



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

SECURITIES AND EXCHANGE BOARD OF INDIA REGULATING THE SECURITIES MARKET

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Abstract

In the globalise economy, where there is a rapid rise in the size and number of institutional investors and global funds, the focus on good corporate practices also increases correspondingly, almost as a in flex action. At the same time, the number and sophistication of investment managers, intermediaries and specialists, has also been raising dramatically. All these factors have further fuelled the need for good corporate Governance practices and hence it could now be said that the concept has really come of age and almost certainly, to stay. Today corporate governance has evolved to a level where the outcome pursued in a system which assures corporate decisions that are efficient and effective. Hence in a way, corporate governance is no longer pre-occupied only with structures and procedures such the Securities and Exchange Board of India (SEBI), FEMA and National Company Law Tribunal (NCLT). But more importantly, concerned with governance process which attempt to decrease the possibility of corporate mistakes, and if mistakes are made, increase the speed at which corrective action is taken.

Key-words: Securities, Exchange, Regulating, Market and Capital

Introduction

In the last few years there have been substantial improvements in the functioning of capital markets in India. Market and credit risks have been reduced by requirement of adequate capitalization, Margining and establishment of clearing corporations in stock exchanges, etc. Systemic improvements have been made by introduction of screen-based trading depositories to allow book entry transfer of securities, etc. However, there are inadequate advanced risk Management's tool. With a view to provide such tools and to strength and deepen markets, there is a need to include derivatives as securities in the Securities and Exchange Board of India Act, 1992 were by trading in derivatives may be possible within the framework of the Act. Recently many companies especially plantation companies have been raising capital from investors through schemes which are in the from of collective investment schemes. However, there is not an adequate regulatory frame work to allow an orderly development of this market. In order that the interests of investors are protected, it

has been decided that the Securities and Exchange Board of India would frame regulations with regard to collective investment schemes.

The Securities and Exchange Board of India (SEBI) Act, 1992 was enacted to provide for the establishment of Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.¹

Recently many shortcomings in the legal provisions of the Securities and Exchange Board of India Act, 1992 have been noticed, particularly with respect to inspection, investigation and enforcement. Currently, the SEBI can call for information, undertaking inspections conduct enquiries and audits of stock exchanges, mutual funds, intermediaries, issue directions, initiate prosecution, order suspension or cancellation of registration.² Penalties can also be imposed in case of violation of the provisions of the Act or the rules or the regulations.

Management of the SEBI

The Management of the Securities and Exchange Board of India (SEBI) shall consist of the following members,³ namely-

- A chairman,
- Two members from amongst the officials of the Ministry of the Central Government dealing with finance and Administration of the Companies Act, 1956
- One member from amongst the officials of the Reserve Bank of India,
- Five other members of whom at least three shall be the whole-time members.

These members are to be appointed by the Central Government, except the official member of the Reserve Bank of India. The Securities and Exchange Board of India are in all 8 members excluding the chairman. The Securities and Exchange Board of India makes it clear that the general superintendence, direction and management affairs, shall vest in a Board of members.⁴ All statutory power for regulation of India capital market is vested with SEBI itself.

¹ Statement of the Objects and Reasons of the Securities and Exchange Board of India, Act 1992

² Statement of the Objects and Reasons of the Securities and Exchange Board of India, (Amendment) Act 2002

³ Section 4 (1) of the Securities and Exchange Board of India, Act 1992

⁴ Section 4 (2), Ibid.

Power of the Securities and Exchange Board of India (SEBI)

Power as is vested in civil court under Civil Procedure Code, 1908-

The Securities and Exchange Board of India shall have the same powers as are vested in a civil court under the civil procedure code, 1908 while trying a suit⁵, in respect of the following matters, namely

- The discovery and production of books of account and other documents.
- Summoning and enforcing the attendance of persons and examine them on oath.
- Inspection of any books, registers and other documents or record of company; and
- Issuing commissions for the examination of witnesses or documents.

To Measures in the Investor's Interest

The Securities and Exchange Board of India is empowered to introduce measures in the interests of investors or securities market, during the pending investigation or on completion of inquiry⁶. The SEBI may undertake the following measures, namely

- Suspend the trading of any Security in the recognized 25 stock exchange.
- Suspend any office bearer of any stock exchange.
- During investigation impound and retain the proceeds or securities in respect of any transaction.

Directions to stock brokers in payment of registration fee

In *Ramesh Chandra Bansal V. Securities and Exchange Board of India and another*⁷ wherein defaults having occurred by stock brokers in payment of registration fees under SEBI Act, 1992, this act, introduced a scheme namely, SEBI, Interest liability Regularization Scheme, 2004 to provide a one-time opportunity to enable the stock brokers in the cash segments of sock exchange to regularize their defaults.

To impose penalty

According to the Supreme Court⁸, the Securities and Exchange Board of India was set up to promote orderly and healthy growth of the Securities market and for investor's protection. The Securities and Exchange Board of India has been monitoring and regulating the activities of stock exchange, mutual funds and merchant bankers etc. to achieve these goals. The capital market has witnessed tremendous growth in recent times, characterized particularly by the increasing participation of the public. Investor's confidence in the capital market can be sustained largely by ensuring investor's protection. Therefore, it become imperative to impose monetary penalties also in addition to other penalties in cases of default.⁹

⁵ Section 11(3) of the Securities and Exchange Board of India Act, 1992

⁶ Section 11(4) of the Securities and Exchange Board of India Act, 1992

⁷ (2006) 2 Comp. L.J. 93 (Guj.)

⁸ Chairman, SEBI v. Shriram Mutual Fund, AIR 2006 SC 2287; (2006) 5 SCC 351

⁹ Section-15-A to 15-H of the Securities and Exchange Board of India Act, 1992; Section 11-A of the Securities and Exchange Board of India Act, 1992

To make regulations

The Securities and Exchange Board of India may by notification, make regulations consistent with this Act.¹⁰

Additional powers of SEBI

The Securities and Exchange Board of India, to regulate or prohibit issue of prospectus, offer documents or advertisement soliciting money for issue of securities¹¹, to make regulations relating to collective investment scheme¹². The SEBI has power to issue directions in respect of the interest of investors or orderly development of securities market¹³, to carry out investigation in respect of transaction of securities which are suspected to be detrimental to the interest of investors¹⁴, and having power to cease and desist proceedings¹⁵.

Hence, the Securities and Exchange Board of India has jurisdiction to direct for payment of interest to shareholders¹⁶. According to the Supreme Court the Securities and Exchange Board of India has discretionary jurisdiction or powers to be exercised in accordance with law and judiciously. Such discretion must be a sound exercised in law.

SEBI and Capital Market

There have been significant reforms in the regulation of the securities market since 1992 in conjunction with overall economic and financial reforms. In 1992, the Securities and Exchange Board of India Act, was enacted giving statutory status as an apex regulatory body. Over the last few years, the SEBI has announced several far-reaching reforms to promote the capital market and protect investor interests. Reforms in the Secondary market have focused on three main areas structure and functioning of stock exchanges, automation of trading and post trade systems, and the introduction of surveillance and monitoring systems. As we know after 1996-1997, Indian corporate sector witnessed a number of mergers and acquisitions of existing firms and companies. But many low capitalized companies (LCCS) exit from the market through the disciplinary action (delisting) of the Securities and Exchange Board of India as shown in Table-I and Table-II

¹⁰ Section 30, Ibid.

¹¹ Section 11-AA, Ibid.

¹² Section 11-B, Ibid.

¹³ Section 11-C, Ibid.

¹⁴ Section 11-D, Ibid.

¹⁵ Section 11-A of the Securities and Exchange Board of India Act, 1992

¹⁶ Clariant International Ltd. V. Securities and Exchange Board of India, AIR 2004, SC 4236

Table-I
Number of Companies De-Listed by SEBI

*1995	5	Merger
	8	Amalgamation
	216	Non-Payment of annual listing fees
*1996	12	Amalgamation
	91	Non-Payment of annual listing fees
	8	Merger
*1997	12	Amalgamation
	5	Winding up business
	173	Non-payment of annual listing fees.
*1998	19	Amalgamation
	1	Merger
	11	Winding up.
*1999	16	Amalgamation
	2	Winding up.
*2000	5	Amalgamation
	72	Merger
	33	Non-Payment of annual listing fees.
*2001	26	Amalgamation
	55	Merger
	39	Non-Payment of annual listing fees.
*2002	33	Amalgamation
	42	Merger
	167	Non-Payment of annual listing fees.
*2003	2	Amalgamation
	5	Amalgamation

*2004	76	Non-Payment of annual listing fees.
	2	Winding up
*2005	2	Amalgamation
	1	Non-Payment of annual listing fees.
	3	Winding up
*2006	2	Amalgamation
	2	Winding up
*2007	2	Amalgamation
	5	Winding up
*2008	2	Amalgamation
	1	Non-Payment of annual listing fees.
*2009	1	Amalgamation
	1	Non-Payment of annual listing fees.
*2010	1	Amalgamation

Table-II
List of Companies De-Listed by SEBI, 2010 to 2020

Year	Nos. of Companies	Causes for De-listed
2010	18 Nos.	Public Issues.
2011	25 Nos.	-Do-
2012	32 Nos.	-Do-
2013	50 Nos.	-Do-
2014	62 Nos.	-Do-
2015	87 Nos.	-Do-
2016	35 Nos.	-Do-
2017	70 Nos.	-Do-
2018	35 Nos.	-Do-
2019	47 Nos.	-Do-
2020	3 Nos.	-Do-

Summary and suggestions

The role of the Regulatory Authority in a country depends upon the stages of development in the securities market in that country. In India context where the market is emerging in nature role of the regulatory body is not only limited to regulation but to create conditions through exercise of function for the development and regulatory measures aiming to create discipline in the market and ensure high degree of fairness and market integrity. Thus, we can say that SEBI as the Capital Market Regulator in India has twin objectives i.e. of regulating as well as developing the market.

Every law relating to securities has its objective of investor protection. As we have discussed, that right from vetting of the prospectus to the all-sorts disclosure requirement of the companies dealing with the public money has a nexus with the company. Investors make the backbone of every corporation by providing the require finance to the corporation. Production of Investor is accomplished through effective regulation and efficient and biting Securities Law. The Regulatory frame work of country monitoring the Securities dealing in the set market place aims at fair play and preserving the market integrity, which in turn has its objective of protection of Interest of Investor, who contribute their hard-earned money in the common pool of the Business Corporation. We can take the example of U.S.A. Where the Securities Act of 1933 has two basic objectives require that investors receive financial and other significant information concerning securities being offered for public sale, and prohibit deceit, misrepresentations, and other fraud in the sale of securities.

Further the preamble of SEBI Act, lays down that protection of the interest of investor is its basic and foremost aim which is to be achieved through its functions of regulation.

All the regulatory measures and actions starting from the vetting of prospectus till the trading of shares in the market are designed and modified time to time in the Interest of Investor, so SEBI is a Regulatory Agency.

