IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.34243 and 33126 of 2022

W.P.No.34243 of 2022:

M/s.Chennai Financial Markets and Accountability,
Represented by its President, Manoj K Sheth,
having its registered office at
GA Florentina, No. 43 1st Main Raod
Gandhi Nagar, Adyar,
Chennai - 600 020. .. Petitioner

vs.

1. The Securities and Exchange Board of India
Southern Regional office (SRO)
7th Floor, 756-L Anna salai
Chennai 600 002, Tamil Nadu
and having their corporate office at
Plot No. C4-A G Block Near Bank of India
Bandra Kurta complex, Bandra East
Mumbai, Maharashtra - 400 051.

2. Multi-Commodity Exchange of India Ltd (MCX)
   Represented by its Managing Director, PS Reddy
   Exchange Square, Suren Road
   Andheri (E), Mumbai - 400 093.

3. Muliti-Commodity Exchange Clearing
   Corporation Limited (MCXCCL)
   Represented by its Managing Director
   Narendra Kumar Ahlawat
   255 Exchange, Square, Suren Road,
   Andheri (East), Mumbai - 400 093. .. Respondents

W.P.No.33126 of 2022:

M/s.Chennai Financial Markets and Accountability,
Represented by its President, Manoj K Sheth,
having its registered office at
GA Florentina, No. 43 1st Main Raod
Gandhi Nagar, Adyar, Chennai - 600 020. .. Petitioner

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 Corporation Limited (MCXCCL)
 Represented by its Managing Director
 Narendra Kumar Ahlawat
 255 Exchange Square Suren Road,
 Andheri (East), Mumbai - 400 093.

4. PS Reddy
 Managing Director and Chief Executive Officer,
 Multi-Commodity Exchange of India Ltd,
 Exchange Square, Suren Road,
 Andheri (E), Mumbai - 400 093.

5. Shashank Sathe
 Chief Technical Officer,
 Multi-Commodity Exchange of India Ltd,
 Exchange Square, Suren Road,
 Andheri (E), Mumbai - 400 093.

6. Narendra Kumar Ahlawat
 Managing Director and Chief Executive Officer,
 Multi-Commodity Exchange Clearing Corporation Limited,
 255, Exchange Square, Suren Road,
 Andheri (E), Mumbai - 400 093.

7. Anilkumar Varma
 Chief Technology Officer,
 Multi-Commodity Exchange Clearing Corporation Limited,
 255, Exchange Square, Suren Road,
 Andheri (E), Mumbai - 400 093. .. Respondents

Prayer in W.P.No.34243 of 2022 : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondent No.1 to take requisite steps to ensure that Respondent No. 2 and 3 conducts a parallel run for a period of one year of the new technology proposed to be deployed by the Respondent No. 2 and 3 for the purpose of running its trading, clearing and settlement platform and consequently order for conducting a third party audit from a reputed auditing agency to ensure the technical soundness and robustness of the new technology platform proposed to be adopted by respondent No. 2 and 3.

Prayer in W.P.No.33126 of 2022 : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondent No.1 to conduct a detailed enquiry into the affairs of the respondent No.2 and 3, qua the integrity and competence of the market software technology proposed to be adopted by the respondent No.2 and 3 after 31.12.2022.

For the Petitioner	:	Mr.Nithyaesh Natraj for Mr.Anirudh A Sriram
For the Respondents	:	Mr.V.Ragavachari Senior Counsel for Mr.C.Prasanna Venkatesh for respondent No.1
	:	Mr.Satish Parasaran Senior Counsel for Mr.Rahul Balaji for respondent Nos.2 and 3 in W.P.No.34243 of 2022 and respondents 2 to 7 in W.P.No.33126 of 2022

COMMON ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.Nithyaesh Natraj, learned counsel for the petitioner; Mr.V.Ragavachari, learned Senior Counsel for Mr.C.Prasanna Venkatesh, learned counsel for the first respondent; and Mr.Satish Parasaran, learned Senior Counsel for Mr.Rahul Balaji, learned counsel for respondents 2 and 3 in W.P.No.34243 of 2022 and respondents 2 to 7 in W.P.No.33126 of 2022.

2. W.P.No.33126 of 2022 is filed seeking directions against the first respondent to conduct a detailed enquiry into the affairs of respondents 2 and 3, qua the integrity and competence of the market software technology proposed to be adopted by respondents 2 and 3.

3. W.P.No.34243 of 2023 is filed seeking directions against

the first respondent to take requisite steps to ensure that respondents 2 and 3 conduct a parallel run for a period of one year of the new technology proposed to be deployed by respondents 2 and 3 for the purpose of running its trading, clearing and settlement platform.

4.1. Learned counsel for the petitioner submits that the third respondent is a Clearing Corporation associated with the second respondent. The second respondent is a leading commodity derivative exchange in India with around 90% market share. Respondents 2 and 3 are planning technological transition for running and maintaining their trading, clearing and settlement platform.

4.2. According to learned counsel for the petitioner, many safeguards are required to be undertaken before the change over of the technology takes place. Parallel runs have to be conducted for at least a year to conclude that the technology is perfect.

Respondents 2 and 3 have failed to do so. Consistently, the first respondent/Securities and Exchange Board of India (SEBI) has been suggesting even till the last date that time would be required to verify that the technological change would be proper and free from glitches. However, suddenly, now they have concluded that the change in software is proper and the same can be implemented from 16.10.2023.

4.3. According to learned counsel, respondents 2 and 3 deal with transactions worth Rs.1,25,000 crores a day. A slight glitch would result in crash of the technology and the transactions would be wayward. The SEBI has to be satisfied that no glitches take place. Even on August 10, 2023, during the talks between the Managing Directors of respondents 2 and 3 and its investors, question was raised about the glitches in the new technology. This would show that respondents 2 and 3 are not well-equipped to handle the new technology. The change in technology should not take place in such an hasty manner putting the investors in peril.

5.1. Mr.Satish Parasaran, learned Senior Counsel for respondents 2 and 3, submits that the apprehension expressed by the petitioner is misplaced. Four times the parallel runs for testing the implementation of the new Commodity Derivatives Platform (CPD) have been carried out. Several mock tests have been conducted with the active participation of the Member Brokers, who have tested the functionalities as well as back office reports. Vulnerability Assessment and Penetration Testing (VAPT) was carried out and major observations have been closed. The same was verified by an external auditor and confirmed in its audit. The second respondent has also taken steps to comply with the Circular dated 5.5.2023 and has also got the new CDP audited from CERT-In empanelled auditors.

5.2. Learned Senior Counsel further submitted that the platform would be maintained by Tata Consultancy Services

Limited, who have also developed the Commodity Derivatives Platform. Tata Consultancy Services Limited has been operating in the field of Information Technology for five decades.

5.3. According to learned Senior Counsel, the petitioner is a proxy put up by 63 Moons Technologies Limited. Because of the present writ petitions, respondents 2 and 3 had to expend huge amount to said 63 Moons Technologies Limited, as is detailed in paragraph (11) of the affidavit filed by the second respondent.

6.1. Mr.V.Ragavachari, learned Senior Counsel appearing on behalf of SEBI, on instructions, submits that parallel runs have been carried out. The Technical Advisory Committee has cleared the said software. The Technical Advisory Committee consists of Professors from various IITs. They are all decorated Professors. Their names are as under:

#	*Member Details*	*Capacity*
1	Dr.D.B.Phatak, Padma Shri Professor Emeritus, IIT Bombay	Chairman

#	Member Details	Capacity
2	Dr.Abhay Karandikar Director, IIT Kanpur	Member
3	Dr.D.Janakiram Director, IDRBT	Member
4	Prof. Manindra Agarwal, Padma Shri Professor, IIT Kanpur	Member
5	Dr.T.Gonsalves Professor Emeritus (Hon.) Indian Institute of Technology Mandi	Member
6	Prof. Debabrata Das Director, IIIT Bangalore	Member
7	Shri Rajesh Doshi Ex-ED, NSDL	Member

6.2. According to learned Senior Counsel, the Technical Advisory Committee of the SEBI after having been convinced of the feasibility of the new technology has approved it.

7. Upon hearing the contentions of the respective parties, it appears that the apprehension of the petitioner is about the viability and feasibility of the transition in technology.

8. The first respondent is the regulator. It is for the first respondent to be completely convinced about the new technology

being viable, feasible and free from glitches.

9. The first respondent has its own Technical Advisory Committee, which consists of Professors from different IITs. A responsible statement has been made that the Technical Advisory Committee of the first respondent has cleared the said technological transition.

10. We are not experts. We cannot sit over the decision of the expert committee. It would also be premature today to say anything upon the new technology being adopted, more particularly when the same has been cleared by the body of experts in the field. If something goes amiss, certainly the aggrieved persons can agitate against the same.

11. As on today, as it has been stated by learned Senior Counsel for SEBI that parallel runs for testing the implementation of the new CPD have been carried out and the Technical Advisory

Committee of the first respondent has reviewed the new technology and are convinced about the functioning of the same, it will not be possible for us to substitute the views of the experts.

In the light of the above, the writ petitions are disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.27109, and 27291 of 2023; 32522, 32523 and 33692 of 2022 are closed.

(S.V.G., CJ.) (D.B.C., J.)

13.10.2023

Index : Yes/No
Neutral Citation : Yes/No
sasi

To:

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   Southern Regional office (SRO)
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

W.P.Nos.34243 and 33126 of 2022

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