

Chapter- 14

Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market.

Fraud-

Includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or agent while dealing in securities. It includes -

- 1 Misrepresentation of truth.
- 2 Suggestion of fact which is not true
- 3 Promise made without intention of performance
- 4 Law declared to be fraudulent.
- 5 Deceptive behaviour by a person
- 6 False statement

* Securities Law Fraud Includes (LIMP)

- > Misrepresentation → Concealment of material fact
- > Suggestion → of facts which are not true
- > Active concealment → By a person who knows the fact
- > Promise → without intention of performing
- > Representation → Made in reckless & careless manner
- > Omission → Law specifically declares fraudulent
- > Deceptive behaviour → Full participation (insider trading)
- > False statement → without reasonable ground of being true
- > Misinformation → Affecting the market price of securities.

* Exception to Fraud -

Any general comments made in good faith in regard to -

- a Economic policy of gov.
- b Economic situation of country
- c Trends in securities market
- d Other matter of like nature

* Prohibition of certain dealing in securities -

No person shall, directly or indirectly

- a) ~~Buy~~ Buy, sell or deal in fraudulent manner.
- b) Use any manipulative or deceptive device
- c) employ any scheme to defraud
- d) engage in any act, practice, or course of business which operates as fraud.

* Prohibition of Manipulative, Fraudulent and Unfair Trade Practices

(a) No person shall involve in fraudulent or unfair trade practices.

(b) Manipulative, fraudulent or unfair trade practice involves -

i. knowingly indulging in any act which creates false or misleading appearance.

ii. Dealing in securities just for the fluctuations in the price of securities.

- iii. Inducing any person to subscribe securities for fraudulently securing the minimum subscription
- iv. Inducing any person to deal in securities for fluctuations in price of securities
- v. Entering into transaction without the intention of performance
- vi. Planting false or misleading news
- vii. Mis-selling of securities or services related to market

Investigation -

Power of SEBI to order Investigation -

The SEBI, chairman, the member or Executive Director has reasonable grounds to believe that -

- (a) The transactions done in a manner detrimental to investor's interest.
- (b) Any intermediary or related person has violated any law of the Act.

Powers of Investigating Authority -

- 1 Call for information or records from any person
- 2 Undertake inspection of any book, record or document of any listed co. or public co.

- 3 Require any intermediary or associated person to furnish information.
- 4 Keep in custody any books, record or document
- 5 Examine orally & record statement
- 6 Examine on oath any manager, managing director, officer or other employee.
- 7 Call information and record from any bank or authority. †
- 8 App. to Judge of designated court for seizure of books, records.
- 9 Every search or seizure carried out according to the provisions.

* Duty to co-operate.

Duty of every person to whom investigation has ordered -

- a) To produce the books, accounts and other documents require for investigation
- b) To appear before investigation authority when required to do so.
- c) Allow the authority to access the premises
- d) Provide facilities for examination of books, accounts and records.

The Investigation authority shall submit the report to SEBI after completion of investigation.

* Enforcement by SEBI

If SEBI is satisfied that there is violation of these regulations, then it can pass the following orders -

- Suspend the trading of securities.
- Restrain person from accessing the securities market
- Suspend any office bearer
- Prohibit the person from disposing the securities
- Direct the person to dispose such securities.

* Manner of service of summons & notice

- SEBI shall issue notice through following modes
- by delivering to that person or his agent.
- Sending to the person by fax or e-mail or by courier or speed post.
- Courier shall sent to the address of his place or last known place of resident or business.
- In case failure to serve summons, affix the notice at a conspicuous place or publish notice in 2 newspaper i.e English and regional language.

* Suspension or cancellation of registration -

SEBI can take following action against intermedi^{ary}

- issue a warning or censure
- Suspend the registration
- Cancel the registration

1 No final order of suspension or cancellation shall passed unless the procedure specified in regulation will applicable to intermediary.