



# KEY ASPECTS OF REGULATION AND IMPORTANT CASES

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# DELEGATED LEGISLATION

- Section 30 of SEBI Act, Section 31 of the SCR Act and Section 25 of the Depositories Act, 1996 confers power to make regulations.
- Process followed-
  - Advisory committees
  - Public consultation- Concept Papers
  - Detailed deliberation at Board
  - Notification in Gazette
  - No prior approval from Govt required after 1995
- Laid before the houses of Parliament.
- Parliament may make changes

# REGULATIONS OF SEBI

- Registration and de-registration of market intermediaries.
- Registration of funds like CIS, MF, VCF, PMS, FIIIs.
- Prohibiting certain practices like Insider Trading, FUTP etc.
- Substantial Acquisition of Shares and Take-overs, Buy-back of securities, listing and delisting.
- DIP Guidelines/ ICDR Regulations

# EXECUTIVE FUNCTION

- Administrative discretion
- Granting registration
- Requirements-
  - net worth, track record,
  - adequate infrastructure,
  - key persons have requisite knowledge,
  - persons are fit and proper
- Reasons for rejection
- Opportunity of hearing if registration not granted

# EXECUTIVE FUNCTION

- Investigation
- Order in writing
- IA has power to summon person/ documents
- Call data records
- Record statements on oath
- Failure leads to monetary penalty or criminal imprisonment up to one year
- Search and seizure with the approval of magistrate
- IA submits a detailed report
- Internal committee of senior officers discuss the report and recommend action
- WTM approve appropriate enforcement action
- File transferred to Enforcement

# QUASI JUDICIAL PROCESS

- Exercised by WTM's and AOs
- Officer dealt with the matter not to be AO
- Enforcement department independent of Investigation
- Adjudication Rules
- Intermediary Regulations
- Natural Justice
- Representation by Party/ Advocates

# TAKEOVER REGULATIONS

- Trigger-
  - Acquisition beyond- 25%
  - Creeping acquisition- 5%
  - Change in control
- Exemptions- SICA, Mergers, Transmission/succession/ inheritance, CDR, Inter se transfer among promoters, others through Panel
- Open offer- minimum 26% without breaching MPS
- Formula for offer price
- Merchant Banker, Escrow, filing of Draft letter
- Limited withdrawal from open offer
- Disclosures- (initial and continuous) 5%/ every 2%, Pledge of shares also

# TAKEOVER REGULATIONS- CASES

**Clariant International Limited and Another Vs. SEBI [AIR2004SC4236]** - The question before Hon'ble Court was who would be eligible to tender shares in open offer, who is eligible for interest, whether dividend paid can be adjusted. Hon'ble Court held that all shareholders can tender the shares but only those shareholders who were holding shares of the target company at the time of trigger of takeover regulations and continues to hold such shares till the time of actual tendering of shares in the open offer are entitled to payment of interest for delayed offer. Court also further held that dividend paid shall be adjusted against the open offer price.

**Daiichi Sankyo Company Ltd v Jayaram Chigurupati & Ors [AIR2010SC3089]** The Hon'ble Supreme Court held that the concept of PAC is based on a target company on one side, and two or more persons acting together with a common objective or purpose of substantial acquisition of shares etc. on the other. Hence unless it was established that Ranbaxy and Daiichi had come together with the intention of acquiring shares in Zenotech, it could not be inferred that they were parties acting in concert within the meaning of the regulation. The Court also held that the presumption of PAC would not operate retrospectively; it applies only from the date two or more persons come together in one of the relationships specified; and does not date back.



# PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES REGULATIONS

- Misrepresentation of material fact
- False information to market
- Misleading appearance of securities
- No change of beneficial ownership
- Funding manipulative trades
- No intention to perform
- Introducing false clients
- False advertisements
- Circular transactions
- Front running

# PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES REGULATIONS- CASE

A company X in the business of theatres committed serious irregularities in its books of accounts; inflated profits and revenues by reporting revenues from non-existent theatres (which were never actually received). This manipulation resulted in a price rise of the scrip of the company and promoters then pledged their shares to raise substantial funds from financial institutions.

Company also lured general public to invest in its shares based on such false financial statements.

SEBI initiated various proceedings and passed orders against the company, its Chairman, MD and other directors.

Some of such orders challenged before SAT; SAT upheld SEBI orders.

One of the directors challenged SAT order before SC.

SC, while dismissing the said appeal, inter alia, made the following observations:

- Message should go that our country will not tolerate “market abuse” and that we are governed by the “Rule of Law”.
- Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and ‘market security’ is our motto.
- Print and Electronic Media have also a solemn duty not to mislead the public.

# PROHIBITION OF INSIDER TRADING REGULATIONS

- Insider- Connected person in contractual or fiduciary capacity, Outsiders, who possess/ access UPSI
- Unpublished Price Sensitive Information- Financial results, dividends, change in capital structure, Mergers and acquisitions, change in KMPs, material events under LA
- Communication / procurement of UPSI banned, except for due diligence
- Burden of proof on Insider
- Defenses- Off market inter se transfer, person in possession and person taking trading decision different, Trading plan
- Trading- includes buy, sell, subscribe, dealing (pledge)
- Disclosures- Rs 10 lakhs quarterly
- Internal codes for fair disclosure and conduct
- Compliance officer- window closure/ prior approval
- Six months bar for contra trades

# PROHIBITION OF INSIDER TRADING REGULATIONS- CASE

## Background

Mr. Y was non-executive independent director of a company A (Jan 1, 2007 to Dec 18, 2008)  
A held 100% of company B and Company B held 100% of Company C in partnership

## Findings

Unpublished Price Sensitive Information (UPSI)

- Board of Directors of Company B passed resolution on March 20, 2008 to open joint demat account in the name of B on behalf of Company C
- Company C made large investments in the scrip of Company D from March 31, 2008
- Funding was provided by Company A
- UPSI Period – March 20, 2008 to March 31, 2008

Insider Trading on the basis of UPSI

- Ms. Z, w/o Mr. Y bought 35,000 shares of Company D on March 27-28, 2008
- Sold the entire shares within 2 weeks
- Made considerable profit of Rs.30,88,103

## Action

Penalty of Rs. 50 lac against Mr. Y and Rs. 10 Lac against Ms. A  
SAT Ruling – Order was upheld by SAT

# PROHIBITION OF INSIDER TRADING REGULATIONS- CASE

## Rakesh Agarwal Vs SEBI.

Rakesh Agarwal was the MD of ABS Industries. Bayer took a controlling interest in ABS in October 1996

brother in law of the appellant had purchased shares prior to the acquisition on the basis of UPSI related to the impending acquisition. The appellant funded the acquisition.

The appellant contented that during the course of the negotiations with Bayer it was conveyed that as per the worldwide policy of Bayer, it would only invest in JVs where it had at least a 51% stake.

SAT held that underlying principal of Insider trading regulations is to prohibit misuse of information for obtaining a unfair advantage. If dealing in securities was not with a view to gain unfairly such transaction would not be prohibited. SAT also held that the Regulation 3 merely aims to prohibit an insider from breaching his fiduciary duty to the company.

Since the dealing in the present case was for achieving the corporate purpose of ensuring that Bayer could acquire 51% shares and not for personal gain, SAT held that appellant is not guilty of Insider Trading.

SEBI appealed the order before the Hon'ble SC which was disposed of in terms of the Consent Order agreed upon by the parties.

# COLLECTIVE INVESTMENT SCHEMES (CIS) AND DEEMED PUBLIC ISSUES (DPI)

- CIS- Four ingredients-
  - scheme contributions,
  - pooling of contributions,
  - to receive property or income,
  - no day to day control
- Deemed CIS
- Exceptions- NBFC, Co-operative societies, contract of insurance, pension scheme, deposits under Companies Act, chit funds
- Prize Chit Banning Act
- Registration- in the form of a trust, credit rating, independent directors
- DPI- offer to more than 50 persons

## CIS -CASE

**PGF Limited & others v. UOI & anr. - AIR 2013 SC 3702** - Question before Hon'ble Supreme Court was challenge to vires of Section 11AA of SEBI Act, 1992 and whether, business activities of PGF limited, namely, sale of agricultural land and sale and development of agricultural land, falls within category of collective investment schemes as specified under Section 11AA of SEBI Act. It was held that since investor protection was the pith and substance behind enacting Section 11AA of SEBI Act, the incidental encroachment upon sale and purchase of land in State List doesn't denude the Parliament's power to make law in this regard, therefore, Section 11AA was held to be constitutionally valid. Further, it was held that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment as it satisfied all the ingredients of Sub Section (2) of Section 11AA and wasn't exempted under Sub-Section (3) of Section 11AA.

## CIS -CASE

A company raised money under the garb of land sale agreement. Total amount raised - Approx. Rs. 50,000 crores.

SEBI passed an order holding their activities to be CIS, which was challenged before the Hon'ble High Court of Rajasthan. The Hon'ble High Court vide its order dated November 28, 2003 allowed the Writ Petition filed by PACL.

SEBI preferred an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court of India vide order dated February 26, 2013, set aside the order of Hon'ble High Court, upheld the constitutionality of 11AA of the SEBI Act, which was challenged by PACL, imposed a cost of Rs.50 lakh on PACL and remitted the matter back to SEBI for fresh consideration.

SEBI Order in August 2014 for refunding the amount illegally mobilized was upheld by SAT in August 2015. Appeal dismissed by Hon'ble SC. SEBI to appoint a committee headed by ex CJI.

Recovery proceedings initiated against the company and its directors. Appeals filed by the company and its directors/promoters against recovery proceedings in SAT.

Additionally, SEBI's AO has imposed monetary penalty of Rs. 7,269 crores on the company and its directors for violation of SEBI Regulations.



## DPI-CASE

An unlisted company raised funds from investors via OFCD without issuing a Prospectus. Total amount raised Rs. 24000 crores approx.

SEBI Order in June 2011 for refund of money to investors, upheld by SAT in October 2011 and by SC in August 2012.

Company claimed that approx. 2.2 crore investors are there. As against this, only 11296 claims received by SEBI after wide publication out of which only 8040 found genuine by SEBI. Principal refunded to them approx. Rs. 30 crores.

As against SC directions to deposit the collected amount with SEBI, actual amount received by SEBI is only Rs. 9000 crore.

Promoter and 2 Directors under judicial custody. Monitoring by a former SC Judge.

# IMPORTANT CASES

**SEBI Vs Sriram Mutual Fund (2006) 5 SCC 361** – SEBI imposed a penalty of Rs. 2 Lakh on Sriram Mutual Fund for repeatedly exceeding limit of trading through associate broker. SAT set aside the penalty holding that exceeding of limit was not intentional and hence in the absence of *mens rea* penalty could not have been imposed. Hon'ble SC held that *mens rea* is not required for imposing penalty under the SEBI Act as *mens rea* is not an essential ingredient for civil statutory violations under the SEBI Act.

**BSE Vs. Kandalgaonkar – (2015) 2 SCC 1** – A broker, who was member of BSE was declared defaulter. Income Tax Department claimed precedence of its claims over other dues owned by the broker, in respect of assets deposited by the broker at the time of taking membership of BSE. Hon'ble Bombay High Court held that dues of Income Tax Department being dues of Government shall have precedence over all other dues in terms of Section 73(3) of CPC. Hon'ble SC held that in case of a defaulter broker stock exchange have a lien, in terms of its Bye laws which makes it a statutory lien and thus gives precedence to the claims of the stock exchange over other dues including Government dues.

# IMPORTANT CASES

**SEBI Vs. Ajay Aggarwal – (2010) 3 SCC 765 –** Certain misstatements were made in the prospectus of a company, issued during the public issue made in the year 1993, of which Appellant was MD at that time. SEBI issued SCN on 22.12.1999 *inter alia* under Section 11B of the SEBI Act which was inserted on 25.01.1995, and passed an order of debarment of five years against appellant. The question was whether Section 11B could have been applied retrospectively. Hon'ble Court held that there is no question of retrospective applying Section 11B in the present case because at the time of passing the order dated 31.03.2004, SEBI was duly empowered to issue such directions as the Section was on the statute book. It was further held that Section 11B being procedural in nature can be applied retrospectively.

**SEBI vs. M/s. S. Kumars Nationwide Ltd. and Anr. –** The company made a preferential allotment which was not in compliance with Preferential Issue Guidelines. Stock Exchange refused permission to list shares on this ground. Company approached SEBI to seek exemption under Clause 17.2.1A of DIP Guidelines, from not complied provisions. SEBI refused to grant exemption. Company approached SAT in appeal which granted exemption contemplated under Clause 17.2.1A. SEBI approached Supreme Court on question whether SAT can exercise power to grant exemption, a power which is originally vested in SEBI. Hon'ble Court allowed the appeal and held that SAT can not exercise powers to grant exemption which is conferred upon SEBI.

# IMPORTANT CASES

**BSE Broker Forum v. SEBI – (2001) 3 SCC 482** – Hon'ble Court was confronted with the question whether there should be a quid pro quo between the fees imposed by the SEBI on brokers and the services rendered to Brokers by SEBI. Hon'ble Supreme Court held that SEBI is authorised by law to collect broker fee under Regulation 10 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. Further held that the said broker fee is a combination of regulatory cum registration fee, hence quid pro quo is not relevant.

**SEBI v. Pan Asia Advisors Ltd. & Anr. – (AIR 2015 SC 2782)** - Issue involved was whether GDR comes within the definition of security as per Section 2(h) of SCRA. Hon'ble Supreme Court held that GDR falls within the definition of security under Section 2(h) which includes rights or interest in securities. Therefore, SEBI had jurisdiction to initiate proceedings against the Lead Managers of GDRs for fraud committed by them on sale/purchase of the underlying shares in India.

# IMPORTANT CASES

**SEBI Vs. M/s. Saikala Associates** (AIR2009SC2540 ) - Important question that arose for consideration before the Hon'ble SC in the aforesaid appeals filed by SEBI were as to whether the Hon'ble SAT exercising power under Rules 21 of SAT (Procedure) Rules, 2000 can convert the suspension of certificate of registration imposed by SEBI into monetary penalty. Hon'ble Supreme Court set aside the order of SAT converting suspension of certificate of registration imposed by SEBI to a monetary penalty and agreed with SEBI that SAT has no power to convert the nature of the penalty.

**SEBI v. Roofit Industries Ltd. - (2016) 1 Comp LJ 1 (SC), 2015 (12) SCALE 642** - Factors listed in Section 15J of SEBI Act can alone be used by AO while determining quantum of penalty because of the word 'namely' used in Section 15J. However, after the amendment made in the year 2002, Section 15J which confers discretion on AO for deciding quantum of penalty, has application only in cases of Section 15F(a) and 15HB. For all other violations penalty has to be in accordance with respective charging sections in Chapter VIA.

# KEY STATISTICS ON SEBI'S FUNCTIONS

No. of regulations framed	-	<b>44</b>
No. of Stock Exchanges recognized	-	<b>19</b>
No. of Brokers registered	-	<b>3,744</b>
No. of Sub-brokers registered	-	<b>42,351</b>
No. of Foreign Portfolio Investors (Including Deemed FII)		<b>8,214</b>
No. of Custodians registered	-	<b>19</b>
No. of Depositories registered	-	<b>2</b>
No. of Depository Participants registered		
▪ CDSL		<b>282</b>
▪ NSDL		<b>683</b>

As per SEBI Annual Report for 2014-15

# KEY STATISTICS (CONTD..)

No. of Merchant Bankers registered	-	<b>197</b>
No. of Bankers to an issue registered	-	<b>60</b>
No. of Debenture Trustees registered	-	<b>32</b>
No. of Credit Rating Agencies registered	-	<b>6</b>
No. of Registrar to an Issue	-	<b>72</b>
No. of Portfolio Managers registered	-	<b>166</b>
No. of Mutual Funds registered	-	<b>47</b>



**THANK YOU**