

# CAPITAL MARKET AND SECURITIES LAWS

CS VIKAS VOHRA | *Corporate Baba*



## HIGHLIGHTS

- Covers all the major concepts of the subject
- Coloured book for better learning
- Important concepts highlighted for quick revision

WIPRO 303.35 ▼ 23    YES ACADEMY 700 ▲ 70    ZEE 124 ▼ 1  
59 ▲ 16    ITC 487 ▼ 18    RELIANCE 1240 ▼ 90    TCS 4174 ▲ 14



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	Capital Market & Securities Laws	



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	Jurisprudence, Interpretation & General Laws	Corporate Funding & Listings in Stock Exchanges
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To begin with, we endorse our heartfelt thank you for showing your trust and confidence in YES Academy. We take pride to welcome you to this prestigious Academy, foundations of which are based on commitment, quality education and integrity. It has been our constant endeavor to deliver better and better. In our attempt to achieve mark of excellence and beyond, we would be even more grateful to have received your continued faith and love. We assure you, your trust will not go in vain and as reflected by our Vision Statement, we would continue to produce Best Company Secretaries as we have been doing for almost a decade now.

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**On behalf of TEAM YES**

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**CS VIKAS VOHRA**  
(Founder)

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(Founder)



Whether you like it or not, the inherent question in everyone is – Whats in it for me? It will be your folly to ignore this aspect of life. Some are motivated by money, some by a sense of purpose, some by a learning environment, some need cool environments and some need challenging environments. Nothing works for all. Something works for all. Everybody has a dominant need, which keeps changing as they keep growing. Every heart has a yearning. In that sense, we are all the same and we are all different.

The key is to take others perspective into consideration. Unless you see the world the way other sees it, you cannot empower the world to see it the way you see it. Leadership is to step into others shoes and then empowering them to walk in the direction that's right for them and that's good for all. There is no one way for all the people. Leadership has to be customized.

People relate to you not for what you are with them but for what they can be when they are with you. Deep relationships are not built by making you understand me but in giving you the confidence that I have understood you. Even with children, they find you interesting only if you talk to them about what they are interested in. once they develop that interest in your company, then you can empower them.

*The secret is – TO SEE THROUGH OTHERS EYES!!!!*

*MY LOVE AND RESPECT TO.....*

To Rajlaxmi – My Soul. You are around

To my Mummy – You are my source of inspiration, your sacrifices showed me the right path every time I went wrong.

To my Papa – You taught me the ability to bounce back and stand still, come what may.

To every Student – Glad to have found so many teachers in you, my source of happiness, my strength.

To my Competitors – You added meaning and worth to my name – Vikas. Thank you for being so strong and amazing. You bring out the best in me.

To my Entire TEAM at YES – With your work, you set up new benchmarks for me each day, and give me reasons to stride longer. Thank you for being so perfect in every pursuit.

To YES Academy and to every person around, my well wishers, my critics for helping me rise in every walk. Its your blessings, which lets me survive and go far.

*Some latest abbreviations at DALAL STREET -*

*BSE - Bombay Se Exit*

*NSE - Nation Se Exit*

*F&O - Future Over*

*NIFTY - No Income For This Year*

*FII - Fraudulent International Investors*

*HNI - Has No Idea*

*PMS - Pre Mediated Scam*

*SIP - Suicide by Investing Patiently*

*EBITDA - Exit Before It Tumbles Down Again*

*Sandesh....*

*Dear Reader,*

*At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on 4<sup>TH</sup> edition of **Capital Market and Securities Laws (New Syllabus)** for CS Executive.*

*While writing this book, I have taken every possible effort to cover each and every provision as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. Howsoever, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at [vikasvohralectures@gmail.com](mailto:vikasvohralectures@gmail.com) or get in touch directly on my cell at +91 8888 078 078.*

*Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run,*



shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.

It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your "Being Successful" factors and start chasing them every morning as you get up.

*"Do everything no matter how unglamorous, to the best of your ability"*

*Because in the end, what shall matter would be quality of life you spent  
and the smiles you lent to the people around you !!!!*

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

*Try to  
Reinvent  
Yourself*

**VIKAS VOHRA (Corporate Baba)**

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## CHAPTER 12 - ACQUISITION OF SHARES & TAKEOVERS



### MEANING AND CONCEPT OF TAKEOVER

The term takeover is not defined in the Companies Act, 2013. Broadly speaking, **takeover refers to acquisition of company by another company.**

Takeover is an acquisition of shares carrying voting rights in a company in order to gain **control over the management of the company.** It takes place when an individual or a group of individuals or a company acquires control over the assets of a company either by acquiring majority of its shares or by obtaining control of the management of the business and affairs of the company.

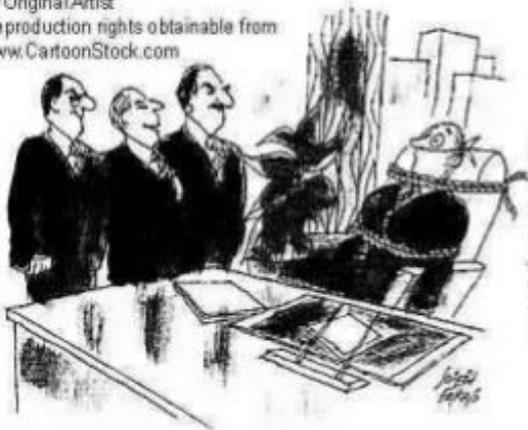
## KINDS OF TAKEOVER

# Takeover : Types

### Hostile Takeover

A takeover attempt that is strongly resisted by the target firm.

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"Consider this an unfriendly takeover, if you wish,  
but takeover it is!"

### Friendly Takeover

Target company's management and board of directors agree to a merger or acquisition by another company.

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### Friendly takeover

Friendly takeover means a takeover *done with the consent of board of directors of both the parties ie the Acquirer and the Target Company*. In friendly takeover, there is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all the shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.



### Hostile takeover

The word hostile means *without the will and intention of the management of the Target Company*. When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently takes efforts to gain control against the wishes of existing management, such acts of acquirer are known as 'hostile takeover'. Such takeovers are hostile on management and are thus called hostile takeover. Hostile takeovers directly made to the shareholders of Target Company has resulted in a multiple defensive strategies-by corporate from being taken over by the company

### Bailout takeover

Takeover of *a financially sick company by a profit earning company to bail out the weak company* is known as bail out takeover. A bail out takeover takes place with the approval of the Financial Institutions and banks since the objective is to revive the financially weak company and banks normally have a charge on the assets of the company.

## LEGAL ASPECTS OF TAKEOVER

The legislations/regulations that mainly govern takeover is as under:

1. *SEBI (SAST) Regulations 2011*
2. *Companies Act, 2013*
3. *Listing Agreement*

## IMPORTANT DEFINITIONS [REGULATION 2]

### ACQUIRER [REG. 2(1) (A)]

"Acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

Thus, acquirer may be "any person"-even a foreign company-i.e. company incorporated outside India. If a foreign company acquires shares of its listed Indian subsidiary company, the acquirer



(foreign company) is bound to -make open offer by way of Public announcement before acquiring shares or voting rights in the listed Indian subsidiary company.

Further, the term 'any person' will encompass natural persons as well as artificial persons.

The mere fact that a person is a promoter does not make him an acquirer, unless it is shown that he either intends to acquire or is acting in concert with the acquirer for the acquisition of shares of the target company. The definition of acquirer does not include a promoter, but includes persons acting in concert with an acquirer. The question as to whether a person is acting in concert with the acquirer is essentially a question of fact. A promoter may not act in concert with the acquirer, whereas a stranger might

### ACQUISITION [REG. 2(1)(B)]

"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

### CONTROL [REG. 2(1) (E)]

"Control" includes the **right to appoint majority of the directors** or to **control the management or policy decisions** exercisable -by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.

### FREQUENTLY TRADED SHARES [REG. 2(1)(J)]

"Frequently Traded Shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the \* calendar month in which the public announcement is made, is **at least ten per cent of the total number of shares of such class of the target company:**



Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.

### **FUGITIVE ECONOMIC OFFENDER**

Fugitive economic offender" shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018)] [Reg. 2(1)(ja)]

### **IDENTIFIED DATE [REG. 2(1)(K)]**

"Identified Date" means the date falling on the 4<sup>th</sup> working day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent.

### **IMMEDIATE RELATIVE [REG. 2(1)(L)]**

"Immediate Relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.

It may be noted that grant-parents, father-in-law/mother-in-law/brother-in-law, uncles, nephews, grandparents, great grandparents, etc. are not "immediate relatives".

### **PERSON ACTING IN CONCERT [REG. 2(1)(G)]**

"Person acting in concert" means.—

Persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights" in, or exercise of control over the target company.

Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,-



- A company, its holding company, subsidiary company and any company under the same management or control;
- A company, its directors, and any person entrusted with the management of the company;
- Directors of companies referred to in items (i) and (ii) of this sub-clause and associates of such directors;
- Promoters and members of the promoter group;
- A mutual fund, its sponsor, trustees, trustee company, and asset management company;
- A collective investment scheme and its collective investment management company, trustees and trustee company;
- A venture capital fund and its sponsor, trustees, trustee company and asset management company;
- A foreign institutional investor and its subaccounts;
- A merchant banker and its client, who is an acquirer;
- A portfolio manager and its client, who is an acquirer;
- Banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual

### JUDICIAL PRONOUNCEMENT

- Supreme Court in the case of *M/S Daiichi Sankyo Company v. Jayaram Chigurupati & Ors* held that what does the deeming provision do?
- The deeming provision simply says that in case of specified kinds of relationships, in each category, the person paired with the other would be deemed to be acting in concert with him/it.
- What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the pair.
- For example, if a company or its holding company makes or agrees to make a move for substantial acquisition of shares etc. of a certain target company then it would be presumed that the move is in pursuance of a common objective and purpose jointly shared by the holding company and the subsidiary company. But the mere fact that two companies are in the



relationship of a holding company and a subsidiary company, without anything else, is not sufficient to comprise "persons acting in concert". Something more is required to comprise "persons acting in concert" than the mere relationship of a holding company and a subsidiary company.

- There may be hundreds of instances of a company having a subsidiary company but to dub them as "persons acting in concert" would be quite ridiculous unless another company is identified as the target company and either the holding company or the subsidiary make some positive move or show some definite inclination for substantial acquisition of shares etc. of the target company.

### TARGET COMPANY [REG. 2(1)(2)]

"Target Company" means a **LISTED INDIAN COMPANY/ LISTED INDIAN BODY CORPORATE OR corporation** established under a Central legislation, State legislation or Provincial legislation.

### TENDERING PERIOD [REG. 2(1)(2A)]

"Tendering Period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.

### VOLUME WEIGHTED AVERAGE MARKET PRICE [REG 2(1)(2B)]

"Volume Weighted Average Market Price" means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange.

### VOLUME WEIGHTED AVERAGE PRICE [REG. 2(1)(2C)]

"Volume Weighted Average Price" means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought.

### WEIGHTED AVERAGE NUMBER OF TOTAL SHARES [REG. 2(1)(2D)]

"Weighted Average Number of Total Shares" means the number of shares at the -beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period\* multiplied by a time-weighting factor.



### WILFUL DEFAULTER

"wilful defaulter" means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such [Reg. 2(1)(ze)]

### SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL OR INITIAL TRIGGER THRESHOLD [REGULATIONS 3-9]

- 1) Without giving a public announcement for open offer, no acquirer shall acquire shares or voting rights in a target company along with shares or voting rights, if any, held by him in person or with persons acting in concert, entitle them to exercise **twenty-five per cent or more of the voting rights** of such target company.
- 2) Without giving a public announcement for open offer, any acquirer along with his PAC's, who already holds twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding (75% or 90%), **shall not acquire any shares or voting rights more than five percent within any financial year in such target company.**

### CREEPING ACQUISITION TRIGGER [REG. 3(2)]

CREEPING ACQUISITION MEANS SLOW AND STEADY ACQUISITION OF SHARES BY THE ACQUIRER IN TARGET COMPANY. IN CREEPING ACQUISITION ACQUIRER CAN ACQUIRE **MAX 5% VOTING RIGHTS OF TARGET CO IN EACH FINANCIAL YEAR.**

The creeping acquisition route is meant to facilitate consolidation by persons already in control or holding substantial number of shares.

An acquirer who (together with PACs) holds 25% or more voting rights in a target company, but less than the maximum permissible non-public shareholding [i.e., Maximum Permissible Non-Public (Promoters') Shareholding is 75% and Minimum Permissible Public shareholding is



25%], is allowed to acquire additional voting rights in the target company to the extent of upto 5% within a financial year ending on 31st March, without making an open offer [Regulation 3(2)]. **If he acquires more than 5% additional voting rights in a financial year ending on 31st March, he will have to make an open offer.** This is subject to their (acquirer and PACs) aggregate post acquisition shareholding not exceeding the maximum permissible non-public shareholding.

Thus, creeping acquisition can be made at the maximum rate of 5% in any one financial year without complying with the requirement of mandatory public offer by way of public announcement, provided that the post-acquisition shareholding of acquirer together with persons acting in concert with him shall not increase beyond 75%.

The open offer obligation would also apply to acquisition of shares by any person from other persons acting in concert with him such that the individual shareholding of the person acquiring shares equals or exceeds the stipulated threshold of 5% although the aggregate shareholding along with persons acting in concert may remain unchanged. [Reg. 3(3)]

It may be noted that Regulations 3(1) and 3(2) are mutually exclusive so that an acquisition can trigger either regulation 3(1) or (but not and) regulation 3(2). It is the percentage of the acquirer's shareholding before and after an acquisition that determines whether the acquisition triggers regulation 3(1) or regulation 3(2).

### ONE TIME EXEMPTION FOR CREEPING ACQUISITION

The acquisition beyond 5% but up to 10% of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company. This exemption was only permitted through preferential issue to promoters and not otherwise.

**Question:**



What is the basis of computation of the creeping acquisitions limit under Regulation 3(2) of Takeover Regulations 2011?

**Answer:**

For computing acquisitions limits for creeping acquisition specified under regulation 3(2), gross acquisitions/ purchases shall be taken in to account thereby ignoring any intermittent fall in shareholding or voting rights whether owing to disposal of shares or dilution of voting rights on account of fresh issue of shares by the target company. SEBI in the interpretative letter dated 18th September, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 as requested by M/s Adani Properties Private Limited has held that an exempt acquisition would not be counted towards computing acquisitions on a gross basis.

**Example:**

Mr. A is contemplating acquisition of XYZ Limited, a listed entity. He presently holds 23% and his brother, who is having common objective holds 3%. Together their holding is 26%. Mr. A, in view of creeping acquisition limits, desires to further acquire 3% assuming the 5% ceiling in every financial year.

**Answer:**

In view of Regulation 3(3) as discussed above, though together they hold 26% and can avail 5% ceiling, but in case Mr. A on individual basis crossing the threshold of 25% or more (since presently he holds 23% and further contemplates to acquire 3% more), he will be required to make open offer. However, in given case, if his brother only acquires 3% and increase their total holding to 29% then there will be no requirement of Open Offer.

## ACQUISITION OF CONTROL [REGULATION 4]



Regulation 4 provides the following:

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target, company, in accordance with these-regulations.

### Explanation

If any acquirer wants to acquire control over a target company, he has to make public announcement to acquire shares from the shareholders of the target company.

As per Reg. 2(1) (e), Control includes acquisition, directly or indirectly, of any of the following rights by the acquirer:

- 1) Right to appoint majority of the directors;
- 2) Right to control the management;
- 3) Right to control the policy decisions.

### VOLUNTARY OFFER [REGULATION 6]

Shareholders holding shares entitling them to **exercise 25% or more of the voting rights in the target company** may, without breaching minimum public shareholding requirements under the listing agreement, voluntarily make an open offer to consolidate their shareholding subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding. [Regulation 6(1)]



The facility to voluntarily make an open offer shall not be available if in the proximate past (preceding 52 weeks), such persons (acquire to and PACs holding 25% or more voting rights) have made acquisitions without open offer within the creeping acquisition limit of 5%. [The first proviso to Regulation 6(1)]

Such an acquirer is prohibited from making acquisitions outside the open offer during the offer period and also prohibited from any further acquisitions for six months after the open offer except pursuant to another voluntary open offer. [Regulation 6(2)]

### Wilful Defaulter

Notwithstanding anything contained in these regulations, no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations. However, this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance with regulation 20 of these regulations upon any other person making an open offer for acquiring shares of the target company.

### Fugitive Economic Offender

Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.

## OFFER SIZE [REGULATION 7]

Regulation 7 provides the following:

Any mandatory open offer would be for **at least 26%**, of total shares of the target company, as of tenth working day from the closure of the tendering period [Regulation 7(1)].



A **voluntary open offer** can be made for the acquisition of shares representing **at least 10%** but shall not exceed 'such number of shares which will take the holding of the acquirer and PACs to beyond maximum non-public shareholding permitted under the listing agreement. [Reg. 7(2)] Upon a competing offer being made, such an acquirer would be permitted to increase his offer size to a normal full-sized open offer within fifteen working days. [Proviso to Reg. 7(2)].

### DISCLOSURE OF ACQUISITION AND DISPOSAL [REGULATION 29]

**Regulation 29(1)** provides that any acquirer along with any PAC, who acquires shares or voting rights in a target company entitle them to **5% cent or more** of the voting rights in such target company shall disclose their aggregate shareholding and voting rights in such target company in a specified form.

**Regulation 29(2)** provides that any acquirer, who together with PACs **holds 5%** or more of the voting rights in a target -company, shall disclose every acquisition or disposal of shares of such target company representing **2% or more change of the voting rights** in such target company along with their aggregate shareholding and voting rights.

Shares taken by way of encumbrance shall be treated as an acquisition; shares given upon release of encumbrance pledge shall be treated as a disposal. However, this requirement shall not apply to a scheduled commercial bank or public financial institution in connection with a pledge of shares for securing indebtedness in-the ordinary course of business. The word encumbrance means taking loan against such shares.

**Regulation 29(3)** provides that the above disclosures shall be made **within two working days** of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-

- a. every **stock exchange** where the shares of the target company are listed; and
- b. The **target company** at its registered office.

**Note:**

- Shares taken by way of encumbrance shall be treated as an "acquisition".
- Share given upon release of encumbrance shall be treated as a "disposal"
- The requirement as listed above shall not apply to a Scheduled Commercial bank or public financial institution or a housing finance company or a systematically important non-banking financial company as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

**CONTINUAL DISCLOSURES [REGULATION 30]**

**Regulation 30(1)** provides that **every person**, who together with PACs holds **25% shares or voting rights** them to exercise of the voting rights in a target company (substantial shareholder), shall disclose their aggregate shareholding as of 31st of March, in such target company in such form as may be specified. **Disclosure shall be made within 7 working days from the end of each financial year to-**

- a. every **stock exchange** where the shares of the target company are listed; and
- b. The **target company** at its registered office.

**Regulation 30(2)** provides that the **promoter of every target company** shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the 31st day of March, in such target company in such form as may be specified. **Disclosure shall be made within 7 working days from the end of each financial year to,-**

- a. every stock exchange where the shares of the target company are listed; and
- b. The target company at its registered office.

**DISCLOSURE OF ENCUMBERED SHARES [REGULATION 31]**

The word **encumbrance means loan against a particular asset**. Here it means loan obtained or repaid against shares. The promoter of every target company shall disclose the following:

- details of shares in such -target company encumbered by him or by persons acting in concert with him;



- details of any invocation of such encumbrance; and
- Details of release of such encumbrance.

The disclosures required as above shall be made within **seven working days from the creation or invocation** or release of encumbrance, as the case may be to,-

- every stock exchange where the shares of the target company are listed; and
- The target company at its registered office.

The promoter of every target company shall declare on a **yearly basis** that he, along with persons acting in concert, has **not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.**

The declaration required under sub-regulation (4) shall be made within **seven working days** from the end of each financial year to -

- every **stock exchange** where the shares of the target company are listed; and
- the **audit committee** of the target company.

### INDIRECT ACQUISITION OF SHARES OR CONTROL

Indirect acquisition means the acquisition of shares, voting rights or control over any other company which would enable the acquirer of shares, voting rights or control to exercise such percentage of voting rights, which would otherwise have triggered an open offer process.

Certain indirect acquisitions are regarded as 'deemed direct acquisitions' if such indirect acquisition satisfy the following conditions such as:

- the **proportionate net asset value** of the target company as a percentage of the **consolidated net asset value** of the entity or business being acquired **exceeds 80 percent**; or
- the **proportionate sales turnover** of target company as a percentage of the **consolidated sales turnover** of the entity or business being acquired **exceeds 80 percent**; or
- the **proportionate market capitalisation** of the target company as a percentage of the **enterprise value** for the entity or business being acquired **exceeds 80 percent**;



In case of indirect acquisitions where public announcement has been made, an amount equivalent to hundred per cent of the consideration payable in the open offer shall be deposited in the escrow account.

Further, under regulation 18(11) in case, the acquirer is unable to make payment to the shareholders who have accepted the open offer within such period, the acquirer shall pay interest for the period of delay to all such shareholders whose shares have been accepted in the open offer, at the rate of 10% per annum.

### OPEN OFFER PROCESS [REGULATIONS 12-23]

1. Appointment of **merchant banker** prior to the Public Announcement (PA).
2. The **Public Announcement** of an open offer shall be sent to all the stock exchanges on which the shares of the target company are listed.
3. **Opening of Escrow Account** - 2 working days prior to the date of the detailed public statement towards security for performance of his obligations under these regulations.
4. **Detailed public statement** - within 5 working days from the date of public announcement.
5. Filing of **Draft Letter of Offer with SEBI** and send copy to Target company and Stock Exchanges - within 5 working days from detailed public statement.
6. **Dispatch Letter of Offer** - within 7 working days of receiving comments from SEBI.
7. Upward revision of Offer price, if any by Acquirer - prior to the commencement of the last 1 working day before the commencement of the tendering period.
8. **Recommendation of Committee of Independent Directors** to be published - atleast 2 working days before the commencement of the tendering period.
9. **Tendering period: commencement** - shall start not later than 12 working days from the date of receipt of comments from the Board and to remain open for 10 working days.
10. Tendering period to be closed after 10 working days.
11. **Payment of Consideration**- within 10 working days from the last day of tendering period.
12. **Post offer Advertisement** - within 5 working days from closure of offer period.

## AUTOMATIC EXEMPTIONS

- (1) (a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being-
- (i) immediate relatives;
  - (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;
  - (iii) a company, its subsidiaries, its holding company, other subsidiaries of such - holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;
  - (iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing regulations or the listing agreement;
  - (v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing regulations or as the case may be, the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company;

However, for purposes of availing of the exemption under this clause, -

- (i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined; and
- (ii) The transferor and the transferee shall have complied with applicable disclosure requirements set out in these regulations.



- (b) acquisition in the ordinary course of business by, -
- (i) an underwriter registered with the SEBI by way of allotment pursuant to an underwriting agreement in terms of the SEBI (ICDR) Regulations, 2018;
  - (ii) a stock broker registered with SEBI on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;
  - (iii) a merchant banker registered with SEBI or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of the SEBI (ICDR) Regulations, 2018;
  - (iv) any person acquiring shares pursuant to a scheme of safety net in terms of the then existing SEBI (ICDR) Regulations, 2018;
  - (v) a merchant banker registered with SEBI acting as a stabilising agent or by the promoter or re-issue shareholder in terms of the SEBI (ICDR) Regulations, 2018;
  - (vi) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
  - (vii) a Scheduled Commercial Bank, acting as an escrow agent; and
  - (viii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.
- (c) acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement. However, both the acquirer and the seller are the same at all the stages of acquisition; and full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.
- (d) acquisition pursuant to a scheme, -
- (i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification or re-enactment thereto;
  - (ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger,



pursuant to an order of a court or a tribunal or a competent authority under any law or regulation, Indian or foreign; or

(iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal under any law or regulation, Indian or foreign, subject to, -

A. the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and

B. where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

(da) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(f) acquisition pursuant to the provisions of SEBI (Delisting of Equity Shares) Regulations, 2021;

(g) acquisition by way of transmission, succession or inheritance;

(h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 47 of the Companies Act, 2013;

(i) acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring implemented in accordance with the guidelines specified by RBI; However, the conditions specified under sub-regulation (6) of regulation 158 of the SEBI (ICDR) Regulations, 2018 are complied with;



- (j) increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.
- (1) An increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of regulation 3, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under regulation 3.
- (2) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under subregulation (1) of regulation 3 and regulation 4.
- (3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in regulation 3(1) within ninety days from the date of the closure of the said buy back offer.
- (4) The following acquisitions shall be exempt from the obligation to make an open offer-
- (a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;
- (b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfilment of the following conditions, -
- (i) the acquirer has not renounced any of his entitlements in such rights issue; and
- (ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of, -
- A) the volume weighted average market price of the shares of the target company during a period of sixty ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of



shares outstanding after allotment under the rights issue. However, such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and

B) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue.

C) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares. However:

(i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;

(ii) in the case of a shareholder resolution, voting is by way of postal ballot;

(iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 68 of the Companies Act, 2013; and

(iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company. However, where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;

D) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;

E) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

F) acquisition of shares in a target company from a venture capital fund or Category I Alternative Investment Fund or a foreign venture capital investor registered with the SEBI, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.



- (5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.
- (6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.
- (7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to SEBI giving all details in respect of acquisitions, along with a non-refundable fee of rupees one lakh fifty thousand by way of direct credit in the bank account through NEFT/ RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of SEBI.

**Question:** Mr. X is Promoter of ABC (India) Limited (Target Company). Mr. X is presently holding 53,073 shares constituting 0.52% of the paid up equity capital of the Target Company. Further, Mr. X has been allotted 75,000 convertible warrants, convertible in to equity. After conversion of warrant in to equity the shareholding of Mr. X will increase from 0.52% to 1.26% of the paid up equity capital. Further, Ms. Z who is Mr. X's elder sister's daughter and holding 7,80,000 equity shares constituting 7.76% of the paid up equity share capital of the Company. Ms. Z is a foreign shareholder and she wanted to gift (Off Market Transaction) her entire shareholding to her mother Mrs. Y and in turn Mrs. Y wanted to gift the entire shareholding to Mr. X. If the entire transaction as contemplated, if concluded, then the shareholding of Mr. X will increase from 0.52% to 9.02% and the shareholding of the promoter group will increase



from 34.28% to 43.30%. You have been engaged as Practising Company Secretary by Mr. X to advise on the following:

- a) Is this increase in the promoter group shareholding would trigger open offer requirements in terms of Regulation 3(2) of the SEBI (SAST) Regulation, 2011.
- b) Further, Whether such transaction would be exempted under Regulation 10 of the SEBI (SAST) Regulations, 2011.

**Answer:** The set of facts as disclosed in the question contains three transactions. First, conversion of convertible warrants in to equity. Secondly, transfer of shares through off market transaction from Ms. Z to Mrs. Y and thirdly, transfer of shares through off market transaction from Mrs. Y to Mr. X. Regarding the first transaction, the trigger and open offer requirements, if any has to be considered at the time of conversion of warrants in to equity as the same would depends on the shareholding pattern of the promoter and promoter's group prevailing at the time of conversion of warrants in to equity shares. Regarding the second and third transaction, considering that Ms. Z, Mrs. Y and Mr. X are immediate relative thus they would be considered as PAC in terms of Regulation 2(1)(g) of the SEBI (SAST) Regulations, 2011. Therefore, the shareholding of the promoters along with PACs would increase more than 5% limit and would trigger open offer requirements under Regulation 3(2) of the SEBI (SAST), 2011. However, the transaction is between immediate relatives, the transaction would be exempt from the obligation to make an open offer as per Regulation 10(1)(a)(i) of the SEBI (SAST), Regulations, 2011 subject to the compliance with the conditions as mentioned under the proviso to Regulation 10(1)(a)(i) and Regulation 10(5), (6) and (7) of the SEBI (SAST), Regulations, 2011. Further, SEBI in the interpretative letter dated 18th September, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 as requested by M/s Adani Properties Private Limited has held that an exempt acquisition would not be counted towards computing acquisitions on a gross basis.

## POWER OF SEBI TO RELAX STRICT ENFORCEMENT OF THE REGULATIONS

### Exemption from enforcement of the regulations in special cases

SEBI may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets. Any exemption granted by the SEBI shall be subject to the applicant satisfying such conditions as may be specified by the SEBI including conditions to be complied with on a continuous basis.

*Explanation.* — For the purposes of these regulations, “regulatory sandbox” means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board.

## PRICING UNDER REG 8 & REG 9

### ADDITION

#### Regulation 8(17)

The effect on the price of the equity shares of the target company due to material price movement and confirmation of reported event or information **may be excluded** as per the framework specified under regulation 30 (11) of SEBI (LODR) Regulations, 2015 for determination of the offer price under this regulation.

#### Regulation 9(6)

The effect on the price of the listed equity shares, which are offered as consideration, due to material price movement and confirmation of reported event or information **may be excluded** as per the framework specified under regulation 30 (11) of SEBI (LODR) Regulations, 2015 for determination of the price of such equity shares under this regulation.

## CHAPTER 13 - PROHIBITION OF INSIDER TRADING



### INTRODUCTION

*Insider trading came into existence from the very inception of trading of securities of a company and is now a challenge faced by investors all over the world. U.S. was the first country to formally enact legislation. In India, many committees were formed which made regulations to keep a check on the practice of insider trading.*

*The Patel Committee in 1986 in India defined Insider Trading as "Insider trading generally means trading in the shares of a company by the persons who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but which is not available to others."*

*The previous regulations which were formulated in 1992 - SEBI (Insider Trading) Regulations were punitive and were amended in 2002. The amendment in 2002 came to be known as SEBI (Prohibition of) Insider Trading) Regulations, 1992 and they were preventive in nature.*

## IMPORTANT DEFINITIONS

### Insider



"Insider" means any person who is:

- i) a **connected person**; or
- ii) in **possession of or having access to unpublished price sensitive information**;

### Connected person

Connected person" means,-

Any person who is or has during the **six months** prior to the concerned act been associated with a company, **directly or indirectly**, in any capacity including by reason of **frequent communication** with its **officers** or by being in any **contractual, fiduciary or employment** relationship or by being a **director, officer or an employee** of the company or holds any position including a **professional or business relationship** between himself and the company whether **temporary or permanent**, that allows such person, **directly or indirectly**, access to unpublished price sensitive information or is **reasonably expected to allow such access**.

### Person deemed to be connected person

"Person is deemed to be a connected person", if such person-

- (a) an immediate relative of connected persons specified in clause (i); or
- (b) a holding company or associate company or subsidiary company; or
- (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or



- (d) an investment company, trustee company, asset management company or an employee or director thereof; or
- (e) an official of a stock exchange or of clearing house or corporation; or
- (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- (g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
- (h) an official or an employee of a self-regulatory organization recognised or authorized by SEBI; or
- (i) a banker of the company; or
- (j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;

### Generally available information

"Generally available information" means information that is **accessible to the public on a non-discriminatory basis**, and **shall not include unverified event or information reported in print or electronic media**.

### Immediate relative

"Immediate relative" means a **spouse** of a person, and includes **parent, sibling, and child** of such person or of the spouse, any of whom is **either dependent financially** on such person, or **consults such person** in taking decisions relating to trading in securities;

### Trading

"trading" means and includes **subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities**, and "trade" shall be construed accordingly;



### Unpublished price sensitive information

"Unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -

- (i) **Financial results;**
- (ii) **Dividends;**
- (iii) **Change in capital structure;**
- (iv) **Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;**
- (v) **Changes in key managerial personnel; and**

### Extracts from SAT Order dated 12th July 2019 in the matter of Mr. G. Bala Reddy v/s SEBI

In this case a Company had secured work orders but the same were not disclosed to stock exchange as the contract was not yet issued to the Company and the Company was only found to be the lowest price bidder. During this period, certain entities had dealt in the shares of this Company with a contention that being the lowest bidder of a contract is a usual course of business and hence, does not amount to UPSI. SAT held that considering that the promoter was aware that the Company was LI (lowest bidder), this information was UPSI and hence it was incumbent upon Promoters not to deal in the scrips of the Company directly or indirectly.

### Compliance officer

Compliance Officer means

- any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,
- who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,

- monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

### COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION



Regulation 3 provides that *any person shall not:*

- *communicate, provide, or allow access to any unpublished price sensitive information; or*
- *procure from or cause the communication by any insider of unpublished price sensitive information;*
- *relating to a company or securities listed or proposed to be listed except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*
- *the board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of Code of Fair Disclosure and Conduct. The term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.*
- *Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall*



be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

- An unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:-

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;

(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

- The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

- The board of directors shall ensure that a structured digital database is maintained containing the names of such persons or entities with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

**Question:** What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary?

**Answer:** The listed company should maintain the names of the fiduciary or intermediary with whom they have shared information along with the Permanent Account Number (PAN) or other unique identifier authorized by law, in case PAN is not available. The fiduciary /



intermediary, shall at their end, be required to maintain details as required under the Schedule C in respect of persons having access to UPSI.

For example: If the listed company has appointed a law firm or Merchant Banker in respect of fund raising activity, it should obtain the name of the entity, so appointed, along with the PAN or other identifier, in case PAN is not available. The law firm or the Merchant Banker would in turn maintain its list of persons along with PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C, with whom they have shared the unpublished price sensitive information.

### TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION

Regulation 4 prescribes that insider shall not trade in securities which are listed or proposed to be listed on stock exchange when in possession of unpublished price sensitive information.

However there are certain exemptions:

1. When there is an **off-market transfer between promoters** who are aware of price sensitive information and both parties had made a conscious and informed trade decision. Such off-market trades shall be **reported by the insiders to the company within two working days**. **Every company shall notify** the particulars of such trades to the stock exchange on which the securities are listed **within two trading days** from **receipt** of the disclosure or from becoming aware of such information.
2. In the case of **non-individual insiders**, the **individuals who were in possession** of such unpublished price sensitive information were **different from the individuals taking trading decisions** and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; with an assurance that no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions;



3. The transaction was carried out through the **block deal window mechanism** between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
4. The transaction in question was carried out pursuant to a **statutory or regulatory obligation** to carry out a bona fide transaction.
5. The transaction in question was undertaken **pursuant to the exercise of stock options** in respect of which the exercise price was pre-determined in compliance with applicable regulations.
6. The **trades were pursuant to a trading plan**.

In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on SEBI. SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

**Whether creation of a pledge or invocation of pledge is allowed when trading window is closed?**

Yes, however, the pledgor or pledgee may demonstrate that the creation of the pledge or invocation of pledge was bonafide and prove this innocence under proviso to sub-regulation (1) of regulation 4.

### TRADING PLANS

Regulation 5 states that an insider would be required to submit trading plan in advance to the compliance officer for his approval. The compliance officer is also empowered to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the company are listed.



The trading plan shall comply with requirements as follows:

- It shall be submitted for a **minimum period of 12 months**.
- **No overlapping** of plan with the existing plan submitted by Insider.
- It shall set out either the **value of trades** to be effected or the **number of securities** to be traded along with the **nature of the trade** and the **intervals** at, or dates on which such trades shall be effected.
- Trading can **commence only after 6 months** from public disclosure of plan.
- **No trading between 20th day prior to closure of financial period and 2<sup>nd</sup> trading day after disclosure of financial results.**
- **Compliance officer to approve the plan.**
- not entail trading in securities for **market abuse**.

#### Rules regarding implementation of Trading Plan

- **Pre-clearance** of trades shall **not be required** for a trade executed as per an approved trading plan.
- Trading window norms and restrictions on **contra trade shall not be applicable** for trades carried out in accordance with an approved trading plan.
- The trading plan **once approved shall be irrevocable** and the insider shall mandatorily have to implement the plan.
- However, the implementation of the trading plan **shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available** at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.
- Upon approval of the trading plan, **the compliance officer shall notify the plan to the stock exchanges** on which the securities are listed



**Question:** Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?

**Guidance:** The Board of Directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

Extracts from SEBI's Interpretive Letter dated 19th July, 2018 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Hawkins Cookers Ltd. (HCL) regarding sale of shares by an Independent Director.

**Facts of the case:**

- a) One of the company's independent directors wants to sell his equity shares of the company.
- b) The sale shall be done as per a trading plan in accordance with regulation 4(iii) of the SEBI (PIT) Regulations, 2015.
- c) As per para 8 of Schedule B to the PIT Regulations, while applying for preclearance, the said director will have to submit an undertaking to the company to the effect that he is not in possession of any Unpublished Price Sensitive Information (UPSI).
- d) By virtue of participation in the Board meetings and access to the information that is shared at such meetings, the said director is deemed to be perpetually in possession of UPSI. Therefore, the said undertaking is not possible.

**Question:**

- a) Whether the said director may submit a trading plan as required for a plan to trade shares above INR 20 lakh in value and proceed with executing the same without giving the said undertaking.
- b) What procedure should be followed by the company and/ or the said director such that the said director may lawfully execute the trade?



### Guidance from SEBI:

- a) Regulation 5 of the PIT Regulations provides exception to the general rule that prohibits trading by insiders when in possession of UPSI. Further, regulation 5, inter alia, states that the trading plan shall be approved by the compliance officer and shall not entail trading in securities for market abuse. In this regard, regulation 5 (3) especially states that the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of PIT Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.
- b) In the absence of an approved trading plan, designated persons are subject to the requirements of code of conduct formulated by the company in terms of regulation 9 read with schedule B to the PIT Regulations.

## DISCLOSURES OF TRADING BY INSIDERS

### Regulations 6 (2)

The disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

### Regulations 6(3)

The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter, provided that trading in derivatives of securities is permitted by any law for the time being in force.

### Regulations 6(4)

The disclosures made shall be maintained by the company, for a minimum period of five years, in such form as may be specified.



## DISCLOSURES BY CERTAIN PERSONS

### Initial Disclosure [Regulation 7 (1)]

- (a) Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;
- (b) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

### Continual Disclosures [Regulation 7(2)]

- (a) Every promoter, member of the promoter group, designated person and the director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

## AUTOMATION OF CONTINUAL DISCLOSURES UNDER REGULATION 7(2) - SYSTEM DRIVEN DISCLOSURES

To begin with, the system driven disclosures shall pertain to trading in equity shares and equity derivative instruments by the entities.

The Depositories and Stock Exchanges shall make necessary arrangements such that the disclosures pertaining to PIT Regulations are disseminated on the websites of respective stock exchanges with effect from October 01, 2020.



The system would *continue to run parallel with the existing system i.e. entities shall continue to independently comply* with the disclosure obligations under PIT Regulations as applicable to them till **March 31, 2021**. As currently done, the disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges.

### DISCLOSURES BY OTHER CONNECTED PERSONS

Any company whose securities are listed on a stock exchange may require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company *in such form and at such frequency as may be determined by the company*.

This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

### CODE OF FAIR DISCLOSURE (REGULATION 8)

- (1) The board of directors of every company, whose securities are listed on a stock exchange, shall *formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information* that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.
- (2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be *promptly intimated to the stock exchanges* where the securities are listed.



## PRINCIPLES OF FAIR DISCLOSURE FOR PURPOSES OF CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE OF UNPUBLISHED PRICE SENSITIVE INFORMATION - SCHEDULE A [Sub-regulation (1) of Regulation 8]:

1. Prompt *public disclosure of unpublished price sensitive information* that would impact price discovery.
2. Uniform *dissemination of unpublished price sensitive information* to avoid selective disclosure.
3. *Designation of a senior officer as a chief investor relations officer* to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. *Appropriate and fair response to queries on news reports* and requests for verification of market rumours by regulatory authorities.
5. Ensuring that information *shared with analysts and research personnel is not unpublished price sensitive information*.
6. *Developing best practices to make transcripts or records of proceedings of meetings with analysts* and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
7. *Handling of all unpublished price sensitive information on a need-to-know basis*.

## MINIMUM STANDARDS FOR CODE OF CONDUCT

The regulations lay down the following minimum standards for Code of Conduct to regulate, monitor and report trading by insiders :-

1. The *compliance officer shall report to the board of directors* and in particular, shall provide *reports to the Chairman of the Audit Committee*, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors.
2. *All information shall be handled within the organisation on a need-to-know basis* and no unpublished price sensitive information shall be communicated to any person except in furtherance of the insider's legitimate purposes, performance of duties or discharge of his legal obligations.
3. The code of conduct shall contain norms for *appropriate Chinese Walls procedures*, and processes for permitting any designated person to "cross the wall".



4. Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities.
5. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.
6. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
7. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.
8. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting, or advising the company.
9. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.
10. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for preclearance of trades.
11. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in



possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

12. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

13. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the Act.

14. Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- a) immediate relatives
- b) persons with whom such designated person(s) shares a material financial relationship
- c) Phone, mobile and cell numbers which are used by them.
- d) the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation - The term "material financial relationship" shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer's annual income but shall exclude relationships in which the payment is based on arm's length transactions.

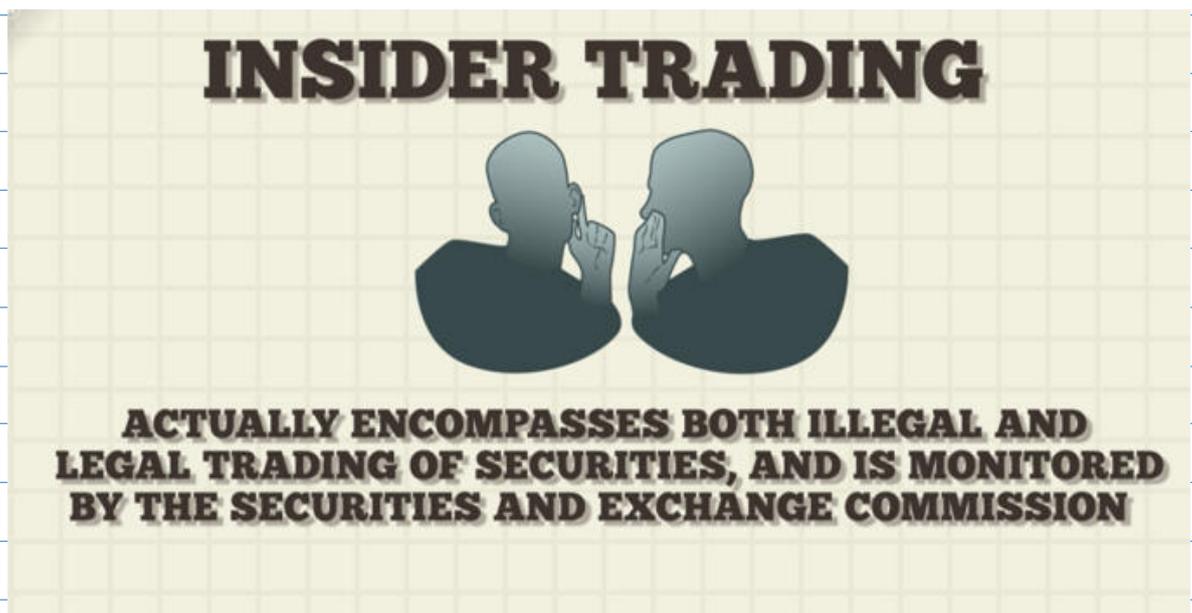
## ALLOWING OFFER FOR SALE (OFS) AND RIGHTS ENTITLEMENTS (RE) TRANSACTIONS DURING TRADING WINDOW CLOSURE PERIOD

It has been decided that *trading window restrictions shall not apply* in respect of OFS and RE transactions carried out in accordance with the framework specified by the Board.

## REPORTING TO STOCK EXCHANGES REGARDING VIOLATIONS RELATING TO THE CODE OF CONDUCT (COC)

The listed companies, intermediaries and fiduciaries shall *promptly inform the Stock Exchange(s)* where the concerned securities are traded, *regarding violations relating to CoC* under PIT Regulations in such modified form and manner as may be specified by the Board.

## PENALTY FOR INSIDER TRADING UNDER SECTION 15G OF SEBI ACT



If any Insider who either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or communicates any unpublished price sensitive information to any person, he shall be liable to a penalty, which shall not be less than ten lakh rupees but which may extend to *twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.*

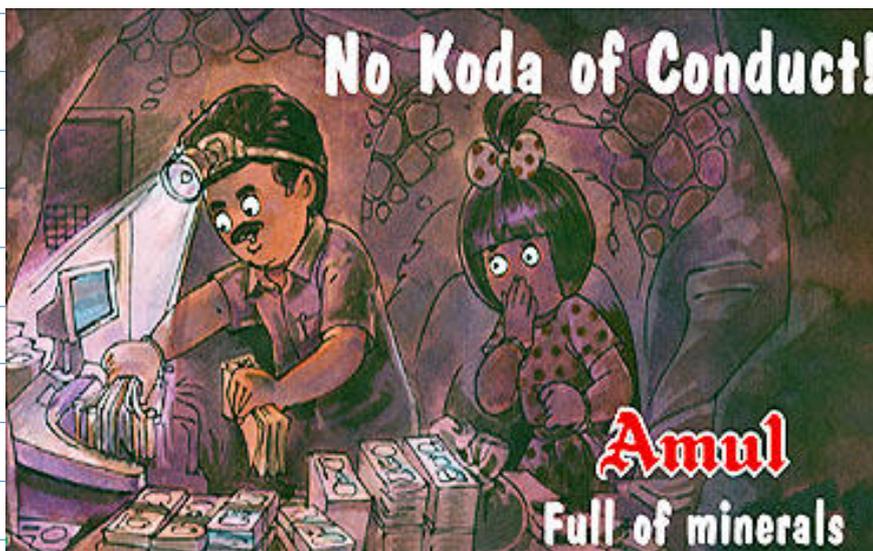
Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal within a period of forty-five days of the order.

### AMOUNT REMITTED TO INVESTOR PROTECTION AND EDUCATION FUND (IPEF)

Any amount collected by the listed companies, intermediaries and fiduciaries for violation(s) of CoC shall be remitted to the Board for **credit to the Investor Protection and Education Fund (IPEF)** administered by the Board under SEBI Act, 1992.

Such amounts shall be credited to the IPEF through the online mode or by way of a demand draft (DD) in favour of the Board (i.e. SEBI - IPEF) payable at Mumbai.

### ROLE OF COMPANY SECRETARY IN COMPLIANCE REQUIREMENTS



- The **Company Secretary shall act as Compliance Officer** and ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
- To **frame a code of fair disclosure** and conduct in line with the model code specified in the Schedule A of the regulations and get the same approved by the board of directors of the company.



- To place before the board the “minimum standards for Code of Conduct” to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.
- To receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter
- To receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs 10 lakh with single or series of transaction in any calendar quarter in prescribed form.
- To ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
- The compliance officer shall approve the trading plan and after the approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
- The Compliance Officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.



## INFORMANT INCENTIVES AND REWARDS

A new Chapter IIIA has been prescribed under the Regulation for incentive and reward for the informants who submits to the SEBI a **Voluntary Information Disclosure** relating to any alleged **violation of insider trading** laws that has occurred, in occurring or **has a reasonable belief** that it is about to occur. The new provisions prescribes the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

## INFORMANT

'Informant' means an individual(s), who voluntarily submits to the SEBI a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has **occurred, is occurring or has a reasonable belief that it is about to occur**, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward.

## SUBMISSION OF ORIGINAL INFORMATION TO THE BOARD [REGULATION 7 (B)]

An Informant shall submit Original Information by **furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the SEBI** in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant's legal representative.

However where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the SEBI may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.

The legal representative shall,-

- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the SEBI, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;



- iii. Undertake and certify that he/she,-
- (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
  - (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the SEBI; and
  - (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the SEBI
- iv. Submits to the SEBI, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii).

An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

#### INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING [REGULATION 9A]

- The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading. The internal controls shall include the following:
  - (a) all employees who have access to unpublished price sensitive information are identified as designated person;
  - (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
  - (a) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;



- (c) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
- (b) all other relevant requirements specified under these regulations shall be complied with;
- (d) periodic process review to evaluate effectiveness of such internal controls.
- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with these regulations.
  - The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
  - Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.
  - The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
  - If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

### APPEAL TO SECURITIES APPELLATE TRIBUNAL

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal **within a period of forty-five days of the order.**

## CHAPTER 14 – PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET

### SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

#### Dealing in Securities

Dealing in Securities includes:

- (a) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the SEBI Act;
- (b) such acts which may be knowingly designed to influence the decision of investors in securities; and
- (c) any act of providing assistance to carry out the aforementioned acts.

#### Fraud

Fraud includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it;
- (5) a representation made in a reckless and careless manner whether it be true or false;
- (6) any such act or omission as any other law specifically declares to be fraudulent;
- (7) deceptive behaviour by a person depriving another of informed consent or full participation;
- (8) a false statement made without reasonable ground for believing it to be true;
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price



### Exceptions to 'Fraud'

Regulation 2 (1) (c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 provides for certain exceptions to 'Fraud' and states *that nothing contained in the clause shall apply to any general comments made in good faith* in regard to-

- (a) the economic policy of the government
- (b) the economic situation of the country
- (c) trends in the securities market or
- (d) any other matter of a like nature

*whether such comments are made in public or in private.*

### Investigating Authority

"Investigating Authority" means any person *authorized by the SEBI* to undertake investigation.

## PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

### Prohibition of certain dealings in securities [Regulation 3]:

No person shall directly or indirectly -

- (a) *buy, sell* or otherwise *deal* in securities in a *fraudulent* manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed, any *manipulative or deceptive device* or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations;
- (c) *employ any device, scheme or artifice to defraud* in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person* in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the SEBI Act or the rules and the regulations made there under.



### *Prohibition of Manipulative, Fraudulent and Unfair Trade Practices [Regulation 4]:*

- (1) Any *act of diversion, mis-utilisation or siphoning off of assets or earnings* of a company whose securities are listed or any *concealment of such act* or any device, scheme or artifice to *manipulate the books of accounts or financial statement* of such a company that *would directly or indirectly manipulate the price of securities* of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.
- (2) Further, any dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—
- (a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market;
- (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
- (c) inducing any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of securities, by advancing or agreeing to advance any money to any other person or through any other means;
- (d) inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;
- (e) any act or omission amounting to manipulation of the price of a security including, influencing or manipulating the reference price or bench mark price of any securities;
- (f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
- (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;
- (h) selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities whether in physical or dematerialized form;



Provided that if:-

- (1) the person selling, dealing in or pledging stolen, counterfeit or fraudulently issued securities was a holder in due course; or
  - (2) the stolen, counterfeit or fraudulently issued securities were previously traded on the market through a bonafide transaction;
  - (3) such selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities shall not be considered as a manipulative, fraudulent, or unfair trade practice.
- (i) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;
  - (j) a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity;
  - (k) circular transactions in respect of a security entered into between persons including intermediaries to artificially provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;
  - (l) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;
  - (m) an intermediary predating or otherwise falsifying records including contract notes, client instructions, balance of securities statement, client account statements;
  - (n) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;
  - (o) Knowingly planting false or misleading news which may induce sale or purchase of securities;
  - (p) mis-selling of securities or services relating to securities market;
- Mis-selling means sale of securities or services relating to securities market by any person, directly or indirectly, by-
- knowingly making a false or misleading statement, or
  - knowingly concealing or omitting material facts, or
  - knowingly concealing the associated risk, or
  - not taking reasonable care to ensure suitability of the securities or service to the buyer.

- (g) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.

## INVESTIGATION

### Power of the SEBI to order investigation [Regulation 5]:

Where the SEBI, the Chairman, the member or the Executive Director (hereinafter referred to as “appointing authority”) has reasonable ground to believe that—

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;
- (b) any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations,
- it may, at any time by order in writing, direct any person (Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the SEBI.

### Powers of Investigating Authority [Regulation 6]:

Without prejudice to the powers conferred under the SEBI Act, the Investigating Authority shall have the following powers for the conduct of investigation, namely:—

- (1) to call for information or records from any person;
- (2) to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting its activities in violation of these regulations;
- (3) to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;



- (4) to keep in his custody any books, registers, other documents and record produced for a maximum period of six months. However, the Investigating Authority may call for any book, register, other document or record if the same is needed again. Further, if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, he shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced;
- (5) to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person. However, the said notes shall be read over to, or by, and signed by, the person so examined;
- (6) to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally;
- (7) to call for information and record from any person including any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;
- (8) to make an application to the Judge of the designated court in Mumbai as notified by the Central Government for an order for the seizure of any books, registers, other documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;
- (9) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized. However, the Investigating Authority



may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof;

- (10) every **search or seizure** made under this regulation shall be carried out in accordance with the provisions of the **Code of Criminal Procedure, 1973** relating to searches or seizures made under that Code.

**Duty to co-operate, etc. [Regulation 8]:**

- (1) It shall be the duty of every person in respect of whom an investigation has been ordered –
- (a) to **produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record** in his custody or control and to furnish such statements and information as the Investigating Authority or the person so authorized by him may reasonably require for the purposes of the investigation;
- (b) to **appear before the Investigating Authority personally** when required to do so by him under regulation 6 to answer any question which is put to him by the Investigating Authority.
- (2) Without prejudice to the provisions of the Companies Act, 2013, it shall be the **duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 of the SEBI Act or every person associated with the securities market to preserve and to produce** to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.
- (3) Such person shall–
- (a) **allow the Investigating Authority or any person authorized by him in this behalf to have access to the premises occupied** by such person at all reasonable times for the purpose of investigation;
- (b) extend to the Investigating Authority or any person authorized by him in this behalf reasonable facilities for **examining any books, accounts and other documents in his custody** or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation;
- (c) **provide to such Investigating Authority or any person authorized by him in this behalf any such books, accounts and records** which, in the opinion of the Investigating Authority, are



*relevant to the investigation* or, as the case may be, allow the Investigating Authority or any person authorized by him in this behalf to take computer print-outs thereof.

### *Submission of report to SEBI [Regulation 9]:*

The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, *submit a report to the appointing authority*. However, the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary.

### *Enforcement by the SEBI [Regulation 10 and 11]:*

If SEBI is satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, may issue directions or take action.

Further, the SEBI may, in the interest of investors and securities market, dispense with the opportunity of predecisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

SEBI may, by an order, for reasons to be recorded in writing, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:—

- (a) *suspend the trading* of the security found to be or prima facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;
- (b) *restrain persons from accessing the securities market* and prohibit any person associated with securities market to buy, sell or deal in securities;
- (c) *suspend any office-bearer of any stock exchange* or self-regulatory organization from holding such position;
- (d) *impound and retain the proceeds or securities* in respect of any transaction which is in violation or prima facie in violation of these regulations;
- (e) direct any intermediary or any person associated with the securities market in any manner *not to dispose of or alienate an asset* forming part of a fraudulent and unfair transaction;
- (f) require the person concerned to *call upon any of its officers, other employees or representatives* to refrain from dealing in securities in any particular manner;



- (g) *prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;*
- (h) *direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the SEBI may deem fit, for restoring the status quo ante.*

*Any final order passed under sub-regulation (1) shall be put on the website of the SEBI.*

#### *Manner of service of summons and notices issued by the SEBI [Regulation 11A]:*

- (1) *A summons or notice issued by the SEBI shall be served on the person through any of the following modes, namely—*
- (a) *by delivering or tendering it to that person or his duly authorised agent; or*
- (b) *by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post;*

*However, the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due;*

*Further, a summons or notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned;*

*Also, a summons or notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.*

- (2) *In case of failure to serve a summons or notice through any one of the modes as mentioned above, the summons or notice may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.*



- (3) In case of failure to affix the summons or notice on the outer door as provided under sub-regulation (2), the **summons or notice shall be published in at least two newspapers**, one of which shall be in an **English daily newspaper** having nationwide circulation and another shall be in a newspaper having wide circulation published in the **language of the region** where that person was last known to have resided or carried on business or personally worked for gain.

### SUSPENSION OR CANCELLATION OF REGISTRATION [REGULATION 12]

The SEBI may, without prejudice to any action under the securities laws or directions or circulars issued thereunder, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary:

- (a) issue a **warning** or censure;
- (b) **suspend** the **registration** of the intermediary; or
- (c) **cancel** of the **registration** of the intermediary.

However, **no final order** of suspension or cancellation of an intermediary for violation of these regulations shall be passed **unless the procedure specified applicable** to such intermediary under the SEBI [(Intermediaries) Regulations, 2008] is **complied with**.

## CHAPTER 15 - DELISTING OF EQUITY SHARES



*Delisting denotes removal of the listing of the securities of a listed company from the Stock Exchange. Delisting differs from suspension or withdrawal of admission to dealings of listed securities, which is for a limited period.*

*'Suspension' of trading in securities means that no trade can take place in the securities of the company suspended for a temporary period. Suspension is not done at the instance of company but it is action taken by the Stock Exchanges against the company, generally for non-compliance of listing conditions.*

*'Delisting' of securities means removal of the name of the company from the stock exchange and no trade can take place in the securities of the company delisted. Delisting of securities can be done either by company voluntarily or by the stock exchange, compulsorily.*

*Delisting of securities may be of two types, namely, voluntary delisting and compulsory delisting. In the case of voluntary delisting, a listed company seeks of its own volition for the delisting of its securities; while in case of compulsory delisting, the Stock Exchange itself delists the securities of such Company.*



## VOLUNTARY DELISTING

In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange. SEBI (Delisting of Shares) Regulations 2009 gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed or only from some of the few stock exchanges and continue to be listed on the exchange(s) having nation wide terminals.

The difference between two options is that of giving 'exit opportunity' to the shareholders.

- **No exit opportunity required to be given:** In this option, if after the proposed delisting from any one or more recognised stock exchanges, **the equity shares still remain listed on any recognised stock exchange** which has nation-wide trading terminals, no exit opportunity needs to be given to the public shareholders.
- **Exit opportunity must be given:** This option requires that if after the proposed delisting, **the equity shares do not remain listed on any recognised stock exchange** having nation-wide trading terminals, exit opportunity shall be given to all the public shareholders.

## DELISTING FROM ALL THE STOCK EXCHANGES EXCEPT ONE

A company may delist its equity shares from one or more stock exchanges where they are listed and continue their listing on other stock exchanges, if after the proposed delisting the equity shares would:

- (i) **Remain listed on any recognized stock exchange** which has nationwide trading terminals, no exit opportunity needs to be given to the public shareholders; and
- (ii) **Not remain listed on any recognized stock exchange** having nationwide trading terminals, **exit opportunity shall be given** to all the public shareholders holding the equity shares sought to be delisted.



## PROCEDURE FOR DELISTING FROM ALL THE STOCK EXCHANGES EXCEPT ONE

- (i) The Company shall obtain **approval from the Board of Directors** with regard to delisting of equity shares from one or more stock exchanges.
- (ii) Thereafter, the company shall give a **public notice** of the proposed delisting in at least one English national daily with wide circulation, one **Hindi** national daily with wide circulation and one **regional language** newspaper of the region where the concerned stock exchanges are located.
- (iii) The Company shall make **an application to the stock exchange** for delisting of shares.
- (iv) Concerned Stock Exchange shall **dispose the application within 30 working days** from the date of receipt of complete application.

## DELISTING FROM ALL STOCK EXCHANGES

### CONDITIONS AND PROCEDURE FOR DELISTING WHERE EXIT OPPORTUNITY IS REQUIRED

Regulation 7 provides that the equity shares of a company may be delisted from all the recognised stock exchanges having nationwide trading terminals on which they are listed, after an exit opportunity has been provided by the acquirer.

#### Initial public announcement (Regulation 8)

On the date when the acquirer decides to voluntarily delist the equity shares of the company, it shall make an **initial public announcement to all the stock exchanges** on which the shares of the company are listed and the stock exchanges shall forthwith disseminate the same to the public.

A **copy of the initial public announcement shall also be sent to the company at its registered office not later than one working day** from the date of the initial public announcement.

#### Appointment of the manager to the offer (Regulation 9)



Prior to making an initial public announcement, the acquirer shall **appoint a merchant banker registered with the SEBI as the Manager to the offer**. The Manager to the offer shall not be an associate of the acquirer.

### **Obligation of the manager to the offer (Regulation 29)**

Before making the detailed public announcement, the Manager to the offer for delisting of equity shares shall ensure that, —

- the acquirer is able to implement the delisting offer.
- firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the delisting offer.
- the contents of the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) are complete, true, fair and adequate in all material aspects.
- market intermediaries are registered with the SEBI.
- the Manager to the offer shall exercise due diligence, care and professional judgment to ensure compliance with these regulations.
- the Manager to the offer shall not, either directly or indirectly through its associates, deal in its own account in the shares of the company after its appointment as Manager to the offer till the conclusion of the delisting offer.
- the Manager to the offer to ensure that the acquirer complies with the provisions of these regulations.

### **Approval by the Board of Directors (Regulation 10)**

The company shall obtain the approval of its Board of Directors in respect of the proposal, **not later than twenty one days from the date of the initial public announcement**.

The Board of Directors of the company, while considering the proposal for delisting, shall certify that—

- (a) the company is in **compliance with the applicable provisions** of securities laws;
- (b) the **acquirer and its related entities are in compliance with the applicable provisions of securities laws**;
- (c) the delisting is in the **interest of the shareholders** of the company.



While communicating the decision of the Board of Directors on the proposal for delisting of equity shares, the company shall also submit to the recognized stock exchanges on which the equity shares of the company are listed, the **due - diligence report of the Company Secretary and the audit report under SEBI (Depositories and Participants) Regulations, 2018.**

Upon receipt of the above mentioned communication, the stock exchanges shall forthwith disseminate the same to the public.

### **Appointment of peer reviewer Company Secretary to carry out the Due-Diligence**

The Board of Directors of the company, before considering the proposal of delisting, shall **appoint a Peer Reviewer Company Secretary** and provide the following information to such Company Secretary for carrying out due-diligence: -

- (a) the details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities during the period of two years prior to the date of board meeting held to consider the proposal for delisting, including the details of the top twenty five shareholders, for the said period;
- (b) the details of off-market transactions of all the shareholders mentioned in clause (a) for a period of two years;
- (c) additional information, if any. Company Secretary is of the opinion that the information provided under clauses (a) and (b) is not sufficient for providing the certification.

After obtaining the information from the Board of Directors, the Company Secretary shall carry out the due-diligence and submit a report to the Board of Directors of the company **certifying that the buying, selling and dealing in the equity shares of the company carried out by the acquirer or its related entities and the top twenty five shareholders is in compliance with the applicable provisions of securities laws including these regulations.**

### **Approval by shareholders (Regulation 11)**

The company shall obtain the approval of the shareholders through a special resolution, **not later than forty five days from the date of obtaining the approval of Board of Directors.** The



special resolution shall be passed through postal ballot and / or e-voting as per the applicable provisions of the Companies Act, 2013.

### **In-principle approval of the stock exchange (Regulation 12)**

The company shall make an application to the relevant recognised stock exchange for in-principle approval of the proposed delisting of its equity shares in the Form specified, not later than fifteen working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.

The application seeking in-principle approval for the delisting of equity shares shall be accompanied by an audit report as required under regulation 76 of the SEBI (Depositories and Participants) Regulations, 2018 in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.

Such application seeking in-principle approval for the delisting of the equity shares shall be disposed of by the recognised stock exchange within a period not exceeding, fifteen working days from the date of receipt of such application that is complete in all respects.

### **Escrow account (Regulation 14)**

The acquirer shall open an interest bearing escrow account with a Scheduled Commercial Bank, not later than seven working days from the date of obtaining the shareholders' approval, and deposit therein an amount equivalent to twenty five percent of the total consideration, calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, if any given by the acquirer in terms of these regulations, whichever is higher.

Before making the detailed public announcement, the acquirer shall deposit in the escrow account, the remaining consideration amount being seventy five percent calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the



floor price or the indicative price, if any given by the acquirer in terms of these regulations, whichever is higher.

On determination of the discovered price and making of the public announcement accepting the discovered price, the acquirer shall forthwith deposit in the escrow account **such additional sum as may be sufficient to make up the entire sum due and payable as consideration** in respect of equity shares outstanding with the public shareholders.

In case of failure of the delisting offer, **ninety nine percent of the amount lying in the escrow account shall be released to the acquirer within one working day from the date of public announcement of such failure.** The remaining one percent amount lying in the escrow account shall be released post return of the shares to the public shareholders or confirmation of revocation of lien marked on their shares by the Manager to the offer as per the timelines provided in these regulations.

#### **Detailed public announcement (Regulation 15)**

The acquirer shall, **within one working day from the date of receipt of in-principle approval** for delisting of equity shares from the recognised stock exchange, make a detailed public announcement in at least one **English** national newspaper with wide circulation, one **Hindi** national newspaper with wide circulation in their all India editions and one **vernacular** newspaper of the region where the relevant recognised stock exchange is located.

The detailed public announcement shall also specify a date, being **a day not later than one working day from the date of the detailed public announcement, which shall be the 'specified date'** for determining the names of the shareholders to whom the letter of offer shall be sent.

#### **Letter of offer (Regulation 16)**

The acquirer shall dispatch the letter of offer to the public shareholders **not later than two working days from the date of the detailed public announcement made.** The letter of offer shall be sent to all public shareholders, holding equity shares of the class sought to be delisted,



whose names appear on the register of the company or depository as on the date specified in the detailed public announcement.

### **Bidding mechanism (Regulation 17)**

The bidding period shall start not later than seven working days from the date of the detailed public announcement and shall remain open for five working days. The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the SEBI.

The Manager to the offer shall ensure that the outcome of the reverse book building process is announced within two hours of the closure of the bidding period. Within two working days from the closure of the bidding period, the acquirer shall, through the Manager to the offer, make a public announcement in the same newspapers in which the detailed public announcement was made, disclosing the success or failure of the reverse book building process, along with the discovered price accepted by the acquirer in the event of success of the said process.

### **Manner of tendering shares (Regulation 18)**

The equity shares shall be tendered/offered by the public shareholders, including by way of marking a lien through the stock exchange mechanism, in the manner specified by the SEBI.

### **Right of shareholders to participate in the reverse book building process (Regulation 19)**

Public shareholders holding the equity shares of the company, which are sought to be delisted, shall be entitled to participate in the reverse book building process in the manner specified in Schedule II of these regulations.

Any holder of depository receipts issued on the basis of underlying equity shares and a custodian keeping custody of such equity shares shall not be entitled to participate in the reverse book building process.



However, any holder of depository receipts may participate in the reverse book building process after converting such depository receipts into equity shares of the company that are proposed to be delisted.

### **Discovered price (Regulation 20)**

The floor price shall be determined in terms of regulation 8 of Takeover Regulations as may be applicable.

After fixation of the floor price, the discovered price shall be determined through the reverse book building process in the manner specified in Schedule II of these regulations, and the Manager to the offer shall disclose the same in the detailed public announcement and the letter of offer.

The acquirer shall have the option to provide an indicative price in respect of the delisting offer, which shall be higher than the floor price. The acquirer shall also have the option to revise the indicative price upwards before the start of the bidding period and the same shall be duly disclosed to the shareholders.

The acquirer may, if it deems fit, pay a price higher than the discovered price.

### **Minimum number of equity shares to be acquired (Regulation 21)**

An offer made or a counter offer made by the acquirer, as the case may be, shall be deemed to be successful if the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted through eligible bids at the final price determined, **reaches 90% of the total issued shares** of that class excluding the following:

- (i) shares which are held by a custodian and against which depository receipts have been issued overseas; and
- (ii) shares held by a Trust set up for implementing an Employee Benefit Scheme under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;



(iii) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of regulation 39 (4) read with Schedule VI of the SEBI (LODR) Regulations 2015.

However, such shareholders shall be certified by the Peer Review Company Secretary appointed by the Board of Directors of the company for due-diligence.

Explanation— The cut-off date for determination of inactive shareholders shall be the date on which the in-principle approval of the Stock Exchange is received, which shall be adequately disclosed in the public announcement.

#### **Option to accept or reject the discovered price or counter offer (Regulation 22)**

The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer, if the discovered price determined through the reverse book building process is equal to the floor price or the indicative price, if any, offered by the acquirer.

The acquirer shall be bound to accept the equity shares, at the indicative price, if any offered by the acquirer, even if the price determined through the reverse book building process is higher than the floor price but less than the indicative price.

However, the abovementioned provisions shall not apply if the discovered price is higher than the indicative price.

In case the discovered price is not acceptable to the acquirer, a counter offer may be made by the acquirer to the public shareholders within two working days of the closure of bidding period and thereafter, the acquirer shall ensure compliance with the provisions of these regulations in accordance with the timelines provided in Schedule IV.

#### **Failure of offer (Regulation 23)**

The delisting offer shall be considered to have failed

- if the minimum number of shares are not tendered/offered.



- if the price discovered through the reverse book building process is rejected by the acquirer.
- 1) Where the delisting offer fails, the equity shares tendered / offered as the case may be, shall be released on the date of disclosure of the outcome of the reverse book building process if the minimum number of shares are not tendered / offered. On the date of making public announcement for the failure of the delisting offer if the price discovered through the reverse book building process is rejected by the acquirer; in accordance with Schedule IV of these regulations if a counter offer has been made by the acquirer.

However, the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- 2) Where the delisting offer fails-

The expenses relating to the offer for delisting shall be borne by the acquirer. The acquirer, whose delisting offer has failed, shall not make another delisting offer until the expiry of six months

#### **Payment upon success of the offer (Regulation 24)**

All the public shareholders, whose bids are accepted, shall be paid the discovered price or a higher price, if any, offered by the acquirer, as stated in the public announcement in the following manner -

- (i) In case the discovered price is equal to the floor price or the indicative price or in case the acquirer is bound to accept the equity shares in the delisting offer, the payment shall be made through the secondary market settlement mechanism;
- (ii) In case the discovered price or the price, if any, offered by the acquirer, is higher than the floor price or the indicative price, as the case may be, the payment shall be made within five working days from the date of the public announcement.



The acquirer shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, whose bids have been accepted in the delisting offer, if the price payable is not paid to all the shareholders within the time specified thereunder.

However, in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the SEBI may grant waiver from the payment of such interest.

### Final application to the stock exchange after successful delisting (Regulation 25)

Within 5 working days from the date of making the payment to the public shareholders, the acquirer shall make the final application for delisting to the relevant recognised stock exchange in the Form specified by such stock exchange from time to time.

The final application for delisting shall be accompanied with necessary details / information, as the recognised stock exchange may require, of having provided the exit opportunity.

The final application for delisting shall be disposed of by the recognised stock exchange within 15 working days from the date of receipt of such application that is complete in all respects. Upon disposal of the final application for delisting by the stock exchange, the equity shares of the company shall be permanently delisted from the stock exchange.

### Right of the remaining public shareholders to tender equity shares (Regulation 26)

The remaining public shareholders, whose shares were either not accepted or were not tendered at all during the bidding period, shall have a right to tender their equity shares for a minimum period of 1 year from the date of delisting.

The acquirer shall be under an obligation during such period to accept the shares of the remaining public shareholders, at the same price at which the equity shares had been delisted.

The payment of consideration for equity shares accepted shall be made out of the balance amount lying in the escrow account.



The Manager to the offer shall ensure that the amount lying in the escrow account or the bank guarantee shall not be released to the acquirer for a minimum period of one year or till the time payment has been made to the remaining public shareholders, whichever is earlier.

### **Cancellation of outstanding depository receipts (Regulation 31)**

After delisting of equity shares from all the recognized stock exchanges having nationwide trading terminals, the company shall be required to compulsorily cancel all the outstanding depository receipts issued overseas and change them into the underlying equity shares in the home jurisdiction after termination of the depository receipts program(s), within 1 year of such delisting.

## **OBLIGATIONS OF THE COMPANY (REGULATION 28)**

- Upon receipt of the detailed public announcement, the Board of Directors of the company shall constitute a Committee of independent directors to provide reasoned recommendations on the delisting offer.
- The Committee of independent directors shall provide its written reasoned recommendations on the proposal for delisting of equity shares to the Board of Directors of the company and in relation thereto, the Committee may also seek external professional advice at the expense of the company.
- The Committee of independent directors, while providing reasoned recommendations on the delisting proposal, shall disclose the voting pattern of the meeting in which the said proposal was discussed.
- The company shall publish such recommendations of the Committee of independent directors, along with the details of the voting pattern, at least 2 working days before the commencement of the bidding period, in the same newspapers in which the detailed public announcement of the offer for delisting of equity shares was published, and simultaneously, a copy of the same shall be sent to the stock exchange(s) and the Manager to the offer.



### OBLIGATIONS OF THE ACQUIRER (REGULATION 30)

- Prior to making the initial public announcement of the offer for the delisting of equity shares, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the delisting offer and that the acquirer is able to implement the delisting offer, subject to any statutory approvals for the delisting offer that may be necessary.
- The acquirer shall ensure that the contents of the initial public announcement, the detailed public announcement, the letter of offer and announcement about success or failure of the offer for delisting are true, fair and adequate in all material aspects, not misleading and based on reliable sources that shall be mentioned wherever necessary.
- The acquirer and the persons acting in concert with it shall be jointly and severally responsible for the fulfilment of the applicable obligations under these regulations.
- The acquirer shall ensure to acquire the shares offered by the remaining public shareholders at the same price at which the equity shares had been delisted for a minimum period of one year.
- No acquirer or persons acting in concert with it shall sell shares of the company during the delisting period.

### COMPULSORY DELISTING

Compulsory delisting refers to **permanent removal of securities of a listed company** from a stock exchange as a **penalizing measure** by the stock exchange for not making submissions/comply with various requirements in the Listing agreement within the time frames prescribed.



## CONSTITUTION OF A PANEL

The decision regarding compulsory delisting shall be taken by a panel to be constituted by the recognized stock exchange consisting of -

- a. *Two directors of the recognized stock exchange (one of whom shall be a public representative);*
- b. *One representative of the investors;*
- c. *One representative of the Ministry of Corporate Affairs or Registrar of Companies;*
- d. *The Executive Director or Secretary of the recognized stock exchange.*

## PROCEDURE FOR COMPULSORY DELISTING

- *Constitution of Panel by Recognised stock exchange to take decision regarding the compulsory delisting by the exchange.*
- *Public notice of compulsory delisting by recognized stock exchange in one English and one regional language newspaper of the region where the concerned recognized stock exchange is located.*
- *Within 15 days, representation by the any person who may be aggrieved by the proposed delisting.*
- *Delisting order by the recognized stock exchange.*
- *Public notice after delisting order by recognized stock exchange in one English and regional language newspaper of the region where the concerned recognized stock exchanges is located and information to all the stock exchanges where the shares of the company listed and also on its trading systems and website.*
- *Appointment of independent Valuer*
- *Determination of the fair value of shares by the independent valuers appointed by the recognized stock exchange.*
- *Acquisition of shares by the promoters at determined fair value.*



- Company Promoters/PAC/ Directors can neither access securities market nor seek listing for a period of 10 years.

### DELISTING OF SMALL COMPANIES

Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, if:

- (i) If a company has paid - up capital not exceeding Rs.10 crores and Net Worth not exceeding 25 Crores as on the last date of preceding year and
- (ii) the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting is less than ten per cent of the total number of shares of such company.
- (iii) the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non-compliance in the preceding one year
- (iv) at least ninety per cent. of such public shareholders give their positive consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted.
- (v) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with then justification therefore and seeking their consent for the proposal for delisting.
- (vi) the promoter completes the process of inviting the positive consent and finalization of the proposal for delisting of equity shares within seventy five working days of the first communication.
- (vii) the promoter makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days.

### DELISTING OF EQUITY SHARES OF COMPANIES LISTED ON INNOVATORS GROWTH PLATFORM AFTER MAKING AN INITIAL PUBLIC OFFER (REGULATION 36)



- A company whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer may be delisted from the innovators growth platform, if -
- (a) such delisting is approved by the Board of Directors of the company;
  - (b) such delisting is approved by the shareholders of the company by a special resolution passed through postal ballot or e-voting. However, the special resolution shall be acted upon only if the votes cast by the majority of public shareholders are in favour of such exit proposal;
  - (c) delisting price is based on a floor price determined in terms of regulation 8 of Takeover Regulations, as may be applicable, and an additional delisting premium justified by the acquirer;
  - (d) the post offer shareholding of the acquirer along with the persons acting in concert with it, taken together with the shares tendered reaches seventy five per cent of the total issued shares of that class and at least fifty per cent shares of the public shareholders as on date of the board meeting are tendered and accepted; and
  - (e) the recognised stock exchange, on which its shares are listed, approves of such delisting.

### DELISTING IN CASE OF WINDING UP OF A COMPANY AND DE-RECOGNITION OF A STOCK EXCHANGE

In case of winding up proceedings of a company whose equity shares are listed on a recognised stock exchange, the rights, if any, of the shareholders of such company shall be in accordance with the laws applicable to those proceedings. Where the SEBI withdraws recognition granted to a stock exchange or refuses renewal of recognition to it, the SEBI may, in the interest of investors pass appropriate order in respect of the status of equity shares of the companies listed on that stock exchange.

#### Question:

The equity Shares of XYZ limited have been delisted from the stock exchange. When can an application be made for listing of equity shares of XYZ limited?

#### Answer:

No application for listing shall be made in respect of equity shares of a company which have been delisted under Chapter III (Voluntary Delisting) or under Chapter VI (Exit Opportunity in



case delisting of equity shares of a company from all the recognised stock exchanges), for a period of 3 years from the delisting and which have been delisted under Chapter V (Compulsory Delisting), for a period of 10 years from the delisting, except the following:

- (a) whose equity shares have been delisted pursuant to a resolution plan under section 31 of the Insolvency Code;
- (b) whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer and which is delisted from the said platform;
- (c) whose equity shares have been delisted in terms of regulation 35 (Delisting of equity shares of small companies).

### NON APPLICABILITY OF REGULATIONS

These regulation shall not be applicable to :-

- securities listed **without making a public issue**, on the **institutional trading platform** of a recognised stock exchange;
- under a **scheme sanctioned by the Board for Industrial and Financial Reconstruction** under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal under section 262 of the Companies Act, 2013;
- to any delisting of equity shares of a listed entity **made pursuant to a resolution plan** approved under Insolvency and Bankruptcy Code, 2016.

Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority.

## CHAPTER 16 - BUY BACK OF SECURITIES



“ THINGS YOU LIKE TO DO SHOULD BE A HOBBY OF YOURS, BUT THINGS THE WORLD DOES SHOULD BE A BUSINESS OF YOURS ”  
- WARREN BUFFETT

### MEANING

Buy back of securities means the company *buys its own shares and extinguishes the same* before the name of the company is entered in its register of members.

### OBJECTIVES OF BUY BACK

- to improve *earnings per share*;
- to improve *return on capital*;
- to provide an *additional exit route* to shareholders when shares are under-valued or are thinly traded;
- to enhance *consolidation of stake* in the company;
- to prevent *unwelcome takeover bids*;
- to *return surplus cash* to shareholders;
- to *support share price* during periods of sluggish market conditions; and
- to *service the equity* more efficient.

### SOURCES OF BUY BACK

A company may purchase its own securities out of:

- i) its *free reserves*; or
- ii) the *securities premium account*; or
- iii) the *proceeds of any shares* or other specified securities.



## AUTHORITY

1. Buy back of securities shall be primarily authorised by the *articles of association* of the company.
2. Buy-back can be made with the *approval* of the *Board of directors* at a board meeting and/or by a *special resolution* passed by *shareholders* in a *general meeting*, depending on the quantum of buy back.
3. In case of a *listed company*, approval of shareholders shall be obtained only by *postal ballot*.

## QUANTUM OF BUY BACK

Board of directors can approve buy-back up to *10% of the total paid-up equity capital and free reserves* of the company.

The *maximum limit of any buy-back, i.e. 25% or less of the aggregate of the paid-up capital and free reserves of the company, will be now based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount.*

In respect of the number of equity shares bought back in any *financial year*, the maximum limit shall *be 25% and be construed with respect to the total paid-up equity share capital of the company in that financial year by a special resolution.*

For the purposes of these regulations, the term "shares" shall include equity shares having superior voting rights.

Further, the buyback from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:

- *15% of the paid up capital and free reserves of the company till March 31, 2023;*
- *10% of the paid up capital and free reserves of the company till March 31, 2024;*
- *5% of the paid up capital and free reserves of the company till March 31, 2025.*



Buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.

**Illustration:** Extract of Balance Sheet of X Ltd consist of:

Equity Share Capital - Rs. 6,00,000 of Rs. 10 each

12% Preference Share Capital - Rs. 100,000 of Rs. 100 each  
14% Debenture Capital - Rs. 300,000 of Rs. 100

What is the maximum equity share capital and number of equity shares that can be bought back?

**Solution:**

(i) Maximum equity share capital that can be bought back

$$= \text{Rs. } 600000 * 25\%$$

$$= \text{Rs. } 1,50,000$$

(ii) Maximum number of equity shares that can be bought back

$$= \text{Rs. } 1,50,000 / 10$$

$$= 15000 \text{ equity shares}$$

### CONDITIONS FOR BUY BACK

1. The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back shall,-
  - a) be less than or equal to 2:1, based on the **standalone or consolidated financial statements of the company, whichever sets out a lower amount** of the company. However if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail; or
  - b) be less than or equal to 2:1, based on the **standalone or consolidated financial statements of the company, whichever sets out a lower amount** of the company, after excluding financial statements of all subsidiaries that are non-banking financial companies and housing finance companies regulated by Reserve Bank of India or National Housing Bank. However buy-back of securities shall be permitted only if all such excluded subsidiaries have their ratio of aggregate



of secured and unsecured debts to the paid-up capital and free reserves of **not more than 6:1 on standalone basis.**

2. Securities bought back shall only be **fully paid securities.**
3. A **declaration of solvency** signed by at least **two directors** of the company, one of whom shall be the **managing director**, if any, in **Form No. SH.9** and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

### FILING OF LETTER OF OFFER

1. The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the **Registrar of Companies** a **letter of offer** in **Form No SH 8**, along with the fee as prescribed.
2. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

### DISPATCH OF LETTER OF OFFER

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but **not later than 21 days** from its filing with the Registrar of Companies.

### TIME PERIOD FOR BUY BACK OFFER

1. The offer for buy-back shall remain open for a period of **minimum period of 15 days** and for a **maximum period of 30 days** from the date of dispatch of the letter of offer.
2. Buy back shall be **completed within a period of one year** from the date of its approval the shareholders or board of directors of the company, as the case may be.



3. Where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.

### METHODS OF BUY BACK

- a) from the existing shareholders or security holders on a proportionate basis;
- b) from the open market;

### EXTINGUISHMENT OF SECURITIES BOUGHT BACK

Securities bought back shall be extinguished within a period of 7 days from the date of completion of buy back.

### PROHIBITION ON FURTHER ISSUE OF SECURITIES

Once the securities are bought back, it shall not issue securities of the same kind within 6 months except by way of bonus issue.

### REGISTER OF BUY BACK

When a company buys back its securities, it shall maintain a register of securities, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed. It shall be maintained in Form SH 10.

### RETURN OF BUY BACK

A company shall, file with the Registrar and SEBI, a return of buy-back within thirty days of such completion in Form No. SH.11, a certificate in Form No SH.15 signed by two directors of the company including the managing director.



## ADDITIONAL CONDITIONS FOR BUYBACK OF SHARES OR OTHER SECURITIES

A company shall **not buy-back its shares** or other specified securities :

- a) so as to **delist** its shares or other specified securities from the stock exchange.
- b) from any person through **negotiated deals**, whether on or off the stock exchange or through spot transactions or through any private arrangement.
- c) A company shall not allow buy-back of its shares unless the **consequent reduction** of its share capital is affected.

## FEW WORDS TO REMEMBER

### Buyback Period:

The period between :

- the date of board of directors resolution; or
- date of declaration of results of the postal ballot for special resolution,
- to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made.

### Small Shareholder:

A shareholder of a company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such securities, **as on record date is not more than two lakh rupee.**

### Tender offer:

An offer by a company to buy-back its own shares or other specified securities **through a letter of offer** from the holders of the shares or other specified securities of the company.

### Frequently traded shares:

Frequently traded shares shall have the **same meaning** as assigned to them under the **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.**



### Secretarial auditor:

Secretarial auditor means an *auditor* as defined in the Secretarial Standards - I issued by the *Institute of Company Secretaries of India*.

## PROCEDURE FOR BUY BACK UNDER DIFFERENT METHODS

### BUY BACK FROM EXISTING SECURITY HOLDERS THROUGH TENDER OFFER

1. A company making a buy-back offer shall announce a *record date* for determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.
2. The *company shall, simultaneously with the public announcement, file a copy of the public announcement in electronic mode, with SEBI and the stock exchanges on which its shares or other specified securities are listed. Prior to this amendment, the requirement was to file a copy of the public announcement through a merchant banker. [Regulation 7(ii)]*
3. The stock exchanges shall forthwith *disseminate the public announcement to the public. [Insertion: Regulation 7(iii)]*
4. A copy of the public announcement shall be *placed on the respective websites of the stock exchange(s), merchant banker and the company. [Insertion: Regulation 7(iv)]*
5. A company is required to *file within 2 working days from the record date, a letter of offer with SEBI, containing disclosures as specified in Schedule III, through a merchant banker who is not an associate of the company and a certificate in the form specified by SEBI, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer is in compliance of these regulations and that the letter of offer contains the information required under these regulations. [Regulation 8(i)(a) and 8(i)(aa)]*
6. In case of buy-back through tender offer, *no draft letter of offer is required to be filed with the Board. [Insertion: Explanation to Regulation 8(i)]*
7. The public announcement shall *disclose that the dispatch of the letter of offer, shall be through electronic mode in accordance with the provisions of the Companies Act, within two working days from the record date and that in the case of receipt of a request from any shareholder*



to receive a copy of the letter of offer in physical form, the same shall be provided. [Insertion: Explanation to Regulation 9(ii)]

8. The **date of the opening of the offer shall be not later than 4 working days from the record date**. Prior to this amendment, the requirement was 5 working days from the date of dispatch of the letter of offer. [Regulation 9(v)]
9. The **offer for buy-back shall remain open for a period of 5 working days** as prior to this amendment the requirement was 10 working days. [Regulation 9(vi)]
10. The **company shall complete the verification of offers received and make payment of consideration** to those holder of securities whose offer has been accepted and return the remaining shares or other specified securities **to the securities holders within five working days (earlier seven days) of the closure of the offer**. [Regulation 10(ii)]
11. The company shall **extinguish and physically destroy the securities certificates so bought back** in the presence of a registrar to an issue or the Merchant Banker and the secretarial auditor **within fifteen days of the date of acceptance of the shares** or other specified securities. [Regulation 11(i)]
12. The company shall, furnish a certificate to SEBI **certifying compliance of extinguishment of certificate duly certified and verified by the secretarial auditor of the company**, the registrar and whenever there is no registrar, by the merchant banker and two directors of the company, one of whom shall be a managing director, where there is one. [Regulation 11(iii)]

**It may be noted that fifteen per cent of the number of securities which the company proposes to buy-back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.**

### ESCROW ACCOUNT

The company should on or before the opening of the offer, deposit in an escrow account the sum as follows:

- (i) if the consideration payable does not exceed **Rs 100 crores - 25 per cent** of the consideration payable;



(ii) if the consideration payable exceeds Rs 100 crores - 25 per cent upto Rs 100 crores and 10 percent thereafter;

The escrow account referred to above shall consist of:

- (a) cash deposited with a scheduled commercial bank, or
- (b) bank guarantee in favour of the merchant banker, or
- (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin with the merchant banker, or
- (d) government securities or
- (e) units of mutual funds invested in gilt funds and overnight schemes or
- (f) a combination of the above;

#### POINTS TO BE REMEMBERED

- The shares proposed to be bought back shall be divided into two categories;
  - a) Reserved category for small shareholders; and
  - b) General category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.
- Holdings of multiple demat accounts would be clubbed together for identification of small shareholder, if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.
- After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by securities holders in that category and thereafter from securities holders who have tendered over and above their entitlement in other category.

#### CAN UNREGISTERED SHAREHOLDER TENDER HIS SHARES FOR BUYBACK?

Yes, unregistered shareholder may also tender his shares for buy-back by submitting the duly executed **Transfer deed** for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any. Please note that shareholders holding shares



in physical form will not be eligible to tender shares under the offer, unless the shares held by them are dematerialised.

### BUY BACK FROM OPEN MARKET

Buy-back of shares from the open market may be in any one of the following methods:

- (i) Through stock exchange.
  - (ii) Book-building process.
1. The company shall ensure that **at least 75% of the amount earmarked for buy-back is utilized for buying-back shares or other specified securities**. The minimum utilization of the amount earmarked for buy-back through stock exchange route **has been increased from existing 50% to 75%**. [Regulation 15(i)]
  2. The company shall ensure that at a **minimum of forty per cent of the amount earmarked for the buy-back**, as specified in the resolution of the Board of Directors or the special resolution, as the case may be, **is utilized within the initial half of the specified duration**. [Insertion: Regulation 15(ii)]

### BUY BACK THROUGH STOCK EXCHANGE

- The **special resolution/ board resolution**, should specify the maximum price at which the buy-back will be made;
- Buy back shall only be made on stock exchanges having nationwide terminals. For the purpose of buy-back through stock exchange, a **separate window will be created by the concerned stock exchange and such window shall remain open for the period specified in these regulations**.
- The buy-back of securities should **not be from the promoters or persons in control of the company**;
- The buy-back should be made only on stock exchanges having Nationwide Trading Terminal facility and only through the order matching mechanism except **'all or none' order matching system**.



- The company should **appoint a merchant banker** and make a public announcement **within 2 working days** from the date of passing special resolution;
- The company shall, simultaneously with the public announcement made, file a **copy of the public announcement in electronic mode with SEBI and the stock exchanges** on which its shares or other specified securities are listed.
- The **stock exchanges shall forthwith disseminate the public announcement to the public.**
- A copy of the **public announcement shall be placed on the respective websites** of the stock exchange(s), merchant banker and the company.
- The company shall submit the **information** regarding the shares bought back, **to the stock exchange on a daily basis** and the stock exchange shall upload the same on its official website immediately;
- The company shall upload the information regarding the shares or other specified securities bought back on its website on a daily basis.
- In case of buy back from open market, no draft letter of offer or offer letter is required to be filed with SEBI.
- The buy-back through stock exchanges shall be undertaken only in respect of frequently traded shares.
- The buy-back through stock exchanges shall be subject to the **restrictions on placement of bids, price and volume** as specified by SEBI.
- The identity of the company as a purchaser would appear on the electronic screen when the order is placed.

The buy-back offer shall **open not later than four working days from the record date** and shall close-

- within 6 months, if the buy-back offer is opened on or before March 31, 2023;
- within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and
- within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025.



However, *with effect from April 1, 2025, the option of open market buy-back through the stock exchange shall not be available* to any company except in cases where the buyback offer has opened on or before March 31, 2025. [Regulation 17(ii)]

### BUY BACK THROUGH BOOK BUILDING

1. A company may buy-back its shares or other specified securities from its existing securities holders through the book building process. [Regulation 22]
2. Disclosures, filing requirements and timelines for public announcement:
  - i. The company, which has been authorised by a special resolution or a resolution passed by its Board of Directors, *shall appoint a merchant banker and make a public announcement within two working days from the date of the approval* of Board of Directors or of the shareholders.
  - ii. The disclosures in the public announcement shall be made in accordance with Schedule II.
  - iii. The *book building process shall commence within seven working days* from the date of the public announcement.
  - iv. The public announcement shall contain the *detailed methodology pertaining to intimation* required to be made prior to the opening of the buy-back offer as specified in Schedule - VI.
3. The *special resolution* should specify the maximum price at which the buy-back will be made.
4. The *deposit in the escrow account* should be made before the date of the public announcement.
5. The amount to be deposited in the escrow account should be determined with reference to the maximum price as specified in the public announcement.
6. The book-building process should be made through an *electronically linked transparent facility*.
7. The number of *bidding centres should not be less than thirty* and there should be at least one electronically linked computer terminal at all the bidding centres.
8. The offer for buy-back should be *kept open* to the security-holders for a period of not less than *two days*.
9. The merchant banker and the company should determine the *buy-back price* based on the acceptances received and the final buy-back price, which should be the *highest price accepted* should be paid to all holders whose securities have been accepted for the buy-back.
10. Payment of consideration shall be completed within a period of five working days from the date of closure of buy back.



11. Provisions pertaining to extinguishment of securities for tender offer shall apply in the same way to buy back through book building as well.

### OBLIGATIONS OF THE COMPANY

The company shall ensure that,—

- a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;
- b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations;
- c) the company shall pay the consideration only by way of cash;
- d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with SEBI or public announcement of the offer to buy-back is made;
- e) the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.
- f) the company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.
- g) No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act, 2013.
- h) The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors.
- i) The particulars of the security certificates extinguished and destroyed shall be furnished by the company to the stock exchanges where the shares or other specified securities of the company are listed within seven days of extinguishment and destruction of the certificates.



- j) The company shall not buy-back the locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable.
- k) The company shall within two days of expiry of buy-back period issue a public advertisement in a national daily, disclose details regarding securities bought back, amount paid and change in capital structure:
- l) The company in addition to these regulations shall comply with the provisions of buy-back as contained in the Companies Act and other applicable laws.

### OBLIGATIONS OF THE MERCHANT BANKER

The merchant banker shall ensure that—

- the company is able to implement the offer;
- the provision relating to escrow account has been complied with;
- firm arrangements for monies for payment to fulfill the obligations under the offer are in place;
- the public announcement of buy-back is made in terms of the regulations;
- the letter of offer has been filed in terms of the regulations;
- a due diligence certificate along with the draft letter of offer has been furnished to SEBI;
- the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and quoting the source wherever necessary;
- due compliance of sections 68, 69 and 70 of the Companies Act and any other laws or rules as may be applicable in this regard has been made;
- the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfilment of all obligations by the company under the regulations;
- a final report is submitted to SEBI in the form specified within fifteen days from the date of expiry of buyback period



## BUYBACK VIS-A-VIS COMPLIANCE UNDER SEBI (SAST) REGULATIONS, 2011

In case the acquirer's initial shareholding was more than 25% and the increase in shareholding due to buyback is beyond the permissible creeping acquisition limit of 5% per financial year, the acquirer can get an exemption from making an open offer, subject to the following:

- Such acquirer does not vote in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;
- In the case of a shareholders resolution, voting is by way of a postal ballot;
- The increase in voting rights does not result in an acquisition of control by such an acquirer over the target company.

In case the above conditions are not fulfilled, the acquirer may, within 90 days from the date of increase, dilute his stake so that his voting rights fall below the threshold which requires an open offer.

## POWER OF SEBI TO RELAX STRICT ENFORCEMENT OF THE REGULATIONS

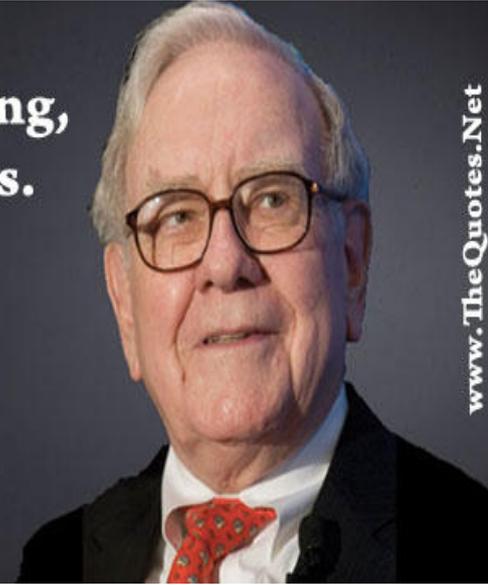
SEBI may, in the interest of investors and the securities market, relax the strict enforcement of any requirement of these regulations except the provisions incorporated from the Companies Act, if the SEBI is satisfied that:

- (a) the requirement is procedural in nature; or
- (b) the requirement may cause undue hardship to investors;

For seeking relaxation as above, the company shall file an application with the SEBI, supported by a duly sworn affidavit, giving details and the grounds on which such relaxation has been sought. The company shall along with the application, pay a non-refundable fee of rupees fifty thousand.

## CHAPTER 17 - MUTUAL FUNDS

**Don't save what is left after Spending,  
But spend what is left after Savings.  
-Warren Buffett**



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### CONCEPT, DEFINITION AND MEANING OF MUTUAL FUND

*A mutual fund works on a very simple concept. It raises money from a lot of small investors, creates a pool of such funds and then invests the same money in various financial assets. Over a period of time, any returns generated out of such investments are distributed amongst the investors. As a token of security, the investors are issued unit certificates. The investors have the choice to either transfer, retain or redeem these units depending upon the time of fund.*

*In other words, Mutual Fund means a fund established in the form of a trust to raise money through sale of units to the public under one or more schemes for investing in securities, including money market instruments.*

*The small investors who generally lack expertise to invest on their own in the securities market prefer some kind of collective investment vehicle like mutual fund, which pool their marginal resources, invest in securities, and distribute the returns there from among them on cooperative principles. The investor benefits in terms of reduced risk and higher returns arising from professional expertise of fund manager employed by the Mutual Fund.*



Initially only UTI was allowed to do the Mutual Fund business. Thereafter, in the year 1987, public sector banks and insurance companies were also allowed to do this business. Finally, in the year 1993 the mutual fund industry was opened to the private sector as well as foreign institutions.

Every mutual fund is required to have an **Asset Management Company**, a company incorporated in the Companies Act, 2013, to manage the funds of the mutual fund. The Asset Management Company should be approved by SEBI and should enter into an agreement with the trustees of the mutual funds to formulate schemes, raise money against the issue of units, etc.

**Trustees** of a mutual fund mean the Board of Trustees or the Trustee Company who holds the property of the mutual fund trust for the benefit of the unit holders.

Mutual fund is always accompanied with a sponsor. **Sponsor** means any person who, acting alone or in combination with another body corporate, establishes a mutual fund.

Mutual fund is always accompanied with a **Custodian of Securities**. Custodian means a person who has been granted a certificate of registration to carry on the business of custody of securities under the SEBI (Custodian of Securities) Regulations, 1996.

## ADVANTAGES OF MUTUAL FUNDS



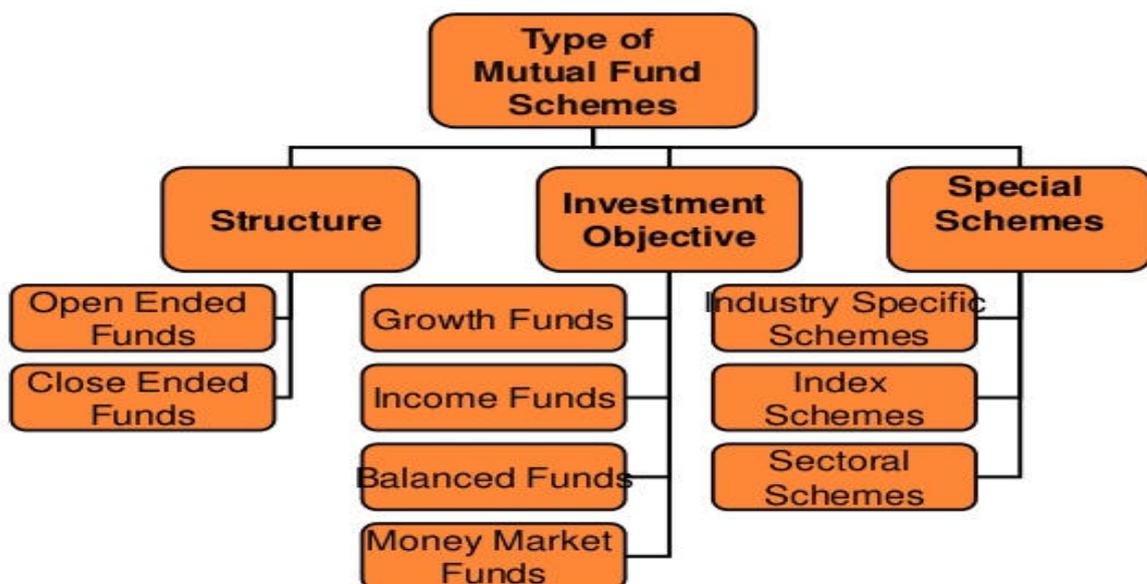
The advantages of investing in a mutual fund are:

- 1. Professional Management:** Mutual funds are managed by a team of skilled professionals, who are expert in their areas. They also have a research team, which constantly analyses the performance and prospects of companies and selects suitable investments to achieve the objectives of the scheme.
- 2. Diversification:** There is a very famous proverb in English, it says: "Do not lay all your eggs in one basket". Mutual funds work on an exact similar concept. Mutual funds invest in a number of companies across sectors. Even if one particular sector collapses, the losses are covered by some other investment, which is doing well. Investors achieve this diversification through a Mutual Fund with far less money than one can do on his own.
- 3. Convenient Administration:** Investing in a mutual fund reduces paper work and helps investors to avoid many problems such as bad deliveries, deliveries, delayed payments, and unnecessary follow up with brokers and companies. Mutual funds save investors time and make investing easy and convenient.
- 4. Return Potential:** Over a medium to long term, mutual funds have the potential to provide a higher return as they invest in a diversified basket of selected securities.

5. **Low Costs:** Mutual funds invest huge sums of money and hence the cost of brokerage is less as compared to a direct investment made by any investor. So the overall brokerage, custodial and other fees translate into lower costs for investors.
6. **Liquidity:** Liquidity means readiness to convert investments into cash. In open-ended schemes, investors can get their money back promptly at net asset value related prices from the mutual fund itself. With close-ended schemes, investors can sell their units on a stock exchange at the prevailing market price or avail of the facility of direct repurchase at net asset value (NAV) related prices.
7. **Transparency:** As per SEBI Regulations, all the mutual funds are compulsorily required to disclose the details of the investments made by them from time to time to all its investors.

## BASIC CLASSIFICATION OF MUTUAL FUNDS

### TYPES OF MUTUAL FUNDS





All the mutual funds can be broadly classified into

- open ended mutual funds
- close ended mutual funds

As the name suggests, an **open-ended mutual fund** is a fund wherein, the fund itself buys and sells units from/to the investors. Since the fund itself buys and sells units, its units are non-fixed. The fund itself buys back the units surrendered and is ready to sell new units. Generally, the transaction takes place at the net asset value, which is calculated on a periodical basis.

A **close ended mutual fund** is the fund where mutual fund management sells a limited number of units and does not redeem them ie once the units are issued, they are redeemed only at the time of end of its tenure. In between, the investors have the choice to sell the units in the open market. Primary example of such mutual fund is UTI's Master share. The units of such mutual funds are traded in the secondary market.

Following are the important differences between close ended and open ended mutual funds :

S.No.	Close ended schemes	Open ended schemes
1.	Fixed corpus : no new units can be offered beyond the limit	Variable corpus due to ongoing purchase and redemption
2.	Listed on stock exchange for buying and selling	No listing on exchange, transactions done directly with the fund
3.	Two values available namely NAV and the Market Trading Price	Only one price namely NAV
4.	Mostly liquid	Highly liquid
5.	Can be purchased only during NFO	Can be purchased on any transaction day
6.	Can be redeemed only at maturity	Can be redeemed on any transaction day [Except when units are locked-in in the case of Equity-Linked Savings Scheme (ELSS) funds]

## MUTUAL FUND PLANS

Sr No.	Regular Plans	Direct Plans
1	Sold through a distributor	Sold directly by the AMC
2	Higher Expense Ratio due to commissions paid to distributor	Lower Expense Ratio as no commission is paid to distributor
3	Potentially lower returns to the investor due to higher expenses	Potentially higher returns due to lower expenses

## TYPES OF MUTUAL FUNDS

Following are the important types of mutual funds:

**Income oriented mutual funds:** the fund primarily offers **fixed income** to investors. Naturally, the main securities in which investments are made by such funds are the fixed yielding ones like bonds.

**Growth oriented mutual funds:** These funds offer growth potentialities associated with investment in capital market namely:

- **High source of income** by way of dividend and
- **Rapid capital appreciation**, both from holding of good quality scrips

These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.

**High Growth Schemes:** An investment in **high risk and high return** with a high degree of capital appreciation generating securities in which aggressive investors are willing.



**Tax Saving Schemes:** These schemes offer **tax rebates to the investors** under tax laws as prescribed from time to time. The Government offers tax incentives for investment in specified avenues e.g. Equity Linked Saving Schemes (ELSS) and Pensions Schemes. It may be noted that Equity Linked Saving Schemes (ELSS) have the lock-in period of three years.

**Hybrid mutual funds:** These funds cater to both the investment needs of the prospective investors - namely **fixed income as well as growth orientation**. Therefore, investment targets of these mutual funds are judicious mix of both the fixed income securities like bonds and debentures and also sound equity scrips. In fact, these funds utilize the concept of balanced investment management. These funds are, thus also known as "balanced funds."

**Hedge Funds:** There is no exact definition of the term 'Hedge Funds'. In general, Hedge Funds are unregistered **private investment partnerships, funds or pools that may invest and trade in many different markets, strategies and instruments**. Hedge funds have an investor base comprising wealthy individuals and institution and relatively high minimum investment limits. They normally pay performance fees to their managers.

It may be noted that Hedge Funds are sometimes also known as Rich Man's Mutual Funds.

**Leverage Funds:** Leverage Funds increase the size and value of portfolio and other benefits to member through **excess gains over cost of borrowed funds**. They tend to indulge in speculative trading and risky investment.

**Money market mutual fund:** These funds invest in short term **debt securities in the money market** like certificates of deposits, commercial papers, government treasury bills etc. owing to their large size, the funds normally get a higher yield on such short-term investments than an individual investor.

**Real Estate funds:** These are closed ended mutual funds, which invest predominantly in **real estate and properties**.



**Capital protection oriented scheme:** This is a mutual fund scheme which is designed as such and which endeavors to **protect the capital invested** therein through suitable orientation of its portfolio structure.

**Fund of Funds:** They invest only in units of other mutual funds. Such funds do not operate at present in India.

**Special Schemes:** This category includes index schemes that attempt to **replicate the performance of particular index such as the BSE, Sensex or the NSE-50** or industry specific schemes (which invest in specific industries) or sectoral schemes (which invest exclusively in segment such as 'A' Group or initial public offering). Index fund schemes are ideal for investors who are satisfied with a return approximately equal to that of an index. Sectoral fund schemes are ideal for investors who have already decided to invest in particular sector or segment.

**Off-shore Funds:** Such funds invest in securities of **foreign companies with RBI permission**.

**New Direction Funds:** They invest in companies **engaged in scientific and technological research** such as birth control, anti-pollution, oceanography etc.

**Exchange Trade Funds:** ETFs are a new variety of mutual funds that first introduced in 1993. ETFs are sometimes described as mere "tax efficient" than traditional equity mutual funds, since in recent years, some large ETFs have made smaller distribution of realized and taxable capital gains than most mutual funds.

**Infrastructure Debt Fund:** They invest primarily in the **debt securities or securitized debt investment of infrastructure companies**.



## FIVE PRINCIPAL CONSTITUENTS

### 1. Sponsor

A sponsor is an influential investor who creates demand for a security because of their positive outlook on it. *The sponsor brings in capital and creates a mutual fund trust and sets up the AMC. The sponsor makes an application for registration of the mutual fund and contributes at least 40% of the net worth of the AMC.*

### 2. Asset Management Company

An asset management company (AMC) is a company that invests *its clients' pooled funds into securities that match declared financial objectives*. Asset management companies provide investors with more diversification and investing options than they would have themselves. AMCs manage mutual funds, hedge funds and pension plans, these companies earn income by charging service fees or commissions to their clients.

### 3. Trustee

A trustee is a person or firm that *holds and administers property or assets* for the benefit of a third party. A trustee may be appointed for a wide variety of purposes, such as in case of bankruptcy, for a charity, for a trust fund or for certain types of retirement plans or pensions.

No person shall be eligible to be appointed as a trustee unless—

1. he is a person of *ability, integrity and standing*; and
2. has *not* been found *guilty of moral turpitude*; and
3. has *not* been convicted of any *economic offence or violation of any securities laws*; and has furnished particulars as specified.

No asset management company and no director (including independent director), officer or employee of an asset management company shall be eligible to be appointed as a trustee of any mutual fund.



No person who is appointed as a trustee of a mutual fund shall be eligible to be appointed as a trustee of any other mutual fund

Two-thirds of the trustees shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.

In case a company is appointed as a trustee then its directors can act as trustees of any other trust provided that the object of the trust is not in conflict with the object of the mutual fund.

In case a company is appointed as the trustee of a mutual fund, the Chairperson of the board of directors of that trustee company shall be an independent director.

Provided that a trustee company, already appointed as the trustee of a mutual fund shall comply with this sub-regulation within a period as may be specified by the Board.

#### 4. Unit Holders

A unitholder is an investor who owns the units issued by a trust, like a real estate investment trust or a master limited partnership (MLP). The securities issued by trusts/MF are called units, and investors in units are called unitholders. The unit in turn reflect share of the investor in the Net Assets of the fund.

#### 5. Mutual fund

A mutual fund established under the Indian Trust Act to raise money through, the sale of units to the public for investing in the capital market. The funds thus collected as per the directions of asset management company for invested. The mutual fund has to be SEBI registered.



## MARKET INTERMEDIARIES

### Custodian

A custodian is a person who carries on the business of providing custodial services to the client. The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.

### Transfer Agents

A transfer agent is a person who has been granted a Certificate of Registration to conduct the business of transfer agent under SEBI Regulations. Transfer agents' services include **issue and redemption of mutual fund units**, preparation of transfer documents and maintenance of updated investment records. They also record transfer of units between investors where depository does not function. They also facilitate investors to get customized reports.

### Depository

A depository facilitates the smooth flow of trading and ensure the investor's about their investment in securities.

## RISKS INVOLVED IN MUTUAL FUNDS

Mutual funds may face the following risks, leading to non-satisfactory performance :

- 1) **Excessive diversification** of portfolio, losing focus on the securities of the key segments
- 2) **Too much concentration on blue chip securities** which are high priced and which do not offer more than average return
- 3) Necessity to effect **high turnover** through liquidation of portfolio resulting in large payments of brokerage and commission
- 4) **Poor planning** of investment with minimum returns
- 5) **Unresearched forecast** on income, profits and Government policies
- 6) **Fund managers being unaccountable** for poor results
- 7) **Failure to identify clearly the risk** of the scheme as distinct from risk of the market.

## TYPES OF RISKS & CAUSE OF RISK

### **Volatility risk**

Typically, equity-based funds invest in the shares of companies that are listed on stock exchanges. The value of such funds is based on companies' performance, which often gets affected due to the prevalent microeconomic factors.

### **Credit risk**

Credit risk in mutual fund investment often results from a situation, wherein, the issuer of the scheme fails to pay the promised interest. In case of debt funds, typically, fund managers include investment-grade securities with high credit ratings.

### **Liquidity risk**

Mutual funds with a long-term and rigid lock-in period like ELSS often come with liquidity risk. Such a risk signifies that investors often find it challenging to redeem their investments without incurring a loss.

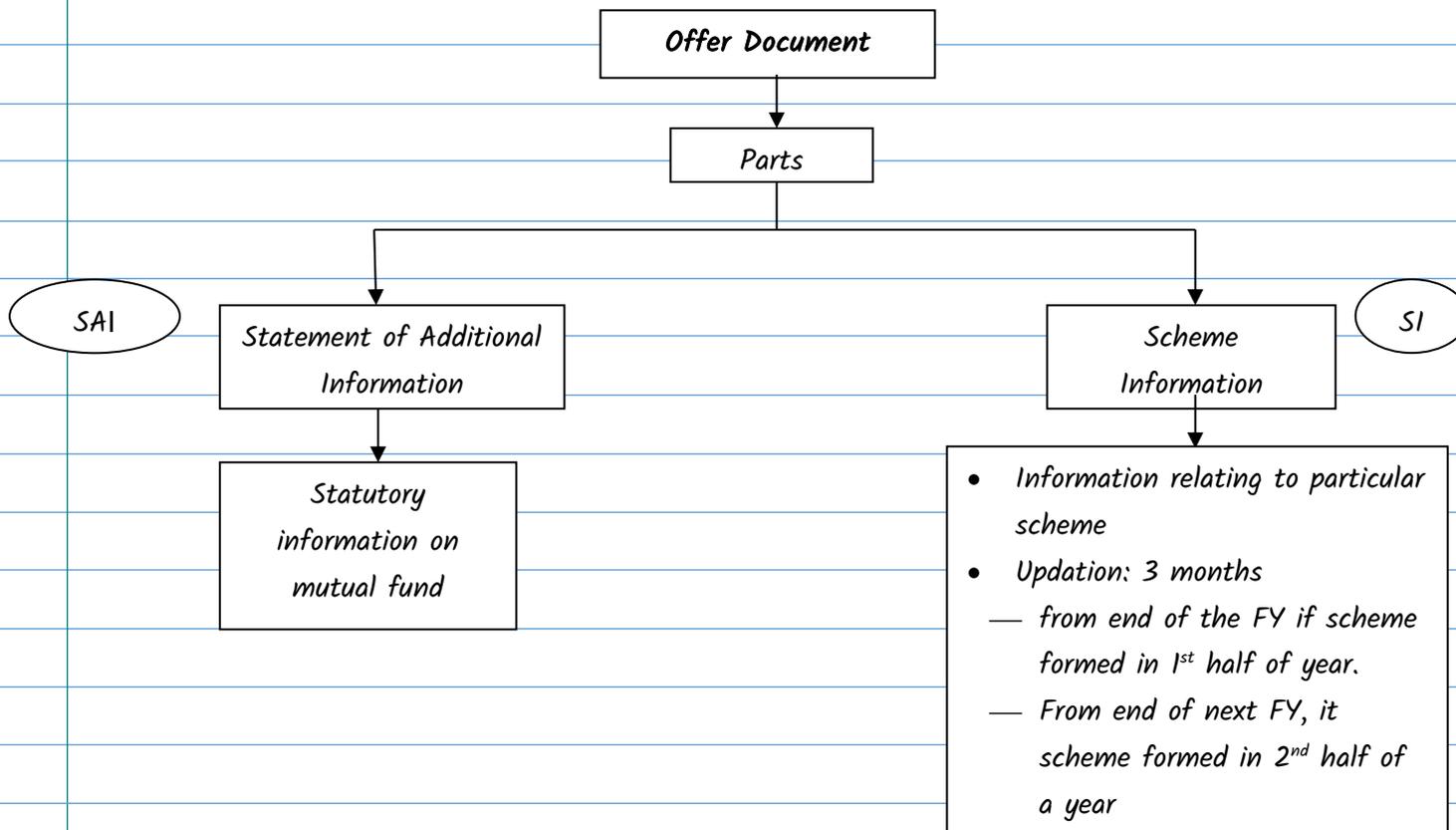
### **Concentrated risk**

This mutual fund risk is also prevalent among investors. It can be described as the situation when investors tend to put all their money into a single investment scheme or in one sector. For instance, investing entirely in just one company's stocks often bears a substantial risk of losing capital if caught amidst bad market situations.

### **Inflation risk**

It can be best described as the risk of losing one's purchasing power, mainly due to the rising inflation rate. Typically, investors are exposed to the impact of this risk when the rate of returns earned on investments fails to keep up with the increasing inflationary rate.

## OFFER DOCUMENT OF MUTUAL FUND SCHEME



## MUTUAL FUND TERMINOLOGY

### Offer Document

- AMC raises money in new schemes through New Fund Offer (NFO)
- Offer document contains key details about the NFO - open and close dates, scheme objective, nature of the scheme, etc.
- Filed with SEBI

Two parts:

**Scheme Information Document (SID)** - A document that contains the details of the scheme.

SID has to be updated every year

Key Contents:



- Scheme name on the cover page, along with scheme structure (open / closed-ended) and expected scheme nature (equity / debt / balanced / liquid / ETF)
- Highlights of the scheme
- Risk factors
- Due diligence certificate issued by the AMC
- Fees and expenses
- Rights of unit holders
- Penalties, litigations, etc.

**Statement of Additional Information** - A document that contains statutory information about the fund house offering the scheme. SAI has to be updated the end of every quarter

#### Key Contents:

- Information about sponsor, mutual fund, trustees, custodian and registrar & transfer agents
- Condensed financial information for schemes launched in the last three financial years
- Information on how to apply
- Rights of unit holders
- Details of the fund managers
- Tax, legal and other general information

#### Net Asset Value

Net asset value is the value of the assets of each unit of the scheme. Thus if the NAV is more than the face value of Rs. 10/-, there is an appreciation for the investment. If the NAV is less than the face value, it indicates depreciation of the investment. Every mutual fund shall compute the NAV of each scheme and publish the same at least in two daily newspapers on every working day.

How is it calculated:

$$\text{NAV} = \frac{\text{Net Asset of the Scheme}}{\text{number of outstanding units}}$$

Net Asset of the Scheme = Market value of investments + Receivables + other accrued income + other assets - Accrued Expenses - Other Payables - Other Liabilities



## FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

- Requires that all financial institutions (including Indian mutual funds) need to report financial transactions of US persons and entities in which US persons hold a substantial ownership.
- Enacted to prevent tax evasion through foreign investments.
- Key details required: Country of birth, Country of citizenship, country of tax residence, TIN from such country.
- Currently made mandatory for all investors (existing and new) in Indian mutual funds.
- For non-individual investors, Ultimate Beneficial Ownership (UBO) details have to be provided.

### Modes of Holding

- Single
- Either or Survivor

Signature of any of the applicants is sufficient for making transactions

- Joint

Signature of all the applicants is required for making transactions

### Nomination

- **Up to 3 nominees** can be registered for a folio
- Units get transferred to the nominees (in the proportion specified) in case of the investor's demise
- Nomination can be updated as and when required by the investor
- A minor can also be nominated, provided the guardian is specified
- If nomination is not registered, in case of death of the investor, the legal heir has to produce documents such as Will, Legal Heir Certificate, No-Objection Certificate from other legal heirs, etc.



## EXPENSE RATIO

- The fees charged by the scheme to manage investors' money. It includes:
- Fees paid to service providers like trustees, Registrar & Transfer Agents, Custodian, Auditor, etc.
- Asset management expenses
- Commissions paid to distributors
- Other selling expenses including advertising expenses
- Expenses on investor communication, account statements, dividend / redemption cheques / warrants
- Listing fees and Depository fees
- GST

Under SEBI (Mutual Funds) Regulations, 1996, Mutual Funds are permitted to incur / charge certain operating expenses for managing a mutual fund scheme - such as sales & marketing / advertising expenses, administrative expenses, transaction costs, investment management fees, registrar fees, custodian fees, audit fees - as a percentage of the fund's daily net assets. This is commonly referred to as 'Expense Ratio'.

In short, Expense ratio is the cost of running and managing a mutual fund which is charged to the scheme.

For actively managed **equity schemes**, the total expense ratio (TER) allowed under the regulations is **2.5 % for the first ₹100 crore of average weekly net assets; 2.25 % for the next ₹300 crore, 2 % for the subsequent ₹300 crore and 1.75 % for the balance AUM.**

**For debt schemes, the expense ratio permitted is 0.25 % lower than that allowed for equity funds.** Information on expense ratio applicable to a MF scheme is mentioned in the Scheme Information Document. For example, an expense ratio of 1% per annum means that each year 1% of a scheme's total assets will be used to cover the expenses managing and operating a scheme.



The expense ratio is calculated as a percentage of the Scheme's average Net Asset Value (NAV). The daily NAV of a mutual fund is disclosed after deducting the expenses. Thus, the TER has a direct bearing on a scheme's NAV - the lower the expense ratio of a scheme, the higher the NAV.

However, while expense ratio is important, it should be borne in mind that it is not the only criterion while selecting mutual fund scheme. A scheme with a consistently decent track record, but a higher expense ratio may be better than the one which lower expense ratio, but gives poor returns.

### HOLDING PERIOD RETURN

Holding period return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage.

Holding period return is calculated on the basis of total returns from the asset or portfolio - i.e. income plus changes in value. It is particularly useful for comparing returns between investments held for different periods of time

$$HPR = \frac{\text{Income} + (\text{end of period value} - \text{original value})}{\text{Original Value}} \times 100$$

**Sales Charges/ Loads:** These costs are directly charged to the investors. Mutual funds use the sales loads for payments of agents' commission and expenses for distribution and marketing.

Sales charges or loads are of two types:

- i) **Front end Load (Entry Load) :** Front end Load is a onetime fixed fee, which is paid by an investor while he buys into scheme/buys the units of a scheme of a mutual fund. Front end Load can be calculated in the following manner:

$$\text{Purchase Price} = \frac{\text{Net Asset Value}}{1 - \text{Front End Load}}$$



ii) **Back end Load (Exit Load)** : This is a fixed fee payable by an investor at the time of redemption. Back end Load can be calculated in the following manner:

$$\text{Redemption price} = \frac{\text{Net Asset Value}}{1 + \text{Back End Load}}$$

### EFFICIENCY OF A MUTUAL FUND

The efficiency of mutual funds may be judged on the factors such as -

- **Stability of funds;**
- **Liquidity of funds** (listed on exchanges);
- **Increase in NAV**, consistent growth in dividend and capital appreciation;
- Whether the **investment objectives** are clearly laid and implemented;
- Whether the issuer has a **proven track record** and offers assured return not less than a percentage;
- Whether it observes investment norms to **balance risks and profits.**

### ASSET MANAGEMENT COMPANY (AMC)

Under SEBI Regulations, every mutual fund is required to have an Asset Management Company (AMC) incorporated as per Companies Act, 2013 **to manage the funds of the mutual fund.** The AMC should be approved by SEBI and should enter into an agreement with the trustees of the mutual fund to formulate schemes, raise money against units, invest the funds and after meeting the permissible costs as per norms, distribute income to the shareholders of the funds.

#### Eligibility Criteria

In order to obtain a certificate of registration, the applicant must meet the following conditions as follows:

- a) The **sponsor** should have a **sound track record** and **general reputation of fairness and integrity** in all his business transactions.

The regulations provide that "Sound track record" means the sponsor:-



- i. be carrying on **business in financial services for a period of not less than five years**; and
- ii. ensure that the **networth is positive in all the immediately preceding five years**; and
- iii. ensure that the **positive liquid networth is more than the proposed capital contribution** of the sponsor in the asset management company and ensure that in case of change in control of the existing asset management company due to acquisition of shares, the positive liquid net worth of the sponsor or funds tied up by the sponsor is to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and
- iv. have **net profit after providing for depreciation, interest and tax in each of the immediately preceding five years**; and
- v. have **average net annual profit** after depreciation, interest and tax during the immediately preceding **five years of at least rupees ten crore**.

However, if the requirements specified under Explanation are not fulfilled, the sponsor shall,-

- i. **adequately capitalize the asset management company such that the net worth of the asset management company is not less than rupees one hundred fifty crore**; and
- ii. ensure that the **initial shareholding equivalent to capital contributed** to the asset management company to the **extent of not less than rupees one hundred fifty crore is locked-in for a period of five years**; and
- iii. **appoint experienced personnel** in asset management company such that the total **combined experience** of Chief Executive Officer, Chief Operating Officer, Chief Risk Officer, Chief Compliance Officer and Chief Investment Officer should be **at least thirty years**; and
- iv. ensure that in case of acquisition of existing asset management company, the **sponsor shall have minimum positive liquid net worth equal to incremental capitalization required** to ensure minimum capitalization of the asset management company and the positive liquid net worth of the sponsor or the funds tied up by the sponsor are to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and
- v. ensure that in case of acquisition of stake in an existing asset management company, the **shareholding equivalent to at least rupees one hundred fifty crore shall be locked in for five years**; and
- vi. ensure that other conditions in this regard **as may be specified by the Board** from time to time are adhered to.



A private equity fund or a pooled investment vehicle or a pooled investment fund may also be permitted to sponsor mutual funds subject to such other conditions as may be specified by SEBI.

- b) the applicant is a *fit and proper person*.
- c) In the case of an existing mutual fund, such *fund is in the form of a trust* and the trust deed has been approved by SEBI;
- d) The *sponsor* has contributed or contributes *at least 40% to the networth* of the *asset management company*;
- e) The *sponsor* or any of its *directors* or the *principal officer* to be employed by the mutual fund should *not have been guilty of fraud* or has not been *convicted of an offence involving moral turpitude* or has *not been found guilty of any economic offence*;
- f) *Appointment of trustees* to act as trustees for the mutual fund in accordance with the provisions of the regulations;
- g) *Appointment of asset management company* to manage the mutual fund and operate the scheme of such funds in accordance with the provisions of these regulations;
- h) *Appointment of custodian* in order to keep custody of the securities or gold and gold related instrument or other assets of the mutual fund held in terms of these regulations, and provide such other custodial services as may be authorized by the trustees.
- i) the *board of directors* of such asset management company has *at least fifty per cent* directors, who are *not associate of, or associated* in any manner with, the sponsor or any of its *subsidiaries or the trustees*;
- j) the *Chairman* of the asset management company is *not a trustee of any mutual fund*;
- k) the asset management company has a *networth* of not less than rupees *fifty crore*;

### *Liquid networth*

Liquid networth means the networth *deployed in liquid assets* which are unencumbered and shall include *cash, money market instruments, Government Securities, Treasury bills, Repo on Government securities* and any other like instruments as specified by the Board from time to time.



## AUDIT COMMITTEE OF ASSET MANAGEMENT COMPANIES (AMCS)

SEBI has prescribed that the AMCs of mutual funds shall be required to constitute an Audit Committee.

### Role

The Audit Committee shall be responsible for oversight of financial reporting process, audit process, company's system of internal controls, compliance to laws and regulations and other related process, with specific reference to operation of its Mutual Fund business.

### Membership

- (1) The Audit Committee of AMC shall have **minimum 3 directors** as members.
- (2) At least **two-third members** of the Audit Committee shall be **independent directors** of AMC. If two-third of the total strength results into fraction, then higher number after rounding up shall be considered.
- (3) The members of the Audit Committee will be **appointed by the Board of Directors** of AMC.
- (4) All members of Audit Committee shall be persons with ability to read and understand the financial statement and at least one member shall have experience and background in finance and accounts.
- (5) The **Chairperson** of the Committee shall be an **independent director**, with adequate experience in the areas of finance and financial services.

### Meetings

The Chairperson of the Audit Committee shall call the meeting as and when required. However, atleast four meetings shall be called in a financial year and not more than one hundred and twenty days shall elapse between two meetings.

### Quorum

The quorum for meeting shall either be **two members or one third** of the members of the Audit Committee, **whichever is greater, with at least two independent directors**.

## NORMS FOR SHAREHOLDING & GOVERNANCE IN MUTUAL FUNDS

- (1) No sponsor of a mutual fund, its associate or group company including the asset management company of the fund, through the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, have -
- (a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or
  - (b) Representation on the board of the asset management company or the trustee company of any other mutual fund.
- (2) Any shareholder holding 10% or more of the share-holding or voting rights in the asset management company or the trustee company of a mutual fund, shall not have, directly or indirectly, -
- (a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or
  - (b) representation on the board of the asset management company or the trustee company of any other mutual fund.
- (3) The sponsor may be permitted to disassociate from the asset management company and the mutual fund subject to such conditions as may be specified by the SEBI.
- (4) In the event of the sponsor disassociating itself from the asset management company and the mutual fund, the asset management company of the existing mutual fund may act as sponsor of the same mutual fund subject to such conditions and in the form and manner as may be specified by the SEBI.
- (5) In the event of the disassociation of the sponsor from the asset management company and the mutual fund, the shareholding for any shareholder in the asset management company shall be below 10%.
- (6) In the event of the sponsor disassociating itself from the asset management company and the mutual fund, the board of directors of such asset management company shall have at least two third independent directors.
- (7) If the asset management company fails to fulfill the conditions specified above, the dissociated sponsor or any new entity may become sponsor of the mutual fund subject to such conditions as may be specified by the SEBI from time to time.



### APPOINTMENT OF CUSTODIAN

- The mutual fund shall appoint a Custodian to carry out the custodial services for the schemes of the fund and sent intimation of the same to the Board within fifteen days of the appointment of the Custodian.
- However in case of a gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in the custody of a custodian registered with the SEBI.

### AGREEMENT WITH CUSTODIAN

- In case of a real estate mutual fund scheme, the title deed of real estate assets held by it may be kept in the custody of a custodian registered with the SEBI.
- The mutual fund shall enter into a custodian agreement with the custodian, which shall contain the clauses which are necessary for the efficient and orderly conduct of the affairs of the custodian.
- However the agreement, the service contract, terms and appointment of the custodian shall be entered into with the prior approval of the trustees.

### PROCEDURE FOR LAUNCHING OF SCHEMES

- No scheme shall be launched by the asset management company unless such scheme is approved by the trustees and a copy of the offer document has been filed with the SEBI.
- The offer documents shall contain adequate disclosures to enable the investors to make informed decisions.
- The mutual fund shall pay the minimum filing fee to the SEBI while filing the offer document and the balance filing fee within such time as may be specified by the SEBI.
- The sponsor or asset management company shall invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less, and such investment shall not be redeemed unless the scheme is wound up. However the investment by the sponsor or asset management company shall be made in such option of the scheme, as may be specified by the SEBI. The mutual fund, which intends to list units of its scheme on the recognised stock exchange(s), shall obtain 'in-principle' approval from



recognised stock exchange(s) in the manner as specified by the recognised stock exchange(s) from time to time.

- Every mutual fund desirous of listing units of its schemes on a recognised stock exchange shall execute an agreement with such stock exchange.
- The listing of close-ended schemes is mandatory and these should be listed on a recognised stock exchange within such time period and subject to such conditions as specified by the SEBI.
- Units of a close-ended scheme can be opened for sale or redemption at a predetermined fixed interval if the minimum and maximum amount of sale, redemption and periodicity is disclosed in the offer document.
- Units of a close-ended scheme can be converted into an open-ended scheme if the offer document of such scheme discloses the option and the period of such conversion or the unitholders are provided with an option to redeem their units in full.
- Units of close-ended scheme may be rolled over in the case of those unitholders who express their consent in writing and the unitholders who do not opt for the roll over or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price.
- No scheme other than equity-linked saving scheme can be opened for subscription for more than 15 days. Further, the minimum subscription and the extent of over subscription that is intended to be retained should be specified in the offer document. In the case of over-subscription, all applicants applying up to 5,000 units must be given full allotment subject to over subscription.
- The AMC is required to refund the application money if minimum subscription is not received, and also the excess over subscription within five working days of closure of subscription.
- A close-ended scheme shall be wound up on redemption date, unless it is rolled over, or if 75% of the unitholders of a scheme pass a resolution for winding up of the scheme; if the trustees on the happening of any event require the scheme to be wound up; or if SEBI, so directs in the interest of investors.



## CODE OF CONDUCT OF MUTUAL FUNDS

- (i) The schemes should not be organized, operated and managed in the interest of sponsors or the directors of AMC or special class of unit holders;
- (ii) It shall ensure the adequate dissemination of adequate, fair, accurate and timely information of all the stakeholders;
- (iii) The excessive concentration of business with the broking firm should be avoided;
- (iv) The scheme - wise segregation of bank accounts and securities accounts must be ensured;
- (v) The investment should be made in accordance with the investment strategies stated on the offer documents;
- (vi) The high standards of integrity and fairness in all the dealings should be maintained by the trustees and AMCs;
- (vii) The AMCs shall not make any exaggerated statements;
- (viii) A half yearly report on the activity of the mutual funds shall be submitted to SEBI by the trustees.

## ADVERTISEMENT OF CONDUCT OF MUTUAL FUNDS

- (i) Advertisement shall be accurate, true, fair, clear, complete, unambiguous and concise.
- (ii) Advertisement shall not contain statement which are false, misleading, biased or deceptive, based on assumptions and shall not contain any testimonials or any ranking based on any criteria.
- (iii) No celebrities shall form part of advertisement.
- (iv) No advertisement shall directly or indirectly discredit other advertisements or make unfair comparisons.
- (v) Advertisements shall be accompanied by a standard warning in legible fonts which states "Mutual fund investments are subject to market risks, read all schemes related document carefully." No addition or deletion of words shall be made to the standard warning.
- (vi) In audio visual media based advertisements, the standard warning in visual and accompanying voice over reiteration shall be audible in a clear and understandable manner. For example, in



standard warning both the visual and the voice over reiteration containing 14 words running for at least 5 seconds may be considered as clear and understandable.

- (vii) Advertisement shall not be so designed as likely to be misunderstood or likely to be disguise the significance of any statement.

### MUTUAL FUNDS ARE PERMITTED TO MAKE INVESTMENT IN

- (i) ADRs and GDRs;
- (ii) Equity of overseas company;
- (iii) Initial or follow on public investments;
- (iv) Foreign debt securities;
- (v) Money market instruments;
- (vi) Repos in the form of investment;
- (vii) Government securities;
- (viii) Derivative;
- (ix) Short - term deposits;
- (x) Units issued by overseas mutual funds.

### PRICING OF UNITS OF MUTUAL FUND

- (1) The price at which the units may be subscribed or sold and the price at which such units may at any time be repurchased by the mutual fund shall be made available to the investors in the manner specified by the Board.
- (2) The mutual fund shall provide the methodology of calculating the sale and repurchase price of units in the manner specified by the Board.
- (3) While determining the prices of the units, the mutual fund shall ensure that the repurchase price is not lower than 95 per cent of the Net Asset Value and the sale price is not higher than 107 per cent of the Net Asset Value.

## SYSTEMATIC INVESTMENT PLAN (SIP) IN MUTUAL FUND

An SIP allows an investor to *invest a fixed amount regularly in a mutual fund scheme*, typically an equity mutual fund scheme. An SIP helps investor to stagger the investments in equity mutual fund schemes over a period. *Most mutual fund advisors do not recommend investing a lumpsum in equity mutual funds.*

## SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The provisions of SEBI (LODR) Regulations, 2015 *applies to the asset management company* managing the mutual fund scheme whose units are listed on the recognised stock exchange(s).

The listed entity shall intimate to the recognised stock exchange(s) of:

- (a) *movement in unit capital* of those schemes whose units are listed on the recognised stock exchange(s);
- (b) *rating of the scheme* whose units are listed on the recognised stock exchange(s) and any changes in the rating thereof (wherever applicable);
- (c) *imposition of penalties and material litigations* against the listed entity and Mutual Fund; and
- (d) any *prohibitory orders* restraining the listed entity from transferring units registered in the name of the unit holders.

## NET ASSET VALUE (NAV) - CUT-OFF TIMELINE

Type of Transaction	Before/ After	Cut-off Time	Applicable NAV
<b>Equity-oriented &amp; Debt funds (except liquid funds)</b>			
Purchase & Switch-in (value < Rs.2 lakhs)	3 pm	Before	Same day NAV
		After	Next business day NAV
Purchase & Switch-in (value > Rs.2 lakhs)	3 pm	Before	NAV of the business day on which funds are available for utilization
		After	



<b>Redemption &amp; Switch-out</b>	<b>3 pm</b>	<b>Before</b> <b>After</b>	<b>Same day NAV</b> <b>Next business day NAV</b>
<b>Liquid Funds</b>			
<b>Purchase &amp; Switch-in</b>	<b>2 pm</b>	<b>Before</b> <b>After</b>	<b>Previous day NAV if funds are realized</b> <b>NAV of the day previous to the funds realized</b>
<b>Redemption &amp; Switch-out</b>	<b>3 pm</b>	<b>Before</b> <b>After</b>	<b>NAV of the day immediately preceding the next business day</b> <b>NAV of the day preceding the second business day from submission</b>

**Type of Scheme**

**Transaction type**

**Cut-off timings**



<p><b>Liquid Funds &amp; Overnight Funds</b></p>	<p>Subscription (including Switch-in from other schemes)</p>	<p>1:30 p.m.</p>
	<p>Redemption (including Switch-in from other schemes)</p>	<p>3:00 p.m.</p>
<p><b>All other schemes (other than Liquid Funds / Overnight Funds)</b></p>	<p>Subscription (including Switch-in from other schemes)</p>	<p>3:00 p.m.</p>
	<p>Redemption (including Switch-in from other schemes)</p>	<p>3:00 p.m.</p>

## CHAPTER 18 - COLLECTIVE INVESTMENT SCHEMES

Three great forces  
rule the world:  
stupidity, fear and  
greed.

Albert Einstein

### INTRODUCTION

A Collective Investment Schemes (CIS) is an extension of Mutual Fund wherein an investment is done in installments. In Collective Investment Schemes investors do not have day to day control over the management and operation of the scheme.

A CIS comprises a pool of assets that is managed by a Collective Investment Schemes manager as is governed by SEBI (Collective Investment Schemes) Regulations, 1999. Collective Investment Schemes provides a relatively secure means of investing on the SE.



## SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999

### An Overview :

SEBI (Collective Investment Schemes) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 2013 and registered with SEBI under these regulations, whose object is to organize, operate and manage a collective investment.

No person other than a Collective Investment Management Company which has obtained a certificate under the regulations should carry on or sponsor or launch a collective investment scheme.

“Close ended collective investment scheme” means any collective investment scheme launched by a collective investment management company in which the maturity period of the collective investment scheme is specified and there is no provision for repurchase before the expiry of the collective investment scheme.

“Collective investment scheme property” includes:

- (i) subscription of money or money's worth (including bank deposits) to the collective investment scheme;
- (ii) property acquired, directly or indirectly, with, or with the proceeds of, subscription of money retired to in item (i); or
- (iii) income arising, directly or indirectly from, subscription money or property retired to in item (i) or (ii).

## REGISTRATION OF CIMC

No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.



### APPLICATION FOR GRANT OF CERTIFICATE

Any person proposing to carry any activity as a Collective Investment Management Company shall make an application to the SEBI for the grant of registration as specified.

### APPLICATION BY A SCHEME OR ARRANGEMENT DEEMED TO BE A COLLECTIVE INVESTMENT SCHEME

- (1) Any person proposing to carry on or sponsor or launch any scheme or arrangement which would be deemed to be a collective investment scheme, shall make an application for grant of registration as a Collective Investment Management Company.
- (2) All other provisions of these regulations and the guidelines and circulars issued there under, shall apply to any scheme or arrangement deemed to be a collective investment scheme.

### APPLICATION BY EXISTING COLLECTIVE INVESTMENT SCHEMES

- Any person who immediately prior to the commencement of these regulations was operating a collective investment scheme, shall subject to the provisions as specified under these regulations make an application to the SEBI for the grant of a certificate within a period of two months from such date.
- The application made shall be dealt with in any of the following manner:
  - (a) by grant of provisional registration by SEBI;
  - (b) by grant of a certificate of registration by the SEBI;
  - (c) by rejection of the application for registration.
- An existing collective investment scheme which:
  - (a) has failed to make an application for registration to the SEBI; or
  - (b) has not been granted provisional registration by the SEBI; or
  - (c) having obtained provisional registration fails to comply with the conditions of SEBI;
 shall wind up the existing collective investment scheme.

### PROCEDURE WHERE REGISTRATION IS NOT GRANTED

Where an application made for grant of registration does not satisfy the conditions specified, the SEBI may reject the application after giving the applicant a reasonable opportunity of being heard and inform the applicant of the same. The decision shall be communicated to the applicant by the SEBI within 30 days of such decision stating therein the grounds on which the application has been rejected.

### RESTRICTIONS ON BUSINESS ACTIVITIES

Collective Investment Management Company cannot undertake :

Any activity other than managing the scheme.	Act as a trustee of any scheme	Launch any scheme for the purpose of investing in securities	Invest in any scheme floated by it.
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### OBLIGATIONS OF CIMC

Every Collective Investment Management Company should:

- (i) be responsible for managing the funds or properties of the scheme on behalf of the unit holders.
- (ii) exercise due diligence and care in managing assets and funds of the scheme.
- (iii) remain liable to the unit holders for its acts of commission or omissions.
- (iv) be incompetent to enter into any transaction with or through its associates, or their relatives relating to the scheme.
- (v) appoint registrar and share transfer agents and should also abide by their respective Code of Conducts.
- (vi) give receipts for all monies received and report of the receipts and payments to SEBI, on monthly basis.
- (vii) hold a meeting of Board of Directors to consider the affairs of scheme, at least twice in every three months and also ensures that its officers or employees do not make improper use of their position or information.
- (viii) obtain adequate insurance against the properties of the schemes.



- (ix) The Collective Investment Management Company and its designated employees shall invest such amounts in such schemes of the Collective Investment Management Company, as may be specified by the Board from time to time.

### SUBMISSION OF INFORMATION AND DOCUMENTS

1. The Collective Investment Management Company should prepare quarterly reports of its activities and the status of compliance of SEBI regulations and submit the same to the trustees within one month of the expiry of each quarter.
2. The Collective Investment Management Company should file with the trustees and the SEBI, particulars of all its directors along with their interest in other companies within fifteen days of their appointment.
3. It should furnish a copy of the Balance Sheet, Profit and Loss Account; a copy of the summary of the yearly appraisal report and such other information as may be required, to the unit holders, SEBI and trustees within two months from the closure of financial year.

### ELIGIBILITY FOR APPOINTMENT AS TRUSTEE

The persons registered with the SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations, 1993 are only eligible to be appointed as trustees.

No person is eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the CIMC.

No person should be appointed as trustee of a scheme, if he has been found guilty of an offence under the securities laws or the SEBI or any authority to which the SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations made hereunder.

The trustee and the Collective Investment Management Company should enter into an agreement for managing the schemes' property.



### APPOINTMENT OF TRUSTEE NOT FOUND GUILTY

No person should be appointed as trustee of a collective investment scheme, if he has been found guilty of an offence under the securities laws or the SEBI or any authority to which the SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations.

### LAUNCH OF SCHEMES BY COLLECTIVE INVESTMENT MANAGEMENT COMPANY

Close ended collective investment scheme and collective investment scheme duration  
Collective Investment Management Company shall:

- (a) launch *only close ended* collective investment schemes;
- (b) the *duration* of the collective investment schemes shall *not be of less than three calendar years*.

### NO GUARANTEED RETURNS

No collective investment scheme shall provide guaranteed or assured returns. However *indicative return may be indicated in the offer document only*, if the same is assessed by the appraising agency and expressed in monetary terms.

### ADVERTISEMENT MATERIAL

Advertisements in respect of every collective investment scheme shall be in *conformity with the Advertisement Code* as specified in the Seventh Schedule. The advertisement for each collective investment scheme shall disclose in addition to the investment objectives, the method and periodicity of valuation of collective investment scheme property.

### APPRAISING AGENCY

The appraising agency whose appraisal report forms part of the offer document and has given a written consent for the inclusion of the appraisal report in the offer document shall be liable for any statement in the appraisal report which is misleading, incorrect or false.



### MISLEADING STATEMENTS

The offer document and advertisement materials shall not be misleading or contain any statement or opinion which are incorrect or false. Where an offer document or advertisement includes any statement or opinions which are incorrect or false or misleading, every person—

- (i) who is a **director** of the **Collective Investment Management Company** at the time of the issue of the offer document;
- (ii) who has **issued the offer document**

**Shall be punishable** under the Act unless he proves either that the statement or opinion was immaterial or that he had reasonable ground to believe at the time of the issue of the offer document or advertisement that the statement was true.

### OFFER PERIOD

**No** collective investment scheme shall be open for subscription **for more than 15 days**. However, collective investment scheme may be kept open for subscription for a maximum of **another 15 days subject to issuance of public notice** by the Collective Investment Management Company before the expiry of initial 15 days.

### KEY ASPECTS FOR LAUNCHING COLLECTIVE INVESTMENT SCHEME

1. The company floating CIS shall have to seek registration with SEBI as Collective Investment Management Company (CIMC).
2. CIS shall be constituted as a two tiered structure comprising of a trust and a CIMC.
3. At the time of application for Registration as CIMC, these entities should have a minimum networth of Rs. 3 crores which shall have to be increased to Rs. 5 crores within three years from the date of grant of registration.
4. **Compulsory Filing of Offer Documents:** Every collective investment Scheme shall have to file offer documents with SEBI containing adequate disclosures to enable the investors to take informed investment decisions.
5. **Mandatory Rating Requirement:** Each collective investment scheme shall have to obtain a rating from recognised credit rating agencies such as CRISIL Limited, Fitch Ratings India Private Limited, ICRA Limited, CARE, SMERA.



6. The projects being undertaken must also be appraised by an empanelled appraising agency such as Agricultural Finance Corporation Ltd., North Eastern Development Finance Corporation Ltd. (NEDFI), Indian Institute of Forest Management, The Forest Research Institute (FRI).
7. **No Assured Return:** The collective investment schemes are prohibited from guaranteeing assured returns. Indicative returns, if any, provided by the collective investment scheme shall be based on the projections in the appraisal report.
8. **Advertisement Code:** Advertisements in respect of every collective investment scheme shall have to conform to the SEBI's advertisement code.
9. **Subscription Period:** No collective investment scheme shall be kept open for subscription for a period of more than 15 days. The collective investment schemes shall be close ended in nature. The collective investment schemes must indicate the minimum and maximum amount proposed to be raised over this period.
10. **Duration of collective investment Schemes:** The duration of the collective investment schemes shall be for a minimum period of 3 years.
11. **Insurance:** Compulsory Insurance cover for the assets of the collective investment scheme and personal indemnity cover for the CIMC shall be obtained.
12. **Listing:** Units issued under the Collective Investment Schemes are to be compulsorily listed on recognised stock exchanges.
13. **Accounting/Valuation norms:** Accounting/valuation norms as stipulated shall have to be followed by Collective Investment Schemes.

### RIGHTS AND OBLIGATIONS OF THE TRUSTEE

The trustee should ensure that the CIMC has;

- (i) the necessary office **infrastructure**;
- (ii) **appointed all key personnel** including managers for the schemes having necessary educational qualifications and past experience;
- (iii) **appointed auditors** from the list of auditors approved by SEBI;
- (iv) appointed a **compliance officer** to redress investor grievances;
- (v) appointed **registrars** to an issue and share transfer agent.



- (vi) prepared a compliance manual and designed internal control mechanisms including internal audit systems;
- (vii) taken adequate insurance for the assets of the scheme;
- (viii) not given any undue or unfair advantage to any associates of the company or dealt with any of the associates in any manner detrimental to the interest of the unit holders;
- (ix) operated the scheme in accordance with the provisions of the trust deed, these regulations and the offer document;
- (x) undertaken the activity of managing schemes only;
- (xi) taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme;
- (xii) minimum networth on a continuous basis and shall inform the SEBI immediately of any shortfall
- (xiii) A meeting of the trustees to discuss the affairs of the scheme should be held at least twice in every three months.

### TERMINATION OF TRUSTEESHIP

- (a) If the trustee ceases to be trustee under SEBI (Debentures Trustees) Regulations, 1993; or
- (b) if the trustee is in the course of being wound up; or
- (c) if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for removing the trustee and SEBI approves such resolution; or
- (d) if in the interest of the unit holders, SEBI, for reasons to be recorded in writing decides to remove the trustee;
- (e) if the trustee serves on the Collective Investment Management Company, a notice of not less than three months expressing intention of not to continue as trustee.

### TERMINATION OF THE AGREEMENT WITH THE COLLECTIVE INVESTMENT MANAGEMENT COMPANY

The agreement entered into by the trustee with the Collective Investment Management Company may be terminated -



- (a) if the CIMC is in the **course of being wound up** as per the provisions of the Companies Act, 2013 or;
- (b) if **unit holders** holding at least **three-fourth of the nominal value** of the unit capital of the scheme **pass a resolution** for terminating the agreement with the CIMC and the prior approval of SEBI has been obtained, or
- (c) if in the **interest of the unit holders**, **SEBI or the trustee** after obtaining prior approval of SEBI, and after giving an opportunity of being heard to the Collective Investment Management Company, decide to terminate the agreement with the CIMC.

### DISCLOSURES IN THE OFFER DOCUMENT

The CIMC shall before launching any scheme **file a copy of the offer document** of the scheme with the **SEBI** and pay filing fees as specified. The offer document should also contain **true and fair view** of the scheme and **adequate disclosures** to enable the investors to make informed decision. **SEBI may carry out such modifications** in the **offer document** as it deems fit. In case no modifications are suggested by SEBI in the offer document **within 21 days from the date of filing**, the Collective Investment Management Company may issue the offer document to the public.

### ALLOTMENT OF UNITS AND REFUNDS OF MONEY

The CIMC should refund the application money to the applicants, if the scheme fails to receive the minimum subscription amount. Any amount refundable should be refunded **within 5 working days from the date of closure** of subscription list, by Registered A.D. and by cheque or demand draft. In the event of **failure to refund** the amounts within the period specified, the CIMC has to **pay interest** to the applicants at a rate of **fifteen percent per annum** on the expiry of 5 working days from the date of closure of the subscription list. **A scheme shall not be open for more than 15 days.**



### CLOSURE OF SUBSCRIPTION LIST

Each collective investment scheme shall immediately after the closure of the subscription list comply with the following conditions, namely,-

- (a) minimum subscription amount of rupees twenty crore;
- (b) minimum twenty investors; and
- (c) no person shall hold more than twenty-five percent of the assets under management of scheme.

Provided that where the collective investment scheme fails to comply with this, Collective Investment Management Company shall be liable to refund the application money to the applicants.

### OFFER PERIOD

No collective investment scheme shall be open for subscription for more than fifteen days: Provided that collective investment scheme may be kept open for subscription for a maximum of another fifteen days subject to issuance of public notice by the Collective Investment Management Company before the expiry of initial fifteen days.

### UNIT CERTIFICATES

The Collective Investment Management Company should issue to the applicant whose application has been accepted, the units only in dematerialized form within a period of five working days from the date of closure of the subscription list.

### TRANSFER OF UNITS

A unit certificate issued under the scheme should be freely transferable. The CIMC on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production. However, if the units are held in a depository such units shall be transferable in accordance with the provisions of the SEBI (Depositories and Participants) Regulations, 2018 and bye-laws of the depository.



## INVESTMENTS AND SEGREGATION OF FUNDS

The Collective Investment Management Company should:

- (a) not invest the funds of the scheme for purposes other than the objective of the scheme as disclosed in the offer document.
- (b) segregate the assets of different schemes.
- (c) not invest corpus of a scheme in other schemes.
- (d) not transfer funds from one scheme to another scheme.
- (e) not invest more than 25% of the amount raised by CIMC in projects owned directly or indirectly by CIMC.

## LISTING OF SCHEMES

The units of every scheme shall be listed immediately after the date of allotment of units and **not later than six weeks from the date of closure** of the scheme on each of the stock exchanges as mentioned in the offer document.

## WINDING UP OF SCHEME

A scheme may be wound up :

- (a) On the **happening of any event** which, in the opinion of the trustee, requires the scheme to be wound up and the prior approval of the SEBI is obtained; or
- (b) If **unit holders** of a scheme holding at least **three-fourth** of the nominal value of the unit capital of the scheme, **pass a resolution** that the scheme be wound up and the approval of SEBI is obtained thereto; or
- (c) If in the **opinion of SEBI**, the continuance of the scheme is prejudicial to the interests of the unit-holders; or
- (d) If in the **opinion of the CIMC**, the **purpose of the scheme cannot be accomplished** and it obtains the approval of the trustees and that of the unit holders of the scheme holding at least three-fourth of the nominal value of the unit capital of the scheme with a resolution that the scheme be wound up and the approval of SEBI is obtained thereto.



### WHAT SHALL NOT BE COLLECTIVE INVESTMENT SCHEME

- (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
- (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934;
- (iii) being a contract of insurance to which the Insurance Act, 1938, applies;
- (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- (v) under which deposits are accepted under section 74 of the Companies Act, 2013;
- (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 406 of the Companies Act, 2013;
- (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
- (viii) under which contributions made are in the nature of subscription to a mutual fund;
- (ix) such other scheme or arrangement which the Central Government may, in consultation with SEBI, notify, shall not be a collective investment scheme.

### SEBI (COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT) REGULATIONS, 2022

The following amendments to the SEBI (Collective Investment Schemes) Regulations, 1999, have been made:

Definition of "auditor" has been modified as-

"auditor" means a firm, including a limited liability partnership, constituted under the Limited Liability Partnership Act, 2008, who is eligible and qualified to audit the accounts of a company under section 141 of the Companies Act, 2013.

The definition of "designated employees" has been inserted:

"designated employees" of the Collective Investment Management Company includes:

- (i) chief executive officer, chief investment officer, chief risk officer, chief information security officer, chief operation officer, fund manager, compliance officer, sales head, investor relation



officer, heads of other departments and dealer of the Collective Investment Management Company;

- (ii) persons directly reporting to the chief executive officer (excluding personal assistant/ secretary);
- (iii) fund management team and research team;
- (iv) other employees as identified by Collective Investment Management Companies or trustees.

## GENERAL OBLIGATIONS OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY

### MAINTAIN PROPER BOOKS OF ACCOUNT AND RECORDS, ETC.

- (1) Every Collective Investment Management Company shall-
  - (a) keep and maintain proper books of account, records and documents, for each collective investment scheme so as to explain its transactions and to disclose any point of time the financial position of each collective investment scheme and in particular give a true and fair view of the state of affairs of the collective investment scheme, and
  - (b) intimate to the SEBI and the trustees the place where such books of account, records and documents including computer records are maintained.
- (2) Every Collective Investment Management Company shall continue to maintain and preserve, for a **period of five years** after the **close of each collective investment scheme**, its books of account, records, computer data and documents.

### DISPATCH OF WARRANTS AND PROCEEDS

The Collective Investment Management Company shall-

- (a) Dispatch to the unit holders the **warrants within 42 days** of the declaration of the interim returns.
- (b) Dispatch the **redemption proceeds within 30 days** of the closure or the winding up of the collective investment scheme.



## STATEMENT OF ACCOUNTS AND ANNUAL REPORT

The Collective Investment Management Company shall:

- a) The expense incurred in case of *Initial Issue Expenses and Annual recurring expenses shall not exceed 2.00 percent of the funds raised under the collective investment scheme.* However, other direct costs, if any, which are incidental to the operation of the collective investment scheme may be charged to scheme, as may be approved by trustee;
- b) prepare the accounts of the collective investment scheme in accordance with accounting norms as specified in Part II of the Ninth Schedule;
- c) comply with format of balance sheet and profit and loss accounts as specified in Part III of the Ninth Schedule.

## AUDITOR'S REPORT

Every collective investment scheme shall have the *annual statement of accounts audited by an auditor who is empanelled with the SEBI and who is not in any way associated with the auditor of the Collective Investment Management Company.* The auditor shall be appointed by the trustee. The auditor shall forward his report to the trustee and such report shall form part of the Annual Report.

## PUBLICATION OF ANNUAL REPORT AND SUMMARY THEREOF

The collective investment scheme wise annual report or an abridged form thereof shall be published in a *national daily* as soon as possible but *not later than two calendar months from the date of finalisation of accounts.* The report if published in abridged form shall carry a note that full annual report shall be available for inspection at the Head Office and all branch offices of the Collective Investment Management Company.

## QUARTERLY DISCLOSURES

A Collective Investment Management Company, on behalf of the collective investment scheme shall *before the expiry of one month from the close of each quarter* publish its unaudited financial results in one *daily newspaper having nationwide circulation* and in a newspaper published in the *language of the region* where the Head Office of the Collective Investment Management Company is situated.



## CHAPTER 19 - PRACTICAL PROBLEMS - PAST YEAR EXAMS

2016 - June 1(c)

Manish owns 250 preference shares of Amaze Ltd., which currently sells for Rs.77 per share and pays annual dividend of Rs. 13 per share -

- (i) What is Manish's expected return?
- (ii) If Manish requires 13% return, should he sell or buy more preference shares at the current price? (5 marks)

2014 - Dec. [1]

The following information has been collected regarding two shares, Share-A and Share-B, trading at BSE on 18<sup>th</sup> September, 2017.

**Share - A**

Date	Time	Price Rs.	No of shares traded
18 <sup>th</sup> September, 2017	14.45.10	385.60	550
18 <sup>th</sup> September, 2017	14.55.35	382.78	1,575
18 <sup>th</sup> September, 2017	15.00.20	380.99	1,514
18 <sup>th</sup> September, 2017	15.01.30	381.79	1,625
18 <sup>th</sup> September, 2017	15.05.40	380.38	1,025
18 <sup>th</sup> September, 2017	15.10.20	381.51	1,390
18 <sup>th</sup> September, 2017	15.20.25	381.42	800
18 <sup>th</sup> September, 2017	15.22.20	384.07	600
18 <sup>th</sup> September, 2017	15.25.55	383.74	1,200

**Share - B**

Date	Time	Price Rs.	No. of shares traded
18 <sup>th</sup> September, 2017	14.07.30	50.60	250
18 <sup>th</sup> September, 2017	14.11.40	52.10	585
18 <sup>th</sup> September, 2017	14.16.20	49.85	700
18 <sup>th</sup> September, 2017	14.26.25	51.25	425
18 <sup>th</sup> September, 2017	14.45.10	50.75	450
18 <sup>th</sup> September, 2017	14.55.35	49.95	500



*You are required to determine the closing prices and last traded prices for both the shares for 18<sup>th</sup> September, 2017. (8 marks)*

2016 - Dec. [1](d)

Following information has been collected regarding Share-X trading at NSE on 2<sup>nd</sup> September, 2017 :

Date	Time	Price Rs.	No. of shares traded
2 <sup>nd</sup> September, 2017	14.42.10	265.60	550
2 <sup>nd</sup> September, 2017	14.53.35	262.78	1,575
2 <sup>nd</sup> September, 2017	15.00.20	260.99	1,514
2 <sup>nd</sup> September, 2017	15.03.30	261.79	1,625
2 <sup>nd</sup> September, 2017	15.05.40	260.38	1,025
2 <sup>nd</sup> September, 2017	15.12.20	261.51	1,390
2 <sup>nd</sup> September, 2017	15.21.25	261.42	800
2 <sup>nd</sup> September, 2017	15.22.20	264.07	600
2 <sup>nd</sup> September, 2017	15.26.55	263.74	1,200

You are required to determine the closing price and last traded price for Share-X for 2<sup>nd</sup> September, 2017. (8 marks)



2014 - Dec. [2] (c)

25<sup>th</sup> January, 2013, XY Bank purchased at 91 - days treasury bill maturing on 16<sup>th</sup> March, 2013. The rate quoted by the seller is Rs. 99.25 per Rs. 100 face value. Computer the yield percentage of the treasury bill. (4 marks)

2016 - Dec. [1] (b)

As on 1<sup>st</sup> April, 2016, Russel Ltd. has surplus cash for six months. It has following two options under consideration for investing the surplus cash :

- (i) To invest in fixed deposit at an interest rate of 8% per annum payable quarterly; or
  - (ii) To buy treasury bills of the face value of Rs. 100 at Rs. 98.019 maturing after six months.
- Presuming that the risk involved in both the options is identical, state with reasons as to which option should be selected by the company for investing its surplus funds. (5 marks)



2008 - June [6] (a)

A unit of Evergrow Equity Fund is redeemed at Rs. 15, the exit load being 2.25%. Calculate the NAV. (4 marks)



2008 - Dec. [5] (a)

Define 'NAV' and 'offer price'. If Rahul invests Rs. 10,000 in a scheme that charges 2% front end load at an NAV of Rs. 10 per unit, what shall be the public offer price? (4 marks)

2010 - June [5] (c)

The redemption price of a mutual fund unit is Rs.48 while the front-end load and back-end load charges are 2% and 3% respectively.

You are required to calculate :

- (i) Net asset value per unit; and
- (ii) Public offer price of the unit. (5 marks)

2015 - June [1] (a)

Super mutual fund has launched a scheme named 'Super Bonanza'. The net asset value [NAV] of the scheme is Rs. 12.00 per unit. The redemption price is Rs. 11.66 per unit and offer price is Rs. 12.50 per unit. You are required to calculate -

- (i) Front - end load; and
- (ii) Back-end load. (5 marks)

2015 - June [1] (b)

Calculate value of 'rights' from the following information -

Number of rights shares offered	2,500
Number of shares held	1,000
Ex-rights price	Rs. 18
Rights offer price	Rs. 15
Face value of a share	Rs. 10 (5 marks)



2015 - Dec. [1] (b)

Somnath Ltd. has a share capital of 50,000 equity shares of Rs. 100 each. Market value is Rs. 250 per share. The company decides to make a rights issue to the existing shareholders in proportion of one new rights share of Rs. 100 at a premium of Rs. 30 per share for every 5 shares held. Calculate the value of rights. (5 marks)

2016 - Dec. [1] (c)

Compute NAV and rate of return for a unit holder who bought a unit at Rs. 17.60 and received a dividend of Rs. 2 per unit during the period. Face value of the unit is Rs. 10. Other details are as under :

Particulars	Rs. in crore
Market value of funds portfolio	4,200
Size of the scheme	2,000
Accrued income	100
Receivables	100
Accrued expenses	275
Liabilities	150
Number of outstanding units : 200 crore	

(5 marks)

### MODULE QUESTION

ABC mutual Fund has the following assets in scheme XYZ at the close business on 31st March, 2019.

Company	No. of Shares	Market Price Per Share
N Ltd	25,000	Rs 20
D Ltd	35,000	Rs 300
S Ltd	29,000	Rs 380
C Ltd	40,000	Rs 500

The total number of units of scheme XYZ are 10 Lakh. The Scheme XYZ has accrued expenses of Rs 2,50,000 and other Liabilities of Rs 2,00,000. Calculate the NAV per unit of the scheme XYZ

2017 - Dec. [1]

ABC Ltd. a company whose equity shares are listed at BSE and NSE is seeking delisting of its equity shares from both the recognized stock exchanges. It provides an exit opportunity to all public shareholders in accordance with SEBI [Delisting of Equity Shares] Regulations, 2009. Calculate the minimum number of equity shares to be acquired for the delisting offer to be successful. Also determine the final offer price from the details given hereunder: (8 marks)

## (i) Shareholding

	Number of Shares	Percentage holding
Promoter	75,00,000	75
Public	25,00,000	25
	1,00,00,000	100

(ii) The floor price in terms of SEBI [Substantial Acquisition of Shares and Takeovers] Regulations, 2011 is Rs. 550 per share.

(iii) Assume that all the public shareholders holding shares in the demat mode had participated in the book building process as follows :

Bid Price Rs.	Number of Investors	Demand [Number of Shares]
550	5	2,50,000
565	8	4,00,000
575	10	2,00,000
535	4	4,00,000
595	6	1,20,000
600	5	1,30,000
605	3	2,10,000
610	3	1,40,000
615	3	1,50,000
620	1	5,00,000
	48	25,00,000



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2015 - Dec. [1] (a)

Jai Ltd. announced issue of bonus shares in the ratio of 1:3 [i.e., one share for every three shares held]. At present the face value of share is Rs. 10, current market price is Rs 621. In addition, it announced split of shares by reducing the face value from Rs. 10 to Rs. 2. Calculate the share price if all other things remain constant. What would have been the situation if split would have been done before the issue of bonus shares? (5 marks)

2015 - Dec. [1]

Aishwarya Ltd. proposes to issue 10,00,000 share warrants to its promoters. The share warrants give an option to buy shares at a predetermined price. From the following share price data, identify the price at which share warrants should be issued and the amount payable by the promoters at the time of allotment :

- (i) Closing price in the market on the relevant date : Rs. 340
- (ii) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; Rs. 354.
- (iii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date : Rs. 350. (6 marks)

2014 - June [1]

Attempt the following and support your answer with necessary reasons:

- a) A transaction of dematerialized equity shares took place on Wednesday, the 19<sup>th</sup> March, 2018 at BSE. According to the compulsory rolling settlement, complete the following table with timeline of the settlement cycle :

Activity	Day and Date
Rolling settlement trading	
Custodial confirmation	
Delivery generation	
Securities and funds pay in	
Securities and funds pay out	
Valuation debit	
Auction	
Auction settlement	

(5 marks)

Answer-

Activity	Day	Day and Date
Rolling Settlement Trading	T	Wednesday i.e. 19 <sup>th</sup> March
Custodial confirmation	T+1 Working days	Thursday i.e. 20 <sup>th</sup> March
Delivery generation	T+1 Working days	Thursday i.e. 20 <sup>th</sup> March
Securities and funds pay in	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Securities and funds pay out	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Valuation debit	T+2 Working days	Friday i.e. 21 <sup>st</sup> March
Auction	T+3 Working days	Monday i.e. 24 <sup>th</sup> March
Auction Settlement	T+5 Working days	Wednesday i.e. 26 <sup>th</sup> March



June 2019

A Mutual Fund having 300 units has shown Net Asset Value (NAV) of Rs 8.75 and Rs 9.45 at the beginning and at the end of the year respectively. The Mutual Fund has given two options:

- (i) Pay Rs 0.75 per unit as dividend and Rs 0.60 per unit as capital appreciation; or
  - (ii) These distributions are to be reinvested at an average NAV of Rs 8.65 per unit. What difference it would make in terms of return available and which option is preferable?
- (5 marks)

June 2019:

From the following information, calculate the Enterprise Value of E Ltd. :

Balance Sheet of E Ltd. as on 31st March, 2018

Liabilities	Amount (Lakh)	Assets	Amount (Lakh)
Share Capital (Face Value of Rs 2)	952	Non-Current Assets	2,550
Reserves & Surplus	48	Current Assets :	
Minority Interest	115	Cash & Cash Equivalent	102
Short-term Borrowings	2,860	Other Current Assets	1,323
	<b>3,975</b>		<b>3,975</b>

Current Market Price Per Share is Rs 96. (4 marks)

June 2019:

The Board of directors of a listed company desires to delist its equity shares from all the recognised stock exchanges. The voting details through postal ballot are as under:

- Total nos. of voters : 7,000 (Public : 5,000 & Promoters : 2,000)
- Voting at shareholders meeting :

(a) Public shareholders :

In favour : 3,300 votes

In against : 1,700 votes

(b) All promoters shareholders have voted in favour of resolution.

By referring SEBI delisting regulation, decide upon the resolution passed by the shareholders.

(4 marks)



June 2019:

The financial data of a listed company as on 31<sup>st</sup> March, 2018 are as follows :

Authorized equity share capital                      Rs 10 crore

(1 crore shares of Rs 10 each)

Paid-up equity share capital                      Rs 5 crore

General reserve    Rs 3 crore

Debenture redemption reserve                      Rs 2 crore

The Board of directors of your company passed resolution by circulation for buy-back of shares to the extent of 9% of the company's paid-up share capital and free reserves. You are required to examine the validity of the proposal with reference to the provisions of the SEBI Regulations. (4 marks)

June 2019:

What are the Option contracts? You are required to compute the profit/loss for each investors in below option contracts :

- (i) Mr. X writes a call option to purchase share at an exercise price of Rs 60 for a premium of Rs 12 per share. The share price rises to Rs 62 by the time the option expires.
- (ii) Mr. Y buys a put option at an exercise price of Rs 80 for a premium of Rs 8.50 per share. The share price falls to Rs 60 by the time the option expires.
- (iii) Mr. Z writes a put option at an exercise price of Rs 80 for a premium of Rs 11 per share. The price of the share rises to Rs 96 by the time the option expires.
- (iv) Mr. XY writes a put option with an exercise price of Rs 70 for a premium of Rs 8 per share. The price falls to Rs 48 by the time the option expires. (5 marks)



Dec 2019:

A Mutual fund has sown Net Asset Value [NAV] of Rs. 11.60 at the commencement of the year. At the end of the year NAV increases to Rs. 12.50. Meanwhile, the Fund distributes Rs. 0.75 as dividend and Rs.0.85 as capital gains.

- (i) Calculate the fund's return during the year.
- (ii) Had these distributions been re-invested at an average NAV of Rs. 12.20, what is the return for 400 units? [5 marks]



Dec 2019:

After the Initial Public Offer, the equity capital of promoters group holding in a listed company is Rs. 140 crore. The post issue equity capital of the company is Rs. 600 crore. The promoters group holding includes [acquired during previous year] :

- i. Rs. 20 crore equity capital allotted in consideration of transfer of Technical know-how by the promoters.
- ii. Rs. 10 crore equity capital pledged with bank.

Whether the promoters group is satisfying minimum promoters contribution requirement as per SEBI regulation? Explain. [5 marks]

Dec 2019:

TechNoGrow Ltd. approved buy back proposal of 200000 Equity share capital in its Board meeting on 25<sup>th</sup> April, 2019. The record date was fixed on 25<sup>th</sup> June, 2019. The closing market price on NSE as on 25<sup>th</sup> April, 2019 and 25<sup>th</sup> June, 2019 was Rs. 2640.40 and Rs. 2514.05 respectively. Determine the number of equity shares which is eligible to be tendered by Small Shareholder Category [rounded off to lower whole number]. [5 marks]



Dec 2020

The information relating to one Equity Oriented Mutual Fund is given below:

(Rs in thousand)

	2nd January, 2019	3rd January, 2019
Market Value of Fund's Portfolio	19,300	19,800
Receivables	200	200
Other Accrued Income	50	50
Accrued Expenses	100	100
Other Payables	100	100
Units of Mutual Fund	5,00,000	5,00,000

Face value per unit is Rs 10.

You are required to calculate:

- (i) NAV of the fund on 2nd January, 2019 and 3rd January, 2019.
- (ii) Ramesh invested Rs 1,95,000 in this Fund on 2nd January, 2019 at 02:00 PM, through Internet Banking Payment System. Calculate the number of mutual fund units allotted to him. Assume that there is no transaction cost.

(5 marks)



Dec 2020

Govind Ltd. proposes to issue 20 lakh share warrants to its promoters. The share warrant gives an option to buy shares at a predetermined price. The price trend of the Company's share in the stock market is given below:

- Closing price on the relevant date: Rs 250.
- The average weekly high and low of the closing price during the 26 weeks preceding to the relevant date: Rs 275.
- The average weekly high and low of the closing price during the 2 weeks preceding to the relevant date: Rs 280.

You are required to:

- (a) Identify the minimum price at which share warrants should be issued; and
- (b) Calculate the amount payable by the promoters at the time of allotment of the warrants.

(4 marks)

Dec 2020

RP Ltd. is planning to issue an IPO in 2019 for which a draft offer document is proposed to be filed in September, 2019. The following data is available regarding the company:

(Rs in crore)

	2015-16	2016-17	2017-18
Net Tangible Assets	5.00	8.00	7.00
Monetary Assets	1.00	3.00	3.00
Net Worth	3.00	4.00	5.00

- (i) Advise the company whether they can proceed with the IPO
- (ii) Will your answer be different if value of monetary assets is Rs 4 crore in 2016-17?
- (iii) How will you deal with the situation, if company has monetary assets of Rs 5 crore in the year 2017-18? (5 marks)

Dec 2020

The Nifty Index was trading at 11025 on 1st February, 2019 on NSE. The put option of 10800 with expiry date of 28th February, 2019 was available at Rs 50 per lot and the call option of 11300 with same expiry date was available at Rs 30 per lot. The size of one lot of Nifty is 75.

Ganesh who is regular trader in stock market purchased 2 lots of put options of 10800 and one lot of call option of 11300. On 22nd February, 2019, the Nifty Index was trading at 10850. Ganesh decided to square off all these transactions. At the time of squaring off, the call option of 10800 could be sold at Rs 80 and put option could be sold at Rs 5.

Calculate the Net gain/loss from this transaction considering the transaction charges including brokerage is fixed at Rs 100 per lot (buy or sale). (5 marks)

Dec 2020

Raman Ltd. issued 50 Lakh equity shares at a price of Rs 200 per share. The company provided Green Shoe Option for stabilizing the post listing price of the shares. The issue was oversubscribed and it was decided that stabilizing agent would borrow maximum number of shares permitted by SEBI (ICDR) regulations. Due to rise in price during Green Shoe Option period, only 5 Lakh shares could be bought back at the price of Rs 180.

You are required to:

- (i) Calculate the number of shares that the stabilizing agent needs to borrow in this case at the time of allotment and explain the same with relevant provisions.
- (ii) Explain the responsibility of Issuer Company in the above case with respect to shortfall while exercising Green Shoe Option.
- (iii) Calculate the amount if any, to be transferred to Investor Protection and Education Fund.

(5 marks)



### June 2021

R is holding 2000 units of a equity-oriented scheme of a mutual fund and 1000 units of a debt scheme of a mutual fund. On 7th June, 2020 he is interested to redeem these units. Prevailing net asset value (NAV) of these units are as under:

Date	Net Asset Value (NAV)	
	Equity-oriented scheme (in Rs)	Debt scheme (in Rs)
6th June	45	35
7th June	46	34
8th June	47	33

He makes an application for redemption of above units on 7th June, 2020 at 2:30 pm. Based on given information answer the following:

- (i) What do you mean by cut-off time? What are the cut-off time for equity-oriented & Debt funds (except liquid funds)?
- (ii) What will be the applicable NAV in his case?
- (iii) What will be applicable NAV if application for redemption is made at 3:15 pm?

(3+1+1 marks)



June 2021

What do you mean by Enterprise value under SEBI Takeover code? From the given information, calculate the Enterprise value of KRS Ltd:

- Outstanding equity share capital Rs 1,600 lakh (par value per share Rs 2)
- Market price per share on closing date (equity share) : Rs 125
- Reserves & Surplus Rs 195 lakh, Minority interest Rs 275 lakh, Preference share capital Rs 4,200 lakh, Cash-in-hand Rs 72 lakh, Cash equivalent Rs 63 lakh, Other current assets Rs 1,965 lakh.

(5 marks)



June 2021

*Aruna Steel Ltd. issued Bonds with the following terms:*

*Issue price of the Bond : Rs 1000*

*Coupon rate : 3%*

*Maturity : 5 years*

*Convertible into equity shares @ Rs 500 per share*

*Ivan had purchased 20 bonds. At the time of maturity, the market price of the equity shares was Rs 400.*

*What are the options available to Ivan on the maturity date and which option he should prefer?*

*(5 marks)*

June 2021

ABC Limited, a public company, has come with public issue of 15,00,000 equity shares through a book building process. The price band is Rs 500 - Rs 600. The following table shows demand of securities at various price levels. What should be the cut-off price as per book building mechanism?

Bid Price (Rs)	Number of Investors Demand	(Number of Shares)
520	25	8,50,000
530	10	4,00,000
535	15	2,00,000
545	4	4,00,000
560	6	1,00,000
575	5	2,00,000
585	3	1,10,000
590	3	1,40,000
595	3	3,50,000
600	1	7,00,000
<b>Total</b>	<b>75</b>	<b>34,50,000</b>

(5 marks)

June 2021

Akshay buys 500 shares of PQR Limited @ Rs 210 per share on the stock exchange platform. In order to hedge the position, he sells 300 futures of PQR Limited @ Rs 195 each. Due to fall in the share and futures price by 5% and 3% respectively on next day, Akshay closes his position by counter transactions. Find out his profit or loss.

(2+3 marks)

Dec 2021

- (i) Rakesh has invested Rs. 20,000 in PQR Mutual Fund with entry load 1%. Find out the Net Asset Value if the number of units purchased was 100.
- (ii) Pritam is holding SALORA Mutual Fund units. He sold all the units at a NAV of Rs. 120 with exit load of 1%. He received Rs. 52,000. Find the number of units sold by Pritam.

(5 marks)



Dec 2021

ABC Company Ltd had issued 2000 equity shares of Rs. 80 each with attachable warrant on 20th June, 2018. The warrant can be exchanged in equity in the proportion of 1 : 1. S, a shareholder who was allotted 200 equity shares with attachable warrant on 20th June, 2018 wants to know the warrant premium if the market value of warrant is Rs. 18 and exercise price is Rs. 70.

- (i) Calculate the warrant premium for S.
- (ii) What are the conditions of eligibility of ABC Company Ltd to issue Warrant?
- (iii) When ABC Company can forfeit the warrant?

(5 marks)



Dec 2021

Suppose B Co Ltd issues bonds with following terms:

Issue price of Bond Rs. 2000.

Coupon rate 2% with maturity period of 2 years.

Convertible into equity shares @ Rs. 100 per share.

Y has subscribed for 5 bonds and made an investment of Rs. 10,000. On maturity date, investor will have an option to either claim full redemption amount or convert the Bonds into equity @ Rs. 100 per share. The quoted share price on maturity date is Rs. 150. If he goes for conversion how many shares Y will get? Will it be fair enough if he opts for redemption value? Calculate which option is best suitable to Y?

(5 marks)

June 2022

Grow India Ltd. has recently launched a Mutual Fund Scheme with the name GI Equity Multi Cap Scheme with following details:

Size of the Scheme	200 lakh
Face value of the unit	RS.20
Number of the outstanding units	20 Lakh
Market value of the fund's investments receivables	360 lakh
Accrued Income	2 lakh
Receivables	2 lakh
Liabilities	1 lakh
Accrued expenses	1 lakh

- (1) What do you mean by NAV?
- (2) Find out the NAV in the present case.
- (3) What does an expense ratio contain in a Mutual Fund Scheme?

(5 marks)

June 2022

Ek Nath, a risk averse investor is planning to take advantage of market rumour that in the upcoming budget, the Government is likely to announce some economic package including production linked incentive (PLI) scheme for auto industries. As he does not like to take higher risk; he purchases one call and put option contract (Lot size 1000 shares) of a leading auto component manufacturing company at a premium of Rs 5 and Rs 4 respectively with strike price of 105. In the budget, no PLI scheme was declared and the price of stock fell to 90.

- (i) Ascertain the net loss/profit.
- (ii) What would be your answer, if the stock price escalates to 120 as Government slashed GST rate on vehicles?

(5 marks)

December 2022

Fortune Mutual Fund launched a special scheme, the details of which are given below:

NAV Rs. 14 per unit

Redemption price Rs. 13.50 per unit

Offer Price Rs. 14.75 per unit

You are required to compute:

(i) Back End Load

(ii) Front End Load

(5 marks)

December 2022

Joshi Ltd is a listed entity entered into a transaction with related party, namely Hosh Ltd for an amount of Rs. 59 crore and simultaneously made a payment of Rs. 10 crore for brand use. The turnover of Joshi Ltd is Rs. 480 crore on standalone basis and after considering consolidation of subsidiary & associate is Rs. 610 crore. You, being a company secretary of the company, advise on the following:

1. Whether the transaction is a related party transaction or not?
2. Whether the payment made for brand use is a related party transaction or not?
3. When transactions with related party are material in above both the cases?
4. What is omnibus approval of audit committee for all related party transactions?

(8 marks)

December 2022

Tarun purchases the following European Call options of TCS. He also purchases the following European put option of ACC. What decision he would take on expiry if TCS closes at Rs. 835 and ACC closes at Rs. 565, spot prices? Ignore premium paid.

- i) TCS 830 Call
- ii) ACC 510 Put
- iii) TCS 840 Call
- iv) ACC 520 Put

(5 marks)

June 2023

The financial data of a listed company Sun Rise Ltd. as on 31<sup>st</sup> March, 2021 is as follows:

Particulars	Amount Rs.
Equity Share Capital [fully paid-up of face value of Rs. 10 each]	5,00,000
10% Preference Share Capital [fully paid-up of Rs. 100 each]	1,00,000
12% Debentures [Rs. 100 each]	2,00,000
Revaluation Reserve	50,000
General Reserve	2,00,000
Profit & Loss Account	2,00,000

The company wanted to place proposal before the Board for buy-back of its equity shares and also simultaneously redeem the entire preference share capital. You, as a Company Secretary, advise the Board on the following issues:

- i) Maximum limit [in amount] up to which shareholders can approve buy-back of shares.
- ii) Maximum number of shares that can be bought back and the maximum price that can be paid per equity share bought back.
- iii) Generally, what should be the ratio of the aggregate of secured and unsecured debts owed to the company after buy-back? (5 marks)



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June 2023

What is Inflation rate? How to calculate it? M bought his morning coffee for Rs. 12 in 2019, but now he is paying Rs. 16 in 2023. Calculate the inflation rate. (5 marks)

June 2023

Daksh is planning to invest in Systematic Investment Plan (SIP) of a mutual fund with a fixed sum of Rs 20,000 on 2nd of every month for four months. The NAV on these dates are Rs 30.76, Rs 42.18, Rs 38.15 and Rs 40.25 respectively. The entry load was 1.75% throughout the period. Find the average buy price including the amount of entry load. (5 marks)

June 2023

X has made an investment of Rs 50,000 to buy 5000 units of Philip mutual fund on 4th April, 2021. He decided to sell the units on 14th November, 2021 at NAV of Rs 20.60. The exit load was 2.25%. Find the sale value & gain made in the transaction. (5 marks)

June 2023

XYZ Limited is having three subsidiaries X Ltd., Y Ltd., and Z Ltd. The consolidated income of XYZ Limited is ` 300 crore and net worth is ` 600 crore. The income and net worth of X Ltd., Y Ltd., and Z Ltd. are as follows :

Company	Income (₹)	Net worth (₹)
X Ltd.	10 crore	65 crore
Y Ltd.	45 crore	14 crore
Z Ltd.	10 crore	18 crore

Examine if there is any material subsidiary of XYZ Limited. (5 marks)

June 2023

R purchases the following European Call option of Emkey Tech Ltd. and European Put option of Giganet Ltd. What decision he would take on expiry, if the share price of Emkey closes at Rs 1100 and Giganet closes at Rs 590 in the following circumstances? (Ignore any premium paid).

- (a) Emkey : 1050 Call
- (b) Giganet : 525 Put
- (c) Emkey : 1120 Call
- (d) Giganet : 580 Put.

(5 marks)

June 2023

Roshivee wants to invest in the share of blue chip companies. However, due to the expected outbreak of war between two countries, an investment advisor suggested him to invest through option contract. He expects that the price of shares will go down in near future.

- (a) What option contract (put or call option) he should buy?
- (b) If the present futures contract of Maxwell Ltd. are traded at Rs 100 and put option involves, a cost of 1.5% (one and a half) based on the strike price. During the month, the war was declared and the price of the share went down to ` 97. What will be the gain or loss on Rs 1,50,000 option contracts ? (5 marks)



Dec 2023

The option contracts are given below: you are required to compute profit or loss to each investor:

- (i) Ravi writes a call option to buy share. at an exercise price of ₹70 for a premium of ₹11 per share. The share price rises to ₹73 by the time the option expires.
- (ii) Narain buys a put option at an exercise price of ₹78 for a premium of ₹7 per share. The share price falls to ₹66 by the time the option expires. (2+3=5 marks)



Dec 2023

Aggarwal purchases 10,000 shares of AB Ltd. at ₹20. He obtains a complete hedge of shorting 400 Nifty at ₹1,200 each. He closes out his position at the closing price of the next day at which point the share of AB Ltd. dropped 2.3% and the Nifty future dropped 2%. Calculate the overall profit or loss. (5 marks)



Dec 2023

QIBs are an investment institution who buy the shares of a company on a large scale. Qualified Institutional Buyers are those Institutional investors who are generally perceived to possess expertise and the financial proficiency to evaluate and to invest in the Capital Markets. Based on these, Sujith Limited, is manufacturer of steel and other products, issued 200 crores equity shares through compulsory book building process.

The following bids were received from QIBs and Mutual fund:

No.	Types of QIB bidders	No. of shares bid for (in crores)
1	A1	30
2	A2	10
3	A3	90
4	MF1	30
5	MF2	30
6	MF3	70
	Total	260

A1-A3 (QIB bidders other than MFs) and MF1-MF3 (QIB bidders which are MFs).

As a company secretary of the company, advise the Board of directors to allot the shares as per the SEBI (Disclosure and Investor Protection) Guidelines, 2000. (5 marks)



Dec 2023

What is Enterprise Value? Compute the Enterprise value from the following information of XYZ Ltd., if the current market price per share is Rs 93:

Liabilities (Rs in lakhs)		Assets (Rs in lakhs)	
Share capital (Face value Rs. 2)	840	Non-current assets	2,490
Reserves and surplus	56	Current Assets	900
Minority interest	110	Cash and cash equivalent	96
Short-term debt	2,280		
Long-term debt	200		
	3,486		3,486

(2+3=5 marks) (Dec 23)

Dec 2023

Tata Aviation Ltd., having nation-wide terminals, is in the process of delisting its equity shares from recognized stock exchange. As per the provision of the delisting regulation, the company is providing exit opportunity to its public shareholder; so the company has got approval from shareholders of the company on 18th March, 2023. Following details are made available to you by the company:

No. of equity shares outstanding are	43,48,33,000
Shares hold by promoters	14,87,67,800
Shares hold by public shareholders	28,60,65,200
Floor price	90 per share
Indicative price	97 per share

You are required to calculate the amount to be deposited at the time of opening Escrow account and mention the date of opening of Escrow account as per the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2021. (5 marks)



Dec 2023

The following information is available from the audited balance sheet of S2 Ltd.

(Rs in lakhs)

Equity Share capital (3,000 lakh share of Rs 10 each)	30,000
Share Premium A/c	3,000
General Reserve	10,000
Secured Loans	40,000
Unsecured Loans	22,000

Compute the maximum limit up to which buy-back is permitted in the financial year 2022-2023. (7 marks)

Dec 2023

Edelweiss Mutual Fund's portfolio related information are as below:

Stock (Rs)	No. of Shares	Price in
Reliance	1,10,000	1,548.24
Tata	2,57,000	548.65
Suzlon	5,05,000	329.51
Wipro	4,75,000	913.67
Richard	3,20,000	517.29

The fund does not involve borrowed money, but its accrued management fee with the portfolio manager is 25,00,000. The number of units outstanding is 8,65,63,000. You are required to compute the value of the portfolio and NAV. (5 marks)

Dec 2023

Satyawan Ltd. is a public limited company, listed in Bombay Stock Exchange. The Board of directors are planning to buy back of shares. You being the CFO, calculate the maximum number of shares that can be bought back along with offer price and advise the board of directors about buy back of maximum possible shares at the maximum possible offer price. Current assets includes bank balance of Rs 15,00,000/-. The balance sheet as at 31<sup>st</sup> March 2023 is given below:

Liabilities	Amount (in Rs)	Assets	Amount (in Rs)
3,00,000 Equity shares of ₹10 each	30,00,000	Fixed Assets	75,00,000
25,00,000, 12% Preference Share	25,00,000	Investment	30,00,000
Capital		Current	30,00,000
General Reserve	10,00,000	Assets	
Profit & Loss Account	25,00,000		
Security Premium	15,00,000		
12% Debentures	20,00,000		
Sundry Creditors	10,00,000		
	1,35,00,000		1,35,00,000

(5 marks)



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Dec 2023

ABC Limited is a listed company. Its financial data as on 31st March, 2022 are as follows:

Authorised equity share capital Rs 20 Crore

(2 Crore shares of Rs 10 each)

Paid up equity share capital Rs 10 Crore

General reserve Rs 6 Crore

Debenture redemption reserve Rs 4 Crore

The board of directors of your company Passed resolution by circulation for buyback of shares to the extent of 8% of the Company's paid-up share capital and free reserves.

- (a) You are required to examine the validity of the proposal with reference to the provisions of the SEBI regulations.
- (b) What will be your suggestion if buyback will be of 12% of the Company's paid up share capital and free reserves? (5 marks)



Dec 2023

Consider a mutual fund that manages a portfolio of securities worth Rs 240 million. Suppose the fund owes Rs 8 million to its investment advisors and owes another Rs 2 million for wages, rent and other expenses. The fund has 5 million shares outstanding.

- (i) What do you mean by NAV?
- (ii) How NAV is calculated?
- (iii) What was the net asset value of the fund? (2+2+1=5 marks)



Dec 2023

An investor buy shares in a mutual fund for Rs 400. At the end of the year, the fund distributes a dividend of Rs 11.20 and after the distribution the net asset value of a share is Rs 468.80. What would be the investor's return on the investment? (5 marks)

June 2024

From the given data for the Option Contracts, you are required to compute profit or loss for each investor:

Type of Option	Exercise Price	Position of the Investor	Stock Price on Expiry Date	Option Premium	Date
Call	100	Holder	115	5	
Call	100	Writer	98	7	
Put	200	Holder	205	18	
Put	200	Writer	210	12	
Call	500	Holder	505	27	

(5 marks)



June 2024

Ram purchased a 3 month call option for 100 shares in XYZ Ltd. at a premium of Rs 30 per share, with an exercise price of Rs 550. He also purchased a 3 months put option for 100 shares of the same company at a premium of Rs 5 per share with an exercise price of Rs 450. The market price of the share on the date of purchase of option, is Rs 500. Calculate the profit or loss that Ram would make assuming that the market falls to Rs 350 at the end of 3 months. (5 marks)



June 2024

Yaksha Motors Ltd. is a listed company. It had a turnover of Rs 450 crore on standalone basis as per the latest audited financial statements. It also has only one subsidiary/ associate company - Yaksha Auto Components Ltd. whose standalone turnover as per the latest audited financial statements was Rs 70 crore. Yaksha Motors Ltd. entered into transactions with related parties during the current financial year as follows:

- (i) Purchase of goods amounting to Rs 60 crore
- (ii) Payment of royalty amounting to Rs 30 crore
- (iii) Payment of Rs 15 crore towards supply of services

Decide, whether the above related party transactions are material or not? (5 marks)



June 2024

Based on the following information, determine the NAV of a regular income scheme on per unit basis:

Rs In crore

Listed share at cost	12.00
Cash on hand	1.00
Bond and debenture at cost	4.30
Of these, bonds not listed and quoted	1.00
Other fixed interest securities at cost	4.50
Expenditure accrued	2.25
No. of units (Rs 10 face value)	20 lakh
The listed share were purchased when-	
- Index was	15,000
- Present Index	20,000
Value of listed bonds and debenture at NAV date	10
There has been a diminution of 30% in unlisted bond and debentures	
Other fixed interest securities are at cost	
	(5 marks)



June 2024

Mohan purchased a 3 month call option for 100 shares in PQR Ltd at a premium of Rs 30 per share, with an exercise price of Rs 550. He also purchased a 3 month put option for 100 shares of the same company at a premium of Rs 10 per share with an exercise price of Rs 500. Calculate the profit or loss that Mohan would make assuming that the market price falls to Rs 400 at the end of 3 months. (5 marks)



June 2024

Nirav attained the age of 18 years recently. He understands the concept of compounded return, thus started investing in a Systematic Investment Plan (SIP) from his monthly pocket money for an amount of Rs 5,000 per month at the beginning of every month, The NAV of the scheme at the beginning of each month is given as below:

Month 1: Rs 10, Month 2: Rs 10.50, Month 3: Rs 10.80, Month 4: Rs 11.00, Month 5: Rs 11.30

The NAV at the end of the 5th month is Rs 12.10

What will be the value of holding of Nirav the end of 5th month under this SIP plan? (5 marks)



Dec 2024

Sun & Moon Ltd. is a Mumbai based construction company. The company is listed in National Stock Exchange. The extract of the balance sheet of Sun & Moon Ltd. is as follows:

Equity Share Capital Rs 10,00,000 of each rupees 25 each

12% preference share capital Rs 2,00,000 of rupees 50 each [Series A]

10.5% preference share capital Rs 10,00,000 of rupees 100 each [Series B]

14% debenture capital Rs 4,00,000 of rupees 50 each

- (i) What is the maximum equity share capital that can be bought back?  
(ii) What is the maximum number of equity shares that can be bought back?

(2+3=5 marks)



Dec 2024

Money Plus Ltd. manages a mutual fund. The details of the mutual fund is as follows:

- Value of invested securities: Rs 7.5 crore
- Cash and cash equivalents: Rs 1.5 crore
- Accrued income: Rs 2.3 crore
- Short-term liabilities: Rs 10 lakh
- Long-term liabilities: Rs 1.2 crore
- Accrued expense: Rs 5 lakh
- Number of units outstanding: Rs 2 crore of Re 1 each

X is holding 50,000 unit of this mutual fund. He got an offer from Y to purchase his entire holding at 110% of the net asset value. Determine the value of transaction that Y will pay to X. (5 marks)



Dec 2024

*What is the meaning of Holding Period Return? Calculate holding period return for a unit holder who bought a unit at ₹24.60 and received a dividend of ₹3 per unit during the period. Face value of the unit is ₹10 and current unit price is ₹28.69. (5 marks)*

## FORMULA TABLE

1. Out of Money [in case of call option] = Strike Price > Market Price.
2. Out of Money [in case of put option] = Market Price > Strike Price.
3. Yield to Maturity [YTM]
 
$$= \frac{[100 - P] \times 365 \times 100}{P \times D}$$

Here P = Price  
D = Days to Maturity
4. Net Assets Value [NAV]
 
$$\frac{\text{Market value of fair value of scheme's investments} + \text{Current Assets} - \text{Current Liabilities \& Provision}}{\text{No. of outstanding units on the valuation date}}$$
5. Public offer price [P.O.P] of an unit of Mutual Fund =  $\frac{\text{NAV}}{\text{Front End Load}}$
6. Redemption Price of an unit of Mutual Fund =  $\frac{\text{NAV}}{\text{Back End Load}}$
7. Value of rights [in case of mutual fund]
 
$$V_r = \frac{n}{m} [P_{ex} - P_{of}]$$

Here,

n = no. of rights shared offered.  
m = no. of original shares held;  
 $P_{ex}$  = Ex-right price  
 $P_{of}$  = Rights offer price;
8. Rate of Return =  $\frac{[\text{NAV at Present} - \text{NAV at Purchase}] + \text{Dividend} \times 100}{\text{NAV at Purchase}}$

## CHAPTER 20 - CASE LAWS

### CHAPTER 3 - SECURITIES CONTRACTS (REGULATION) ACT, 1956

21.02.2020

*Pacific Finstock Ltd. (Appellant) vs. BSE Ltd. (Respondent)*  
*Securities Appellate Tribunal*

*For Listing of a security, the Listing norms as on date of Application filed alone is required to be considered but status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application.*

1. *The appellant, being aggrieved by the order dated August 02, 2019 passed by the BSE Limited ("BSE") rejecting the listing application has filed the present appeal.*
2. *The facts leading to the filing of the present appeal is, that the appellant was a listed company on the Vadodara Stock Exchange and Ahmedabad Stock Exchange but subsequently it came on the Dissemination Board of the BSE and remained on the Dissemination Board for the last several years. Securities and Exchange Board of India ("SEBI" for convenience) issued a Circular dated October 10, 2016 by which the companies which were on the Dissemination Board were required to get their company listed on nationwide stock exchange or provide an exit opportunity to existing shareholders. In terms of this Circular, the appellant submitted a plan of action to BSE on February 16, 2017 and a revised plan of action was submitted on June 28, 2017.*
3. *In the meanwhile, the appellant vide notice dated August 07, 2017 was identified as a suspected shell company. Against this notice, the appellant filed an Appeal No. 264 of 2017 before this Tribunal which was disposed of by an order dated September 29, 2017 directing the appellant to make a fresh application for direct listing of its securities which would be considered by BSE and which would further be subject to any order that may be passed by SEBI.*



4. It transpires that the appellant filed a fresh listing application. During the pendency of the application, the Whole Time Member ("WTM") passed an order dated October 26, 2017 directing BSE to consider the outcome of the forensic audit while considering the listing application. Accordingly, the appellants' application was kept in abeyance till the submission of the Forensic Audit Report. The WTM's order dated October 26, 2017 was subsequently confirmed by a confirmatory order dated August 02, 2018 against which the appellant filed an Appeal No. 295 of 2018 which was eventually dismissed as infructuous by an order dated March 07, 2019.
5. In the meanwhile, the promoters/directors of the appellant company were debarred from accessing the securities market vide SEBI's order dated September 28, 2019 passed in the matter of Kavit Industries Ltd. This fact was brought to the notice of the appellant and sought clarification as to how the company is required to comply with the requirements for direct listing of its securities. It transpires that the company vide letter dated May 18, 2019 intimated that two of its directors have resigned with effect from April 15, 2019 and that SEBI vide its order dated February 13, 2019 has removed the tag of "suspected shell company". BSE after considering the aforesaid response, found that one of its promoters Shri Jayesh Raichandbhai Thakkar, continued to remain as the promoter of the company inspite of being debarred by SEBI vide order dated September 28, 2018 and, therefore, the direct listing requirements norms had not been complied with. Accordingly, the listing application was rejected.
6. Before the Tribunal, the only ground urged is that the law which was applicable on the date when the listing application was filed on July 29, 2017 could alone be considered. There is no dispute on this proposition namely that the listing norms that was in force on the date when the application was filed was alone required to be considered. Subsequent norms or amended norms or regulations are not required to be considered. However, the status of the directors/promoters of the company are required to be considered on the date of the passing of the order on the listing application. If on the date when the listing application was being considered the promoters/ directors of the company committed default and thereby incurred a debarment from accessing the securities market then it was imperative upon the authority to consider such debarment while considering the listing application. In the instant case, the debarment was in direct conflict when the norms stipulated for considering the listing agreement. Such



*order of SEBI of debarment of one of the promoters was brought to the knowledge of the company. The said listing requirements norms were not rectified and consequently the BSE had no option but to reject the listing application. The said order does not suffer from any manifest error of law and requires no interference. The appeal fails and is dismissed.*



03.12.2019

*Karvy Stock Broking Limited (Appellant) vs. National Stock Exchange of India (Respondent)*

*Securities Appellate Tribunal*

1. *By the present appeal the appellant is seeking quashment of the impugned order/circular dated December 2, 2019 issued by respondent National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE').*
2. *Vide the said circular respondent NSE had suspended the present appellant from its membership due to the alleged non compliance of the regulatory provisions of the Exchange with effect from 2nd December, 2019.*
3. *Upon hearing both sides, the Rules are framed by respondent NSE in exercise of the powers of the Section 9 of the SCRA. The appellant has equally efficacious remedy to challenge the impugned order before the relevant authority of the respondent NSE. In that view of the matter, SAT did not find any reason to entertain the appeal. Learned Senior counsel for the respondent submits that the appeal, if any, filed by the appellant with the respondent, they would be heard expeditiously by convening meeting of the relevant authority. There is no need to bypass the statutory Rules. At this stage, learned counsel for the appellant submits that the appellant may be provided with liberty to seek documents from the respondent. SAT did not find any hitch in acceding to the said request. The respondent shall supply the documents or grant inspection of the same relevant to the dispute.*
4. *For the reasons stated above, the appeal is disposed of. Appellant would be at liberty to file an appeal as provided by Rule 13A(d) of the NSE Rules. In case, if such an appeal is filed, appellant shall be heard as expeditiously as possible and in any event shall be decided by December 6, 2019. In case the relevant authority would not be able to decide the appeal within the period, the decision on the temporary stay to the impugned order may be taken by the relevant authority on or before December 6, 2019. No order as to costs.*



**20.08.2020**

*Dr. Satish Chandra, Ms. Sucharita Das and The Orissa Minerals Development Co. Ltd. (collectively known as "Noticees") vs. SEBI*

*Adjudicating Officer, Securities and Exchange Board of India*

*The disclosures were made by The Orissa Minerals Development Co. Ltd. to stock exchanges belatedly each after a period of more than 24 hours since the time of their receipt by OMDC.*

**Facts of the case:**

*SEBI conducted investigation into the alleged delayed disclosure of the price sensitive information (hereinafter referred to as "PSI") by The Orissa Minerals Development Company Ltd., (hereinafter referred to as "OMDC/Company"), in the scrip of OMDC, to the Stock Exchanges ("BSE" and "NSE") for alleged violation of provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 during the investigation period July 02, 2012 to August 10, 2012.*

*The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that the Noticees have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 ("SCRA").*

*By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation.*

**Order:**

In view of the foregoing, considering the facts and circumstances of the case, the material on record, SEBI imposed a total penalty of Rs. 2,00,000/- (Rupees Two Lacs only) under Section 15HB of the SEBI Act, 1992 and Section 23A(a)\* of the Securities Contracts (Regulation) Act, 1956, on the Noticees i.e. The Orissa Minerals Development Co. Ltd., Dr. Satish Chandra and Ms. Sucharita Das for violation of Clause 2.1 of Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II to Regulation 12(2) of the PIT Regulations, 1992 and also against The Orissa Minerals Development Co. Ltd for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA.

\* Section 23A(a) deals with Penalty for failure to furnish information, return, etc



07.09.1998

*Vinay Bubna vs. Yogesh Mehta and Ors*

*Whether by-laws framed by the Bombay Stock Exchange are subordinate legislation?*

*In the above case Bombay High Court Held*

*Section 9(4) of the Securities Contract Act requires previous publication of the bye-laws before they can come into force. Publication is another incidence of subordinate legislation. Therefore, there is no difficulty in holding that the bye-laws framed under Section 9 are subordinate legislation. Section 9 of the Securities Contract Act itself confers power on the Board to make bye-laws pertaining to regulation and control of contracts. Bye-laws have been framed under the Securities Contracts (Regulation) Act, 1956. For that purpose, the relevant sections of the Act which need to be referred to are Section 7A of the Securities Contracts (Regulations) Act, 1956 confers a power on a recognised Stock Exchange to make rules restricting voting rights, etc. Section 8 is the power conferred on the Central Government to direct rules to be made and/or to make rules itself after consultation with the Governing bodies of the Stock Exchanges generally or with the governing body of any Stock Exchange in particular for matters specified in Section 3(2), In case the Governing Body fails to make Rules as directed power is conferred under sub-section (2) on the Central Government.*



### Extracts from SEBI Order dated 20th August 2020 in the matter of The Orissa Minerals Development Co. Ltd.

#### SEBI Adjudication Order:

SEBI, in exercise of the powers conferred under Section 15-1 of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995 and Section 23-1 of the SC(R) Act, 1956 read with Rule 5 of the Adjudication Rules, 2005, imposed a total penalty of Rs. 2,00,000/- (Rupees Two Lacs only) under Section 15HB of the SEBI Act, 1992 and Section 23A(a) of the Securities Contracts (Regulation) Act, 1956, on the Noticees i.e. The Orissa Minerals Development Co. Ltd., Dr. Satish Chandra and Ms. Sucharita Das for violation of Clause 2.1 of Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II to Regulation 12(2) of the PIT Regulations, 1992 and also against The Orissa Minerals Development Co. Ltd for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA.

### Extracts from SEBI Order dated 20th August 2020 in the matter of The Orissa Minerals Development Co. Ltd.

SEBI conducted investigation into the alleged delayed disclosure of the price sensitive information by The Orissa Minerals Development Company Ltd., ("OMDC/Company"), in the scrip of OMDC, to the Stock Exchanges ("BSE" and "NSE") for alleged violation of provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 during the investigation period July 02, 2012 to August 10, 2012.

The OMDC, Dr. Satish Chandra (Managing Director) and Ms. Sucharita Das (Company Secretary) has made belated disclosure to the stock exchanges of the important price sensitive information. Therefore, SEBI hold that they have violated the provisions of Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956



**30.08.2022**

*Atlanta Infrastructure and Finance Ltd.*

*Adjudicating Officer, SEBI*

### **Facts of the Case :**

*Atlanta Infrastructure and Finance Ltd. ("Atlanta") was formerly known as Kadvani Securities Ltd. and was an authorised Non-Banking Financial Services Company (NBFC). The Company changed its name to Atlanta Infrastructure and Finance Ltd. w.e.f. August 3, 2013. The main business activity of the Company is infrastructure and development of land. The company was incorporated in 1992 and listed on BSE w.e.f June 07, 1995.*

*SEBI conducted an investigation into trading of the scrip of Atlanta for suspected manipulation of the scrip price for the period August 2, 2010 to January 6, 2015 and the investigation revealed that the promoters/promoter group had all disposed-of their shares on February 19, 2014 as per information provided by RTA of the company. The total promoter/promoter group shareholding of Atlanta for the quarter ended March 2014 should have been zero. Atlanta had submitted to BSE a wrong shareholding pattern. Atlanta had submitted 2,23,000 shares as promoter shareholding to BSE for the quarter ended March 2014 and therefore, was alleged to have violated Section 21 of Securities Contracts (Regulations) Act, 1956 ("SCR Act").*

### **SEBI Order:**

*SEBI under Section 23-1 of SCR Act read with Rule 5 of SCR(A) Rules, imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 23H of SCRA, 1956 on Atlanta Infrastructure and Finance Ltd. for violation of Section 21 of SCRA, 1956.*



**19.04.2022**

*M/s. S.B. Securities Pvt. Ltd.*

*Adjudicating Officer, SEBI*

**Facts of the Case :**

*Securities and Exchange Board of India (hereinafter referred to as 'SEBI') and BSE Ltd. (hereinafter referred to as 'BSE') conducted a comprehensive joint inspection of M/s. S.B. Securities Pvt. Ltd. (hereinafter referred to as 'Stock Broker / Noticee/You/Broker') from March 26, 2019 to March 27, 2019 and on April 23, 2019. The said inspection was carried out at 379, Priti Building, S V Road, Vile Parle (west), Mumbai - 400 056 w.r.t. its Stock Broking activities (hereinafter referred to as 'SBs'). The period covered in the inspection was from April 2017 to September 2018 (hereinafter referred to as 'Inspection Period'). Noticee is a SEBI-registered Stock Broker, having SEBI registration number as INZ000001834. Noticee is a Stock Broker of BSE. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee under: a) Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"), for the alleged violations of Section 23D of SCRA.*

**SEBI Order:**

*SEBI under Section 23-I of SCR Act, imposed a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on S.B. Securities Pvt. Ltd for violation of Section 23D of SCRA, 1956. The Noticee, a SEBI registered Intermediary, was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent.*



*Extracts from SAT Order dated 25th February 2019 in the matter of Synergy Cosmetics (Exim) Limited vs. BSE Limited*

*Synergy Cosmetics (Exim) Limited (Company) is a listed company and its securities got delisted on the platform of the BSE Limited. The BSE Limited vide its notice dated 18.10.2016 suspended the trading in securities of the company for non-compliance of listing requirements. Since no steps were taken by the company for revocation of the suspension, a show cause notice dated 26.04.2018 was issued calling upon the company to show cause as to why the securities of the company should not be compulsorily delisted from the platform of the BSE Limited. The BSE Limited by the impugned order dated 26.06.2018 issued an order compulsorily delisting the securities of the company. The appellant being aggrieved by the computation of the fair value of the shares has filed the appeal under Section 23L of the Securities Contracts (Regulation) Act, 1956.*



## CHAPTER 4 - SECURITIES AND EXCHANGE BOARD OF INDIA

01.07.2020

India Ratings and Research Private Ltd. (Appellant) vs. SEBI (Respondent)  
Securities Appellate Tribunal

*SEBI can call for and examine records of any proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After making inquiry, SEBI may enhance the quantum of penalty imposed, if the circumstances of the case so justify.*

### **Facts of the case:**

The Adjudicating Officer by the impugned order dated 26th December, 2019 has imposed a penalty of Rs.25 lakhs upon the Appellant for violating the Code of Conduct to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 while granting credit rating to IL&FS for the financial year 2018-19.

SEBI issued a second show cause notice dated 28th January, 2020 by exercising powers under Section 15- 1(3) of the SEBI Act directing the Appellant to show cause as to why penalty should not be enhanced as in their opinion the order of the Adjudicating Officer was not in the interest of the securities market.

“Under Section 15-1(3), the SEBI can call for and examine records of proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After examining the matter, the SEBI can enhance the quantum of penalty imposed.”



Misc. Application no.159 of 2020 has been filed in Appeal no.103 of 2020 praying that proceedings initiated by SEBI pursuant to the second show cause notice dated 28th January, 2020 issued under Section 15-1 (3) of the SEBI Act, should be stayed.

### Order:

SEBI has the power to initiate proceedings under Section 15-1(3) of the SEBI Act. SAT directed the Appellant to deposit a sum of Rs.25 lakhs pursuant to the impugned order dated 26<sup>th</sup> December, 2019 before the Respondent within four weeks which would be subject to the result of the appeal. SAT further directed that the proceedings in pursuance to the second show cause notice dated 28th January, 2020 will continue and the Respondent will pass appropriate orders after giving an opportunity of hearing to the Appellant either through physical hearing or through video conferencing but any order that is passed by the Respondent shall not be given effect to during the pendency of this appeal. Misc. Application is accordingly disposed of.

**18.03.2021**

Mr. Neeleshkumar Radheshyam Lahoti (Noticee) (In the matter of Supreme Tex Mart Limited) vs. Securities and Exchange Board of India (SEBI)  
Adjudicating Officer, SEBI

Every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations.

### Facts of the Case:

SEBI conducted an investigation into the affairs of Supreme Tex Mart Limited (STML/ Company) for the period June 01, 2016 to October 31, 2016. During the course of investigation, the Investigating Authority (IA) of SEBI issued summons under Section 11C(2) read with Section 11C(3) of the SEBI Act, 1992 to Mr. Neeleshkumar Radheshyam Lahoti (Noticee) seeking certain documents/ information. The Noticee replied to the summons and submitted certain information. However, it was alleged that the Noticee submitted incorrect information.



In view of the same, SEBI initiated adjudication proceedings under Section 15HB of the SEBI Act against the Noticee.

### **SEBI Order:**

SEBI imposed a penalty of 8 lakh on the Noticee under the provisions of Section 15HB of the SEBI Act. It was established that the Noticee provided incorrect information to the Investigating Authority (IA) of SEBI and hampered the process of investigation thus violating the provisions of Section 11C(2) read with Section 11C(3) of the SEBI Act, 1992. It was a deliberate attempt of Noticee to misguide investigation. Section 11C(3) of the SEBI Act empowers the IA to obtain records, documents, information etc., as considered relevant or necessary for the purpose of investigation. Section 11C(2) of SEBI Act casts an obligation on every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, such records, documents, information which are in their custody or power.



**28.02.2019**

*Adjudicating Officer, SEBI (Appellant) vs. Bhavesh Pabari (Respondent)*

*Supreme Court of India*

*The Supreme Court of India ruled in Adjudicating Officer, SEBI v. Bhavesh Pabari granting back the discretionary power to Adjudicating Officer (AO) under supervision and scrutiny of the court.*

### **Facts of the Case**

*The SEBI Act, as the object of its enactment would indicate, was enacted "to provide for the establishment of SEBI 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."*

*Sections 15 A to 15 HA of the SEBI Act, 1992 are the penalty provisions whereas Section 15 I deals with the power of adjudication and Section 15 J enumerates the "factors to be taken into account by the Adjudicating Officer" while adjudging the quantum of penalty.*

*Section 15J has been a part of SEBI since 1992. Section 15J lays down that while adjudging the amount of penalty, the adjudicating officer shall have due regard to the factors which are as follows:*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

**Explanation-** *For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15-F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*



The questions referred in the given case can be enumerated and summarized as follows:

- (i) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of the Securities and Exchange Board of India Act, 1992 are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?
- (ii) Whether the power and discretion vested by Section 15J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15A to Section 15HA of the SEBI Act?

**The Court held and in the view that-**

The provisions of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. But this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c) of Section 15J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed.

Conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.

Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15 A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A (a) to 15 HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy.



**11.02.2021**

*Suman Motels Limited vs. SEBI*

*Adjudicating Officer, Securities and Exchange Board of India*

**Failure to obtain SCORES Authentication and to redress investor grievances**

**Fact of the Case:**

Securities and Exchange Board of India (hereinafter referred to as, "SEBI") vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter referred to as, "SCORES") authentication and also redress any pending investor grievances in that platform only. Subsequently, SEBI also vide Circulars No CIR/OIAE/1/2012 dated August 13, 2012, No. CIR/OIAE/1/2013 dated April 17, 2013 and No CIR/OIAE/1/2014 dated December 18, 2014, (hereinafter referred to as, "SEBI circulars") inter alia directed all companies whose securities were listed on Stock Exchanges to obtain SCORES authentication within a period of 30 days from the date of issue of this circular and also to redress the pending investor grievances within the stipulated time period.

It was alleged that Suman Motels Limited (hereinafter referred to as, "Noticee") had failed to obtain the SCORES authentication and to redress investor grievances pending therein within the timelines stipulated by SEBI, therefore not complying with the aforesaid SEBI Circulars.

**Order:**

After taking into consideration all the facts and circumstances of the case, Adjudicating officer imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the Noticee viz. Suman Motels Limited in terms of the provisions of section 15B of the SEBI Act, 1992, which will be commensurate with its non-compliances.



## CASE SNIPPETS

1. JM Financial Ltd's former vice president Atul Saraogi on July 16, 2020 had settled an alleged insider trading case with SEBI by paying an amount of Rs 15 lakh towards settlement charges. During the span of investigation, SEBI observed that Saraogi had entered into two off-market trades in shares of JMFL and had not obtained preclearance from JMFL for the two off-market trades. Besides, he had entered the offmarket transaction when the trading window was closed.
2. Shareholders of the Kapashi Commercials Ltd., a BSE Listed company, have settled with SEBI a case of alleged violation of takeover norms by paying over Rs 34 lakh amount towards settlement terms. They had filed an application with the SEBI proposing to settle the case for alleged violation of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in respect of change in their shareholding in Kapashi Commercials. It was alleged that the four individuals made delayed disclosures to the company and BSE about the change in their shareholding in Kapashi Commercials.
3. Northward Financial Planners (NFP) and its partners have settled with SEBI a case related to alleged violation of Investment Advisers regulations upon payment of Rs. 21.67 lakh towards settlement charge. NFP and partners were carrying on investment advisory activities since F.Y. 2013-14 and filed application for SEBI registration after a delay of over 4 years and continued to carry on investment advisory activity without seeking registration.



## CHAPTER 5 - LAWS GOVERNING TO DEPOSITORIES AND DEPOSITORY

31.03.2020

*Jaypee Capital Services Ltd (Noticee) vs. SEBI Whole Time Member, Securities and Exchange Board of India*

### **Facts of the Case**

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further period of five years and the renewed certificate was valid till August 10, 2016.

SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to noncompliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various bye-laws of NSDL.

Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.



### **Order**

*The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs as given under third schedule read with Regulation 20AA of the DP Regulations.*

*SEBI, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, cancelled the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-291-2008/IN-DPCDSL-368- 2006) with immediate effect.*



## CHAPTER 6 - SECURITIES MARKET INTERMEDIARIES

05.06.2020

*Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (Noticee) vs. SEBI Whole Time Member, Securities Exchange Board of India*

*The Noticee cease and desist from acting as an Investment Adviser as it refused to refund the money so taken by it as service fee from complainant.*

### **Facts of the Case:**

*SEBI had received a complaint against Mr. Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (hereinafter referred to as "Noticee"), a registered Investment Adviser (hereinafter referred to as "IA") inter alia alleging that a promise was made on behalf of the Noticee to the complainant assuring him a huge return of Rs. 28.80 lakh on a meagre investment of Rs. 20,000/- over a short period of 4 months and 10 days. Pursuant to such an assurance, an amount of Rs. 1,30,000/- was transferred by the complainant to the Noticee towards first installment of the service fee, out of total service fee of Rs. 4,47,200/- demanded by the Noticee in installments. However, after suffering loss on the very first day of availing the services of the Noticee, the complainant asked the Noticee to return the amount paid to him. As the Noticee refused to refund the money so taken by it as service fee and also stopped attending the phone calls of the complainant, a complaint was lodged with SEBI. The said complaint was forwarded to the Noticee for resolution and to submit an Action Taken Report (ATR) in the SEBI Complaints Redress System (SCORES).*

### **Order:**

*In view of the foregoing findings and in the interest of investors and for the protection of their rights, SEBI issue following directions:*

- i. The Certificate of Registration as Investment Adviser bearing Registration number INA000009038 issued in favour of the Noticee is hereby cancelled.*
- ii. The Noticee shall forthwith cease and desist from acting as an Investment Adviser.*



- iii. The Noticee shall not use the term 'Investment Adviser' directly or indirectly in any manner whatsoever on the letter-head, on the website, signage board, or otherwise.
- iv. The Noticee is debarred from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with securities market in any manner, for a period of 2 years and during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticee(s) shall remain frozen.

**31.03.2020**

**Jaypee Capital Services Ltd (Noticee) vs. SEBI Whole Time Member, Securities and Exchange Board of India**

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further period of five years and the renewed certificate was valid till August 10, 2016.

SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to noncompliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various bye-laws of NSDL.



Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.

### Order

The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would therefore have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs as given under third schedule read with Regulation 20AA of the DP Regulations. Whole Time Member, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-29 "self regulatory organization" means an organization of a class of intermediaries duly recognised by or registered with the SEBI and includes a stock exchange.

**01.07.2020**

**Mr. Vishal Vijay Shah (Noticee) in the matter of Maharashtra Polybutenes Limited v. SEBI Securities Appellate Tribunal**

### Facts of the Case:

In the facts of the instant proceedings, it is observed that the Vishal Vijay Shah ("Noticee"), a registered Stock Broker had received funds in the client and settlement bank accounts from third parties in cash and had made payments to third parties on behalf of clients. It is further observed that the Noticee had also made withdrawal of cash from the client bank accounts.

Under the SEBI Circulars, a responsibility has been cast on the Stock Broker to ensure that payments are received directly from the respective clients and not from third parties.

Accordingly, the Noticee should have taken expedient steps to ensure that funds received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party monetary amounts were received.



However, there is nothing on record to suggest that such steps were indeed taken.

Further, the Noticee in its submissions has itself admitted to having carried out such irregular practices. The aforementioned conduct of the Noticee clearly demonstrates that it failed to maintain fairness in the conduct of its business, exercise due skill and care and comply with the statutory requirements. Thus, in addition to the violation of the SEBI Circulars the Noticee has also violated the provisions of Clauses A(1), (2) & (5) of the Code of Conduct as specified under Schedule II read with Regulation 9(f) of the Stock Brokers Regulations.

The BSE had earlier conducted inspection of the Noticee and upon a consideration of the BSE Inspection Reports in light of the Inspection Report, it is observed that the violations committed by the Noticee in the instant proceedings are repetitive in nature. Further, it is a well settled position of law that SEBI may initiate multiple proceedings for the same set of violations.

#### Order:

The Noticee had violated the aforementioned provisions of the Stock Brokers Regulations and aforementioned SEBI Circulars. Having regard to the facts and circumstances of the instant proceedings, SEBI accepted the recommendation of the Designated Authority that the Certificate of Registration of the Noticee be suspended for a period of one year.

**29.05.2020**

*Arihant Capital Markets Ltd. (Noticee) vs. SEBI Adjudicating Officer, Securities Exchange Board of India*

*SEBI imposed penalty for the alleged violation of the provisions of SEBI (Stock Broker and Sub Brokers) Regulations, 1992.*

#### Facts of the case:

SEBI conducted investigation into trading activities of certain entities in the scrip of Moryo Industries Ltd. for the period of January 15, 2013 to August 31, 2014. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Arihant Capital Markets



Ltd. (hereinafter be referred to as, the "Noticee") under Section 15HB of the Securities and Exchange Board of India Act, 1992, for the alleged violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (as existed at the relevant time) of the Securities and Exchange Board of India (Stock Broker and Sub Brokers) Regulations, 1992.

### Order:

In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon SEBI under Section 15-1 (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, SEBI hereby impose monetary penalty of Rs.5,00,000/- (Rupees Five Lakhs only) on the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order or May 31, whichever is later.

**28.04.2022**

**AmrapaliAadya Trading & Investment Pvt. Ltd & Ors (Noticees) vs. SEBI  
Adjudicating Officer, Securities and Exchange Board of India**

### Facts of the Case:

SEBI conducted an investigation in the matter for the investigation period April 01, 2011 to March 31, 2017. On completion of investigation, it was observed that the Noticees have allegedly been found indulged in following:

- a. Non-submission of information sought through summons.
- b. Siphoning of clients' funds/ securities.
- c. Non segregation & Mis-utilisation of client's securities and funds.
- d. Mis-used the client's securities by pledging/transferring the same.
- e. Routing/ Diversion of Clients' funds.
- f. Running fixed return scheme for some of its clients.
- g. Selling of client's securities from the employee's account.
- h. Moving funds and securities to its sister concern and transferring funds from business bank account of the Noticee to its related/ group entities.
- i. Non-disclosure of demat accounts to NSE.
- j. Failed to carry out running account settlement.



*In view of same, it was alleged that the Noticees have violated various provisions of the SEBI Act, Securities Contracts (Regulation) Rules, 1957, SEBI (Stock Brokers) Regulations, 1992 and circulars issued by SEBI from time to time.*

### **SEBI Order:**

*SEBI of considered view that the Noticees have violated various provisions of SEBI Act, SCRA, Rules and Regulation made and various circulars issued thereunder and thus imposed penalties totaling Rs 29 crore on nine entities, including AmrapaliAadya Trading & Investment Pvt. Ltd. and Aadya Commodities Pvt. Ltd. It was held that any omission on part of the registered intermediary is detrimental to the interest of investors in securities market.*



## CHAPTER II - LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS

04.03.2020

*Picturehouse Media Ltd. vs. Bombay Stock Exchange Ltd.  
Securities Appellate Tribunal*

### *Penalty imposed for non-compliance of SEBI LODR Regulations on delay appointment of women director*

*The provisions of the LODR regulations require that every listed company should have a women director. The appellant hereby is a public listed company and one women director resigned and consequently the post became vacant which was require to be filled up by another woman under the LODR Regulations. Since there was a delay in appointing a woman director of the company, the penalty was imposed by BSE under LODR Regulations. The appellant has filed the appeal against the order passed by BSE imposing a penalty of Rs.7,59,920/- for violation of Regulations 17(1) and 19(1) and 19(2) of SEBI LODR Regulations, 2015. In the light of default committed by the appellant SAT did not find any error in the impugned order and dismissed the appeal.*



## CHAPTER 12 - ACQUISITION OF SHARES AND TAKEOVERS - CONCEPTS

16.03.2020

G P Shah Investment Private Limited & Ors. (Appellant) vs. SEBI (Respondent)  
Securities Appellate Tribunal

### Facts of the case:

The present appeal has been filed against the order of the Adjudicating Officer, SEBI dated March 13, 2019 imposing a penalty of 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011" for convenience). This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement of an open offer for acquiring the shares of the target company.

### Order:

SAT finds that no relief can be granted to the appellants as AO granted several opportunities but the appellants chose not to appear or file any reply. In the light of the aforesaid, SAT are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise. With regard to the quantum of penalty, SAT finds that the order of the Whole Time Member (WTM) directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, SAT did not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of 25 crores or three times the amount of profits could have been imposed. In view of the aforesaid, SAT do not find any merit in the appeal and the same is dismissed with no order as to costs.



**07.07.2020**

**M/s Sungold Capital Limited vs. SEBI Whole Time Member, Securities and Exchange Board of India**

One of the principles underlying under SAST Regulations is exit opportunity to the public shareholders of the Target Company at the best price and accordingly, the provisions of SAST Regulations deals with offer price, that offer price in an open offer highest of the prices of shares of the Target Company derived through various methods.

**Facts of the case:**

The respective acquirers/PAC's after acquiring shares/voting rights of Sungold Capital Limited ("Target Company") beyond the threshold of initial/creeping acquisition have failed to make an open offer in terms of Regulation 10 and 11(1) of SAST Regulations, 1997, on, April 1, 2007 and September 14, 2007, respectively. As per Regulation 21(19) of SAST Regulations, 1997, the acquirer and the PAC's were jointly and severally liable for discharge of obligations under SAST Regulations, 1997.

SAST Regulations, 1997 has been repealed by Regulation 35(1) of SAST Regulations, 2011 and has been replaced by SAST Regulations, 2011. Regulation 35(2)(b) of SAST Regulations, 2011, provides that all obligations incurred under the SAST Regulations, 1997, including the obligation to make an open offer, shall remain unaffected as if the repealed regulations has never been repealed.

Therefore, the obligations to make open offer, incurred by the acquirers/PAC's under SAST Regulations, 1997, are saved and can be enforced against them by virtue of Regulation 35 of SAST Regulations, 2011.

**Order:**

SEBI directed acquirers/PAC's of the target company to make a public announcement of a combined open offer for acquiring shares of Sungold Capital Ltd., under Regulation 10 and



11(1) of the SAST Regulations, 1997, within a period of 45 days from the date when this order comes into force, in accordance with SAST Regulations, 1997. The acquirers/PAC's shall along with the offer price, pay interest at the rate of 10% per annum for delay in making of open offer, for the period starting from the date when the Notices incurred the liability to make the public announcement and till the date of payment of consideration, to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.



17.03.2020

*Susheel Somani & Ors. (Appellant) vs. SEBI (Respondent)*

*Securities Appellate Tribunal*

*Penalty imposed by SEBI on violating SAST Regulations, further reduced by SAT considering it a technical breach*  
*Facts of the case: Aggrieved by the order of the Adjudicating Officer of the respondent SEBI dated December 27, 2017 imposing a penalty of Rs. 15 lacs for violation of provisions of public announcement of an open offer under Regulation 3(2) read with Regulation 13(1) of the SEBI (SAST) Regulations, 2011, the present appeal is preferred. The appellants contended before the AO that there was no violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulations, 2011 since the transfer was inter se between the promoters, the same was exempted from making a public announcement as provided by Regulation 10 of the SAST Regulations. As regard the exemption, the AO found that while Regulation 10 of the SAST Regulations provides for making disclosures to the stock exchanges and to the company within a period of two working days. In the present case, the appellants made the disclosures on 7th day as against the provisions of Regulation 29(3).*

*[Reg. 29(3) - the disclosures are required to be made within two working days]*

*Thus, technically the appellants were not exempted from making public announcement and, thus, are in violation of the relevant regulations. The AO has observed that as the condition of making disclosures within two working days is not fulfilled, the act was not fit for grant of exemption. In the circumstances, the penalty was imposed. The appellants made the disclosures though belatedly after five days as required by Regulation 29 of the SAST Regulations. Thus, it was a technical breach and, therefore, AO instead of imposing a penalty of Rs. 15 lacs, imposed a penalty of Rs. 5 lacs which would have been just and sufficient.*

*The appeal was partly allowed.*



**07.09.2017**

**Mega Resources Ltd. (Appellant) vs. SEBI (Respondent)**

**Securities Appellate Tribunal**

*Ignorance of law will not excuse the appellant to escape the liability of violating the law*

**Facts of the case:**

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company.

This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations.

It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions.

However, It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct.



Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H) (ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for nondisclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs. Five Lakh to Rs. Twenty Five crore.

It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

### **Order:**

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. Five Lakh and by the amendment dated October 29, 2002 it is up to Rs. Twenty Five Crore or three times of the amount of profits made out of such failure, whichever is higher.

However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H (ii) of the SEBI Act.

Since the punishment imposable now for such nondisclosure and public announcement is up to Rs. Twenty Five Crore, SAT finds that the penalty of Rs. Fifty Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down.

Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. Fifty Lakh is upheld and the appeal is dismissed.



08.07.2010

*M/S Daiichi Sankyo Company vs. Jayaram Chigurupati & Ors.*

**Supreme Court held that:**

What does the deeming provision do? The deeming provision simply says that in case of specified kinds of relationships, in each category, the person paired with the other would be deemed to be acting in concert with him/it. What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the pair. For example, if a company or its holding company makes or agrees to make a move for substantial acquisition of shares etc. of a certain target company then it would be presumed that the move is in pursuance of a common objective and purpose jointly shared by the holding company and the subsidiary company. But the mere fact that two companies are in the relationship of a holding company and a subsidiary company, without anything else, is not sufficient to comprise "persons acting in concert". Something more is required to comprise "persons acting in concert" than the mere relationship of a holding company and a subsidiary company.



## CHAPTER 13 - PROHIBITION OF INSIDER TRADING

12.02.2020

*Shruti Vora (Appellant) vs. SEBI (Respondent)*

*Securities Appellate Tribunal*

*No duty cast upon the Adjudicating Officer to disclose or provide all the documents which are not relied upon while issuing Show Cause Notice*

*Appellant (Shruti Vohra) requested to the respondent (SEBI) to be allowed for the full inspection of other documents obtained during the investigation of the appellant and copies be supplied thereof. According to appellant, the inspection of the documents was only confined to the show cause notice and documents relied upon in the show cause notice. The core issue is whether the appellant is entitled for inspection and for supply of all the documents in possession of the adjudicating authority including those documents upon which no reliance has been placed by the Adjudicating Officer (AO) of the SEBI in the show cause notice. SAT observed that Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by 9 Adjudicating Officer) Rules, 1995 does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. Hence, there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.*



**16.06.2020**

**Aditya Omprakash Gaggar (Noticee) vs. SEBI Adjudicating Officer, Securities Exchange Board of India**

*Acts such as making UPSI available on a discriminatory basis will compromise the confidence of investors and has a serious impact on the price of the securities.*

**Facts of the case:**

*During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "UPSI") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, SEBI initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp.*

*Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 during the period of January 1, 2016 to February 10, 2016. It was observed that Bata India Ltd. had announced financial results for quarter and nine months ended on December 31, 2015 on February 10, 2016. The investigation inter alia revealed that Mr. Aditya Omprakash Gaggar (hereinafter also referred to as "Noticee") among other had communicated the UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for quarter ended December 2015 through WhatsApp messages from the WhatsApp chat of Ms. Shruti Vora.*

**Order:**

The instant case before SEBI is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI when the messages are deleted and manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market gossips/rumors will compromise the confidence of investors and the activity of such kind has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. SEBI in the opinion that the peculiar nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

Thus, SEBI imposed a penalty of ₹15,00,000/- (Rupees Fifteen Lakhs only) on the Noticee viz., Mr. Aditya Omprakash Gaggar in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Sections 12 A (d) & 12 A (e) of the Securities and Exchange Board of India Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order.



**16.07.2020**

**Mr. B Renganathan ('Noticee') in the matter of Edelweiss Financial Services Ltd. vs. SEBI Adjudicating Officer, Securities and Exchange Board of India**

*Compliance officers are expected to discharge a responsible role in the corporate functioning. The standards of good compliance aid and build up good corporate governance to add value and confidence to the market and its investors.*

*SEBI, upon receipt of examination report from National Stock Exchange (NSE), conducted investigation in the dealings in the scrip of Edelweiss Financial Services Ltd. ('EFSL'/'Company') to examine the violation, if any, of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations, 2015') for the period of January 25, 2017 to April 05, 2017 ('Investigation Period'/'IP').*

*The Company is listed on NSE and Bombay Stock Exchange (BSE). It is observed that Mr. B Renganathan ('Noticee') was the compliance officer and Company Secretary of EFSL during IP. During the course of investigation, it was observed by SEBI that Ecap Equities Limited ('Ecap'), a wholly owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Private Limited ('AIMIN'), a fintech company, on April 05, 2017 by entering into a share purchase agreement (SPA). The same was disclosed by EFSL to NSE and BSE on the same day. Further, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on January 25, 2017.*

*Therefore, it was alleged that the acquisition of AIMIN by Ecap was a price sensitive information which had come into existence on January 25, 2017 upon signing of Term Sheet. Despite that, the Noticee, being the compliance officer of the company, failed to close the trading window during the period of January 25, 2017 to April 05, 2017. By his failure to close the trading window during this period, it is alleged that the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders mentioned in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. In view*



of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the 'SEBI Act'.

**Order:**

Adjudicating Officer, SEBI find non-compliance on the part of the Noticee by failing to close trading windows when necessary as per law. Therefore, there were repeated instances wherein the Noticee had failed to close the trading window. In view of the above the argument of the Noticee that there was no repetition of violation is not acceptable. Adjudicating Officer's considered view that a repetitive violation, in disregard to the applicable provisions of law, cannot be construed to be a technical violation.

After taking into consideration the facts and circumstances of the case, material/facts on record, the reply submitted by the Noticee, Adjudicating Officer imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order.

**Extracts from SAT Order dated 12th July 2019 in the matter of Mr. G. Bala Reddy vs. SEBI**

In this case, a Company had secured work orders but the same were not disclosed to stock exchange as the contract was not yet issued to the Company and the Company was only found to be the lowest price bidder. During this period, certain entities had dealt in the shares of this Company with a contention that being the lowest bidder of a contract is a usual course of business and hence, does not amount to UPSI. SAT held that considering that the promoter was aware that the Company was LI (lowest bidder), this information was UPSI and hence it was incumbent upon Promoters not to deal in the scrips of the Company directly or indirectly.



15.02.2021

Mr. Prannoy Roy vs. Securities and Exchange Board of India (SEBI)

Supreme Court of India

*The appeals will be heard by the SAT without insisting on deposit of half the amount of fines as a precondition for hearing appeals.*

### **Background / Facts of the Case:**

*SEBI conducted an investigation into the suspected insider trading in the scrip of NDTV (hereinafter referred to as "the Company") during the period starting from September 01, 2006 to June 30, 2008 (hereinafter referred to as "Investigation Period").*

*While the investigation conducted into the matter, inter alia, revealed that Mr. Sanjay Dutt and his associated entities had indulged in insider trading in the scrip of NDTV (for which separate proceedings have been initiated) at the same time, the investigation also concurrently detected that Mr. Prannoy Roy and Mrs. Radhika Roy have carried out insider trading in the scrip of NDTV during the Investigation Period.*

*Mr. Prannoy Roy and Mrs. Radhika Roy had together bought 48,35,850 NDTV shares on December 26, 2007 at the rate of `400 per share. Subsequently, Mr. Prannoy Roy and Mrs. Radhika Roy had sold 24,10,417 and 25,03,259 shares respectively on April 17, 2008 at 10:26:42 at the rate of `435.10 per share. The trading in the shares of NDTV was done by Mr. Prannoy Roy and Mrs. Radhika Roy while in possession of UPSI (purchase on December 26, 2007) and within 24 hours of disclosing the price sensitive information to the stock exchanges (sale on April 17, 2008), during the period when the trading window for them was closed, thereby making a wrongful gain of `16,97,38,335/-*

*The gain made by Mr. Prannoy Roy and Mrs. Radhika Roy on the total number of shares jointly purchased by them during the UPSI period has been determined as below:*

Name	Buy Quantity during UPSI period pertaining to PSI-6*	Actual sell price on April 17, 2008 (C)	Actual buy price on December 26, 2007 (C)	Gain (C) #
Prannoy Roy	A	B	C	(B-C)xA
and Radhika Roy	4835850	435.1	400	169738335

\*Price Sensitive Information (PSI) - 6: The Board of the Company decided to evaluate options for reorganization of the Company, which could include de-merger/ split of the Company into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary, NDTV Networks Plc.

Therefore, by making the aforesaid sales of Company's shares held by them, Mr. Prannoy Roy and Mrs. Radhika Roy have together received a gain of `16.97 crores for themselves.

### Alleged violations

Mr. Prannoy Roy and Mrs. Radhika Roy, being the "insiders" with respect to NDTV in terms of regulation 2(e) of the PIT Regulations, 1992, have traded in NDTV shares during UPSI period pertaining to PSI-6, while in possession of the UPSI. Regulation 3(i) of the PIT Regulations, 1992, inter alia, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI.

Further, in terms of regulation 4 of the PIT Regulations, 1992, any insider who deals in securities in contravention of regulation 3 is said to be guilty of insider trading. In view of the aforesaid discussions and factual findings, SEBI found that, in the instant case, Mr. Prannoy Roy and Mrs. Radhika Roy, by dealing in shares of NDTV on December 26, 2007, while in possession of



unpublished price sensitive information (PSI- 6), have violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.

The PIT Regulations, 1992, have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. As per Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015, any proceedings initiated for contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 1992.

### **SEBI Order:**

Mr. Prannoy Roy and Mrs. Radhika Roy had made a wrongful gain of `16,97,38,335 while trading in the shares of the Company. The gains made by them have been calculated as the difference between actual sell price (i.e., `435.1) received and actual buy price (i.e., `400) of 4835850 shares of NDTV incurred by them.

In order to protect the interest of investors and the integrity of the securities market, SEBI, in exercise of its powers conferred under section 19 of the SEBI Act, 1992, read with section 11, 11(4) and 11B of the SEBI Act, 1992, issued the following directions:

(a) Mr. Prannoy Roy and Mrs. Radhika Roy, jointly or severally, disgorge the amount of wrongful gain of `16,97,38,335/-, along with interest at the rate of 6% per annum from April 17, 2008, till the date of actual payment of disgorgement amount along with interest, within 45 days from the date of coming into force of this order.

(b) Mr. Prannoy Roy and Mrs. Radhika Roy shall be restrained from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years.



### Appeal to SAT:

Mr. Prannoy Roy and Mrs. Radhika Roy filed an appeal against the SEBI's order dated November 27, 2020 whereby SEBI had barred them from the securities market for two years and also directed them to disgorge illegal gains of ₹ 16.97 crore for indulging in insider trading more than 12 years ago.

### SAT ORDER:

SAT has directed NDTV's promoters Prannoy Roy and Radhika Roy to deposit 50 per cent of the disgorged amount before SEBI within four weeks. If NDTV deposits the amount, the balance amount will not be recovered during the pendency of the appeal before SAT.

### Supreme Court Order:

A bench headed by Chief Justice S A Bobde directed that appeals of the appellants shall be heard by the Securities Appellate Tribunal (SAT) at Mumbai without insisting on any deposit of amount.

Further, the Hon'ble Supreme Court vide its order dated February 15, 2021 exempted Prannoy Roy and Radhika Roy from making deposit before the SAT for hearing their appeals. The Hon'ble Supreme Court directed that "no amount shall be coercively recovered from the appellants (Prannoy Roy and Radhika Roy) for hearing the case".

Extracts from SEBI's Interpretive Letter dated 19th July, 2018 issued under the SEBI (Informal guidance) Scheme, 2003 in the matter of Hawkins Cookers Ltd. (HCL) regarding sale of shares by an Independent Director.

### Facts of the case:

- a) One of the company's independent directors wants to sell his equity shares of the company.
- b) The sale shall be done as per a trading plan in accordance with regulation 4(iii) of the SEBI (PIT) Regulations, 2015.



c) As per para 8 of Schedule B to the PIT Regulations, while applying for preclearance, the said director will have to submit an undertaking to the company to the effect that he is not in possession of any Unpublished Price Sensitive Information (UPSI).

d) By virtue of participation in the Board meetings and access to the information that is shared at such meetings, the said director is deemed to be perpetually in possession of UPSI. Therefore, the said undertaking is not possible.

Question: a) Whether the said director may submit a trading plan as required for a plan to trade shares above INR 20 lakh in value and proceed with executing the same without giving the said undertaking. 358 Prohibition of Insider Trading LESSON 13

b) What procedure should be followed by the company and/ or the said director such that the said director may lawfully execute the trade?

#### **Guidance from SEBI:**

a) Regulation 5 of the PIT Regulations provides exception to the general rule that prohibits trading by insiders when in possession of UPSI. Further, regulation 5, inter alia, states that the trading plan shall be approved by the compliance officer and shall not entail trading in securities for market abuse. In this regard, regulation 5 (3) especially states that the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of PIT Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

b) In the absence of an approved trading plan, designated persons are subject to the requirements of code of conduct formulated by the company in terms of regulation 9 read with schedule B to the PIT Regulations.



**April 19, 2022**

**Balram Garg and Ms. Shivani Gupta & Ors. (Appellants) vs. Securities and Exchange Board of India (Respondent) Supreme Court of India**

*Insider Trading cannot be presumed due to proximity between the parties.*

**Brief Facts of the Case:**

*P. Chand Jeweller Pvt. Ltd. was incorporated on April 13, 2005 under the Companies Act, 1956 as a Private Limited Company. However, pursuant to a resolution passed by the shareholders on July 5, 2011, the company was converted into a Public Limited Company, following which the name of the company was changed to "PC Jeweller Ltd." ("PCJ").*

*SEBI vide its impounding order dated 17.12.2019 and a show-cause notice dated 24.04.2020 alleged that the Padam Chand Gupta (P.C. Gupta) was the Chairman of PCJ during the relevant period and was a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the SEBI (Prevention of Insider Trading Regulations), 2015 ("PIT Regulations").*

*Balram Garg, who is the brother of P.C. Gupta and the Managing Director of PCJ is also a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the PIT Regulations.*

*Sachin Gupta and Smt. Shivani Gupta (son and daughter-in-law of Balram Garg's deceased brother late P.C. Gupta) and Amit Garg (son of Amar Garg, who was also the brother of Balram Garg) traded on the basis of Unpublished Price Sensitive Information ("UPSI") received by them on account of their alleged proximity to P.C. Gupta and Balram Garg between the period from 01.04.2018 to 31.07.2018.*

*It was also alleged that all the appellants shared the same residence.*



Aggrieved by the order of SEBI, the Appellants filed appeals before the Securities Appellate Tribunal ("SAT") and the Tribunal, vide its order dated 21.10.2021, dismissed the Appeals preferred by the Appellants

### **Supreme Court Judgment:**

Supreme Court allowed the appeals and set aside the final orders of Whole Time Member and SAT. It was held that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants. Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.



## CHAPTER 14 - PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET

05.01.2021

SEBI (Appellant) vs. Bharti Goyal etc. (Respondent)

The Supreme Court of India

The direction for substituting the penalty which has been imposed under Section 15HA of SEBI Act, 1992 with a warning is contrary to the statutory provisions.

### Background/ Facts of the Case:

The SEBI conducted an investigation in the matter of Mapro Industries Limited (Mapro/MIL) during July 1, 2014 to November 30, 2014 (investigation period) and the possible violation of Regulations 3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 by the Noticees (total 16 entities).

SEBI had initiated investigation against sixteen entities, including the appellant, for manipulating the price of the scrip of Mapro Industries Limited (Mapro), a listed company, by trading above the last traded price (LTP) and violating various provisions of the SEBI (PFUTP) Regulations, 2003. While six of the entities which had engaged in market manipulation were suspected to be related entities, the appellants were part of the other ten entities which were not shown to be connected to these related entities.

### Alleged violations

It was alleged that during this period the price of the scrip was raised from Rs.79.15 on July 1, 2014 to a high of Rs.493.40 on November 10, 2014 and thereafter closing at Rs.430 on November 28, 2014. Though only six entities were found to be suspected group entities the scope of the investigation was expanded to another ten entities who were found to be part of



the top traders during the investigation period. What is held in the impugned order is that though there is no connection/relationship of these ten entities to the six suspected entities by the very manipulative nature of their trades such as placing buy orders mostly at the beginning of trading hours and substantively above the Last Traded Price (LTP) they have manipulated the trading system and disturbed the market equilibrium in the scrip of Mapro.

Together these ten entities raised the price of the scrip by Rs.241.95 by trading a total quantity of 1174 shares in 43 trades. It was also held in the impugned order that the contribution of these ten entities was about 69% of the total net LTP which was achieved in 29 trades with a total quantity of just 234 shares.

### SEBI Findings

The SEBI observed that they had executed 120 trades as buyers and out of which their 22 trades contributed to positive LTP of Rs. 139.95 which was 18.07% of market positive LTP. On further analysis of said 22 trades, it was observed that buy orders were placed first in 14 trades and LTP contribution of such trades were Rs. 88.95 which was 11.48% of the total positive market LTP.

SEBI, from the trading pattern of the entities, noted that the entities manipulated the share price of the company by contributing positively to the LTP (last traded price) which consequently led to the rise in the price of the scrip.

SEBI found that the trades done by the Noticees are in violation thus liable for monetary penalty under Section 15HA of SEBI Act for violation of Regulations 3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI PFUTP Regulations, 2003. Without delving into the aspect of connection between the appellants and the connected/ suspected entities, SEBI held that by the very nature of their trades, the appellants manipulated the scrip price and disturbed the market equilibrium.



### **SEBI Order**

SEBI imposed a penalty of Rs. 5,00,000 each on 10 individuals and six entities under Section 15 HA of the SEBI Act, 1992 for violating the Regulations 3(a), (b), (c) & (d), 4(1), 4(2) (a) and (e) of SEBI PFUTP Regulations, 2003.

### **Appeal before Securities Appellate Tribunal (SAT)**

Bharti Goyal, one of the individual one which fine was imposed, has filed an appeal before SAT. Ms. Bharti Goyal, appeared in person during hearing and contended that she invested in the shares of Mapro in the normal course of business as she is a small-time trader though not frequent and there is no connection or relationship with any connected/suspected entity and finally lost money in this investment.

The learned counsel for the Respondent in Appeal contended that placing buy orders well above the LTP is completely irrational as no rational investor would like to buy shares at a price substantially higher than the LTP.

While the trading pattern of Appellant; placing the buy orders for generally very small number of shares and the timing of the orders; all point towards possible violation of the provisions of PFUTP Regulations it is also possible that an investor through a thorough observation of the movement of the scrip could be placing orders in the system without any intention to manipulate the market. Since the dividing line is very thin and blurred distinguishing both these categories is a difficult, if not impossible, task.

### **SAT Order dated August 25, 2020**

The SAT modified the penalty order imposed by SEBI for the manipulation in the scrip price of a listed entity into a warning, on account of non-establishment of a connection between the appellants and the connected/ suspected entities that are alleged to have manipulated the price.



### **SEBI Appeal before Supreme Court of India**

SEBI filed appeal before Supreme Court of India. Mr. K K Venugopal, learned Attorney General for India, (from Appellant side) submitted that Section 15HA of the Securities and Exchange Board of India Act 1992, as amended on 8 September 2014, provides for a minimum penalty of Rs. 5,00,000 which can go up to Rs. 25 crores. Hence, the imposition of a warning which is not a penalty contemplated by section 15 HA is beyond jurisdiction. It has been submitted that similar orders have been passed by SAT in many other cases, leading to several appeals being filed before this Court by SEBI.

### **Supreme Court of India Order dated 05.01.2021**

Prima facie, the direction for substituting the penalty which has been imposed under Section 15HA with a warning is contrary to the statutory provisions. The SAT is not exercising the jurisdiction under Article 226 of the Constitution and is a creature of the statute. Even the jurisdiction under Article 226 has to be exercised in a manner consistent with law. Hence, there shall be a stay of the operation of the impugned judgment and order of the SAT dated 25 August 2020.

**01.01.2021**

**Order In the matter of Reliance Petroleum Limited (now known as Reliance Industries Limited) Adjudication Officer, SEBI**

**The positions taken by clients on behalf of principal which is not known to the trading members or the market at large, will be treated as fraudulent and manipulative in nature.**

### **Background**

SEBI conducted an investigation into the trading in the scrip of Reliance Petroleum Limited (now known as Reliance Industries Limited) for the period November 1, 2007 to November 29, 2007 ('Investigation Period'/'IP'). The SEBI observed that RIL had entered into a well-planned operation with its Agents to corner the open interest in the RPL Futures and to earn undue profits from the sale of RPL shares in both cash & futures segments and to dump large



number of RPL shares in the cash segment during the last ten minutes of trading on the settlement day resulting in a fall in the settlement price.

### **Facts of the Case**

A resolution was passed by the Board of Directors of 'Noticee-1' ('RIL') on March 29, 2007 which inter-alia approved the operating plan for the year 2007-08 and resource requirements for the next two years, i.e., approximately Rs. 87,000 crore. Thereafter, RIL decided to sell approximately 5% of its shareholding in RPL (i.e., upto 22.5 crore RPL shares) in November 2007.

RIL admittedly appointed 12 agents, between 30th October, 2007 to 3rd November, 2007, to undertake transactions in the November 2007 RPL Futures (settlement period 1st November - 29th November 2007) on its behalf.

The said Agents appointed by RIL took short positions in the F&O Segment on behalf of RIL, while RIL undertook transactions in RPL shares in the cash segment. During the period of 1st November 2007 to 29th November 2007, various transactions were undertaken by RIL in the Cash Segment and by RIL through the Agents in the F&O Segment. From 15th November 2007 onwards, RIL's short position in the F&O Segment constantly exceeded the proposed sale of shares in the Cash Segment. On 29th November 2007, RIL sold a total of 2.25 crore shares in the Cash Segment during the last 10 minutes of trading resulting in fall in the prices of RPL shares, which also lowered the settlement price of RPL November Futures in the F&O Segment. RIL's entire outstanding position of 7.97 crores in the F&O Segment was cash settled at this depressed settlement price resulting in profits on the said short positions. The said profits were transferred by the agents to RIL as per a prior agreement.

As per SEBI's order, RIL executed a well-planned scheme of manipulative trades in the Cash Segment and the F&O Segment in Reliance Petroleum Limited shares. As a result of their involvement in this scheme, these entities have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d), (e) of SEBI (Prohibition of Fraudulent and



Unfair Trade Practices relating to Securities Market) Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR10/01 dated November 02, 2001.

### **Alleged Violations**

During investigation, it was alleged that RIL manipulated the settlement price by placing huge sell orders in the cash segment during the last ten minutes of trading on November 29, 2007 (the day of expiry of RPL November Futures contracts) which depressed the closing share price of RPL, while simultaneously having large short position in RPL November futures through its agents.

It was also alleged that Shri Mukesh D. Ambani (hereinafter referred to as 'Noticee-2'), being the Chairman & Managing Director of RIL, was responsible for its day-to-day affairs and thereby, liable for the manipulative trading done by RIL.

### **SEBI Findings**

Mr. Sandeep Agarwal was commonly authorized by the 12 Agents to place orders in the F&O Segment, who was an employee of a wholly owned subsidiary of RIL. SEBI noted that the orders were placed by the same person for all the entities and the entities were connected directly or indirectly with RIL.

During the month of November 2007, the front entities of RIL had held a position which was substantial compared to the maximum permissible limit, in accordance with NSE data.

These arrangements were entered with the intention to corner the F&O segment and were therefore fraudulent and manipulative in nature. Agents of RIL had assumed individual positions in the November 2007 futures of RPL, without disclosing their relationship with the principal, i.e., RIL. The fact that the clients have been authorized by RIL to take separate and independent position limits was not known to the trading members or the market at large.

### **SEBI Order**

SEBI imposed a penalty of Rs. 40 crores on Reliance Industries Ltd (RIL) and its Chairman & Managing Director, Mukesh Ambani and Rs.20 crores and Rs.10 crores on other two entities



*i.e. Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd respectively for alleged manipulation in the trading of Reliance Petroleum Limited's (now known as RIL) securities.*

**26.08.2021**

*Nishant Inbuild Limited (Noticee) In the matter of PMC Fincorp Ltd.  
Adjudication Officer, SEBI*

*Creation of misleading appearance of trading and manipulation the price of the scrip by contributing to the price rise to be treated as Unfair Trade Practice as per Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003*

### **Facts of the Case**

*SEBI carried out an investigation in the matter of PMC Fincorp Ltd. wherein it was observed that lots of buyers and sellers were trading in the scrip of PMC during the investigation period of March 29, 2012 to March 31, 2015. The shares of company were listed on UP Stock Exchange Ltd (UPSE) and subsequently got listed on Bombay Stock Exchange Ltd (BSE) on March 12, 2012. The investigation was carried out to ascertain the artificial demand in the scrip of PMC during the IP by continuously buying shares at increasing prices and then holding on to the shares purchased by Noticee and other entities, thereby also reducing the shares held by the public and that their trades were manipulative in nature. The Investigation Period was divided into five patches to identify the volume traded and fluctuation in prices.*

*Noticee along with connected entities as mentioned in the SEBI order contributed to high trading volumes in Patch 3 and 4 which lead to fluctuate the price of the scrip of PMC Fincorp Ltd. Further, Noticee and other entities namely Embassy, Economy, Seabird Retails, Seabird Distributors and Seabird Vincon had fund transfers with PMC. On analysis of bank statements of aforesaid entities, it was observed that PMC had transferred funds to aforesaid entities who in turn transferred the aforesaid funds to their respective brokers for settlement of their trading in the scrip of PMC.*



### Alleged Violations

1. It was alleged that a group of 92 entities were found to be connected to one another on the basis of fund transfers, off market transactions, common directors, same address etc. and in common connection with Noticee by one or other way.
2. From the trading analysis of the Investigation Period, SEBI had observed that some of the entities had traded among themselves and contributed to market +ve contribution.
3. Few of the entities were alleged to have aided 11 other connected entities (buyers) by selling shares to increase the price of the scrip.
4. It was alleged that the Noticee, along with the 33 connected entities created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and have violated Section 12 A(a),(b),(c) of SEBI Act read with Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

### SEBI Findings

Noticee was involved in negative and positive LTP contribution both. From the volume traded during the Investigation Period of Patch 3 (20/03/2013 to 12/03/2014) and Patch 4 (13/03/2014 to 21/10/2014), SEBI noted that the Noticee was a significant buyer in the PMC scrip during Patches 3 and 4, and contributed to high trading volumes in Patch 3 and 4. Amongst the connected entities it was the 9th largest trading entity, providing significant liquidity in the scrip during Patches 3 and 4. The trading pattern of the Noticee thus establishes that it contributed to trading volumes and provided liquidity.

### Noticee was connected with other Entities

The Noticee, through its trades provided the necessary counterparties and liquidity required to maintain volumes of trading in the scrip and enable the entities Economy, Embassy, Seabird Distributors, Seabird Vincon, Seabird Retails, Famous, Rolex and Shivdarshan to continuously buy in the scrip at increasing prices. Noticee also facilitated in fund transfers from PMC and its promoter through loans directly or via Seabird Distributors which were used to pay to the brokers for some of its purchases.



The SEBI found that Noticee had a close connection with the Embassy, Seabird Distributors, Seabird Vincon, Economy, Seabird Retails, which have been found to have manipulated the price of the scrip. Further, Noticee also had close connection with PMC and its promoters namely Prabhat Management and RRP Management Services which have been found to be played a part in funding or routing of funds to Economy, Embassy, Seabird Distributors, Seabird Vincon, Seabird Retails.

Hence, Noticee contributed to significant trading volume in the scrip during patch 3 and 4 and provided liquidity and was a counterparty to trades by aforesaid entities.

### SEBI Order

SEBI imposed a penalty of Rs. 5 Lakh on Nishant Inbuild Limited.

**02.09.2021**

M/s Achal Investments Ltd. In the matter of Mis-utilization of funds raised through preferential issue

Whole Time Member, SEBI

Mis-utilisation and diversion of the proceeds is considered as violation of high standards of ethics and corporate governance and attract penalty under the provisions of SEBI (PFUTP) Regulations, 2003.

### Background

The SEBI conducted an investigation in dealing in securities by raising of funds through preferential issue of equity shares and utilization thereof by the M/s Achal Investments Ltd. (Company) to ascertain whether there was any violation of the provisions of SEBI Act, 1992, Listing Agreement read with provisions of SEBI (LODR) Regulations, 2015 and SEBI (PFUTP) Regulations, 2003



### Facts of the Case

The company had issued equity shares on preferential basis to 47 entities. The objects of the preferential issue of equity shares issued to the shareholders are as under:

1. To strengthen the equity base of the company,
2. To arrange the funds required for meeting the enhanced working capital requirements of the company,
3. To meet certain capital expenditure, and
4. To meet expenditure for general corporate purposes.

The company, in response to a Bombay Stock Exchange Notice admitted that it has deviated from the stated objectives in utilization of the issue proceeds. Further, the company informed SEBI that it has obtained ratification for the deviation from its shareholders in the AGM.

The ratified details of utilization of proceeds of preferential issue are mentioned below: | Loans & Advances - Rs. 1,55,00,000 | Advance for purchase of shares - Rs. 27,69,600 | Repayment of Loan - Rs. 8,50,000

### Alleged Violations

A Show Cause Notice (SCN) issued to the Company inter alia, states the following allegations:

1. The Company has mis-utilized and diverted the proceeds received through the preferential issue of equity shares.
2. The Company, while seeking ratification from its shareholders after a delay of 5 years, has not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds.
3. The Company by mis-utilizing and diverting the proceeds received through the preferential issue of equity shares has committed fraud on its shareholders.
4. The Company failed to make the quarterly disclosure regarding utilization of preferential issue proceeds as required under Clause 43 of Listing Agreement.

It was also alleged that following provisions have been violated by the company:

- Section 12A of SEBI Act, 1992 (SEBI Act) deals with Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
- Regulation 2(1)(c) of PFUTP Regulations



- Regulation 3. Prohibition of certain dealings in securities
- Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices
- Conditions for Listing as per SCRA.

### SEBI Findings:

One of the reasons for deviation of funds was advance for purchase of shares to the SEBI registered Sub-brokers. However, it was found that the MoUs which were executed by the Company do not stipulate even the basic details of the names of the scrips that need to be purchased, quantity of shares, price, whether the shares have to be purchased in the primary market or in the secondary market through Stock Exchanges or in off market, etc. Hence, it was observed that the transfer of funds by the Company to the Sub-brokers could not have been for the purpose of purchasing shares. To the contrary, it was alleged that the funds were transferred for the Sub-brokers' own use since no KYC formalities were completed and no orders were made.

SEBI concluded that the company has mis-utilized the proceeds received from the preferential issue of equity shares. This action is not only detrimental to the interest of the company but also to the interest of its shareholders.

Another allegation was in relation to a loan given to an individual which was also ratified by the shareholders. SEBI noticed that the said loan amount cannot be considered as a normal business transaction of the Company as deployment of funds out of the working capital. No legally binding agreement had been entered into by the Company, no interest was charged from the borrower and no collateral was taken from the borrower. It was deduced that the company had no intention to secure the return of funds.

In light of the aforesaid discussion, which brings out the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares by the Company, it was alleged that the company has committed fraud as defined under Regulations 2(1)(c)(2) and 2(1)(c)(4) of the PFUTP Regulations.



SEBI observed that the company has employed, in connection with the preferential issue of securities, a manipulative device to defraud the existing and prospective shareholders and has engaged in a practice which has acted as a fraud on them. These acts of the Company in making such a suggestion are a fraudulent or an unfair trade practice as it knew the same to be not true and the Company was aware that such misleading information would influence the decision of investors and induce them in dealing in securities.

The company contended that it sought shareholders' approval for ratification of deviation of proceeds of preferential issue. However, SEBI noted that the company had merely informed the shareholders that it had deviated from the purpose for which the proceeds were raised and had not made full and complete disclosure of facts and information pertaining to the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares.

SEBI concluded that the Company in order to ratify the alleged mis-utilization and diversion of proceeds of preferential issue of equity shares from its shareholders, has in the said process, misled and influenced its shareholders. Further, the act of the Company not to make true and complete disclosure and diversion of proceeds of preferential issue of equity shares is not only a device to manipulate its shareholders to ratify the mis-utilization and diversion of proceeds of preferential issue of equity shares but it is also meant to deprive the shareholders of giving informed consent regarding the ratification process. SEBI held that the said act of the Company has led to the violation of provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

### **SEBI Order**

SEBI issued the following directions to the company:

That it is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of five (05) years from the date of Order.



*That it shall bring back the amount of Rs.1,38,29,600/- due to it, which has been extended either directly or indirectly, to the entities mentioned in this Order, along with due interest, expeditiously and take all necessary action, including legal actions, towards bringing back the said sum. It shall file a quarterly report stating the compliance of this direction to SEBI.*

*Imposed penalty of Rs. 20,00,000/- (Rs. 10 lakh each under Section 15HA of the SEBI Act, 1992 and under Section 23E of the SCRA).*



## CHAPTER 15 - DELISTING OF EQUITY SHARES

16.06.2022

*Autoriders Finance Ltd. - Appellant v. National Stock Exchange of India Ltd. - Respondent  
Securities Appellate Tribunal*

### **Facts of the Case:**

*The National Stock Exchange of India Limited ('NSE') issued a show cause notice dated August 26, 2020 to the appellant Company to show cause as to why the appellant Company should not be compulsorily delisted under Regulation 22(1) of the Delisting Regulations on the ground of continuous non-compliance with respect to the requirements under the Listing Regulations. Thereafter, the respondent sent an e-mail to the appellant Company on September 4, 2020 stating therein that reply has not been received by the respondent.*

*It transpires that the Delisting Committee considered the matter on September 24, 2020 and thereafter passed the impugned order on November 27, 2020 directing compulsorily delisting of the appellant Company under Regulation 22(1) of the Delisting Regulations. The appellant is aggrieved by the order dated November 27, 2020.*

*The appellant contends that no opportunity of hearing was provided by the Delisting Committee before passing the impugned order and therefore the said order is violative of the principles of natural justice as embodied under Article 14 of the Constitution of India.*

*The proviso to Regulation 22(1) of the Delisting Regulations clearly indicates that no order directing delisting of the shares of the Company shall be made unless the Company is given a reasonable opportunity of being heard.*

### **SAT Order:**

*SAT opined that the impugned order is violative of principles of natural justice since no notice of hearing or opportunity of hearing was provided to the appellant Company. The proviso clearly*



*stated that no order shall be passed under Regulation 22(1) unless the Company has been given a reasonable opportunity of being heard. It means that the Delisting Committee is required to give a notice for hearing which admittedly no such notice was issued. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed.*



## CHAPTER 17 - MUTUAL FUNDS

23.05.2006

SEBI Vs. Shriram Mutual Fund

Hon'ble Supreme Court

### Facts

The respondent was a mutual fund and the asset management company. During the period from June, 1998 to September, 1999, the respondent had conducted business through associated brokers, in excess of the limits prescribed under regulation 25(7)(a) of the 1996 Regulations on 12 occasions covering 6 quarters. The respondent had failed to comply with the terms and conditions attached to the certificate of registration granted to it, inasmuch as it did not exercise diligence to ensure that the transactions by its own asset management company were confined to the permissible limits. The Adjudicating Officer imposed a sum of Rs. 5 lakhs as penalty on the respondent No. 2 under section 15E for failure to comply with regulation 25(7)(a) and Rs. 2 lakhs on the respondent No. 1 for failure to comply with the terms and conditions attached to the certificate of registration.

The respondents filed appeals before the Securities Appellate Tribunal, inter alia, contending that the transactions with the associate brokers were related to thinly traded securities, for which there were no ready markets available through the normal stock exchange, or were relating to securities which did not have any large volume or trade in the market.

The Tribunal set aside the order passed by the Adjudicating Officer on the ground that the penalty to be imposed for failure to perform a statutory obligation is a matter of discretion which has to be exercised judicially and on a consideration of all the relevant facts and circumstances. The Tribunal also held that the Adjudicating Officer had to be satisfied with the material placed before him that the violation deserved punishment. The appeal was filed to Supreme Court.



### **HON'BLE SUPREME COURT JUDGEMENT**

The Hon'ble Supreme Court set aside the decision of Securities Appellate Tribunal in *Shriram Mutual Fund v. Chairman*.

It was held by Supreme Court that the penalty is warranted by the quantum which has to be decided by taking into consideration the factors stated in section 15J of SEBI Act. In its opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. The penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.

The SEBI was set up to promote orderly and healthy growth of the securities market and for investors protection SEBI has been monitoring and regulating the activities of Stock Exchanges, 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. Investors' confidence in the capital market can be sustained largely by ensuring investors protection. That it became imperative to impose monetary penalties also in addition to other penalties in cases of default.

The Court held that mens rea is not an essential element for imposing penalty for breach of civil obligations.



**23.10.2017**

**SAHARA ASSET MANAGEMENT COMPANY P. LTD & ORS. Appellant(s) VERSUS  
SECURITIES AND EXCHANGE BOARD OF INDIA & ORS. Respondent(s)**

*Hon'ble Supreme Court*

**Facts of the case:**

*SEBI passed an order dated June 23, 2011 against two Sahara group entities namely Sahara India Real Estate Corporation Ltd. (SIRECL), Sahara Housing Investment Corporation Ltd. (SHICL) and some of their Directors to refund the money collected through the issue of Optionally Fully Convertible Debentures (OFCDs) and restrained those Directors from associating themselves with any listed public company and any public company which intends to raise money from the public till such time the money is refunded to the investors to the satisfaction of SEBI.*

*Following these orders against the two Sahara group companies and their Directors SEBI initiated proceedings by appointing a Designated Authority under the Intermediaries Regulations on June 9, 2014. This Designated Authority was to enquire into whether there was any violation of the provisions of the Mutual Fund Regulations, 1996 as well as related SEBI Circulars by the Sahara Mutual Fund, Sahara Sponsor, Sahara AMC and its Trustees. The Designated Authority submitted the report on October 14, 2014 holding that these entities are no longer fit and proper persons to carry on the business of mutual fund and recommended cancellation of certificate of registration of Sahara MF.*

*The impugned order has been issued consequent to the findings by SEBI that Sahara Sponsor is not a 'fit and proper person' because its Promoter-Director is not a fit and proper person and hence the Sahara MF and Sahara AMC are no longer fit and proper to carry on the business of mutual fund*

*Thus, SEBI vide order dated July 28, 2015 had ordered cancellation of Certificate of Registration of Sahara Mutual Fund with effect from expiry of 6 months from the date of the order.*



Subsequently, Sahara MF, Sahara AMC and others had preferred an appeal against the SEBI order dated July 28, 2015 before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated July 28, 2017 disposed of the said appeal, granting a period of 6 weeks to the appellants to approach the Hon'ble Supreme Court of India.

Sahara MF and others subsequently filed an appeal in the Hon'ble Supreme Court, challenging the aforesaid order of the Hon'ble SAT.

### **Hon'ble Supreme Court Order**

The said appeal was dismissed by the Hon'ble Supreme Court vide order dated October 23, 2017.

## **WINDING UP OF SIX YIELD-ORIENTED FIXED INCOME SCHEMES OF FRANKLIN TEMPLETON INDIA AMID COVID-19- A CASE STUDY**

### **INTRODUCTION**

COVID-19 started showing its impact on the mutual fund industry during pandemic. Though we could attribute most of that outflow to corporates redeeming funds to meet their quarter end obligations, high volatility and uncertainty as consequences of the pandemic could have also played a major hand in the redemption pressure for debt schemes. Foreign Institutional Investors (FIIs) have been redeeming investments heavily in equity and debt segment ever since WHO declared COVID-19 a pandemic. In March 2020, FIIs pulled out Rs. 60,375 crore from the debt market.

High redemption and lack of buying interest has made debt mutual fund schemes vulnerable, especially those with higher exposure to low rated instruments. This instability has claimed its first casualty in debt mutual funds.



### ABOUT FRANKLIN TEMPLETON (INDIA)

Franklin Templeton's association with India dates back to over 2 decades as an investor. As part of the group's major thrust on investing in markets around the world, the India office was set up in 1996 as Templeton Asset Management India Pvt. Limited. It flagged off the mutual fund business with the launch of Templeton India Growth Fund in September 1996, and since then the business has grown at a steady pace.

Franklin Templeton (India) is one of the largest foreign fund houses in the country. It manages one of the most comprehensive ranges of mutual funds catering to varied investor requirements and offering different investment styles to choose from.

### WINDING-UP OF SPECIFIC SCHEMES

The Trustees of Franklin Templeton Mutual Fund (FTMF) in India announced that they have, after careful analysis and review of the recommendations submitted by Franklin Templeton AMC, and in close consultation with the investment team, voluntarily decided to wind up their suite of six yield oriented, managed credit funds effective from April 23, 2020.

In light of the severe market dislocation and illiquidity caused by the COVID-19 pandemic, this decision has been taken in order to protect value for investors via a managed sale of the portfolio. This action is limited to the below-mentioned funds, which have material direct exposure to the higher yielding, lower rated credit securities in India that have been most impacted by the ongoing liquidity crisis in the market.

#### Details of schemes being wound up

S. No.	Name of the Scheme	Scheme Characteristic (based on Macaulay duration or credit rating) as stated in the scheme information document	Macaulay duration* in years as on 22 April 2020

1.	Franklin India Ultra Short Bond Fund	Investing in Instruments with Macaulay duration between 3-6 months	0.38
2.	Franklin India Short term Income Fund	Investing in Instruments with Macaulay duration between 1-3 years	2.41
3.	Franklin India credit Risk Fund	A bond fund focusing on AA and below rated corporate bonds (excluding AA+ rated corporate bonds)	2.37
4.	Franklin India Low Duration Fund	Investing in Instruments with Macaulay duration between 6-12 months	1.17
5.	Franklin India Dynamic Accrual Fund	Investing across duration	1.95
6.	Franklin India Income Opportunity Fund	Investing in Instruments with Macaulay duration between 3-4 years	3.94

**\*Macaulay duration is the weighted average of the time to receive the cash flows from a bond. It is measured in units of years. Macaulay duration tells the weighted average time that a bond needs to be held so that the total present value of the cash flows received is equal to the current market price paid for the bond.**

### **CAUSES FOR WINDING UP THESE SCHEMES**

According to a statement to investors from FTMF, Franklin Templeton (India) winding up these schemes in order to preserve value and secure an orderly and equitable exit for investors in these yield-oriented schemes. The credit climate was extremely challenging over the last quarter or so, and Covid-19 severely heightened the pressure resulting in a spike in yields and sharply reduced liquidity. The ongoing global pandemic has impacted business activity across a



wide range of sectors and diminished portfolio companies' ability to access funds and service existing debt. Mutual funds are facing unprecedented liquidity challenges during the lockdown which was necessary to address the Covid-19 pandemic.

Factors like rising redemption pressures, mark to market losses, following spike in yields and rising illiquidity in portfolios, following lower trading volumes have together caused severe and worsening liquidity crunch for open-end mutual fund schemes. This impact will be long-lasting, and bond market conditions are unlikely to return to normalcy in the immediate future.

The schemes had to resort to continuous borrowing to fund redemptions during this time, and were unable to repay the borrowings through sale of portfolio securities due to the prevailing market environment. The Investment manager did not believe it was prudent to continue funding redemptions through potentially increasing levels of borrowings.

FTMF follows a high-risk high-return strategy for the above mentioned funds - Meaning a major part of its portfolio is exposed to lower rated securities (rating below AAA). The market disruption due to the virus outbreak has impacted these securities the most. Under conditions of high redemption pressure, mutual funds sell their liquid assets to meet the demand, leaving the portfolio highly exposed to illiquid assets. Thus, investors who choose to stay invested are at a disadvantage here.

Anticipating continued liquidity stress to the funds, the fund house thought winding up the scheme is the only viable option for the unit holders to minimize erosion of value.

### **KEY IMPLICATIONS FOR INVESTORS ON SUCH WINDING UP**

#### **Suspension of Purchase and Redemption:**

The six wound up schemes were no longer available for subscription or redemption, post cut-off time on 23 April 2020. All Systematic Investment Plans (SIP), Systematic Transfer Plans (STP) and Systematic Withdrawal Plans (SWP) into and from the abovementioned schemes stand cancelled post cut-off time on 23 April 2020.



### **Distribution of monies from Scheme Assets:**

Following the decision to wind-up the schemes, Franklin Templeton (India) will proceed to assist the Trustees with orderly realization and liquidation of the underlying assets with the objective of preserving value for unit holders, and with distribution of the proceeds thereof to the unit holders after discharging the liabilities of the schemes.

### **Tax Implications:**

The amount received by investors are in the form of redemption of units and would, where such amount or part thereof represents a gain for the investor, be taxed as capital gain in the hands of investors depending on inter alia the period of their investment in the scheme. Investors can take advice from a tax expert as impact could vary depending on their status and income.

### **SEBI/SAT/SUPREME COURT'S DIRECTION TO FRANKLIN TEMPLETON MUTUAL FUND - KEY BULLETS**

1 SEBI vide its press release dated May 7, 2020 has advised Franklin Templeton mutual fund (FT) to focus on returning money to investors, in the context of their winding up six of their debt schemes.

- However, a small number of investors sought the intervention of various courts and winding up of the schemes were stayed.
- In October 2020, the High Court of Karnataka issued its judgment, in which it upheld the decision to wind up the Funds and held that there was "nothing wrong with the decision making process," but determined that consent of the unitholders u/r 18(15)(c) was required to implement the decision.
- On December 3, 2020, the SC issued an interim order allowing the Trustee to seek unitholder approval for winding up the six Funds, without prejudice to the right of the parties to argue on the interpretation of the regulation and other aspects of the appeal.
- The Trustee then proceeded to conduct votes for each of the six Funds, which concluded on December 29, 2020, and a substantial majority (above 96%) of the voting unitholders of each of the Funds voted in favor of the winding-up decision. Thereafter, the SC allowed the Trustee to distribute the cash available in the schemes to the respective unitholders



proportionately and appointed SBI Funds Management Private Limited, a public sector entity, to undertake the distribution.

- Further vide order dated February 12, 2021, the SC upheld the validity of the e-voting exercise and confirmed the winding-up status of the schemes. With the consent of all the parties, the SC appointed SBI Mutual Fund Pvt. Ltd as the liquidator to monetize the assets of the scheme and distribute the proceeds to the unitholders.
- Since the date of the winding up till July 9, 2021, the six schemes have received INR 25,859 crore from maturities, coupons, sale, and prepayments. The total amount distributed in the winding up schemes stands at INR 26,783.22 crores amounting to 106% of the AUM as on April 23, 2020.

SEBI initiated a forensic audit/inspection, with respect to the affairs of the six fixed income schemes and fund of funds schemes that invested in these six schemes. SEBI had communicated the observations/findings of the said forensic audit/inspection to the Trustee and the AMC and sought their comments together with relevant supporting documents/ records. The Trustee and the AMC had submitted their response to SEBI. Subsequently, SEBI has issued Show Cause Notices ('SCNs'), on 24 November 2020 to the AMC and on 27 November 2020 to the Trustee and 8 employees of the AMC (including an ex-employee), upon consideration of observations in forensic audit / inspection and responses thereon submitted by the AMC and the Trustee. The Trustee and the AMC and 8 employees (including an ex employee) had submitted their response to the SEBI on these SCNs.

On June 7, 2021, SEBI issued an order against the AMC and on June 14, 2021 a separate joint order against the Trustee and certain AMC officers and employees, finding violations of certain regulatory provisions, including - at a high level - with respect to similarity in investment strategies among the Funds, calculation of duration and valuation of portfolio securities, documentation of investment diligence and investment terms, and portfolio risk management. SEBI's orders include, as applicable, monetary penalties, disgorgement of investment management and advisory fees, and a prohibition from launching new fixed income funds in India for a two-year period.



The AMC filed an appeal and an application for stay before the Hon'ble Securities Appellate Tribunal (SAT). After hearing the parties, the Hon'ble SAT has stayed the operation of the order passed by the WTM.



## CHAPTER 18 - COLLECTIVE INVESTMENT SCHEMES

05.06.2020

*Dairyland Plantations (India) Limited - Noticee No. 1*

*Mrs. Roshan D. Nariman - Noticee No. 2*

*Ms. Taz N. Nariman - Noticee No. 3*

*Ms. Jeroo Nariman - Noticee No. 4*

*Mrs. Silloo R. Nariman - Noticee No. 5*

*Mr. Urvaksh Naval Hoyvoy - Noticee No. 6*

*Mrs. Shernaz Kershasp patel - Noticee No. 7*

*Mrs. Meher Khushru Patel - Noticee No. 8*

*Mrs. Rukhshana Meher Anklesaria - Noticee No. 9*

*Whole Time Member*

*Securities and Exchange Board of India*

### **Facts of the Case:**

Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination into the business activities being carried out by Dairyland Plantations (India) Limited (hereafter referred to as "Company/DPL/Noticee no.1"). The examination of the business activities of the Company revealed that the Company had launched a scheme named as Green Gold Bonds scheme (hereinafter referred to as "Scheme") which apparently possessed the requisite ingredients of a collective investment scheme (hereinafter referred to as "CIS").

It was noticed that the said Scheme entailed a one-time payment of Rs. 5 000 in lieu of a unit of 5 Teakwood trees with a holding period of 20 years and on maturity, the contributor/investor had the option to get the teak trees or the realised sale proceeds thereof. The examination of the details of the scheme further revealed that the Company had mobilised approx. Rs. 1,00,82,000/- (Rs One Crore and Eighty-Two Thousand) from 1660 contributors/investors. It was observed that the Scheme was launched by the Company during the period from 1992 to 1996 and during the said period as well as subsequently thereafter during the operation of the Scheme, the Noticees no. 2 to 9 were its Directors and were



responsible for the affairs of the management of the business of the Company. It was also noticed that the said Scheme was being carried on without obtaining registration from SEBI, in violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "CIS Regulations").

It is noted that Section 12 (1B) of SEBI Act, which came into effect on January 25, 1995 prohibited a person from carrying out any CIS, unless he obtains registration from SEBI.

However, the section permitted existing entity who were carrying out CIS activities prior to the commencement of the aforesaid provision to continue with the existing scheme till Regulations governing CIS are promulgated. Subsequently a separate CIS Regulations of SEBI was enacted which came into force on October 15, 1999 in terms of which, all the existing CIS (prior to the commencement of CIS Regulations) were required to apply for registration or else, were required to wind up the existing CIS after making repayment to the contributors/investors and also were further required to file a Winding Up and Repayment report (hereinafter referred to as "WRR") with SEBI in terms of the said CIS Regulations.

Accordingly, various companies including the Noticee Company, which were running CIS schemes at the time of promulgation of the afore-stated CIS Regulations, were asked vide several letters and public notices, to abide by the provisions of the CIS Regulations and submit their compliance reports as mandated under the said Regulations. However, the Noticee Company neither obtained provisional registration, nor applied for registration of its CIS Scheme by the prescribed date of March 31, 2000, and did not even take necessary steps for winding up of the Scheme. Therefore, a Show Cause Notice dated May 12, 2000 (hereinafter referred to as "SCN") was issued to the Company calling upon it to show cause as to why suitable directions shall not be issued against it for continuing with its CIS activities, in violations of the provisions of SEBI Act r/w the CIS Regulations.

**Order:**

SEBI issue following directions:-

- a) The Noticee Company shall, within a month from the date of issue of this order, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, mentioning in bold letters the name of the Scheme i.e 'Green Gold Bonds Scheme' in the said News Papers and inviting complaints/claims from any investor in respect of the said Green Gold Scheme from contributors/investors that are still outstanding. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their complaints/claims, with the superscription "Complaints/Claims in the Matter of Dairyland Plantations (India) Ltd.", to SEBI.
- b) A period of one month from the date of the advertisement shall be provided to contributors/investors for submitting any claim/complaint as stated aforesaid.
- c) The Company shall furnish to SEBI the details of the investors viz; name of the investors, amount invested, year of investment, address and other material information etc., within a period of 15 days from the date of this order.
- d) An interest bearing escrow account shall be opened by the Noticee Company in a nationalised public sector bank and the entire outstanding amount payable to the investors under the above stated Scheme shall be transferred/deposited to this escrow account within one month from the date of this order.
- e) The Company shall wind up its existing CIS and refund the money collected by the Company under the Scheme to the contributors/investors which are due to them strictly as per the terms of offer of the scheme. Those investors who want to opt for repayment in the form of 5 Teak-wood trees and not in cash, the Noticees shall refund them in the form of Teak-wood Trees on a best efforts basis but in the event the repayments cannot be made in the form of Teak-wood trees for want of permission/authorisation to cut the trees or any other genuine hardships, those investors shall also be repaid their dues in cash



as per the terms of the scheme. All the monetary refunds to the contributors/investors shall be made through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non Transferable") or through any other appropriate banking channels such as NEFT or RTGS with appropriate audit trail.

- f) The present incumbent Directors (Noticees no. 4 to 6) shall ensure that the aforesaid directions are complied with.
- g) Noticee Company and present incumbent Directors shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, contributors/ investors so refunded and other details of escrow account duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to the investors, bank account statements of the Company indicating refunds so made to the investors and receipts taken from the investors acknowledging such refunds along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, within a period of six (06) months from the date of this Order.
- h) Any amount remaining balance in the aforesaid escrow account after making repayment to contributors/ investors, shall be transferred to Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009 after a lapse of 1 year from the date of this order.
- i) All the Noticee Directors along with the Company (Noticee No.1) except for the Noticee no. 2 and 3 (against whom the proceedings stand abated on account of death), are restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of one (01) year with effect from the date of filing of WRR to SEBI. It is clarified that during the period of restraint, the existing holding of securities of the Noticees including units of mutual funds, shall remain frozen.



- j) In the event the Noticee Company and the present Directors fail to carry out the directions issued at sub-paragraph (a) to (h) above or any complaint is received hereinafter suggesting that the Company has failed to pay all the dues to the investors, the Noticee Company and its Directors (Noticees no. 4, 6, 7, 8 and 9) shall be jointly and severally liable to refund to the contributors/ investors such amounts in the manner provided under the direction in subpara (e) above within a period of 03 months from the end of the six (06) months as directed under sub-para (g) above.
- k) The Noticee Company and its present Directors shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the Company except for the purpose of making refund to its investors as directed above.
- l) The Noticee Company and Director Noticees no. 4, 6, 7, 8 and 9 shall provide inventory of details of all their assets (movable and immovable) within a period of one (01) month from the date of this order.



**25.02.2019**

**Nicer Green Housing Infrastructure Developers Ltd. & Ors. (Appellant) vs. SEBI (Respondent)**

**Securities Appellate Tribunal**

*In the absence of any evidence that the appellants had refunded and that they are ready and willing to pay the balance amount to investors in a time bound manner, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations.*

**Facts of the case:**

*The Nicer Green Housing Infrastructure Developers Ltd., Appellant No. 1 is a company incorporated under the Companies Act, 1956 as a public limited company and is engaged in the business of acquiring agricultural land and developing the same for the purpose of re-sale.*

*SEBI found that the activity of fund mobilization by the appellant no. 1 under its scheme fell within the ambit of "Collective Investment Scheme" as defined under Section 11AA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act'). SEBI issued an order dated November 9, 2015 under Section 19 read with Sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 issuing a slew of directions restraining the appellant and its directors from collecting any money from the investors or to launch or to carry out any investments schemes.*

*SEBI further directed to refund the money collected under its scheme to the investors and thereafter wind up the company. The appellants being aggrieved by the said order filed an Appeal before the Securities Appellate Tribunal wherein the appellants contended that they are ready and willing to comply with the order passed by SEBI contending that out of an amount of Rs. 31.71 crore collected the appellants have already refunded Rs. 27.48 crore and that the appellants are ready and willing to refund the balance amount in a time bound manner.*



### Order:

SAT finds that no proof has been filed either before SEBI or even before this Tribunal to show that the appellants had refunded a sum of Rs. 27.48 crore and that they are ready and willing to pay the balance amount in a time bound manner. In the absence of any evidence being filed, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations. The appeal lack merit and is dismissed summarily.

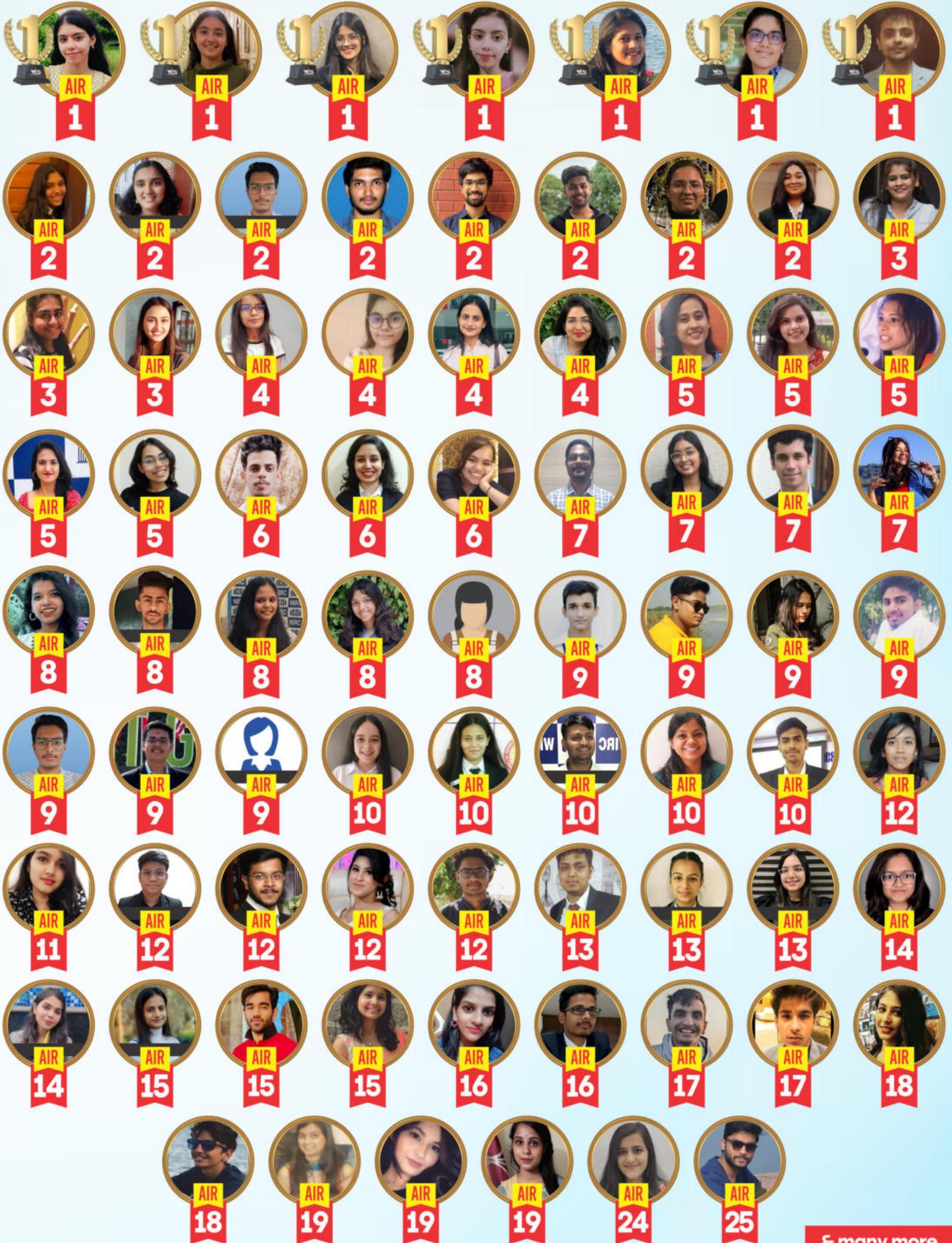
### SEBI IN ITS ORDER DATED FEBRUARY 25, 2020 IN CASE OF VAYAA BUILDER AND DEVELOPERS (P.) LTD. (VBDP) HELD

Where VBDP and its directors had mobilized funds from investors through different land/plot allotment scheme which satisfied four requirements of a collective investment scheme as defined in section 11AA and since these schemes were being carried out without obtaining registration from SEBI in violation of section 12(1B), VBDP and its directors were to be directed to refund illegally mobilised funds to investors and were also to be restrained from accessing securities market.

### SECURITIES APPELLATE TRIBUNAL, MUMBAI BENCH IN CASE OF SHREE SAI SPACE CREATIONS LTD. (SSCL) (APPELLANT COMPANY) HELD -

Where appellant company was involved in mobilizing funds by launching (CIS) without obtaining SEBI registration and it failed to comply with directions issued by SEBI to refund entire amount to investor, penalty of Rs. 25 lakhs imposed on appellant was reasonable and Adjudicating Officer's direction to pay penalty of Rs. 25 lakhs by appellant could not be faulted.

SEBI concluded that appellant company set up in year 2010 was engaged in fund mobilizing activity from public by launching Collective Investment Scheme (CIS) without obtaining SEBI registration and accordingly directed appellant to file a proposal for refund of entire amount. However, appellants had not completed process of repayment to investors despite lapse of three years from date of order.





**CS Vikas Vohra**  
**Founder - YES Academy**

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 50,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.



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