 vide letter No. MCX-SX/INSP/837/2012/4150 dated May 9, 2012:

S.No.	Client Code	Client Name	Requirement	Period / Date
1.	C1	Jaypee Financial Services Ltd	Following ledgers with running balances <ul style="list-style-type: none"> • NSE CD • NSE FO • NSE CM • BSE CM 	October 2008
			Following margin obligations <ul style="list-style-type: none"> • NSE CD • NSE FO 	24-10-2008

M.

S.No.	Client Code	Client Name	Requirement	Period / Date
2.	CA1	Arora Timber Ltd (GenX Commodities Ltd)	Following ledgers with running balances <ul style="list-style-type: none"> • NSE CD • NSE FO • NSE CM • BSE CM 	November 2008
			Following margin obligations <ul style="list-style-type: none"> • NSE CD • NSE FO 	20-11-2008
3.	J007	Jaswant Timber Pvt Ltd	NSE CD Ledgers with running balances	October 2008 and November 2008
			NSE CD margin obligations	24-10-2008 and 20-11-2011

- 5.8.1. In reply to the above letter, vide letter dated May 15, 2012, the Member stated that since these transactions were done on other Exchanges, it is beyond the purview of the Exchange and hence they are unable to provide the same.
- 5.8.2. Vide letter no. MCX-SX/INSP/837/2012/4969 dated May 17, 2012, the Exchange again advised the Member to submit the above mentioned details by May 21, 2012, mentioning that the Exchange has a reason to believe that the Chartered Accountant Certificate provided at the time of inspection could not be relied upon.
- 5.8.3. The Member, vide letter dated May 21, 2012, submitted the details of the ledgers and margin obligations shall be submitted by them before the DAC.
- 5.8.4. The Member, vide letter dated May 14, 2012, again requested to provide following information:
- a) Copy of Gazette Notification for Grant of Recognition to MCX Stock Exchange
 - b) Copy of Gazette Notification in relation to rules/bye laws framed by MCX Stock Exchange
 - c) Names of the Members of the Disciplinary Action Committee
- 5.8.5. Vide letter No. MCX-SX/INSP/837/2012/4711 dated May 15, 2012, the Exchange provided names of the DAC Members. As far as the request for Central and State Gazette notification for grant of recognition to MCX-SX was concerned, the Exchange informed that it was a matter totally extraneous of the present proceedings. It was also informed that the Member ought to have satisfied itself before taking membership, on this and all related aspects. It was further informed

that the updated version of the Rules and Bye-laws of the Exchange were available on the website of the Exchange.

6. Personal Hearing before the Disciplinary Action Committee

6.1. JCPL was granted an opportunity of hearing before the Disciplinary Action Committee of the Exchange on May 22, 2012. Mr. Ankur Arun, the designated director of JSPL, appeared in person together with Dr. Anurag Kumar Agarwal, Advocate. They made the following submissions during the hearings:

- a) He submitted that the Rules of the Exchange can come into force only after the same have been published in the Government Gazette. He submitted the following case laws to support this proposition:
 - a. *ITC Bhadrachalam Paperboards v. Mandal Revenue Officer* – (1996) 6 SCC 634
 - b. *Mahesh Ratilal Shah v. Union of India* – (2010) 2 SCC 706
 - c. *V.V. Rupa v. S. Dalmia* – AIR 1968 Bom 347
- b) Section 9(4) of the SCRA and section 23 of the General Clauses Act, 1897 were also relied upon in support of this proposition.
- c) It was submitted that this was a case of dead horse being dragged as the surrender application was made and the time limit of 60 days had elapsed before the alleged complaint of Mr. Ankit Sharma was received.
- d) The maximum disciplinary action that could be taken even if the allegations were true was suspension of membership, which would be infructuous in this case as the trading rights were already deactivated.
- e) Coming to facts, he submitted that the inspection was closed with a fine of Rs. 40,000/-, there was no concealment or any major irregularities observed. No other action was recommended even by the inspection team.
- f) The letter of Mr. Ankit Sharma was an unsigned letter with no address or telephone number, on the basis of which no action could be taken.
- g) The relevant clients had requested JSPL not to present the relevant cheques as they already had adequate balances in the other exchange ledgers with the member.
- h) There has been no change in stance; the four cheques were indeed received, but they were not deposited as per request of the clients as they had adequate balances in other ledgers.

- i) Cheques could be used for many purposes; they are negotiable instruments and can be used as security also.
- j) The reversal entry for the non-credit of these cheques could be found in the NSE CD Segment ledger of the same client.
- k) Cheques received, recorded and not presented would not amount to wrong reporting. It was not a case of false margins being reported; they were actual running balances.
- l) There are specific penalties prescribed in Exchange circular dated October 4, 2008 which alone was applicable and the SEBI circular issued in 2011 did not apply to the transactions as they took place in 2008-09.
- m) Non-supply or supply of information sought in bits and pieces does not amount to shifting stance.
- n) There is nothing morally, ethically or otherwise wrong in the practices followed by JCPL. No malafides were involved.
- o) There is no basis for casting doubt on the CA certificate submitted by the member.

7. CONSIDERATION OF ISSUES

- 7.1. We have carefully considered the material on record including show cause notice, the replies filed and submissions made by JCPL.
- 7.2. JCPL has raised some preliminary issues such as that proceeding on the basis that the Bye-laws and Rules of the Exchange were not notified in the Gazette. The recognition of the Exchange and publication of the Bye-laws / Rules are not relevant to these proceedings and this forum has no jurisdiction to any such issues. We, however, note that the Bye-laws and Rules are duly published in both the Central and State Gazettes as follows:
 - 7.2.1. Gazette of India Weekly, Part IV, September 27-October 3, 2008, pages 347 & 391;
 - 7.2.2. Gazette of the State of Maharashtra, October 16, 2008, pages 168 & 198.
- 7.3. Hence, we do not find any substance in this submission. We note that the recognition of the Exchange had also been duly notified in the Official Gazette of India Extraordinary, Part IV, September 18, 2008.
- 7.4. We are unable to agree with the other preliminary submission that the Exchange ought not to have enquired into the matter after the surrender application was made by JCPL. We find that the allegations made were prima facie serious, warranting further enquiry before approving the surrender, and hence the Exchange

is justified in undertaking such enquiry irrespective of whether the objection period for the surrender application was over or not. We further note that the allegations in the complaint related to a period prior to the surrender application and as such, the Exchange has taken into account the complaint.

- 7.5. We find further that no order would be infructuous as contended, if the allegations are established to be true. Though a member may not have trading rights, he still has certain rights and obligations as a Member of the Exchange and an intermediary registered with SEBI. Therefore Exchange can take suitable actions depending on the severity of violation.
- 7.6. We note that through reports dated October 24, 2008 and November 20, 2008 submitted to the Exchange through file uploads (as prescribed vide circular no. MCX-SX/C&S/7/2008 dated October 4, 2008), JCPL reported collection of client margins as follows:

Sr. no.	Margin Date	Client Code	Client Name	Total Margin (Amount in Rs.)	Margin Collected (Amount in Rs.)
1.	24-Oct-08	C1	Jaypee Financial Services Ltd	66,58,241.15	66,58,241.15
2.	20-Nov-08	C1	Jaypee Financial Services Ltd	92,27,632.40	92,27,632.40
3.	24-Oct-08	CA1	Arora Timbers Ltd	82,92,098.03	82,92,098.03
4.	20-Nov-08	CA1	Arora Timbers Ltd	20,78,433.35	20,78,433.35
5.	24-Oct-08	J007	Jaswant Timbers Pvt. Ltd.	53,18,192.00	53,18,192.00
6.	20-Nov-08	J007	Jaswant Timbers Pvt. Ltd.	1,03,05,357.12	1,03,05,357.12

- 7.7. When the inspection team of the Exchange conducted an inspection of the Member between 26th & 27th November 2009, JCPL submitted client ledgers containing the following entries corroborating the above reports:

7.7.1. Jaswant Timbers Pvt. Ltd. (Client Code - J007)

Date	Narration	Bill No	Cheque No	Debit	Credit	Running balance
24/10/2008	Cheque received	BRV3-2410	203917	0.00	4000000	7228943.44
20/10/2008	Cheque received	BRV4-2011	203920	0.00	6100000	14958927.85


7.7.2. Jaypee Financial Services Ltd. (Client Code - C1)

Date	Narration	Bill No	Cheque No	Debit	Credit	Running balance
24/10/2008	Cheque received	BRV2-2410	455937	0.00	5950000	8026205.91

7.7.3. Arora Timbers Ltd. (Client Code - CA1)

Date	Narration	Bill No	Cheque No	Debit	Credit	Running balance
20/11/2008	Cheque received	BRV3-201190 (not legible)	0.00	700000	2870312.79

- 7.8. The above facts are not disputed. The Member's surrender application was also pending at the Exchange.
- 7.9. The unsigned letter written to the Exchange by one Ankit Sharma purporting to be an employee of JCPL was received at this juncture. Serious allegations were made in the letter about wrong data being submitted to the inspection team and the above ledger entries being non-existent.
- 7.10. The Exchange had acted promptly and requested comments of JCPL on the allegations in the said letter. The first of such letters went on July 28, 2011 and the Exchange had been duly following up with letters dated September 19, 2011 and October 19, 2011, advising the Member to submit bank statements, duly showing receipt of cleared funds of the relevant amounts comprised in the said cheques.
- 7.11. Though various letters were written by JCPL to the Exchange in reply, they were on collateral issues such as the letter being anonymous, surrender application already being made etc., without addressing the issues of alleged non-existence of the funds recorded in the relevant ledger entries.
- 7.12. It was only after issuance of the Show Cause Notice that the Member came up with an explanation that the relevant clients had requested not to present the relevant cheques for encashment and use moneys lying in their other accounts maintained with the member towards margin payable for transactions on MCX-SX. We note that the first reply of JCPL on the merits of the transactions was thus made to the Exchange only on February 2, 2012, about 7 months since the issue was first taken up by the Exchange with it.
- 7.13. Naturally, it can be inferred that it is an afterthought and is reprehensible. It raises a doubt in our minds as to the motives behind such delay and efforts at forestalling legitimate enquiries of the Exchange.
- 7.14. The Exchange with a view to verifying this submission had advised the Member to submit details of the clients' total exposure, margin liability and deposits available in NSE & BSE on the said dates duly certified by a CA. The Exchange further sought copies of the ledger extracts of these clients at the other Exchanges on the relevant dates, which after some reluctance, has been handed over to us during the hearing.

- 7.15. We have examined the purported ledger extracts submitted by JCPL. On perusal of the same, it appears as follows:
- 7.15.1. That the submitted papers are not actually extracts from ledgers of client accounts of the respective exchanges but rather an artificial construct containing amalgam of data of the three exchanges prepared specifically for submission to the Exchange. This raises justifiable questions concerning credibility of the same. It is also noted that the NSE F&O registration number of the member is also incorrectly stated.
- 7.15.2. It is seen that except for one client – Jaypee Financial Services Ltd. who had traded – both the other clients had kept idle funds (Arora Timbers Ltd. ranging from Rs. 24 lakhs to Rs. 9 crore (except for some trades in NSE CD Segment); Jaswant Timbers Ltd. containing numerous JV entries without any actual fund movement) with the member at various points of time and during the entire months of October-November, 2008 they had not traded at all. There are only entries showing in and out of funds, but no trade related transactions such as pay-in, pay-out, MTM margin payment etc.
- 7.15.3. It is seen that there is one more such entry where cheque was purportedly received, but reversal entry was made in another ledger. This entry is contained in ledger of Jaswant Timbers P. Ltd. showing cheque no. 203916 for Rs. 50 lakhs received on October 23, 2008 and reversed on same date in different ledger.
- 7.15.4. There are numerous entries in the said other exchange ledgers of Arora Timbers Ltd. stating, merely 'cheque received' and 'cheque paid'. Having regard to the surrounding circumstances, it can be inferred that these would not be corroborated by actual funds movement. However, given the rigid stance of the member, this aspect would not be possible to be verified by MCX-SX, as the ledger pertains to other exchanges.
- 7.15.5. There are other discrepancies also, such as on November 18, 2008 three cheques seem to have been issued to Arora Timbers Ltd. by the Member without there being adequate balances in the bank.
- 7.15.6. A submission was made that the reversal entries for the cheques which were allegedly received but not presented, are contained in the ledgers of other Exchanges and we find that suitable entries are recorded in the purported ledger extract. We are of the considered view that this is not an acceptable practice. A reversal of an entry in a ledger occurring on account of non-presentation or dishonor of a cheque is made only in the same ledger. The only possible explanation in the circumstances could be that the entries are entered as an afterthought and
- 

obviously not be available in the respective ledgers maintained for any of the Exchanges.

- 7.15.7. There is no transfer entry between the other exchange ledgers and MCX-SX ledger as contended by the member.
- 7.15.8. If the cheques were taken merely for security as is now sought to be contended, it is surprising why such cheques were entered in the ledger of MCX-SX, giving an impression that they were actually realized.
- 7.15.9. We find that an amalgam of several exchanges ledger has been provided at the hearing deliberately with a view to obfuscate the real position so that even if other exchanges wanted to conduct an enquiry for verification of the same, no exchange would be able to single-handedly verify the same. In case of any discrepancy, the member would always take a stand that the relevant entries were with some other exchange.
- 7.15.10. We find that neither MCX-SX nor any other Exchange would be able to verify the genuineness of these entries without co-operation of JCPL, which does not seem to be forthcoming.
- 7.16. We note that if the explanation given by the Member with recourse to the other Exchange ledgers is false and it would attract severe penalty of Rs. 6,64,048.44 and five days suspension in line with the Exchange Circular no. MCX-SX/INSP/92/2009 dated March 30, 2009 which was in force at the material point of time.
- 7.17. On careful consideration of the matter, we find that the earlier penalty of Rs.40,000/- imposed consequent to the inspection for other routine violations will not operate as double jeopardy or *res judicata*. This is for the simple reason that the earlier penalty was for different violations and that the Exchange was not even aware of the alleged wrong reporting of margin or the misleading of the inspection team when that penalty was imposed. The present allegations constitute a new and distinct cause of action, which is not barred by either of these doctrines.

8. FURTHER COURSE OF ACTION

- 8.1. We note that wrong reporting of margin is considered to be a very serious non-compliance as correct reporting and collection of client margin is vital to a vibrant risk management system. Any wrong reporting has potential to endanger the solvency of the member and could have cascading effect on the market.

- 8.2. Submitting false information to the Exchange during inspection and stonewalling Exchange's enquiries into significant issues is much more reprehensible. It would be a violation of the provisions of the Bye-laws and Rules as extracted above in para 4.1.1. We note that members have several privileges of trading and related issues on Exchanges only on the basis that they will fully co-operate with the Exchange in case of any such enquiries.
- 8.3. In light of the above analysis, we do not place any credence on the CA certificate and the other exchange ledgers produced by the member at the end of the proceedings. We deem it necessary that an independent enquiry is necessary by a competent authority to examine the matter further comprehensively with other Exchanges.
- 8.4. As noted above, no exchange would be able to verify the truth of the matter single-handedly in light of the intransigence of the member and his extreme reluctance to part with relevant data.
- 8.5. We are of the considered view that Exchange shall refer the matter to SEBI for further examination including the records of other Exchanges, where Member is associated with, to find out the truth whether Member had the funds of Clients or not. Till such time, the surrender application should not be disposed off by the Exchange.
- 8.6. If for any reason SEBI is of the view that no such examination is necessary or that the statement of Member is correct, Exchange may dispose of the application.



Asha Das
21 August, 2012
New Delhi



Prem Rajani
24 August, 2012
Mumbai

Verified True Copy
For MCX-Stock Exchange Ltd.



Company Secretary