

## “Sebi and its Power to Issue Directions”

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### *Abstract*

The Securities and Exchange Board of India was initially a non- statutory body that was appointed for the regulation of the financial market. In the year 1992, it was made as an autonomous body with statutory powers. As the capital market was a growing field in 1970 and 80s there were several malpractices such as unofficial private placements, rigging of prices, not complying with the provisions of the companies act, etc., the government thought of bringing a regulatory body so that the confidence of the people in the stock market can be maintained. Then the government comes up with SEBI. The duty of SEBI is more like that of a watchdog. The SEBI mainly looks into the issuers of securities, investors and financial intermediaries. The SEBI has 3 functions. The capital markets watchdog now has wide-ranging powers for conducting an inquiry or investigation, settling disputes, enforcing its directions etc. These directions are the most controversial provision which remedial, preventive and punitive in character. SEBI has wide-ranging power to issue directions. Sections 11 and 11B of Act of the deals with the directions. Such directions should be made “In the interest of investors, orderly development of securities market.” The author in the further paper discusses the judicial decisions, relevant articles on the matter of powers of SEBI to give directions.

**Keywords:** SEBI, Objectives, Structure, Delegation, Jurisdiction, SAT, Powers and functions.

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## **INTRODUCTION TO SEBI**

Due to the rapid growth in the capital market in 1980s the general public has shown a huge interest and participated. This was misused by various people by way of malpractices like violation of rules and regulations of stock exchanges and listing requirements, rigging of prices, investment consultants and others involved in the securities market, unofficial premium on new issues, delay in delivery of shares, etc. by the brokers, merchant bankers, and companies. This led to the suffering of the investors. As then there are no proper penal provisions on such act the government was unable to redress the grievance of the investors. This gave a leap for the formation of the Securities and Exchange Board of India.

SEBI serves as a watchdog for the participants of the capital market. The aim of SEBI is to facilitate the working of the security market smooth. SEBI's duty is to check and protect the investors' interest from being curbed by malpractice.<sup>1</sup> The preamble of the act itself gives answers for the basic questions such as what, for whom and how.<sup>2</sup>

## **FUNCTIONS**

Section 11 of the Act says what all are the functions that are to be performed by the Board.<sup>3</sup>

### Protective Functions

The core function of SEBI is to protect the interest of the participants and investors. By way of Prohibit fraudulent and unfair trade practices, prevent insider trading, Promote fair practices, checking price rigging and Create awareness among investors.

### Regulatory Functions

The main regulator function is to have a check on the market. These consists of framing of guidelines and code of conduct for the proper functioning of financial intermediaries and

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<sup>1</sup> Elearnmarkets - Financial Market Learning. (2018). SEBI The Purpose, Objective and Functions of SEBI. [online] Available at: <https://blog.elearnmarkets.com/sebi-purpose-objective-functions-sebi/> [Accessed 14 Apr. 2019].

<sup>2</sup> Securities and Exchange Board of India Act,1992, preamble

<sup>3</sup> Securities and Exchange Board of India Act, 1992, Section 11.

corporate, Regulation of takeover of companies, Conducting inquiries and audit of exchanges, Registration of brokers, sub-brokers, merchant bankers etc., Levying of fees, Performing and exercising powers and Register and regulate credit rating agency.

### Development Functions

SEBI performs certain development functions also that include but they are not limited to imparting training to intermediaries, Promotion of fair trading and reduction of malpractices, Carry out research work, Encouraging self-regulating organizations and Buy-sell mutual funds directly from AMC through a broker.<sup>4</sup>

### **OBJECTIVES OF SEBI**

The objectives of SEBI are to protect the interest of investors and to promote the development of stock exchange and to regulate the activities of the stock market. Those are: to regulate the activities of the stock exchange, to protect the rights of investors and ensuring safety to their investment, to prevent fraudulent and malpractices by having a balance between self-regulation of business and its statutory regulations and to regulate and develop a code of conduct for intermediaries such as brokers, underwriters, etc.<sup>5</sup>

### **ORGANIZATIONAL STRUCTURE OF SEBI**

The SEBI Board comprises nine members. They are One Chairman appointed by the Government of India, Two members who are officers from Union Finance Ministry, One member from Reserve Bank of India and Five members appointed by the Union Government of India.<sup>6</sup>

### **SECURITIES APPELLATE TRIBUNAL**

Securities Appellate Tribunal is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992. The Civil Court jurisdiction is completely bared.<sup>7</sup> The purpose of the SAT is to:

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<sup>4</sup> Securities and Exchange Board of India Act, 1992, Section 11B

<sup>5</sup> *Supra* note. 3

<sup>6</sup> Securities and Exchange Board of India Act, 1992, Section 4.

<sup>7</sup> Securities and Exchange board of India Act, 1992, section 15Y.

- Hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act
- Exercise jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force.

The Appeal from SAT will only be dealt with by the Supreme Court but not any High court.

### **DELEGATION**

In terms of Section 19 of the Securities and Exchange Board of India Act, 1992, the Board is empowered to delegate such of its powers and functions by general or special order in writing, to any member, officer of the Board or any other person subject to such conditions, as may be specified in the Order.

As per Securities and Exchange Board of India (Delegation of Powers) Order, 2015. The functions and powers to Issue of Directions / Orders under Section 11B / SEBI Regulations and Guidelines were delegated to WTM, Issue directions under Section 12A was delegated to WTM and Issue directions under Section 12A of THE DEPOSITORIES ACT, 1996 was also delegated to WTM.<sup>8</sup>

### **STATUTES THAT SEBI DEAL WITH**

The SEBI deals with the SEBI Act, 1992, Depositories Act, 1996, Securities Contract (Regulation) Act, 1956, Companies Act, Repeal of forwarding Contract Regulation Act & Merger of FMC with SEBI, September 29, 2015.

### **GUIDING PRINCIPLES OF THE SEBI ACT**

The preamble of the Act says: protect the interest of Investors, Regulate the Securities of the market and Develop the Securities market.

Section 11 of the SEBI Act is the charging section. It gives the task to accomplish the above mentioned 3 objectives by measures as it thinks fit.

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<sup>8</sup> Securities And Exchange Board Of India General Order Delegation Of Powers, Sebi/Lad/Dop/03/ 2015

**JURISDICTION OF SEBI**

The term “securities” has been defined in Section 2(h) of the SC(R) Act as Shares, scripts, bonds, debentures or other marketable securities of a like nature in or of any incorporated company or other body corporate; Units of mutual fund or collective investment scheme; Security receipt under SARFAESI Act; Government Securities; any instrument declared by the Central Government as Security.

**REGULATION OF PRIMARY MARKET**

Section 11A of The SEBI Act empowers SEBI to specific matters relating to Issue of Capital, Offer document, Advertisements soliciting money from the public for the issue of securities and transfer of securities.

Section 12A of the SEBI Act prohibits any manipulative or deceptive device. It prohibits any device scheme or artifice to defraud which operates as a fraud. Regulates all the intermediaries in the primary market such as Merchant Bankers, Bankers to an issue, Share Transfer Agents, Registrar to issue, Debenture Trustees

The Regulation of Intermediaries enables SEBI to regulate the securities market, ensure investor protection, fair market practices, due diligence, true and fair disclosures

**INVESTOR PROTECTION**

There were several steps taken for the protection of Investors. Such as Promotion and controlling of self-regulatory companies, keeping a check on frauds and unfair trading methods related to the securities market and Stock Exchange and other securities market business regulation and other such.<sup>9</sup>

Ms. Roopalben Panchal and 5 others have committed an IPO scam. In which they made a profit of around 24 crores using fictitious Demat accounts in 18 IPOs which are for the individual investors. Prashant saran the whole-time member of SEBI in the order no. WTM/PS/198/EFD/MAR/2016 has put a bar on M/s Roopalben Panchal and five others for a period of 3 months saying not to enter the security market. SEBI also asked to submit the

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<sup>9</sup> Securities and Exchange board of India Act, 1992, section 11(2).

unlawful gain made along with interest. So they were liable to pay 36 crores. And also stated that if at all they failed to comply within 45 days, then they will be bared for 9 more years. And SEBI also had their Demat accounts frozen.<sup>10</sup>

### **STOCK EXCHANGE**

The stock exchange is a Self-Regulatory Organizations. Sections 4, 7A & 9 of the SC(R) Act empowers stock exchanges to frame its own rules and bye-laws. The SEBI is conferred with the power to direct amendments to be made. The amendments such as the Re-constitution of the Stock-Exchange, Reconstitution of Governing Board.<sup>11</sup>

### **SEBI – INVESTIGATOR**

SEBI is empowered to carry on investigations when Transactions in Securities are being dealt with in a manner harmful to the investors or Securities Market or; Any intermediary or any person associated with the Securities Market and has violated the Provision of the Act, Rules and the Regulations; Also has the power of search and seizure and impounding of documents and assets.<sup>12</sup>

### **SEBI-Quasi-judicial authority**

In case of violation of the provisions of the Act, a monetary penalty up to 25 crores can be imposed on the defaulter by the adjudicating officer of SEBI not below the rank of Division Chief. Prior approval of the SEBI Board or member is not required to impose the penalty. Cancellation of certificate of Registration of Intermediaries.

A person against whom proceedings are initiated and directions are issued or monetary fine is imposed or a certificate of registration is canceled can apply to SEBI for settlement of

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<sup>10</sup> WTM/PS/198/EFD/MAR/2016

<sup>11</sup> Securities and Exchange board of India Act, 1992, section 11.

<sup>12</sup> Securities and Exchange board of India Act, 1992, section 11C.

proceedings. The settlement takes place in accordance with the regulations on payment of the amount as determined.<sup>13</sup>

## **POWER TO ISSUE DIRECTIONS**

The power to issue directions was both Preventive and Remedial Powers. The SEBI has the power to issue directions under the provisions of the SEBI Act, SC(R) Act, and the Depositories Act.

At the stage of investigation or inquiry, these directions can be issued. The general directions given by the SEBI are barring the directors from entering the market for a stipulated time and barring buying selling or dealing in securities.

By the amendment brought to the SEBI in the year 2014 enables itself to impose fines, collect the unlawful gains along with interest, attachment of property, etc. and also the appointment of a receiver for the management of the movable and immovable property.<sup>14</sup>

### **11B. Power to issue directions.**

Save as otherwise provided in section 11, if after making or causing to be made an inquiry, 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 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, as may be appropriate in the interests of investors in securities and the securities market.

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<sup>13</sup> SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014

<sup>14</sup> Section 28(A) of the Act.

Explanation<sup>15</sup>.—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.

This 11B was inserted by the Securities Amendment Act, 1995.

#### **DIRECTIONS IN THE INTEREST OF INVESTORS, INTERMEDIARIES, AND SECURITIES MARKET**

At the commencement of the Act in 1992 there is no provision enabling SEBI to take action against companies issuing capital or the investors manipulating the market. As at that time those were the matters dealt by the Ministry of Corporate Affairs. Latter SEBI took recourse to Section 11B, which empowered it to issue directions.<sup>16</sup>

These are:

1. Prohibit companies from making an attempt to issue capital with false or misleading information.
2. Prohibit investors who manipulated the market from buying, selling or dealing in the securities market.

There are no prescribed rules specifying the manner in which the directions will be issued by SEBI. However, SEBI practice involves the following procedure taken before issuing directions: A member of the SEBI Board will issue a show-cause notice to the person against whom directions are proposed to be issued, Initiation of an investigation or an inquiry is a must to use the powers to use directions.<sup>17</sup>

However, in case SEBI can give interim directions in the interest of the investor or the intermediaries or the security market, then SEBI has on many occasions passed directions by giving a post decisional hearing. In the matter of investigations into irregularities in IPOs against

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<sup>15</sup> Inserted by the Securities Laws (Amendment) Act, 2014.

<sup>16</sup> Inserted by Securities Laws (Amendment) Act 1995

<sup>17</sup> Section 11B of the Act.



Pratik stock vision private limited<sup>18</sup>, the WTM has held that there is prima facie case so that the directions are valid, and the latter situation will be determined by the report of the inquiry officer.

However, at present, SEBI is not to resort to posting decisional hearing but to pass orders after a hearing is given. This can be substantiated by the observation that the majority of the orders passed after 2008 are orders passed after giving a hearing.

After the hearing, a formal order is passed. The quasi-judicial orders of SEBI are passed by the following officers:

1. The monetary penalty is imposed by a Division Chief.
2. Orders to intermediaries under their respective regulations as a consequence of a report by the EO is passed by the WTM.
3. Directions or orders under the SEBI Act are passed by WTMs.<sup>19</sup>

All the directions given by the SEBI will be given along with reasoning. In case of any grievance, the aggrieved person can appeal to the Securities Appellate Tribunal.<sup>20</sup>

Section 179 and 180 of the Finance Act 2018 amended Section 11 and 11B of the SEBI Act respectively, thereby conferring the Board with the power to levy penalties. Prior to this amendment, Whole Time Members of the Board had been passing directions which were only remedial and preventive in nature and the imposition of penalties used to be the job of Adjudicating Officers, for which separate proceedings were conducted. The amendment seeks to allow Whole Time Member to impose penalties as well as remedial and preventive directions.

The Securities Laws (Amendment) Ordinance, 2014 was promulgated for amending the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996. As per section 28A of SEBI Act, as amended by Securities Law (Amendment) Ordinance, SEBI is empowered to recover money from persons who fail to pay the penalty imposed by adjudicating officer or fail to comply with any direction of the Board

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<sup>18</sup> WTM/TCN/08 /ISD/05/07

<sup>19</sup> Sections 11, 11(B), 11(D) and 11(4) of SEBI Act, 1992.

<sup>20</sup> Section 15T of the SEBI Act, 1992.

for refund of money or fail to comply with a direction of disgorgement order or fail to pay any fees due to the Board.<sup>21</sup>

#### **CASES, ORDERS, AND DIRECTIONS**

➤ *Interpretation when violations are unintentional.*

##### **1. In Re: Refex Industries Limited (formerly known As: Refex Refrigerants Limited)<sup>22</sup>**

The bench, G. Mahalingam, has stated that, “there is a violation of regulation 11(2) of the Takeover Regulations, by the Noticee; that the violation is unintentional and not for consolidation. That the violation is technical and venial in nature; and there are clear mitigating circumstances in the form of subsequent amendments to the Takeover Regulations which further lessens the gravity of the violation.

In view of the above, in the exercise of powers conferred upon me under section 11B of the SEBI Act, I do not find this to be a fit case warranting a direction as proposed in the show cause notice dated February 26, 2016, and the show-cause notice stands disposed accordingly.”

##### **2. In Re: Anshu’s Clothing Limited<sup>23</sup>**

The Bench, G. Mahalingam has stated that “it is important to point out that the statutory duty of ensuring an orderly market compels SEBI, as a regulatory body, to strictly interpret and apply the rules and regulations and initiate action/proceedings against entities found to be in default, whether such default is intentional or otherwise. The said perspective and the resultant initiation of enforcement actions on part of SEBI cannot be found fault with, in the larger interest of the securities market. Thus, promoters/lenders/ other persons dealing in the shares of a listed company, at all times, need to be mindful of the significance and impact of their actions in the securities market including the unintended legal consequences, likely to arise out of their failure to adhere to the procedures laid down under laws pertaining to securities market, no matter however bonafide their intentions might be. Strict compliance with the provisions of law, in letter and spirit, by the market participants in all situations is the ideal solution for avoiding all such legal and regulatory complications and for ensuring an orderly securities market.”

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<sup>21</sup> Section 28A of the Act.

<sup>22</sup> In Re: Refex Industries Limited, 2017 Indlaw SEBI 12.

<sup>23</sup> In Re; Anshu’s Clothing Limited, 2017 indlaw sebi 216.

➤ *In The Matter of Fund Diversions and Improper Transactions.*

### **3. UNITED SPIRITS LIMITED<sup>24</sup>**

The SEBI has exercised its power conferred upon in terms of Section 19 read with Sections 11(1), 11(4)(b) and 11B of the SEBI Act, and issued the directions.

DR. VIJAY MALLYA, Ashok Chopra, P.A.Murali, Sowmiyanarayanan, S.N.Prasad, Pramiit singh gill and Anipur are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly. And DR. VIJAY MALLYA and Ashok Chopra are restrained from holding a position as Directors or Key Managerial Persons of any listed company. And also gave directions that USL shall, within 21 days, provide SEBI with the Actions taken against the above persons mentioned, Steps taken to recover the following amounts from Dr. Vijay Mallya and the companies to whom such funds were wrongly diverted, which have been reported as diversion.-

- a. Under the PWC-UK Report i.e. ₹655.55 Crores and
- b. Under the E&Y Report i.e. ₹1225.24 Crores.

The SEBI has approached the government asking to amend the Companies Act in such a way that the declared directors should be considered as a disqualified person and should vacate the chair. This was asked after the reluctance of Vijay Mallya to act as directed.

Officials have stated that the Finance Ministry in favor of the proposal of the SEBI and has asked the regulator to get it approved by its board and then forward it to the Corporate Affairs Ministry.<sup>25</sup>

➤ *CONTEMPT*

### **4. Securities and Exchange Board of India (SEBI) and Ors. Vs. Sahara India Real Estate Corpn. Ltd. and Ors.<sup>26</sup>**

Direction for deposit was given to the Sahara and it failed to comply with the same. As a result, the SEBI had initiated contempt proceedings against Respondent Group of Companies upon their failure to comply with the direction of the Court requiring them to deposit stipulated

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<sup>24</sup> WTM/SR/CFD-CMD/6/01/2017

<sup>25</sup> The Hindu. (2019). Mallya row: SEBI seeks changes to Companies Act. [online] Available at: <https://www.thehindu.com/business/Industry/mallya-row-sebi-seeks-changes-to-companies-act/article26432401.ece> [Accessed 16 Apr. 2019].

<sup>26</sup> 2015 (112) ALR 21

amount in SEBI Account, resulting in freezing of Respondent's asset. The respondent challenged the same on the ground that they would be unable to discharge their burden of paying the refund. Now the issue is whether initiation of contempt proceedings was sustainable.

The court has stated that “the orders passed may not be strictly construed as arising out of contempt jurisdiction, but in the exercise of inherent jurisdiction vested in this Court to do complete justice in the matter and to ensure that the applicants render full compliance of its orders.”

➤ *Retrospective Effect Of 11B And Constitutional Validity*

**5. Securities and Exchange Board of India Vs. Ajay Agarwal<sup>27</sup>**

There was an alleged misstatement of facts in the prospectus of company and misleading investors. Restraint order was received from accessing the securities market. SEBI restrained Director of Company from accessing securities market on prima facie case that facts were misstated in the prospectus of the company during the public issue of shares and therefore, investors were misguided. Appellate Board ruled in favor of Ajay on the ground that provision of Section 11B cannot be invoked in respect of the alleged misconduct which took place at a point of time when Section 11B was not on the statute book. The issue is whether Section 11B of the Securities and Exchange Board of India Act, 1992 could be invoked.

It was held that Provisions of Section 11B being procedural in nature can be applied retrospectively. Even if the law applies prospectively, the Board cannot be prevented from acting in terms of the law which exists on the day the Board passed its order. Also, there is no challenge to those provisions which came by way of amendment in 1995 and in the absence of any challenge to the provisions of section 11B, it cannot be said that even though Board is statutorily empowered to exercise functions in accordance with the amended law, its power to act under the law, as amended, will stand frozen in respect of any violation which might have taken place prior to the enactment of those provisions. The board hasn't exercised those powers in respect of a proceeding that was initiated prior to the enactment of those provisions. In fact, Board has issued the show cause notice in terms of Section 11-B and considered the reply of the Ajay

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<sup>27</sup> Securities and Exchange Board of India Vs. Ajay Agarwal, AIR2010 SC 3466

SEBI restrained the Respondent from associating with any corporate body in accessing the securities market and prohibiting him from buying, selling or dealing in securities for the alleged violation of SEBI guidelines. The Appellant Tribunal held the restrain as violative of Article 20(1) of the constitution.

Whether the Appellant Tribunal justified in quashing the restraining directions of SEBI given under amended Section 11B of the Act, due to the allegations against the company which surfaced prior to the coming into effect of those amendments in 1995 and 2002 on the grounds of violative of Article 20(1) of the constitution of India.

It was Held, Article 20(1) provides protection only in a case where a person is charged with having committed an “offence” and is subjected to a penalty. An offence would always mean an act of omission or commission which would be punishable by any law for the time being in force. Therefore, the order of restrain for a specified period cannot be equated with punishment for an ‘offence’ or ‘penalty’. Even if penalty imposed after an adjudicatory proceeding, persons who is penalised cannot be called accused. Herein, the Respondent has not been held guilty of committing any offence nor has he been subjected to any penalty. He has merely been restrained by an order Thus, protection under Article 20(1) of the Constitution in respect of ex post facto laws is not available to the Ajay.

#### **6. 21st Century Entertainment Private Limited and others V Union of India and others<sup>28</sup>**

Reserve Bank of India came out with certain guidelines those are Guidelines on Ownership and Governance in Private Sector Banks (RBI Guidelines). RBI Guidelines required private sector banks to ensure that ultimate ownership and control of private sector banks was well diversified. RBI recorded that Bank of Rajasthan had made incorrect disclosures in regard to shareholding pattern. As a result the Petitioners were restrained from accessing security market and prohibited from buying, selling and dealing in securities.

It was held, that section .11 of Act provided right of hearing by same authority apart from provision of appeal, thus it could not be said to be a case of exclusion of principles of natural justice altogether. Provisions of section .11(4) & 11(B) of Act were not hit by art.14 of Constitution. Act provided establishment of Board to protect interest of investors in securities

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<sup>28</sup>[2011] 165 Comp Cas 207

and to promote development and to regulate security market and matters connected with or incidental thereto. Section 11(4) of Act gave power to Board to restrain persons from accessing securities market and to prohibit such persons from being associated with securities market to buy and sell or deal in securities. Act was pre-eminently a social welfare legislation seeking to protect interests of common men who are small investors. Restrained order for same period from accessing security market and prohibiting buying, selling and dealing in security was not hold to be a penalty. Provisions of section.11 (4) & 11(B) of Act imposed reasonable restriction in conformity to art.19 (6) of Constitution. Provisions of sections 11(4) & 11(B) of Act were not violative of art.19(1)(g) of Constitution. Restrained and prohibitory order had passed during intervening period. Petitioners might raise their objections before SEBI itself, more so when impugned order was interim in nature.

➤ *Regulatory actions against Collective Investment Schemes*

**7. In Re: Sun-Plant Agro Ltd. and Ors.<sup>29</sup>**

Order dated May 03, 2011, SEBI directed M/s. SPAL to repay the mobilized funds to the investors within a period of three months. Since M/s. SPAL failed to confirm compliance of the directions issued to it vide the order dated May 3, 2011, SEBI issued a Show Cause Notice dated January 3, 2013 to M/s. SPAL and its directors/ persons in charge of business of its scheme calling upon them to show cause as to why appropriate actions, as contemplated in the show cause notice, in terms of SEBI Act and Collective investment scheme Regulations should not be taken against the noticees for failure to comply with the said order. Subsequently, order dated December 30, 2013, SEBI inter-alia restrained and debarred M/s. SPAL and its directors, namely, Mr. Awadesh Kumar Singh, Mr. Girija Shankar Kumar and Mr. Sant Kumar from accessing the securities market for a period of five years, and prohibited the said entities/ persons from mobilizing funds under any schemes or arrangement, existing or future, as defined under section 11AA of the SEBI Act, 1992. Further, it was clarified that the directions passed in this order shall not be construed to absolve the M/s. SPAL and other noticees from the obligations to wind up all its collective investment schemes and repay the investors to the satisfaction of SEBI.

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<sup>29</sup> In Re: Sun-Plant Agro Ltd. and Ors. (15.03.2016 - SEBI / SAT) : MANU/SB/0088/2016

**8. IN RE: M/s. PM TELELINKS LTD AND M/s. 8K MILES SOFTWARE SOLUTIONS LTD<sup>30</sup>.**

SEBI, *suo moto*, carried out an examination in the scrip of M/s. P.M. Telelinks Ltd. and M/s. 8K Miles Software Solutions Ltd. in view of surveillance alerts regarding variation in price. Examination, *prima facie*, revealed that promoters of PMTL transferred funds to related entities. The related entities were observed to be trading in the scrip of PMTL immediately after credit of funds in their accounts. These connected entities indulged in creating artificial volumes in the scrip of PMTL and 8KMILES through trading amongst themselves, executing synchronised trades and placed orders at a price higher than the last traded price, thereby contributing to the rise in price. Once the price of the scrip reached its peak, the aforesaid entities offloaded their shares, thereby resulting in fall in the price of the scrip.

SEBI, passed an *ad interim ex -parte* order dated April 18, 2013 restraining 13 entities including the promoters of M/s. P.M. Telelinks Ltd., from accessing securities market and prohibiting them from buying, selling or dealing in securities in any manner whatsoever, till further directions in the matter of dealing in the scrip of M/s. P.M. Telelinnks Ltd. (PMTL) and M/s. 8K Miles Software Solutions Ltd. (8KMILES). Pursuant to the above, after considering the submissions made by these 13 entities, SEBI has confirmed its directions against 13 entities.

**9. M/s. POLYTEX INDIA LTD., M/s. KGN ENTERPRISES LTD. AND M/s. GEMSTONE INVESTMENTS LTD.<sup>31</sup>**

SEBI, *suo moto*, carried out an examination in the scrip of M/s. Polytex India Ltd., M/s. KGN Enterprises Ltd. and M/s. Gemstone Investments Ltd. in view of surveillance alerts regarding variation in price. Examination, *prima facie*, revealed that certain entities have received funds from Pabari - Parikh Group entities who have been barred from accessing securities market by SEBI vide its order no. -WTM/KMA/ISD/353/02/2011 dated February 2, 2011. These, aforesaid, entities created artificial volumes in the scrips of M/s. Polytex India Ltd., M/s. KGN Enterprises Ltd. and M/s. Gemstone Investments Ltd., substantially traded amongst themselves and placed orders at a price higher than the last traded price and thereby contributed to the rise in price of M/s. Polytex India Ltd., M/s. KGN Enterprises Ltd. and M/s. Gemstone Investments Ltd.

<sup>30</sup> SEBI/WTM/MPB/EPD-DRA-I/38/201

<sup>31</sup> Order in the matter of dealing in the shares of Polytex India Ltd., KGN Enterprises Ltd. and Gemstone Investment Ltd. - 08.01.2014 - SEBI : MANU/SPRL/0005/2014

SEBI, passed an ad interim ex -parte order dated May 10, 2013 restraining 11 entities, from accessing securities market and prohibiting them from buying, selling or dealing in securities in any manner whatsoever, till further directions in the matter of M/s. Polytex India Ltd., M/s. KGN Enterprises Ltd. and M/s. Gemstone Investments Ltd. Pursuant to the above, after considering the submissions made by these 11 entities, SEBI has confirmed its directions against 11 entities.

➤ *Significant enforcements of regulations*

These cases came to notice of SEBI, where the intermediaries registered with SEBI indulged in unlawful activities like making false claims to investors or mobilizing money for different schemes. Prompt action was taken against them by passing interim orders.

**10. M/s. MCX BIZ SOLUTIONS AND MR SYED SADAQ<sup>32</sup>**

In the matter of M/s. MCX Biz Solutions (hereinafter referred to as “MBS”) SEBI noticed that the entity was soliciting and collecting money from public and was promising high returns. Therefore SEBI undertook preliminary inquiries into the matter and it was observed that MBS is maintaining a website wherein it has claimed to be active in stock trading and commodities trading.

It was further observed that on its website MBS had displayed a sub-broker registration certificate showing it to have been issued by SEBI. The certificate was fake and MBS was observed to be not registered with SEBI as represented. Hence vide Order dated November 18, 2013, MBS and its sole proprietor Mr. Syed Sadaq were inter-alia restrained from accessing the securities markets and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner till further directions.

**11. MR. SUNIL KALE AND M/s. TRENDLINE TRADES ACADEMY<sup>33</sup>**

In another matter of sub broker Sri Sunil Kale, SEBI noticed that M/s. Trendline Traders Academy, of which Mr. Sunil Kale is the founder/director, had issued advertisement in Sakal newspaper dated April 28, 2013 claiming to double the money invested by an investor through it

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<sup>32</sup> WTM/RKA/MIRSD/46 /2013

<sup>33</sup> Sebi.gov.in. (2019). [online] Available at: [https://www.sebi.gov.in/sebi\\_data/attachdocs/1389855486231.pdf](https://www.sebi.gov.in/sebi_data/attachdocs/1389855486231.pdf) [Accessed 18 Apr. 2019].



in a year's time and also offered portfolio management services on its website without seeking the requisite registration under the SEBI Act and the Regulations. Hence vide Order dated November 18, 2013, Mr. Sunil Laxman Kale and M/s. Trendline Traders Academy were interalia restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner.

After the issuance of the Order, Mr. Sunil Laxman Kale attended personal hearing in the matter and interalia submitted that the activities alleged in the Order happened due to mistake, non-understanding and ignorance of rules and regulations of SEBI and also submitted that he had not done any activities in the nature of portfolio management services in the past and would not do so in future. Taking into account the submission of the sub-broker, the prohibitions and debarments regarding restraining Mr. Sunil Laxman Kale and M/s. Trendline Traders Academy from accessing the securities market etc. were discontinued vide Order dated December 31, 2013.

**IMF - INDIA FINANCIAL SYSTEM STABILITY ASSESSMENT—PRESS RELEASE AND STATEMENT  
BY THE EXECUTIVE DIRECTOR FOR INDIA<sup>34</sup>**

A report was released by the IMF on the financial stability on December 2017, in which I had looked into all the financial systems of the country including The SEBI.

**SEBI HAS MADE SIGNIFICANT EFFORTS TO ADDRESS THE RECOMMENDATIONS OF THE  
PREVIOUS FSAP.**

Amendments to the SEBI Act have granted SEBI additional investigative powers, created a special court that handles criminal cases filed by SEBI, and gave SEBI full authority to regulate pooled investment schemes exceeding Rs 1 billion. SEBI has also expanded its staff and the scope of its regulatory programs, and developed a risk-based assessment matrix. The two major registered securities exchanges, the Bombay Stock Exchange and the National Stock Exchange, have been successfully demutualized. The deregistration of the 21 regional exchanges is almost

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<sup>34</sup> IMF Country Report No. 17/3

complete, and companies meeting the new listing standards were transferred to a “Dissemination Platform.”

#### **COMPLIANCE WITH LISTING REQUIREMENTS COULD BE FURTHER ENHANCED.**

There is scope to improve the ongoing compliance and enforcement reviews of listed companies’ annual and periodic reports. Specifically, SEBI should develop a risk-based system for selective reviews of listed companies’ reports. The transfer of legal authority on public listed company reporting from the Ministry of Corporate Affairs to SEBI would greatly facilitate this process.

#### **THE REGULATORY AND SUPERVISORY FRAMEWORK FOR COMMODITIES MARKETS SHOULD BE UNIFIED.**

The current regulatory set-up is complex, with SEBI having responsibility on commodity derivatives markets, while central and state governments regulate commodity spot markets. Unifying the regulatory and supervisory framework for all commodities markets should be given priority as part of the authorities’ intention to develop a modernization plan for regional commodity spot markets.

#### **APPLICATION OF THE FMI PRINCIPLES TO FMIs:**

The RBI and SEBI should progress their plans to assess all the FMIs under their respective purview

#### **INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

SEBI is a member of the The International Organization of Securities Commissions Board, the governing and standard-setting body of the IOSCO, which is comprised of 34 securities regulators. The policy work of IOSCO is conducted by its eight policy committees under the aegis of the Board. SEBI is currently a member of 7 of these policy committees and chairs the Committee 1 on Issuer Accounting, Auditing and Disclosure.

SEBI is a member of IOSCO Assessment Committee, which is responsible for developing and delivering programs to identify and assess implementation of IOSCO's Objectives and Principles of Securities Regulation and other standards and policies set out in IOSCO reports or resolutions approved by IOSCO across the IOSCO membership. SEBI is currently the Chair of IOSCO

Assessment Committee and OIA is directly involved in all the work being generated by Assessment Committee.

SEBI is also a member of IOSCO Growth and Emerging Markets Committee (GEMC) and Asia Pacific Regional Committee (APRC).<sup>35</sup>

IOSCO MMoU represents a common understanding amongst its signatories about how they will consult, cooperate, and exchange information for capital market enforcement purposes. The MMoU sets an international benchmark for cross-border co-operation. Established in 2002, it has provided securities regulators with the tools for combating the cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.<sup>36</sup> SEBI is one of the signatories to the IOSCO MMoU.<sup>37</sup>

## CONCLUSION & SUGGESTIONS

The SEBI has a very wide range of powers. Some of these powers are of distortionary in nature. These discretionary often being questioned by the aggrieved. Few contend that the power to issue directions is arbitrary, few says that it is not constitutionally valid. But often the Supreme Court stands on the side of SEBI Act saying that, the discretionary power is subjected to the scope in the act. The preamble clearly says what, when and how. The powers to issue directions of the SEBI alone is a vast power conferred up on it. The above mentioned judicial decisions clarifies the scope of the power. The power to issue direction is growing day by day, this evident from the above mentioned instance of mallya. By looking into the recent amendments, regulations, cases it's evident that the powers of SEBI are being in a rapid. The range of the function are also expanding. The IMF has looked into all the relevant financial aspects of the nation and has stated necessary recommendations. The implementation of such recommendation will benefit the nation at large.

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<sup>35</sup> Sebi.gov.in. (2019). SEBI | Office of International Affairs (OIA). [online] Available at: <https://www.sebi.gov.in/department/office-of-international-affairs-36/oia-iosco.html> [Accessed 14 Apr. 2019].

<sup>36</sup> Iosco.org. (2019). OICV-IOSCO - Iosco.org. [Online] Available at: <https://www.iosco.org/about/?subsection=mmou> [Accessed 15 Apr. 2019].

<sup>37</sup> Iosco.org. (2019). OICV-IOSCO - Iosco.org. [Online] Available at: <https://www.iosco.org/about/?subSection=mmou&subSection1=signatories> [Accessed 15 Apr. 2019].