Adjudications and Appeals under SEBI Laws

Lesson 13

KEY CONCEPTS

■ Adjudication ■ Consent Order ■ Compounding ■ Securities Appellate Tribunal ■ Unpublished Price Sensitive Information ■ Show Cause Notice

Learning Objectives

To understand:

- Concept of Adjudication
- Adjudicating Authorities
- Procedure of Adjudication
- Penalties levied under SEBI Laws
- Compounding and Consent terms
- Settlement Proceedings
- Securities Appellate Tribunal

Lesson Outline

- Introduction
- Powers to issue directions and levy penalty under Section 11B
- Penalties under SEBI Laws
- Power to Adjudicate
- Procedure for Holding of Inquiry
- Factors to be taken into account while adjudging quantum of penalty
- Crediting sums realised by way of penalties to Consolidated Fund of India
- Rules under:
  - ✓ SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995,
  - ✓ Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
  - ✓ Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
- Recovery of amounts
- Continuance of proceedings
- Compounding Provisions Under:
  - ✓ The Securities And Exchange Board of India Act, 1992 (“SEBI Act”),
  - ✓ Securities Contracts (Regulation) Act, 1956 (SCRA) &
  - ✓ Depositories Act, 1996
- Settlement Proceedings / Consent Orders Under SEBI Laws-Applicable for Composition of Offences
- Settlement of administrative and civil proceedings
- Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018
- Securities Appellate Tribunal
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites / video links)

REGULATORY FRAMEWORK

- SEBI Act, 1992
- Securities Contracts (Regulation) Act, 1956
- Depositories Act, 1996
- SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995
- Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018
- Securities Appellate Tribunal (Procedure) Rules, 2000.

INTRODUCTION

Securities and Exchange Board of India was established in the year 1992, in accordance with the provisions of the SEBI Act, 1992 (**SEBI Act**), with a twofold objective of :

(a) protecting the interests of investors in securities; and

(b) promoting the development of and to regulate the securities market.

Within the universe of its enforcement powers, SEBI has the ability to trigger three distinct provisions of law:

– Issuing directions and levying penalties under Sections 11(4) and 11B of the SEBI Act (Section 11 & Section 11B),

– Adjudicatory powers under Sections 15A-15J of the SEBI Act (Section 15), and

– Enquiry proceedings in terms of the Section 12(3) of the SEBI Act [Section 12(3)].

In addition to this, SEBI is empowered to adjudicate and SAT is empowered to entertain appeals under Securities Exchange Board of India Act, 1992(SEBI Act) and Securities Contract (Regulations) Act, 1956 (SCRA).

SEBI is also empowered to initiate criminal proceedings under SEBI Act, 1992 and can regulate Stock Exchanges by virtue of SCRA.

Powers to issue directions and levy penalty under Section 11B of SEBI Act, 1992

Save as otherwise provided under section 11 of SEBI Act 1992, If after making or causing to be made an enquiry, the Board is satisfied that it is necessary, –

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 of SEBI Act, 1992 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person.

It may issue such directions, –

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A of SEBI Act, 1992, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. – For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

The SEBI Act laid down the heavy penal consequences for non-compliance under section 15A to 15HB of the Act. However, the quantum of penalty and power of adjudication was provided under section 15I & J of the Act which has to be read along with sections pertaining to penal provisions.

Penalties under SEBI Act, 1992

Section	Particulars	Penalty
Section 15A	**Penalty for failure to furnish information, return, etc.** If any person, who is required under this Act or any rules or regulations made thereunder, – (a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty: (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty: (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty:	(a) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees; (b) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees; (c) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15B	**Penalty for failure by any person to enter into agreement with clients** If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty :	• which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15C	**Penalty for failure to redress investors' grievances.** If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty:	• which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15D	**Penalty for certain defaults in case of mutual funds** If any person, who is – (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to: (b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to: (c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to : (d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to : (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to: (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (d) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (e) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (f) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15E	**Penalty for failure to observe rules and regulations by an asset management company.** Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15EA	**Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts** Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to:	• penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.
Section 15EB	**Penalty for default in case of investment adviser and research analyst.** Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to:	• penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15F	**Penalty for default in case of stock brokers** If any person, who is registered as a stock broker under this Act, – (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to: (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to : (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees for which the contract note was required to be issued by that broker. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.
Section 15G	**Penalty for insider trading.** If any insider who, – (i) 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	• 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.

	(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a :	
Section 15H	**Penalty for non-disclosure of acquisition of shares and takeovers** If any person, who is required under this Act or any rules or regulations made thereunder, fails to, – (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or (ii) make a public announcement to acquire shares at a minimum price; or (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer, 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 such failure, whichever is higher.
Section 15HA	**Penalty for fraudulent and unfair trade practices.** If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to:	• penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.
Section 15HAA	**Penalty for alteration, destruction, etc., of records and failure to protect the electronic database of Board** Any person, who – (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.	• a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher. *Explanation*. – In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them undersection 43 of the Information Technology Act, 2000.

	Explanation. – For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof; (b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database; (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database; (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt; (e) without authorisation disrupts the functioning of system database; (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to:	
Section 15HB	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to:	• penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalties under Securities Contracts (Regulations) Act, 1956

Section	Particulars	Penalty
Section 23	(1) Any person who- (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or (c) contravenes the provisions contained in section 17 or section 17A, or section 19; or (d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30; (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or	• shall, without prejudice to any award of penalty by the Adjudicating Officer or the Securities and Exchange Board of India under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

	(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act; (2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction:	
Section 23A	**Penalty for failure to furnish information, return, etc.** Any person, who is required under this Act or any rules made thereunder, – (a) to furnish any information, document, books, returns or report to the recognised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes false, incorrect or incomplete information, document, books, return or report, shall be liable to: (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure; (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 23B	**Penalty for failure by any person to enter into an agreement with clients** If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.
Section 23C	**Penalty for failure to redress investors' grievances.** If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to:	• penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 23D	**Penalty for failure to segregate securities or moneys of client or clients** If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to:	• penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.
Section 23E	**Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds** If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to:	• penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23F	**Penalty for excess dematerialisation or delivery of unlisted securities.** If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to:	• a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23 G	**Penalty for failure to furnish periodical returns, etc.** If a recognised stock exchange fails or neglects to furnish periodical returns or furnishes false, incorrect or incomplete periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to:	• a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23GA	**Penalty for failure to conduct business in accordance with rules, etc**. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to :	• penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Section 23H	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to :	• penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalties under Depositories Act, 1996

Section	Particulars	Penalty
Section 19A	**Penalty for failure to furnish information, return, etc.** Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder, – (a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents he shall be liable to: (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or bye-laws, fails to file return or furnish the same within the time specified therefor, he or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents shall be liable to: (c) to maintain books of account or records, fails to maintain the same, he shall be liable to:	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19B	**Penalty for failure to enter into an agreement.** If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, and is required under this Act or any rules or regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.

Section 19C	**Penalty for failure to redress investors' grievances.** If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents or intermediary shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19D	**Penalty for delay in dematerialisation or issue of certificate of securities.** If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19E	**Penalty for failure to reconcile records.** If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19F	**Penalty for failure to comply with directions issued by Board under section 19 of the Act.** If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19 FA	**Penalty for failure to conduct business in a fair manner** Where a depository fails to conduct its business with its participants or any issuer or its agent or any person associated with the securities markets in a fair manner in accordance with the rules, regulations made by the Board or directions issued by the Board under this Act, it shall be liable to:	• a penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Section 19G	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to:	• a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI vide its various circulars dated November 30, 2015, October 26, 2016 and May 13, 2018 laid down the framework for imposing penalty and taking action against such listed entities which violate the provisions of the SEBI Listing Regulations. Considering the various amendments under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 pursuant to the Kotak Committee recommendations, SEBI thought fit to bring yet another circular making amendments to the existing framework. The circular dated January 22, 2020, is in supersession to the earlier circular dated May 13, 2018. Further as per SEBI circular dated March 26, 2020 ref no.

SEBI/HO/CFD/CMD1/CIR/P/2020/48 the circular dated January 22, 2020 shall come into force with effect from compliance periods ending on or after June 30, 2020. Therefore, June 30, 2020 is the 1st quarter for monitoring of non-compliant companies as per provisions of circular dated January 22, 2020.

SEBI vide circular dated January 22, 2020 (ref no. SEBI/HO/CFD/CMD/CIR/P/2020/12) have specified uniform approach in the matter of levy of fines for non-compliance with certain provisions of the Listing Regulations, the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter of a non-compliant listed entity.

The recognized stock exchanges shall take action for non-compliance with the provisions of the Listing Regulations & circulars/guidelines issued thereunder, by a listed entity as under:

Sl. No.	*Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015*	*Fine payable and/or other action to be taken for non-compliance in respect of listed entity*
1.	**Regulation 6(1)** Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	Rs. 1000 per day
2.	**Regulation 7(1)** Non-compliance with requirement to appoint share transfer agent	Rs. 1000 per day
3.	**Regulation 13(1)** Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	Rs. 1000 per day
4.	**Regulation 13(3)** Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	Rs. 1000 per day

Sl. No.	Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
5.	**Regulation 17(1)** Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	Rs. 5000 per day
6.	**Regulation 17(1A)** Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years	Rs. 2000 per day
7.	**Regulation 17(2)** Non-compliance with the requirements pertaining to the number of Board meetings	Rs. 10,000 per instance
8.	**Regulation 17(2A)** Non-compliance with the requirements pertaining to quorum of Board meetings.	Rs. 10,000 per instance
9.	**Regulation 18(1)** Non-compliance with the constitution of audit committee	Rs. 2000 per day
10.	**Regulation 19(1)/ 19(2)** Non-compliance with the constitution of nomination and remuneration committee	Rs. 2000 per day
11.	**Regulation 20(2) / (2A)** Non-compliance with the constitution of stakeholder relationship committee	Rs. 2000 per day
12.	**Regulation 21(2)** Non-compliance with the constitution of risk management committee	Rs. 2000 per day
13.	**Regulation 23(9)** Non-compliance with disclosure of related party transactions on consolidated basis.	Rs. 5000 per day
14.	**Regulation 24A** Non-compliance with submission of secretarial compliance report	Rs. 2000 per day
15.	**Regulation 27(2)** Non-submission of the Corporate governance compliance report within the period provided under this regulation	Rs. 2000 per day

Sl. No.	Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
16.	**Regulation 28 (1)** Non-compliance with obtaining in-principle approval of stock exchange(s) before issuance of securities	Rs. 50,000 per instance
17.	**Regulation 29(2)/29(3)** Delay in furnishing prior intimation about the meeting of the board of directors	Rs. 10,000 per instance of non-compliance per item
18.	**Regulation 31** Non-submission of shareholding pattern within the period prescribed	Rs.2000 per day
19.	**Regulation 31A(3)(a)** Non-compliance pertaining to delay in submission of reclassification application to stock exchanges	Rs. 5,000 per day
20.	**Regulation 32(1)** Non-submission of deviations/ variations in utilization of issue proceeds	Rs.1000 per day
21.	**Regulation 33** Non-submission of the financial results within the period prescribed under this regulation (Levy of fine is in addition to the requirement of providing reasons for non-submission of the financial result as per circular no. CIR/CFD/CMD-1/142/2018 dated November 19, 2018)	Rs. 5,000 per day
22.	**Regulation 34** Non-submission of the Annual Report within the period prescribed under this regulation	Rs. 2,000 per day
23.	**Regulation 42(2)/42(3)/ 42(4)/42(5)** Delay in/ non-disclosure of record date/ dividend declaration or non-compliance with ensuring the prescribed time gap between two record dates/ book closure dates	Rs. 10,000 per instance of non-compliance per item
24.	**Regulation 43A** Non-disclosure of Dividend Distribution Policy in the Annual Report and on the websites of the entity	Rs. 25,000 per instance

Sl. No.	Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
25.	**Regulation 44(3)** Non-submission of the voting results within the period provided under this regulation	Rs. 10,000 per instance of non-compliance
26.	**Regulation 44(5)** Non-convening of annual general meeting within a period of five months from the close of financial year	Rs. 25,000 per instance
27.	**Regulation 45(3)** Non-obtaining approval of stock exchange(s) before filing request for change of name with Registrar of Companies	Rs. 25,000 per instance
28.	**Regulation 46** Non-compliance with norms pertaining to functional website	Advisory/warning letter per instance of non-compliance per item Rs. 10,000 per instance for every additional advisory/ warning letter exceeding the four advisory/ warning letters in a financial year

Fine to be levied in case of non-compliance(s) by issuers of listed Non-convertible Securities w.e.f. August 01, 2022

The recognized stock exchanges is required to take action for non-compliance with the provisions of the SEBI LODR Regulations & circulars/ guidelines issued thereunder, by an entity having listed Non-Convertible Securities, as under:

Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities
1.	**Regulation 6(1)** Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	Rs.1000 per day
2.	**Regulation 7(1)** Non-compliance with requirement to appoint share transfer agent.	Rs.1000 per day
3.	**Regulation 13(1)** Failure to ensure that adequate steps are taken for expeditious redress of investor complaints	Rs.1000 per day

Sl. No.	*Regulation*	*Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities*
4.	**Regulation 13(3)** Non-submission of the statement on debenture holder complaints within the period prescribed under this regulation or under any circular issued in respect of redress of investor grievances	Rs.1000 per day
5.	**Regulation 50(1)** Delay in furnishing intimation about board meeting.	Rs. 5,000 per instance of non-compliance per item
6.	**Regulation 50(2)** Delay in furnishing intimation about meeting of shareholders or holders of non-convertible securities	Rs. 5,000 per instance of non-compliance per item
7.	**Regulation 52(1) / 52(2)(a) / 52(2)(d) / 52(2)(f)** Non-submission of quarterly and year to date standalone financial results on a quarterly basis within the period prescribed under this Regulation under Regulation 52(1)/ Unaudited financial results submitted without limited review report under Regulation 52(2)(a)/ Non-submission of annual audited standalone and consolidated financial results within the period prescribed under Regulation 52(2)(d)/ Non-submission of statement of assets & liabilities and cash flow statement as required under Regulation 52(2)(f)	Rs. 5,000 per day
8.	**Regulation 52(4) / 52(6)** Non-disclosure of line items prescribed under Regulation 52(4) along with the quarterly / annual financial results / non-disclosure of items pertaining to non-convertible securities as prescribed under Regulation 52(6) as notes to financials	Rs. 1,000 per day
9.	**Regulation 52(7)/ (7A)** Non-submission of statement indicating the utilization of issue proceeds/ material deviation in the use of proceeds	Rs. 1,000 per day
10.	**Regulation 53(2)** Non-submission of annual report within the period prescribed under this regulation.	Rs. 2,000 per day
11.	**Regulation 54 (2)/ (3)** Non-disclosure of extent and nature of security created and maintained with respect to secured listed non-convertible debt securities in the financial statements	Rs. 1,000 per day

Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities
12.	**Regulation 57(1)** Non-disclosure of information related to payment obligations.	Rs. 2,000 per day per ISIN
13.	**Regulation 57(4)** Non-submission of details of payable interest/dividend/principal obligations during the quarter	Rs. 1,000 per ISIN
14.	**Regulation 57(5)** Non-submission of certificate confirming the payment of interest/ dividend/principal obligations due in the quarter or non-submission of details of all unpaid interest/dividend/principal obligations at the end of the quarter	Rs. 1,000 per ISIN
15.	**Regulation 59 (1)** Failure to obtain prior approval of stock exchange for any structural change in non-convertible securities	Rs. 50,000 per instance
16.	**Regulation 60 (2)** Delay in submission of the notice of record date	Rs. 10,000 per ISIN
17.	**Regulation 62** Non-compliance with norms pertaining to functional website	Advisory/warning letter per instance of non-compliance per item Rs. 10,000 per instance for every additional advisory/ warning letter exceeding the four advisory/ warning letters in a financial year.
	Fine to be levied in case of non-compliances by issuers of listed Commercial Papers	
Sl. No.	***Clause***	***Fine payable and/ or other action to be taken for non-compliance in respect of an entity having listed Commercial Paper***
1.	Non-submission of financial results within the prescribed period	Rs. 5,000 per day
2.	Non-disclosure of line items prescribed under Regulation 52(4) of SEBI LODR Regulations along with the financial results	Rs. 1,000 per day
3.	Non-submission of certificate regarding fulfillment of payment obligations	Rs. 1,000 per day per ISIN

CASE STUDY

***Century Enka Limited* vs. *Securities and Exchange Board of India & Ors*. before SAT (Dated 25.03.2022)**

The facts leading to the filing of the present appeal is, that Mr. B. K. Birla was a non-independent non-executive director in the appellant company and died on July 3, 2019 thereby causing a vacancy in the board of directors. This vacancy was required to be filled up and eventually an independent director was appointed on February 5, 2020.

Admittedly, after July 3, 2019 on account of demise of Mr. B.K. Birla, the composition of the board of directors reduced from 6 to 5 directors. The vacancy so caused was eventually filled up on February 5, 2020.

For the aforesaid period from July 4, 2019 to February 5, 2020 on account of non-compliance of the Regulation 17(1) of the LODR Regulations, BSE and NSE has imposed a fine for the quarter ended December 31, 2019 and again for the quarter ended March 31, 2020 under circular dated May 3, 2018 issued by SEBI as under:

Regulation	***Fine payable and / or other action to be taken for non-compliance in respect of listed entity***
Regulation 17(1) Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	Rs. 5000/- per day

The appellant being aggrieved filed an application before SEBI for waiver of the fine which was rejected by SEBI by an order dated June 30, 2021.

The stock exchanges in their orders have levied a fine holding that the exchange has decided to provide a period of three months or time till the next board meeting whichever is later to enable the companies to fill the vacancy in consonance with the provisions of Regulation 25(6) of the LODR Regulations and since the appellant failed to fill the vacancy within three months, the penalty has been imposed from October 3, 2019 under Regulation 17 of the LODR Regulations. The same view was taken by SEBI in its order of June 30, 2021.

Order

It is observed that the approach adopted by the respondent is totally illegal and against the provisions of law. The provisions under the LODR Regulations are required to be complied by the companies including the appellant. Non-compliance of various provisions may entail imposition of fine as per the circular dated May 3, 2018. This circular has been issued in exercise of the powers under Section 11A(2) of the Securities and Exchange Board of India Act, 1992(hereinafter referred to as 'SEBI Act') read with Sections 9 and 21 of Securities Contract (Regulations) Act, 1956 (hereinafter referred to as 'SCR Act') and read with Regulation 98 of the LODR Regulations. This circular has the force of law. Under Annexure I to the circular a fine of Rs. 5,000/- per day can be imposed for non-compliance of Regulation 17(1) of the LODR Regulations.

Regulation 17(1) states that the board of directors shall comprise of not less than 6 directors. If there are less than 6 directors, the said regulation is violated and fine can be imposed but the question is that there is no time line provided under Regulation 17(1) to fill the vacancy caused by the reason of death, resignation, etc. If no time line is provided, the question of imposition of fine at the rate of Rs.5,000/- per day does not arise.

In this regard, Regulation 25(6) of the LODR Regulations provides certain obligations with respect to independent directors, namely, that where an independent director who resigns or is removed from the board of directors, the said independent director would be replaced by a new independent director at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy whichever is later. Such provision is missing under Regulation 17(1). Consequently, so long as the period of filing the vacancy in the board of directors under Regulation 17(1) is not framed, no fine could be imposed.

Further, the exchange cannot on its own take a decision for imposition of fine. Fine can only be imposed by statutes or by circular which has the force of law. In the instant case, nothing has been brought on record to show that the stock exchange has the power to frame such laws nor anything has been brought on record to indicate that SEBI has framed such laws under Section 11A of the SEBI Act read with Sections 9 and 21 of the SCR Act and read with Regulation 98 of the LODR Regulations.

Thus, the impugned orders cannot be sustained and are quashed.

CASE STUDY

Ignorance of law is not an excuse for escaping from liability of violation of law

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 non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 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.

Decision:

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. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 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 non-disclosure and public announcement is up to Rs. 25 Crore, SAT finds that the penalty of Rs. 50 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. 50 lakh is upheld and the appeal is dismissed.

Power to Adjudicate under SEBI Act, 1992 (Section 15I), Section 23I of Securities Contracts (Regulations) Act, 1956 and Section 19H of Depositories Act, 1996

For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G,15H, 15HA and 15HB of SEBI Act, 1992, Sections 23A, 23B, 23C, 23D, 23E, 23F,23G and 23H of Securities Contracts (Regulations) Act, 1956 and Section 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G of Depositories Act, 1996 :

- **Appointment of Adjudicating Officer**: The Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- **Power of Adjudicating Officer** : While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections as specified above, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- **Call of Record by SEBI**- The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.
- **Opportunity of being heard:** No such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.
- **Limitation period:** Nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T of SEBI Act, 1992, section 23L of Securities Contract (Regulation) Act, 1956 and section 23A of Depositories Act, 1996 whichever is earlier.

Therefore, it can be summed-up that the following powers can be exercised by the adjudicating officer:

1. *Holding an inquiry.*
2. *Imposing penalty.*
3. *Power to summon.*
4. *Power to enforce the attendance of any person acquainted with the facts.*

Procedure for Holding of Inquiry [Rule 4 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005

(1) **Show Cause Notice**: In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB,15F, 15G, 15HA and 15HB of SEBI Act, 1992 sections 23A, 23B, 23C, 23D, 23E, 23F,23G, 23GA and 23H of Securities Contract (Regulation) Act, 195 and Sections 19A, 19B, 19C, 19D,19E, 19F, 19FA and 19G of Depositories Act, 1992, whether any person has committed contraventions as specified in any of sections mentioned above, the SEBI(Board) or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) **Content of Notice**: Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) **Date of Appearance:** If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) **Personal Hearing**: On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) **Opportunity to produce Evidence**: The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 :

The notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) **Appointment of Presenting Officer:** The Board may appoint a presenting officer in an inquiry under this rule.

(6) **Enforcement of Attendance:** While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) **Consequences of failure to appeal:** If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

Factors to be taken into account while adjudging quantum of penalty (Section 15J of SEBI Act & Section 23 J of Securities Contracts (Regulations) Act, 1956 and Section 19-I of Depositories Act, 1996)

While adjudging quantum of penalty under section 15-I or section 11 or section 11B of SEBI Act, 1992 section 12A or section 23-I of Securities Contracts (Regulations) Act, 1956 and section 19 or section 19H of Depositories Act, 1996, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

(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 15F, 15G, 15H and 15HA of SEBI Act, 1992 section 23A to 23C of Securities Contracts (Regulations) Act, 1956 and sections 19A to 19F of Depositories Act, 1996 shall be and shall always be deemed to have been exercised under the provisions of this section.

Example 1: Synchronised Trading:

SEBI suspected manipulation in the trading of Futures & Options segment (F&O), and found that the company and some other firms had undertaken fictitious trades.

- **Order of Adjudicating Officer**

  According to the A.O., a manipulative/deceptive devise had been used for synchronization and reversal of trades and the trades were essentially fraudulent/fictitious in nature and resulted in creating a misleading appearance of active trading in those securities.

- **Judgement of SAT**

  However, the Order was struck down by the Securities Appellate Tribunal (SAT) in 2011 on grounds that synchronization and reversal of trades effected by the parties with a significant price difference, some in a few seconds and majority, in any case, on the same day had no impact on the market, had not affected the NIFTY index in any manner nor induced investors. SAT held that such trades are illegal only when they manipulate the market in any manner and induce investors.

- **Judgement of Supreme Court**

  It was held that the trade reversals in the instant case amply demonstrated that the parties did not intend to transfer beneficial ownership through these transactions. Rather, the repeated reversals adversely affected the price discovery system, deprived other market players from participating in the trades, were a misuse of market mechanism and therefore violative of transparent norms of trading in securities.

Considering the perfect matching of quantity, price and time and sale in the impugned transactions, parties being persistent in the number of such trade transactions with huge price variations (without any major variation in the price of the underlying securities) wherein one party repeatedly booked profits whilst the other repeatedly incurred losses, the Supreme Court noted that it would be too naïve to hold that such transactions were by mere coincidence.

CASE LAWS

In the case of *SEBI v. Bhavesh Pabari,* a full bench of the Hon'ble Supreme Court held that an AO has the right and discretion to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA are not complied with.

The decision broadened the application of Section 15J of the SEBI Act and highlighted that the three reasons listed therein must only be regarded as illustrative and not exhaustive in nature, hence allowing the AO to assess the punishment after a consideration of all aggravating and mitigating factors. This decision has evolved considerably over the years, to now recognise the ability of AOs to not impose penalties at all, even in cases where a non-compliance is identified, but is not significant enough to merit a penalty.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 15JA of SEBI Act, 1992, Section 23K of Securities Contracts (Regulations) Act, 1956 and 19J of Depositories Act, 1996]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Order of the Board or the adjudicating officer [Rule 5 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

(1) **Imposition of Penalty:** If, upon consideration of the evidence produced before the Board or the adjudicating officer, the Board or the adjudicating officer is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1) of sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the SEBI Act, 1992, sub-section (1) or sub-section (2) of section 19 or section 19H of the Depositories Act, 1996 or sub-section (1) or sub-section (2) of section 12A or section 23-I of the Securities Contracts (Regulations) Act, 1956, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant sections.

(2) **Quantum of Penalty:** While adjudging the quantum of penalty as stipulated under the above mentioned sections, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

(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.

(3) **Content of Order**: Every order made under sub-rule (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) **Date & Sign:** Every such order shall be dated and signed by the Board or the adjudicating officer.

(5) **Rectification of Error:** The Board or the adjudicating officer who has passed an order, may rectify any error apparent on the face of record on such order, either on its own motion or where such error is brought to his notice by the affected person within a period of fifteen days from the date of such order.

Explanation: For the purpose of this rule, "error apparent on the face of record" shall mean any typographical errors that creep in inadvertently into the order and includes such other errors that do not require a long drawn out reasoning process to ascertain such a mistake.

CASE LAWS

In the matter of Mahamaya Steel Industries Limited (BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF INDIA), dated October 05, 2018

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Facts of the Case

Securities and Exchange Board of India pursuant to BSE report, observed that some promoters of Mahamaya Steel Industries Limited undertook certain transactions in the shares of the Company during 2016 for which disclosures were required to be made under regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"). However, it was observed that one of the promoters (hereinafter referred to as "Noticee") failed to comply with the disclosure requirements under PIT Regulations.

In the instant matter, the following issues arise for consideration and determination:-

(a) Whether the Noticee have violated the provisions of regulations 7(2)(a) of PIT Regulations?

(b) Do the violation, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

The Noticee had submitted that she is not a promoter but she is a part of the promoter group as per the definition provided in 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. However, on perusal of the website of BSE, it is observed that the Noticee had herself made disclosures under the promoter category under regulation 7(2) read with 6(2) of PIT Regulations.

Regulation 6(2) of the PIT Regulations states that: "The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions."

This provision clearly shows that intent of the legislation. It is not only the promoters, but all those who are related to them may be privy to unpublished price sensitive information and are required to disclose the change in their shareholding to the public. In such situations, we cannot take the narrow interpretation of the provision and excuse the Noticee considering that she is not a promoter but part of the promoter group. As she is the spouse of one of the promoters, viz. Anand Kumar Agrawal, she was liable to make disclosures under regulation 7(2)(a) of PIT Regulations. Moreover, she had been making disclosures under PIT Regulations as promoter.

Order

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations.

The Hon'ble Supreme Court of India in the matter of *SEBI* Vs. *Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations. Therefore, Noticee is liable for a penalty under section 15 A(b) of SEBI Act.

After examination, it did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticee failed to make the relevant disclosure on more than one occasion. Hence it can be said that the violation is repetitive in nature.

In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, in exercise of the powers conferred upon under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, monetary penalty is imposed under section 15A (b) of SEBI Act of Rs. 2,00,000/- (Rupees Two Lakh only) for violation of regulation 7(2)(a) of PIT Regulations.

Copy of the Order [Rule 6 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

The Board or the adjudicating officer shall send a copy of every order made under rules by it to the person concerned and to the Board.

Service of notices and orders [Rule 7 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

(1) A notice or an order issued under these rules 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:

Provided that 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:

Provided further that a 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:

Provided also that a 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 notice or an order through any one of the modes provided under sub-rule (1), the notice or order 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 notice or order on the outer door as provided under sub-rule (2), the notice or order 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.

Recovery of amounts [Section 28A of SEBI Act, 1992, Section 23 JB of Securities Contract (Regulation) Act, 1956 and Section 19-IB Depositories Act, 1996]

1) If a person fails to pay the penalty imposed under SEBI Act 1992, Securities Contract (Regulation) Act, 1956 and Depositories Act, 1996 or fails to comply with a direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B of SEBI Act 1992, section 12A of Securities Contract (Regulation) Act, 1956 and section 19 of Depositories Act, 1996 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: –

   (a) attachment and sale of the person's movable property;

   (b) attachment of the person's bank accounts;

   (c) attachment and sale of the person's immovable property;

   (d) arrest of the person and his detention in prison;

   (e) appointing a receiver for the management of the person's movable and immovable properties,

   and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

   Explanation 1. – For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

   Explanation 2. – Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

   Explanation 3. – Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of SEBI Act, section 23 L of Securities Contract (Regulation) Act, 1956 and section 23A of Depositories Act, 1996.

   Explanation 4. – The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B of SEBI Act, section 12A of Securities Contract (Regulation) Act, 1956 and section 19 of Depositories Act, 1996, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression ''Recovery Officer'' means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Continuance of proceedings [Section 28B of SEBI Act, 1992, Section 23 JC of Securities Contract (Regulation) Act, 1956 and Section 19-IC of Depositories Act, 1996]

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1), –

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Explanation. – For the purposes of this section "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

CASE LAWS

Case Laws on Insider Trading

***In Re Sun Infoways Limited*,** the said appeal was filed against the order dated November 6, 2006 passed by the Adjudicating Officer, SEBI. The Adjudicating Officer in his order *inter alia* found Mrs. Sadhana Nabera guilty of insider trading and had levied Rs.5 lakhs penalty on her. While allowing the said appeal, the Hon'ble SAT observed, "We are of the considerate opinion that Nabera as an auditor could not be expected, much less reasonably, to have access to the information of merger of Zap with the company which was a policy decision.

In view of the above, we are of the view that Nabera had no concern with the information pertaining to the merger of Zap with the company nor was it a part of his duty to have access to such information while performing his duties. No company would allow such sensitive information to reach the auditor till it has been made public.

***Kedar Nath Agarwal* v *Securities and Exchange Board of India*,** the allegation that the stock broker had failed to prescribe the code of internal procedures and conduct for the prevention of insider trading; the Enquiry Officer observed that no specific instance has been pointed out where the stock broker or any of its associated entities had traded as an "insider" after having access to any price sensitive information. Though, the Enquiry Officer had not viewed this as a serious issue, the tribunal was of the view that the same is not in accordance with the provisions of Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. The stock broker, being an intermediary recognized as such under Section 12 of the SEBI Act, and is very much active in the securities market, needs to comply with the aforesaid provision.

Rakesh Agrawal* vs. *SEBI

In 1996, managing director of ABS Industries Ltd., signed a deal with Bayer AG, a German business, which agreed to purchase 51% of ABS Industries Ltd.'s shares. Following UPSI's announcement of the acquisition, the accused sold a significant portion of his ABS Industries ownership, which he owned through his brother-in-law. Considering the brother-in-law to be a well-connected individual, SEBI held that Managing Director was guilty of insider trading and directed him to deposit Rs. 34 lakhs with Investor Protection Funds of Stock Exchange, Mumbai and NSE (in equal proportion i.e. Rs.17 lakhs in each exchange) to pay any investor who may make a claim afterwards.

On appeal to the Securities Appellate Tribunal (SAT), it was concluded that even if Managing Director had traded securities while in possession of UPSI, he was not guilty of insider trading because his actions were in the best interests of the company (as Bayer AG was not willing to acquire the company unless it could obtain a minimum of 51% of the shares) and there was no intention to make a profit.

Further, SAT decided that in order to penalise an insider for violating the Regulations, it must be proven that the insider benefited unfairly from the trade. The tribunal also rejected SEBI's argument that insider trading jurisprudence is founded on the concept of 'disclose or abstain', and that an insider in possession of UPSI cannot trade in a company's stocks until he reveals the UPSI. After revisiting the entire jurisprudence of insider trading on requirement of Mens Rea under Indian legal system, the tribunal held that: *"Taking into consideration the very objective of the SEBI Regulations prohibiting the insider trading, the intention/motive of the insider has to be taken cognizance of. It is true that the regulation does not specifically bring in mens rea as an ingredient of insider trading. But that does not mean that the motive need be ignored."*

Hindustan Lever Limited* vs. *SEBI

Hindustan Lever Ltd. **("HLL")** bought 8 lakh shares of Brook Bond Lipton India Ltd. **("BBLIL")** from Public Investment Institution, Unit Trust of India **("UTI")** two weeks prior to the public announcement of the merger of two companies, i.e., HLL and BBLIL. SEBI, suspecting insider trading, issued a Show Cause Notice **("SCN")** to the Chairman, all Executive Directors, the Company Secretary and the then Chairman of HLL.

London-based Unilever was the parent company of HLL and BBLIL, and were operating under the same management. SEBI determined that HLL and its directors were insiders because they had prior knowledge of the merger. SEBI further determined that HLL was in the possession of UPSI as mentioned under Section 2(k) of the 1992 Regulations, which included any information regarding amalgamation/mergers/takeovers that "is not widely known or published by such company for general information, but which if published or known, is likely to substantially impact the price of securities of that company in the market".

Observations made by SAT

The issue before SAT was whether HLL was an insider and the information held by the HLL constituted UPSI. The SAT concurred with the SEBI order that the information accessible to HLL in regard to the merger went beyond self-generated information, i.e., information derived from the company's own decision-making. In addition, SAT stated that the presence of directors who were common to both HLL and BBLIL, as well as a common parent company in Unilever, indicated that they (i.e., HLL and BBLIL) were effectively managed together. As a result, HLL could be classified as an insider under the 1992 Regulations, and it was reasonable to assume that HLL was privy to the BBLIL board's decision-making on the merger issue.

SAT observed that even in the merger of two healthy companies, there are synergistic possibilities that might lead to price sensitivity for either company, on the subject of whether the information shared with HLL constituted UPSI. As a result, SAT concurred with SEBI's judgment that merger information was price sensitive (albeit not "unpublished").

The outcome of the decision

This decision of the SAT led to an amendment in the definition of *"unpublished"* under Section 2(k) which stated, *"unpublished" means information which is not published by the company or its agents and is not specific in nature."*

Explanation – Speculative reports in print or electronic media shall not be considered as published information".

By the same Amendment, SEBI also introduced a new provision, Section 2(ha) which defined *"price sensitive information"* to include any information relating to an amalgamation, merger or takeover as deemed price sensitive information, regardless of whether such information actually has any affect the price of the securities in the market. However, the amendments did not definitively and expressly define *"generally available information"* and then 2015 regulations finally came out defining what constitutes UPSI by stating *"generally available information"* under Section 2(1)(e) which stated, *"generally available information" means information that is accessible to the public on a non-discriminatory basis;".*

COMPOUNDING PROVISIONS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT"), SECURITIES CONTRACTS (REGULATION) ACT, 1956 (SCRA) & DEPOSITORIES ACT, 1996

Composition of certain offences

Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 (collectively referred to as SEBI Laws here for brevity) contain penalty provisions for contravention. Section 24A of the Securities and Exchange Board of India Act, 1992, Section 23 N of the Securities Contracts (Regulation) Act, 1956 and section 22A of the Depositories Act, 1996 provide for composition of certain offences thereunder:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending. . Thus, if the offence is punishable with fine only or imprisonment or fine or with fine or imprisonment or both alone can be compounded.

The contours and the essential elements of Section 24A of the SEBI Act were recently explored and elaborately explained by the Hon'ble Supreme Court ("**Court**") in *Prakash Gupta v. Securities and Exchange Board of India ("**Prakash Gupta**").*

CASE STUDY

***Prakash Gupta* v. *Securities and Exchange Board of India*, dated July 23, 2021**

Fact of the Case: The appellant is being prosecuted for an offence under Section 24(1) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The appellant sought the compounding of the offence under Section 24A. By an order dated 15 November 2018, the Additional Sessions Judge – 02 Central District at Tis Hazari Courts, Delhi ("Trial Judge"), rejected the application, upholding the objection of the Securities and Exchange Board of India that the offence could not be compounded without its consent.

Mr. Prakash Gupta, director of Ideal Hotels & Industries Limited ("Company"), was accused of having engaged in price rigging and insider trading during the Initial Public Offer ("IPO") of the Company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

On 27 June 1996, SEBI received a complaint alleging that certain Delhi/Bombay based brokers had, on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint in October 1996, alleging price rigging and insider trading in the scrip of the Company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of six entities who had purchased approximately 51 per cent of the 38 lac equity shares on offer during the period between 28 January 1996 and 29 February 1996. They were found to have continued buying shares even after that period, and had ultimately purchased 28,38,000 equity shares, which was approximately 75 per cent of the post issue floating stock of the Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.

A criminal complaint was filed against Mr. Gupta before the Trial Court alleging the above violations and an Adjudicating Officer under the SEBI Act was appointed. Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions of the SEBI Act, allowed Mr. Gupta to purchase the shares of the shareholders at a higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by Mr. Gupta, levied a fine of INR 20,000 on him and other co-promotors. This penalty too was paid by the accused.

Thereafter, a compounding application under Section 24A of the SEBI Act was filed by Mr. Gupta before the Trial Court which was objected to by the High Powered Advisory Committee ("HPAC") of SEBI. The Trial Court rejected the compounding application on the grounds that SEBI had not provided its consent to the same, which was upheld by the High Court of Delhi. Hence, the present appeal before the Court.

Issue:

Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending ?

Observation:

While a plain reading of the section 24A does not provide for the consent of SEBI, it was considered whether such consent should be read into Section 24A, on the grounds of *casus ommisus*.

In the present case, it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose.

The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

Decision:

In the present case, we are clearly of the view that the nature of the allegations against the appellant are such so as to preclude a decision to compound the offences.

1. The factors as listed in the Frequently Asked Questions in relation to the 'Guidelines for Consent Order and for considering requests for composition of offences' dated April 20, 2007 should be adhered to;

2. The opinion of SEBI and its HPAC must be given due deference as the same indicates their position on the effect that non-prosecution of the offence may have on market structures. The Securities Appellate Tribunal or the courts should only differ from the opinion of SEBI/ the HPAC, if it has reasons to believe that the said opinion is *mala fide* or manifestly arbitrary;

3. The principle behind the compounding proceeding should be that the aggrieved party has been restituted and that it has consented to end the dispute. Since the aggrieved party may not be before the court, and that the offences are usually of public nature, it becomes even more essential to rely on SEBI's opinion to understand if restitution has taken place; and

4. Even if restitution has taken place, but the offence is of public character and non-prosecution of the same would affect the public at large, such offence should not be compounded.

The judgment of the Supreme Court in *Prakash Gupta* is significant as it not only underlines the importance of the role played by SEBI in market regulation and addressal of investors, but also appreciates the intention of the legislators while doing so. Further, it fills in the lacune that earlier existed by providing detailed guidelines on the factors to be take into consideration while passing an order under Section 24A of the SEBI Act.

https://main.sci.gov.in/supremecourt/2019/17875/17875_2019_35_1501_28712_Judgement_23-Jul-2021.pdf

SETTLEMENT PROCEEDINGS / CONSENT ORDERS UNDER SEBI LAWS-APPLICABLE FOR COMPOSITION OF OFFENCE

In SEBI Laws, the term Settlement / Consent Order is significant and has to be understood along with or at the time of learning composition of offence.

Consent order may be passed at any stage after probable cause of violation has been found under SEBI Laws. However, in the event of a serious and intentional violation, the process should not be completed till the fact-finding process is completed whether by way of investigation or otherwise.

Compounding of Offence can take place after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed.

Consent orders provide flexibility of a wider array of enforcement actions which will achieve the twin goals of an appropriate sanction and deterrence without resorting to long drawn litigation before SEBI, SAT, and Courts. Passing of consent orders also reduce regulatory costs and save time and efforts in pursuing enforcement actions.

It is an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

Consent Order cannot be construed as waiver of statutory powers by the Board. The Board always has the right to proceed for appropriate action if it cannot achieve its objectives through a consent order.

This effort could more effectively be used for pursuing cases which require the full process of enforcement action and for policy initiatives.

Under the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996 (collectively also known as securities laws), SEBI pursues two streams of enforcement actions i.e., Administrative /Civil (or) Criminal.

Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

In the case of the chairman *SEBI* v. *Shriram mutal fund & ANR* Appeal (Civil) No. 9523-9524 of 2003 it was held that A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow.

Settlement of administrative and civil proceedings. (Section 15JB of SEBI Act & Section 23 JA of Securities Contracts (Regulations) Act, 1956 and Section 19-IA of Depositories Act, 1996)

- Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I of SEBI Act, 1992 , section 12A or section 23-I of Securities Contracts (Regulations) Act, 1956 and section 19, and section 19H of Depositories Act, 1996, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

- The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under SEBI Act, 1992.
- The settlement proceedings under these sections, the procedure specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.
- No appeal shall lie under section 15T of SEBI Act, 1992, section 23 L of Securities Contracts (Regulations) Act, 1956 and section 23A of Depositories Act, 1996 against any order passed by the Board or adjudicating officer, as the case may be, under this section.

All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

CASE LAWS

Shareholders of the *Kapashi Commercials Ltd.* on 10th July, 2020, 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 have 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.

SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

In exercise of the powers conferred by Section 15JB of the Securities and Exchange Board of India Act, 1992, Section 23JA of the Securities Contracts (Regulation) Act, 1956 and Section 19-IA of the Depositories Act, 1996 read with Section 30 of the Securities and Exchange Board of India Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996,SEBI has by notification dated 30th November 2018 has made the following regulations to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto known as Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. It came into force on the 1st day of January 2019.

Application for Settlement (Regulation 3)

(1) A person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I.

(2) The application made above shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I.

Provided that the rejection or withdrawal of the application shall not affect the continued validity of the undertakings and waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I and subject to such undertakings and waivers, the Board or the applicant, shall be free to initiate or pursue such proceedings as may be appropriate in accordance with law.

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s):

Provided that the facts established against the applicant or admitted in any ongoing or concluded proceedings in India or outside India, with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action.

(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned to the applicant.

(6) The applicant whose application has been returned under sub- regulation (5) may, within fifteen days from the date of communication from the Board, submit the complete and revised application that conforms to the requirements of these regulations:

Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default at the same stage of the proceedings, as indicated in Table I in Schedule-II.

(7) Where the applicant is an association or a firm or a body corporate or a limited liability partnership, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

Explanation. - For the purpose of this sub-regulation, the expression 'officer who is in default' shall have the same meaning as provided in sub-Section (60) of Section 2 of the Companies Act, 2013.

(8) An application for settlement of defaults related to disclosures, shall to the extent possible, be made after making the required disclosure.

Limitation (Regulation 4)

An application in respect of any specified proceeding pending before the Board shall not be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is later.

The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.

Scope of settlement proceedings (Regulation 5)

(1) No application for settlement of any specified proceedings shall be considered, if:

(a) an earlier application with regard to the same alleged default had been rejected;

(b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

(c) monies due under an order issued under securities laws are liable for recovery under securities laws.

(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, -

i. has market wide impact, or

ii. caused losses to a large number of investors, or

iii. affected the integrity of the market.

(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may inter alia take into account the following factors, -

(a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;

(b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

(c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;

(d) any other factor as may be deemed appropriate by the Board.

(4) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

(5) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.

Rejection of application (Regulation 6)

(1) An application may also at any time be rejected on the following grounds:

(a) Where the applicant refuses to receive or respond to the communications sent by the Board;

(b) Where the applicant does not submit or delays the submission of information, document, Revised Settlement Terms, etc., as called for by the Board;

(c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;

(d) Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;

(e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (2) of regulation 15 and/or does not abide by the undertaking and waivers;

(f) Where the applicant fails to comply with the condition precedent(s) for settlement within the time as required by the Internal Committee.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Withdrawal of application (Regulation 7)

(1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default:

Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

Effect of pending application on specified proceedings (Regulation 8)

(1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn:

Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

Explanation. - Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any adverse observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed by such applicant.

Settlement terms (Regulation 9)

(1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

(2) The non-monetary terms may include the following:

(a) Suspension or cessation of business activities for a specified period;

(b) Exit from Management;

(c) Disgorgement on account of the action or inaction of the applicant;

(d) Refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;

(e) Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.;

(f) Lock-in of securities;

(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures;

(h) Provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;

(i) Submit to enhanced internal audit and reporting requirements;

(j) Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

(3) The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India.

(4) The application fee referred to in sub-regulation (2) of regulation 3 and the legal costs, if any, forming

part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.

Explanation. – Legal costs shall include liquidated costs, as may be determined by the Board, in respect of costs for obtaining appropriate orders from the Tribunal or Court under sub-regulation (2) of regulation 24 and include other expenses incurred by the Board in any other proceeding before any Court or Tribunal in respect of such application.

(5) The amount of profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund.

Factors to be considered to arrive at the settlement terms (Regulation 10)

While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited, to the following:

(a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;

(b) the role played by the applicant in case the alleged default is committed by a group of persons;

(c) nature, gravity and impact of alleged defaults;

(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;

(e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;

(f) processes that have been introduced since the alleged default to minimize future defaults or lapses;

(g) compliance schedule proposed by the applicant;

(h) economic benefits accruing to any person from the non-compliance or delayed compliance;

(i) conditions which are necessary to deter future non-compliance by the same or another person;

(j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;

(k) any other enforcement action that has been taken against the applicant for the same violation;

(l) any other factors necessary in the facts and circumstances of the case.

High Powered Advisory Committee (Regulation 11)

(1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement.

(2) The High Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.

(3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years.

(4) The quorum for a meeting of the High Powered Advisory Committee shall be of three members.

Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage.

(5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard: Provided that:

(i) where any member of the High Powered Advisory Committee seeks recusal, the remaining two or more members may submit their recommendation on the terms of settlement;

(ii) where no consensus or majority may be reached, the recommendation made by the Judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the Judicial member, the recommendations of the remaining two or more members shall be submitted for consideration to the Panel of Whole Time Members; and

(iii) where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.

Internal committee(s) (Regulation 12)

(1) Internal Committee(s) shall be constituted by the Board.

(2) The Internal Committee(s) shall comprise of an officer of the Board not below the rank of Chief General Manager and such other officers as may be specified by the Board.

PROCEDURE OF SETTLEMENT

Proceedings before the Internal Committee (Regulation 13)

(1) Save as otherwise provided in these regulations, an application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may:

(a) call for relevant information, documents, etc., pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

Explanation. – Nothing in these regulations shall confer a right upon the applicant to seek information from the Board or require the Board to seek information from any other person for the purpose of relying upon it in the settlement proceedings or request the Board to permit it to present information not already disclosed in the application, which the applicant was aware of at the time of making the application or which information upon diligent enquiry being made could have become known to the applicant.

(b) call for the personal appearance of the applicant before it:

Provided that a duly authorized representative of the applicant may represent on behalf of the applicant:

Explanation. - Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.

(ba) require the applicant to comply with certain condition precedent(s) within a specified time period for consideration of the application for settlement.

(c) permit the applicant to submit revised settlement terms within a period not exceeding fifteen working days from the date of the Internal Committee meeting.

(3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee.

Proceedings before the High Powered Advisory Committee (Regulation 14)

(1) The High Powered Advisory Committee shall consider the proposed settlement terms placed before it along with the following:

(a) the application, undertaking and waivers of the applicant;

(b) factors specified in regulation 10;

(c) settlement terms or revised settlement terms proposed by the applicant;

(d) any other relevant material available on record.

(2) The High Powered Advisory Committee may seek revision of the settlement terms and refer the application back to the Internal Committee.

(3) The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members.

Action on the recommendation of High Powered Advisory Committee (Regulation 15)

(1) The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same:

Provided that where the recommendations of the High Powered Advisory Committee to settle the specified proceedings are rejected, the panel of Whole Time Members shall record reasons for rejection of the recommendations:

Provided further that where the recommendation of the High Powered Advisory Committee to settle the specified proceedings are rejected, such decision of the panel of Whole Time Members shall be communicated to the applicant.

(2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of payment through the dedicated payment gateway provided for the purpose.

Provided that, in no case shall such remittance be accepted after the thirtieth calendar day from the date of the receipt of the notice of demand.

(b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant.

(2) Where the Panel of Whole Time Members does not accept the recommendation of the High Powered Advisory Committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the Internal Committee and the High Powered Advisory Committee.

1) What is a Consent Order?

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

2) What is Compounding of Offence?

A Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.

3) What are Administrative/Civil enforcement actions?

Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT).

4) What is Prosecution?

Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

5) What is the objective of Consent Order?

Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrance without resorting to litigation, lengthy proceedings and consequent delays.

6) What is the objective of Compounding of Offence?

Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

7) Who can seek settlement of proceedings through consent order and compounding?

Any person who is notified that a proceeding may or will be initiated/instituted against him/her, or any party to a proceeding already initiated/instituted, may, at any time, propose in writing for settlement.

SUMMARY SETTLEMENT PROCEDURE

Summary settlement procedure (Regulation 16)

(1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding, the Board may issue a notice of summary settlement in the format as specified in Part-A of Schedule-III, calling upon the noticee to file a settlement application under Chapter-II and submit the settlement amount and/or furnish an undertaking in respect of other nonmonetary terms or comply with other non-monetary terms, as may be specified in the summary settlement notice in respect of the specified proceeding(s) to be initiated for the following defaults,-

i. Delayed disclosures, including filing of returns, report, document, etc.;

ii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited;

iii. Disclosures not made in the specified formats;

iv. Delayed compliance of any of the requirements of law or directions issued by the Board;

v. Such other defaults as may be determined by the Board.

Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner.

(2) Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action.

(3) The noticee may, within thirty calendar days from the date of receipt of the notice of settlement, -

(a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I;

(b) remit the settlement amount as specified in the notice of settlement;

(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be; and

(d) seek rectification of the calculation of the settlement amount, as communicated in the notice of settlement, at the time of filing the settlement application and in all such cases, the decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board:

Provided that, the Board may for reasons to be recorded, grant extension of time not exceeding a further period of fifteen calendar days for filing the settlement application, remittance of the settlement amount and/or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the non-monetary terms specified in the notice of settlement.

(4) Upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of the non-monetary terms or compliance with non-monetary terms, if any as detailed in the settlement notice, the Board shall pass an order of settlement under regulation 23.

Regulation 17

Notwithstanding anything contained in these regulations, where a noticee does not file a settlement application under this Chapter or remit the settlement amount and/or comply with other non-monetary terms to the satisfaction of the Board or withdraws the settlement application at any time prior to the communication of the decision of the Board, the specified proceedings may be initiated, and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before the Court or Tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.

Settlement with confidentiality (Regulation 19)

(1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including –

(a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board;

(b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;

(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and

(d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation.

Explanation. – Violation of securities laws in this Chapter refers to defaults other than those of disclosure and reporting requirements detailed in Schedule II.

Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit.

(2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings.

(3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case.

(4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws.

(5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing.

(6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant.

(7) The rejection of the application for confidentiality shall be communicated to the applicant.

Procedure (Regulation 20)

(1) The provisions of Chapters IV to VI of these regulations may be applied *mutatis mutandis* to a settlement application filed under this Chapter and a settlement order passed accordingly.

(2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board.

Confidentiality and assurance (Regulation 21)

For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

Confidentiality (Regulation 22)

Notwithstanding anything contained in Chapter X, the following shall be treated as confidential, -

(a) the identity of the applicant seeking confidentiality; and

(b) the information, documents and evidence furnished by the applicant under this Chapter.

Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, –

(i) the disclosure is required by law;

(ii) the applicant has agreed to such disclosure in writing; or

(iii) there has been a public disclosure by the applicant.

SETTLEMENT ORDERS

Settlement of proceedings before the Adjudicating Officer and the Board (Regulation 23)

(1) The Whole Time Member, Adjudicating Officer or the competent officer of the Board before whom the proceedings are pending, shall dispose of the respective proceedings, by an appropriate order, on the basis of the approved settlement terms.

(2A) In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms.

(3) The settlement order passed under these regulations shall, contain the details of the alleged default(s), relevant provisions of the securities laws, brief facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.

Settlement of the proceedings pending before the Tribunal or any court (Regulation 24)

(1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall *mutatis mutandis* apply to an application for settlement of any proceeding pending before the Tribunal or any court.

(2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.

Service and publication of settlement order (Regulation 25)

Settlement orders shall be served on the applicant and shall also be published on the website of the Board:

Provided that settlement orders in matters relating to the confidentiality shall not, directly or indirectly, disclose the identity of the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.

Settlement Schemes (Regulation 26)

Notwithstanding anything contained in these regulations, the Board may specify a settlement scheme for any class of persons involved in respect of any similar specified defaults.

Explanation. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.

Effect of settlement order on third party rights or other proceedings (Regulation 27)

(1) A settlement order under these regulations shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default.

(2) Where any applicant who obtains a settlement order is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings

against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another: Provided that, unless the settlement order is revoked, such observations shall qua the applicant be subject to the settlement order obtained by the applicant.

(3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.

Revocation of the settlement order (Regulation 28)

(1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

Confidentiality of information (Regulation 29)

(1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked or withdrawn under these regulations.

Explanation. – When any fact is discovered in consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved.

Irregularity in procedure (Regulation 31)

No settlement order or rejection of a settlement application shall be invalidated on ground of any defect in procedure or determination of the settlement terms or on account of any vacancy in or any defect in the constitution of any committee under Chapter V:

Provided that, nothing in these regulations shall prohibit the Board from revoking the settlement order where the applicant fails to pay any difference due to any discrepancy in arriving at the settlement terms:

Provided further that, the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of initiating or continuing or restoring of any legal proceeding and the waivers given in sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Explanation. – For the removal of doubts, it is clarified that the power to seek the difference under this regulation shall include and always be deemed to have included the profits gained or losses avoided out of the violations for which the specified proceedings also have been initiated.

Procedure for composition (Regulation 33)

The provisions of Chapters IV to VI and Schedule-II may be applied *mutatis mutandis* for determining the terms while processing a compounding application.

CASE LAWS

In the matter of R. Jhunjhunwala and Ors.

The Securities and Exchange Board of India (SEBI) has moved to settle an 'insider trading' case involving investors who were accused of unusual dealing in shares of Aptech Computers.

One of the investor has management control over Aptech and is also on the board of the company. In September 2016, the share price of Aptech hit a 10 per cent upper circuit as Investor's brother and sister picked up 2.5 lakh and 5 lakh shares respectively. Both these trades combined were worth more than ₹100 crore then. There were trades executed by others as well. In just a few days, Aptech announced its entry into the pre-school education segment.

Shareholding of promoters led by the one of investor's family has increased to around 48 per cent in Aptech since the prominent investor first picked up a 10 per cent stake in the company in 2005. SEBI found that there existed unpublished price sensitive information in Aptech when the high-profile investors were dealing in the company shares.

SEBI had alleged that One of the investors and others traded in Aptech when in possession of unpublished price sensitive information (UPSI). In September 2016, Aptech had announced its foray into the preschool segment. As per the SEBI order, this was an UPSI between March 14, 2016 and September 7, 2016, the date of official announcement.

It is alleged that two persons/investors were in possession of the UPSI and communicated the same to other applicants. On the basis of the UPSI, investors are alleged to have traded in the scrip of Aptech during the UPSI period.

The investors settled the case under SEBI's consent route where an alleged wrongdoer can close investigations and adjudications into the matter with SEBI without admitting or denying guilt and charges against them. The total charges paid by one of the investor amount to ₹18.5 crore, of which the disgorgement amount is nearly ₹6 crore. His wife has paid ₹3.2 crore. Aptech board members, including investor and director have paid ₹6.2 crore and ₹1.7 crore respectively.

https://www.thehindubusinessline.com/markets/stock-markets/sebi-settles-insider-trading-case-with-rakesh-jhunjhunwala/article35329574.ece

SECURITIES APPELLATE TRIBUNAL

Establishment of Securities Appellate Tribunals (Section 15K)

Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act; and to exercise jurisdiction, powers and authority conferred on the Tribunal by or under SEBI Act, 1992 or any other law for the time being in force.

Consequent to Government Notification No.DL-33004/99 dated 27th May, 2014, SAT also hears and disposes of appeals against orders passed by the Pension Fund Regulatory and Development Authority (PFRDA) under the PFRDA Act, 2013. Further, in terms of Government Notification No.DL-(N)/04/0007/2003-15 dated 23rd March, 2015, SAT hears and disposes of appeals against orders passed by the Insurance Regulatory Development Authority of India (IRDAI) under the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 and the Rules and Regulations framed thereunder.

Composition of Securities Appellate Tribunal (Section 15L)

The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act, –

(a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit.

Every Bench constituted shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal. (Section 15 M)

A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he –

(a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and

(b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

(c) in the case of a Technical Member:

(i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or

(ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. (Section 15MA)

The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:––

(a) Presiding Officer, Securities Appellate Tribunal – Chairperson;

(b) Secretary, Department of Economic Affairs – Member;

(c) Secretary, Department of Financial Services – Member; and

(d) Secretary, Legislative Department or Secretary, Department of Legal Affairs – Member.

The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee.

The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed as mentioned above. (Section 15MB)

No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum-Selection Committee.

A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

The Presiding Officer or such other member of the Securities Appellate Tribunal, holding office on the date of commencement of Part VIII of Chapter VI of the Finance Act, 2017 shall continue to hold office for such term as he was appointed and the other provisions of this Act shall apply to such Presiding Officer or such other member, as if Part VIII of Chapter VI of the Finance Act, 2017 had not been enacted. (Section 15MC).

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal (Section 15N)

The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years.

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

Procedure and powers of the Securities Appellate Tribunal.(Section 15U of SEBI Act, Section 22 B of Securities Contract(Regulation) Act, 1956 and Section 23B of Depositories Act, 1996)

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely : –

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte* ;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte* ;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench.

(5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

(6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Appeal to the Securities Appellate Tribunal (Section 15T of SEBI Act, Section 23 L of Securities Contract (Regulation) Act, 1956 and Section 23A of Depositories Act, 1996)

(1) (i) Any person under SEBI Act, 1992 aggrieved, –

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

(ii) Any person under Securities Contract (Regulation) Act, 1956 aggrieved, –

(a) by the order or decision of the recognized stock exchange; or

(b) the adjudicating officer; or

(c) any order made by the Securities and Exchange Board of India under sub-section (3) of section 23-I.

(iii) any person aggrieved under Depositories Act, 1996

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder,

(b) or by an order made by an adjudicating officer under this Act.

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

Further the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, the parties to the appeal and to the concerned Adjudicating Officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Right to legal representation. (Section 15V of SEBI Act, Section 22C of Securities Contract(Regulation) Act, 1956 and Section 23C of Depositories Act, 1996)

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation. – For the purposes of this section, –

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or any attorney of any High Court, and includes a pleader in practice.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings (Section 15R of SEBI Act, 1992)

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Procedures as per Securities Appellate Tribunal (Procedure) Rules, 2000

In exercise of the powers conferred by section 29 read with sections 15T and 15U of the Securities and Exchange Board of India Act, 1992, the Central Government hereby made the Securities Appellate Tribunal (Procedure) Rules, 2000.

Form and procedure of appeal (Rule 4)

(1) A memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

(2) A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.

Sittings of Appellate Tribunal (Rule 5)

(1) The Appellate Tribunal shall hold its sitting either at a place where its office is situated or at such other place falling within its jurisdiction, as it may deem fit by the Appellate Tribunal.

(2) In the temporary absence of the Presiding Officer, Government may authorise one of the two other Members to preside over the sitting of the Tribunal either at a place where its office is situated or at such other place falling within its jurisdiction as it may deem fit by the Appellate Tribunal.

Language of Appellate Tribunal (Rule 6)

(1) The proceedings of the Appellate Tribunal shall be conducted in English or Hindi.

(2) No appeal, application, representation, document or other matters contained in any language other than English or Hindi, shall be accepted by Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

Appeal to be in writing (Rule 7)

(1) Every appeal, application, reply, representation or any document filed before the Appellate Tribunal shall be typewritten, cyclostyled or printed neatly and legibly on one side of the good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed in the manner provided in sub-rule (2).

(2) The appeal under sub-rule (1) shall be presented in five sets in a paper book along with an empty file size envelope bearing the full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.

Presentation and scrutiny of memorandum of appeal (Rule 8)

(1) The Registrar shall endorse on every appeal the date on which it is presented or deemed to have been presented and shall sign endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number.

(3) If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed, the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof.

(5) An appeal against the order of the Registrar shall be made within 15 days of receiving of such order to the Presiding Officer or in his temporary absence, to the Member authorized under sub-rule (2) of rule 5, whose decision thereon shall be final.

Fee (Rule 9)

(1) Every memorandum of appeal shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted in the form of crossed demand draft drawn on any nationalised bank in favour of "the Registrar, Securities Appellate Tribunal" payable at the station where the registry is located.

(2) The amount of fee payable in respect of appeal against adjudication orders made under Chapter VIA of the Act shall be as follows : –

Amount of penalty imposed	***Amount of fees payable***
Less than rupees ten thousand	Rs. 500
Rupees ten thousand or more but less than one lakh	Rs. 1,200
Rupees one lakh or more	Rs. 1200 plus Rs. 500 for every additional one lakh of penalty or fraction thereof, subject to a maximum of Rs. 1,50,000.
Amount of fee payable in respect of any other appeal against an order of the Board under the Act shall be rupees five thousand only	

Contents of memorandum of appeal (Rule10)

(1) Every memorandum of appeal filed under rule 4 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively and shall be in the manner provided in sub-rule (1) of rule 7.

(2) It shall not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

Documents to accompany memorandum of appeal (Rule 11)

(1) Every memorandum of appeal shall be in five copies and shall be accompanied with copies of the order, at least one of which shall be a certified copy, against which the appeal is filed.

(2) Where a party is represented by an authorised representative, a copy of the authorisation to act as the authorised representative and the written consent thereto by such authorised representative, shall be appended to the appeal.

Plural remedies (Rule 12)

A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

Notice of appeal to the respondent (Rule 13)

Copy of the memorandum of appeal and paper book shall be served by the Registrar on the respondent as soon as they are registered in the registry, by hand delivery, or by Registered Post or Speed Post.

Filing of reply to the appeal and other documents by the respondent (Rule 14)

(1) The respondent may file five complete sets containing the reply to the appeal along with documents in a paper book form with the registry within one month of the service of the notice on him of the filing of the memorandum of appeal.

(2) Every reply, application or written representation filed before the Appellate Tribunal shall be verified in the manner provided for, in the Form.

(3) A copy of every application, reply, document or written material filed by the respondent before the Appellate Tribunal shall be forthwith served on the appellant, by the respondent.

(4) The Appellate Tribunal may, in its discretion, on application by the respondent allow the filing of reply referred to in sub-rule (1) after the expiry of the period referred to therein.

Date of hearing to be notified (Rule 15)

The Appellate Tribunal shall notify the parties of the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct.

Hearing of appeal (Rule 16)

(1) On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Securities Appellate Tribunal shall, then, if necessary, hear the Board or its authorised representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments :

Provided that in case of temporary absence of the Presiding Officer or of the Member authorised by the Government under sub-rule (2) of rule 5, the Presiding Officer can authorise the other Member present on that day to hear the Board or authorised representative against the appeal.

(2) In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the Securities Appellate Tribunal may dispose of the appeal on the merits:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his non-appearance, when the appeal was called for hearing, the Securities Appellate Tribunal shall make an order setting aside the ex parte order and restore the appeal.

Dress regulations for the Presiding Officer, Members and for the representative of the parties (Rule 17)

(1) The dress of the Presiding Officer shall be white or striped or black pant with black coat over white shirt and band or buttoned up black coat and band. The dress for the two other Members shall be white or striped or black pant with black coat over white shirt and black tie or buttoned up black coat. In the case of a female Presiding Officer or a Member, the dress shall be black coat over a white saree.

(2) Every authorised representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress.

(3) All other persons appearing before the Appellate Tribunal shall be properly dressed.

Order to be signed and dated (Rule 18)

(1) Every order of the Appellate Tribunal shall be signed and dated by the Presiding Officer and the two other members. The Presiding Officer will have powers to pass interim orders or injunction, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice.

(2) Orders shall be pronounced in the sitting of the Appellate Tribunal by the Presiding Officer or in case of the temporary absence of the Presiding Officer, by the Member authorized under sub-rule (2) of rule 5.

Publication of orders (Rule 19)

The orders of the Appellate Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Presiding Officer may lay down.

Communication of orders (Rule 20)

A certified copy of every order passed by the Appellate Tribunal shall be communicated to the Board, the Adjudicating Officer and to the parties, as the case may be.

Orders and directions in certain cases (Rule 21)

The Appellate Tribunal may make, such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Fee for inspection of records and obtaining copies thereof (Rule 22)

(1) A fee of rupees twenty, for every hour or part thereof of inspection subject to a minimum of rupees one hundred shall be charged for inspecting the records of a pending appeal by a party thereto.

(2) A fee of rupees five for a folio or part thereof not involving typing and a fee of rupees ten for a folio or part thereof involving typing of statement and figures shall be charged for providing copies of the records of an appeal, to a party thereto.

Working hours of the Appellate Tribunal (Rule 23)

(1) The office of the Appellate Tribunal shall observe such public and other holidays as observed by the offices of the Central Government in the locality where the office of the Appellate Tribunal is situated.

(2) The Appellate Tribunal shall, subject to any other order made by the Presiding Officer, remain open on working days from 10 AM to 6.00 PM. But no work, unless of an urgent nature, shall be admitted after 4.30 PM on any working day.

(3) The sitting hours of the Appellate Tribunal shall ordinarily be from 10.30 AM to 1.00 PM and 2.00 PM to 5.00 PM, subject to any order made by the Presiding Officer.

Holiday (Rule 24)

Where the last day for doing any act falls on a day on which the office of the Appellate Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office opens.

Functions of the Registrar (Rule 25)

(1) The Registrar shall discharge his functions under the general superintendence of the Presiding Officer or in the temporary absence of the Presiding Officer, the Member authorized under sub-rule (2) of rule 5.

He shall discharge such other functions as are assigned to him under these rules by the Presiding

Officer or in the temporary absence of the Presiding Officer, by the Member authorized under sub-rule (2) of rule 5, by a separate order in writing.

(2) He shall have the custody of the records of the Appellate Tribunal.

(3) The official seal of the Appellate Tribunal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the Presiding Officer, or in the temporary absence of the Presiding Officer, the Member authorized under sub-rule (2) of rule 5, the official seal of the Appellate Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.

(5) The official seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Appellate Tribunal, save under the authority in writing of the Registrar.

Additional functions and duties of Registrar (Rule 26)

In addition to the functions and duties assigned in the rules, the Registrar shall have the following functions and duties subject to any general or special order of the Presiding Officer or in his temporary absence, the Member authorized under sub-rule (2) of rule 5, namely : –

(i) to receive all appeals, replies and other documents;

(ii) to decide all questions arising out of the scrutiny of the appeal before they are registered;

(iii) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rule;

(iv) subject to the directions of the Presiding Officer, or in his temporary absence, the member authorized under sub-rule (2) of rule 5, to fix date of hearing of the appeal or other proceedings and issue notices thereon;

(v) to direct any formal amendment or records;

(vi) to order grant of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of the Appellate Tribunal;

(viii) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers; and

(ix) to requisition records from the custody of any court or other authority.

Seal and emblem (Rule 27) The official seal and emblem of the Appellate Tribunal shall be such as the Central Government may specify.

Appeal to Supreme Court (Section 15Z of SEBI Act, Section 22F of Securities Contract (Regulation) Act, 1956 and Section 23F of Depositories Act, 1996)

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

LESSON ROUND-UP

- Securities Exchange Board of India was established, with a twofold objective of :
  - (a) protecting the interests of investors in securities; and
  - (b) promoting the development of and to regulate the securities market.
- The SEBI Act laid down the heavy penal consequences for non-compliance under section 15A to 15HB of the Act.
- For the purpose of adjudging an offence, the Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.
- Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws.
- A Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.
- Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992.
- Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court.

GLOSSARY

Consent Order-an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws.

Penalty-a punishment for breaking a law, rule or contract

Insider Trading-the practice of purchasing or selling a publicly-traded company's securities while in possession of material information that is not yet public information.

Appeal- the legal process to ask a higher court to review a decision by a judge in a lower court (trial court).

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. A fraud is punishable offence whereas the non-compliance also attracts the penalties. Differentiate between the two concepts i.e. Fraud and Non-Compliance.
2. The price of equity share of a listed company viz. NextDial Ltd. (NDL) increased from Rs.10 to high of Rs.50 i.e. a rise of 500% during the period 1st April, 2022 to 30th Sept., 2022. NDL had entered into a Share Purchase Agreement (SPA) with the proposed acquirer(s) to acquire 40% of the subscribed equity share capital as of 31st Aug., 2022 which would result in change of management. This initial discussion on the deal was made on 1st April, 2022 but SPA was signed on 25th April, 2022.

During 1st April, 2022 to 30th Sept., 2022, the promoter and his wife dealt in the script of NextDial Ltd. Referring to the provisions of SEBI (PIT) Regulations, answer the following :

(i) Define Unpublished Price Sensitive Information.

(ii) Whether there was any Unpublished Price Sensitive Information (UPSI) ?

(iii) What will be the date of UPSI ?

(iv) What are the factors to be taken into account by the adjudicating officer while imposing penalty for the act ?

3. Distinguish between the following :

(i) Fine and Penalty

(ii) Civil Offence and Criminal Offence

(iii) Composition and Consent

4. PQ Limited was a Company listed on XYZ Stock Exchange. The Company was making continuous losses and was not performing well. There were also reports of alleged financial irregularities in media. Also, many complaints were received by Securities Board of India (SEBI), regarding its listed securities. Subsequently, SEBI passed an Order to delist the securities of the Company from the said stock exchange.

As a Company Secretary, advise PQ Limited for further course of action.

5. Write short notes on Consent Order issued by SEBI

6. SEBI issued an order against the directors of the Shyam and Company Ltd., a listed entity, against their failure to comply with the some of the provisions of the SEBI (LODR) Regulations, 2015 and levied penalty for the same. However, the directors of the company are of the opinion the penalty levied by the SEBI for non-compliance of the provisions are not applicable to the company since these provisions came into effect after the amendment in the SEBI (LODR) Regulations, 2015 and company had complied with the old provisions, which were applicable on the company at the prevailing time. Advise the company the legal recourse available to it, quoting the relevant provisions of the law.

7. What factors Adjudicating Officer shall consider while adjudging quantum of penalty ?

8. ABD Limited (listed Company) has failed to redress investors' grievances relating to the Transfer of the share and indulges in fraudulent and unfair trade practices relating to securities. Write down the penalties which could be faced by the company under SEBI Act, 1992.

9. Explain the effect of Settlement Order on third party rights or other proceedings. Also, state the circumstances under which the Settlement Order is revoked.

10. ABD Limited (listed Company) has failed to redress investors' grievances relating to the Transfer of the share and indulges in fraudulent and unfair trade practices relating to securities. Write down the penalties which could be faced by the company under SEBI Act, 1992.

LIST OF FURTHER READINGS
• SEBI ACT, 1992 • Depositories Act, 1996 • Securities Contract (Regulations) Act, 1956

OTHER REFERENCES (Including Websites/Video Links)
• https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=1&smid=0 • https://www.indiacode.nic.in/ • https://sat.gov.in/