THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
EXECUTIVE PROGRAMME

(NEW SYLLABUS)

for

December, 2020 Examination

Securities Laws and Capital Markets

MODULE 2

PAPER 6

Students appearing in Examination shall note the following:

Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the SEBI, RBI & Central Government on or before six months prior to the date of the examination.

LESSON 1

Securities Contracts (Regulation) Act, 1956

Performance review of the commodity derivatives contracts
(SEBI Circular No. SEBI/HO/CDMRD/DNPMP/CIR/P/2020/21 February 04, 2020)

1. The primary objective of the commodity derivatives market is to provide credible future price signals to market participants and an effective platform for hedging the price risks. In order to ensure that the derivatives contracts are closely aligned to the physical markets, it is imperative to have a framework to evaluate the performance of these contracts based not merely on statistics regarding delivery and trade volumes but also on the strength of a comprehensive empirical assessment after considering all relevant information, pertaining to the performance of a derivative contract during the relevant period of time.

2. Keeping the above in view and in consultation with the Commodity Derivatives Advisory Committee (CDAC), the following has been decided:

   2.1. All recognized stock exchanges shall review the performance of all contracts traded on their exchanges, in commodity derivatives segment, as per the parameters laid down.
   2.2. The said performance review shall be consulted with the Product Advisory Committee (PAC) constituted in terms of SEBI Circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/89 dated August 07, 2019 on the subject of "Product Advisory Committee".
   2.3. The said performance review along with the methodology adopted in evaluation, if any, shall be disclosed by the stock exchanges on their website prominently.
   2.4. The said performance review shall be conducted on an annual basis for each financial year and shall be disclosed by 30th June of the following financial year.

3. The performance review of the commodity derivatives contracts shall be based on various parameters for each commodity as illustrated in Annexure-I of SEBI circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2020/21 dated February 04, 2020.

For Details: https://www.sebi.gov.in/legal/circulars/feb-2020/performance-review-of-the-commodity-derivatives-contracts_45897.html

CASE LAWS

1.	**21.02.2020**	**Pacific Finstock Ltd. (Appellant) vs. BSE Ltd. (Respondent)**	**Securities Appellate Tribunal**

For Listing of a security, the Listing norms as on date of Application filed alone is required to be consider but status of the directors/ promoters of the company are required to be considered on the date of the passing of the order on the listing application.

1. The appellant, being aggrieved by the order dated August 02, 2019 passed by the BSE

Limited ("BSE" for convenience) rejecting the listing application has filed the present appeal.

2. The facts leading to the filing of the present appeal is, that the appellant was a listed company on the Vadodara Stock Exchange and Ahmedabad Stock Exchange but subsequently it came on the Dissemination Board of the BSE and remained on the Dissemination Board for the last several years. Securities and Exchange Board of India ("SEBI" for convenience) issued a Circular dated October 10, 2016 by which the companies which were on the Dissemination Board were required to get their company listed on nationwide stock exchange or provide an exit opportunity to existing shareholders. In terms of this Circular, the appellant submitted a plan of action to BSE on February 16, 2017 and a revised plan of action was submitted on June 28, 2017. In the meanwhile, the appellant vide notice dated August 07, 2017 was identified as a suspected shell company. Against this notice, the appellant filed an Appeal No. 264 of 2017 before this Tribunal which was disposed of by an order dated September 29, 2017 directing the appellant to make a fresh application for direct listing of its securities which would be considered by BSE and which would further be subject to any order that may be passed by SEBI.

3. It transpires that the appellant filed a fresh listing application. During the pendency of the application the Whole Time Member ("WTM") passed an order dated October 26, 2017 directing BSE to consider the outcome of the forensic audit while considering the listing application. Accordingly, the appellants' application was kept in abeyance till the submission of the Forensic Audit Report. The WTM's order dated October 26, 2017 was subsequently confirmed by a confirmatory order dated August 02, 2018 against which the appellant filed an Appeal No. 295 of 2018 which was eventually dismissed as infructuous by an order dated March 07, 2019.

4. In the meanwhile, the promoters/ directors of the appellant company were debarred from accessing the securities market vide SEBI's order dated September 28, 2019 passed in the matter of Kavit Industries Ltd. This fact was brought to the notice of the appellant and sought clarification as to how the company is required to comply with the requirements for direct listing of its securities. It transpires that the company vide letter dated May 18, 2019 intimated that two of its directors have resigned with effect from April 15, 2019 and that SEBI vide its order dated February 13, 2019 has removed the tag of "suspected shell company". BSE after considering the aforesaid response, found that one of its promoters Shri Jayesh Raichandbhai Thakkar, continued to remain as the promoter of the company inspite of being debarred by SEBI vide order dated September 28, 2018 and, therefore, the direct listing requirements norms had not been complied with. Accordingly, the listing application was rejected.

5. Before the Tribunal the only ground urged is that the law which was applicable on the date when the listing application was filed on July 29, 2017 could alone be considered. There is no dispute on this proposition namely that the listing norms that was in force on the date when the application was filed was alone required to be considered. Subsequent norms or amended norms or regulations are not required to be considered. However, the status of the directors/ promoters of the company are required to be considered on the date of the passing of the order

on the listing application. If on the date when the listing application was being considered the promoters/ directors of the company committed default and thereby incurred a debarment from accessing the securities market then it was imperative upon the authority to consider such debarment while considering the listing application. In the instant case, the debarment was in direct conflict when the norms stipulated for considering the listing agreement. Such order of SEBI of debarment of one of the promoters was brought to the knowledge of the company. The said listing requirements norms were not rectified and consequently the BSE had no option but to reject the listing application. The said order does not suffer from any manifest error of law and requires no interference. The appeal fails and is dismissed.

2.	**03.12.2019**	**Karvy Stock Broking Limited (Appellant) vs. National Stock Exchange of India (Respondent)**	**Securities Appellate Tribunal**

1. By the present appeal the appellant is seeking quashment of the impugned order/circular dated December 2, 2019 issued by respondent National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE').

2. Vide the said circular respondent NSE had suspended the present appellant from its membership due to the alleged non compliance of the regulatory provisions of the Exchange with effect from 2nd December, 2019.

3. Upon hearing both sides, the Rules are framed by respondent NSE in exercise of the powers of the Section 9 of the SCRA. The appellant has equally efficacious remedy to challenge the impugned order before the relevant authority of the respondent NSE. In that view of the matter, SAT did not find any reason to entertain the appeal. Learned Senior counsel for the respondent submits that the appeal, if any, filed by the appellant with the respondent, they would be heard expeditiously by convening meeting of the relevant authority. There is no need to bypass the statutory Rules. At this stage, learned counsel for the appellant submits that the appellant may be provided with liberty to seek documents from the respondent. SAT did not find any hitch in acceding to the said request. The respondent shall supply the documents or grant inspection of the same relevant to the dispute.

4. For the reasons stated above, the appeal is disposed of. Appellant would be at liberty to file an appeal as provided by Rule 13A(d) of the NSE Rules. In case, if such an appeal is filed, appellant shall be heard as expeditiously as possible and in any event shall be decided by December 6, 2019. In case the relevant authority would not be able to decide the appeal within the period, the decision on the temporary stay to the impugned order may be taken by the relevant authority on or before December 6, 2019. No order as to costs.

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Lesson 2

Securities and Exchange Board of India Act, 1992

1	**02.06.2020**	**N. Ravichandran vs. SEBI**	**Whole Time Member, Securities Exchange Board of India**

SEBI, in special circumstance, permits Shri N. Ravichandran to subscribe for shares in the Rights Issue of Reliance Industries Limited.

Facts of the Case:

SEBI, in exercise of power under Sections 11, 11B and 11(4) of the SEBI Act, 1992, read with Regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992, had passed an Order ("the order") dated November 05, 2019, in the matter of KLG Capital Services Limited, whereby Shri N. Ravichandran, along with certain other entities, was inter alia debarred from buying, selling or otherwise dealing in securities market, in any manner whatsoever, or accessing the securities market, directly or indirectly, for a period of five years from the date of the Order, subject to setting off of the period of debarment already undergone by him in the matter.

SEBI is in receipt of an email dated May 28, 2020, sent on behalf of Shri N. Ravichandran by his advocates, M/s. Crawford Bayley & Co., whereby Shri N. Ravichandran has submitted inter alia that he currently holds shares of Reliance Industries Limited, which has recently announced its Rights Issue, which is open for subscription from May 20, 2020 and closes on June 03, 2020. Shri N. Ravichandran has requested SEBI for permitting him to apply for shares in the said Rights Issue. He has further requested SEBI for permission to convert certain physical share certificates held by him into demat form.

Order:

SEBI note that the abovementioned request regarding applying for shares in the Rights Issue of Reliance Industries Limited pertains to availing benefits of corporate action on the shares which Shri N. Ravichandran was already holding as on the date of the Order. SEBI further note that conversion of physical shares certificates into demat form does not dilute the restraint imposed on the Shri N. Ravichandran vide the Order in any manner. Considering the above, SEBI grants the following limited relaxations to Shri N. Ravichandran:

(a) Shri N. Ravichandran is permitted to subscribe to shares in the abovementioned Rights Issue of Reliance Industries Limited up to his entitlement accruing due to his shareholding in Reliance Industries Limited as on the date of the Order (i.e. November 05, 2019). However, Shri N. Ravichandra n shall not be permitted to subscribe to shares renounced by any other shareholder of Reliance Industries Limited in the abovementioned Rights Issue.

(b) Shri N. Ravichandran is permitted to convert the physical share certificates held by him, as on the date of the Order, into demat form, within 3 months of the date of this order.

(c) Except for subscribing to shares in the abovementioned Rights Issue and converting physical share certificates into demat form as permitted above, Shri N. Ravichandran shall continue to remain debarred from buying, selling or otherwise dealing in securities market, in any manner whatsoever, or accessing the securities market, directly or indirectly, till the debarment period as directed in the Order is over.

2.	**05.06.2020**	**Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (Noticee) vs. SEBI**	**Whole Time Member, Securities Exchange Board of India**

The Noticee cease and desist from acting as an Investment Adviser as it refused to refund the money so taken by it as service fee from complainant.

Facts of the Case:

SEBI had received a complaint against Mr. Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (hereinafter referred to as "Noticee"), a registered Investment Adviser (hereinafter referred to as "IA") inter alia alleging that a promise was made on behalf of the Noticee to the complainant assuring him a huge return of Rs. 28.80 lakh on a meagre investment of Rs. 20,000/- over a short period of 4 months and 10 days. Pursuant to such an assurance, an amount of Rs. 1,30,000/- was transferred by the complainant to the Noticee towards first installment of the service fee, out of total service fee of Rs. 4,47,200/- demanded by the Noticee in installments. However, after suffering loss on the very first day of availing the services of the Noticee, the complainant asked the Noticee to return the amount paid to him. As the Noticee refused to refund the money so taken by it as service fee and also stopped attending the phone calls of the complainant, a compliant was lodged with SEBI. The said complaint was forwarded to the Noticee for resolution and to submit an Action Taken Report (ATR) in the SEBI Complaints Redress System (SCORES).

Order:

In view of the foregoing findings and in the interest of investors and for the protection of their rights, SEBI issue following directions:

i. The Certificate of Registration as Investment Adviser bearing Registration number INA000009038 issued in favour of the Noticee is hereby cancelled.

ii. The Noticee shall forthwith cease and desist from acting as an Investment Adviser.

iii. The Noticee shall not use the term 'Investment Adviser' directly or indirectly in any manner whatsoever on the letter-head, on the website, signage board, or otherwise.

iv. The Noticee is debarred from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with securities market in any manner, for a period of 2 years and during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticee (s) shall remain frozen.

3.	**25.06.2020**	**M/s Beckons Industries Limited (Noticee) vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

It is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

Facts of the case: In this case, it is established that Beckons Industries Limited ("Noticee") by employing fraudulent arrangement with regard to subscription of GDRs had acted in a manner which is fraudulent and deceptive, thereby detrimental to the interest of investors in the Indian securities market. The Noticee defrauded the Indian investors by entering Pledge Agreement with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of Beckons by deliberately making false/misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at Beckon's disposal when in fact GDR issuance, was just a facade to create underlying equity shares without receipt of consideration. It is particularly evident from the established facts that the entire proceedings of GDR which was transferred in the EURAM's account of Noticee served as collateral to the loan taken by Vintage FZE ("Vintage") in subscribing GDR and such amount was ultimately transferred to the Noticee's Indian Bank Account, only as and when Vintage repaid the loan to EURAM. Thus, the manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. Therefore, SEBI found it appropriate to impose suitable penalty on the Noticee.

It is established that Beckons had deliberately and actively concealed the true and material facts and made false and misleading disclosures and also made misrepresentation of facts to the stock exchange and investors in its shares. Such acts on the part of the Listed Company cannot be viewed leniently.

Order:

SEBI imposed monetary penalty of Rs. 10,00,00,000/- on Beckons Industries Limited under 15HA of the SEBI Act alleging that the company issued the GDRs in a fraudulent way by way of credit agreement and account charge agreement, which was not disclosed to the stock exchanges and also made misleading disclosure to the stock exchanges that "it had successfully closed its Global Depository Receipts issue.." and thereby violated the provisions of section 12A (a),(b) and (c) of SEBI Act read with Regulation 3 (a) (b) (c) (d), 4 (1), 4 (2) (f) (k) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

4.	**30.06.2020**	**Mr. Gurmeet Singh ("Noticee-1"), Mr. I.S. Sukhija ("Noticee-2") and Mr. H. S. Anand ("Noticee-3") in the matter of Beckons Industries Limited vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

A basic premise that underlies the integrity of the securities market is that entities connected with the securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities.

Facts of the case:

In this case, it is established that Mr. Gurmeet Singh ("Noticee-1") and Mr. I.S. Sukhija ("Noticee-2") by employing fraudulent arrangement with regard to subscription of GDRs had acted in a manner which is fraudulent and deceptive, thereby detrimental to the interest of investors in the Indian securities market. The Noticees actively played a role in defrauding the Indian investors by entering Pledge Agreement with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of Beckons Industries Limited ("Beckons") by deliberately making false/misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at Beckon's disposal when in fact GDR issuance, was just a facade to create underlying equity shares without receipt of consideration. It is particularly evident from the established facts that the entire proceedings of GDR which was transferred in the EURAM's account of Beckons served as a collateral to the loan taken by Vintage FZE ("Vintage") in subscribing GDR and such amount was ultimately transferred to the Beckons' Indian Bank Account, only as and when Vintage repaid the loan to EURAM. Thus, the manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. Therefore, SEBI found it appropriate to impose suitable penalty.

Order:

In view of the above, it was alleged that the Noticees violated the provisions of section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 read with regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In this regard, SEBI imposed monetary penalty of Rs. 1 crore on Mr. Gurmeet Singh and Rs. 20 lakh on Mr. I.S. Sukhija, directors of Beckons Industries Limited for employed fraudulent arrangement with regard to subscription of GDRs and had acted in a manner which was fraudulent and deceptive, thereby detrimental to the interest of investor.

5	**22.06.2020**	**M/s Ashlar Commodities Private Limited (Noticee) vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice.

Facts of the case:

Ashlar Commodities Private Limited ('Noticee") was indulged in execution of alleged non genuine trades. It was observed from the trade log of the Noticee that it had traded in 530

unique contracts in the Stock Options segment of BSE during the relevant period, in which it has allegedly entered into non genuine trades in 528 contracts wherein it executed a total of 1154 trades out of which 1151 trades were allegedly non genuine trades which had resulted into creation of artificial volume of total 2,87,13,000 units in the given 528 contracts. It is further observed that the Noticee, by executing non genuine trades during the relevant period, registered a positive close out difference of ₹ 8,06,09,700. The trades entered by the Noticee were reversed on the same day within few minutes with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades were artificial and non-genuine in nature.

Order:

Taking into consideration all the facts and circumstances of the case, SEBI imposed monetary penalty of Rs. 84 lakh on Ashlar Commodities Private Limited under section 15HA of the SEBI Act for market abuse and fraudulent practices considering the fact that the trades of the company in 528 stock option contracts which resulted into artificial volume in range of 1% to 100%, generated out of the 528 non-genuine trades of the company and such trades had created a misleading appearance of trading in the scrip.

6.	**16.03.2020**	**G P Shah Investment Private Limited & Ors. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Facts of the case:

The present appeal has been filed against the order of the Adjudicating Officer, SEBI dated March 13, 2019 imposing a penalty of 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011" for convenience). This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement of an open offer for acquiring the shares of the target company.

Order:

SAT finds that no relief can be granted to the appellants as AO granted several opportunities but the appellants chose not to appear or file any reply. In the light of the aforesaid, SAT are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise. With regard to the quantum of penalty, SAT finds that the order of the Whole Time Member (WTM) directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, SAT did not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of ` 25 crores or three times the amount of profits could have been imposed. In view of the aforesaid, SAT do not find any merit in the appeal and the same is dismissed with no order as to costs.

7.	**01.12.2014**	**Vidharbha Industries Ltd. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Penalty under Section 15HB of SEBI Act, 1992 for not obtaining SCORES authentication

Facts of the case:

Appellant is aggrieved by the order passed by Adjudicating Officer (AO), SEBI on August 28, 2014. By that order the penalty of 2 lakh rupees was imposed on the appellant under Section 15HB of the SEBI Act, 1992 on ground that appellant had failed to comply with the requirements specified in SEBI circular dated April 17, 2013 for SCORES authentication.

Relevant facts are that SEBI had introduced an online electronic system for resolution of investors grievances i.e., SCORES in the year 2011. For the purpose of accessing the complaints of the investors against the companies as uploaded in the SCORES, listed companies were required to log in to SCORES system electronically through a company specific user id and password to be provided by SEBI.

Order:

Where a listed company fails to obtain SCORES authentication within the time stipulated by SEBI, then it amounts to violating the directions of SEBI and in such a case penalty is imposable under Section 15HB of SEBI Act which shall not be less than one lakh rupees but which may extend to one crore rupees.

Thus, in the present case, the AO had imposed penalty of Rs. 2 Lac which cannot be said to be arbitrary, excessive or unreasonable. Accordingly, the appeal was dismissed with no order as to costs.

8.	**01.07.2020**	**India Ratings and Research Private Ltd. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

SEBI can call for and examine records of any proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After making inquiry, SEBI may enhance the quantum of penalty imposed, if the circumstances of the case so justify.

Facts of the case:

The Adjudicating Officer by the impugned order dated 26th December, 2019 has imposed a penalty of Rs.25 lakhs upon the Appellant for violating the Code of Conduct to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 while granting credit rating to IL&FS for the financial year 2018-19.

SEBI issued a second show cause notice dated 28th January, 2020 by exercising powers under Section 15- I(3) of the SEBI Act directing the Appellant to show cause as to why penalty should not be enhanced as in their opinion the order of the Adjudicating Officer was not in the interest of the securities market.

"Under Section 15-I(3), the SEBI can call for and examine records of proceedings if it considers the orders passed by the adjudicating officer erroneous and not in the interests of securities markets. After examining the matter, the SEBI can enhance the quantum of penalty imposed."

Misc. Application no.159 of 2020 has been filed in Appeal no.103 of 2020 praying that proceedings initiated by SEBI pursuant to the second show cause notice dated 28th January, 2020 issued under Section 15-I(3) of the SEBI Act, should be stayed.

Order:

SEBI has the power to initiate proceedings under Section 15-I(3) of the SEBI Act. SAT directed the Appellant to deposit a sum of Rs.25 lakhs pursuant to the impugned order dated 26th December, 2019 before the Respondent within four weeks which would be subject to the result of the appeal. SAT further directed that the proceedings in pursuance to the second show cause notice dated 28th January, 2020 will continue and the Respondent will pass appropriate orders after giving an opportunity of hearing to the Appellant either through physical hearing or through video conferencing but any order that is passed by the Respondent shall not be given effect to during the pendency of this appeal. Misc. Application is accordingly disposed of.

9.	**12.02.2020**	**Shruti Vora (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

No duty cast upon the Adjudicating Officer to disclose or provide all the documents which are not relied upon while issuing Show Cause Notice

Appellant (Shruti Vohra) requested to the respondent (SEBI) to be allowed for the full inspection of other documents obtained during the investigation of the appellant and copies be supplied thereof. According to appellant, the inspection of the documents was only confined to the show cause notice and documents relied upon in the show cause notice. The core issue is whether the appellant is entitled for inspection and for supply of all the documents in possession of the adjudicating authority including those documents upon which no reliance has been placed by the Adjudicating Officer (AO) of the SEBI in the show cause notice. SAT observed that Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by 9 Adjudicating Officer) Rules, 1995 does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. Hence, there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.

10.	**16.06.2020**	***Aditya Omprakash Gaggar (Noticee)* vs. *SEBI***	**Adjudicating Officer, Securities Exchange Board of India**

Acts such as making UPSI available on a discriminatory basis will compromise the confidence of investors and has a serious impact on the price of the securities.

Facts of the case:

During November 2017, there were certain articles published in newspapers / print media

referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "UPSI") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, SEBI initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp.

Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 during the period of January 1, 2016 to February 10, 2016. It was observed that Bata India Ltd. had announced financial results for quarter and nine months ended on December 31, 2015 on February 10, 2016. The investigation inter alia revealed that Mr. Aditya Omprakash Gaggar (hereinafter also referred to as "Noticee") among other had communicated the UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for quarter ended December 2015 through WhatsApp messages from the WhatsApp chat of Ms. Shruti Vora.

Order:

The instant case before SEBI is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI when the messages are deleted and manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market gossips/rumors will compromise the confidence of investors and the activity of such kind has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. SEBI in the opinion that the peculiar nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

Thus, SEBI imposed a penalty of ₹15,00,000/- (Rupees Fifteen Lakhs only) on the Noticee viz., Mr. Aditya Omprakash Gaggar in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Sections 12 A (d) & 12 A (e) of the Securities and Exchange Board of India Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order.

11.	**25.02.2020**	**Zenith Highrise Infracon Ltd., Mr. Katyal banerjee (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Once allotment is made to less than fifty allottees by way of private allotment the first

proviso to Section 67(3) clearly makes it a private issue and not a public issue.

The appellant company raised its capital in the financial year 2012-2013 by allotment of Redeemable Preferential Shares ("RPS") of Rs. 100 each through private placement, that is, to friends and relatives of the members/ directors and raised an amount of Rs. 43,04,000 from 47 allottees. A list of the allottees was filed before the Registrar of Companies (ROC). Three allottees made complaints to SEBI in respect of issue of RPS with regard to non-inclusion of their names in the list submitted before the RoC. On enquiry of the SEBI it was observed that the company had raised an amount of Rs. 43,04,000 from 52 allottees whereas the RoC record showed allotment of RPS to 49 persons. Based on this discrepancy SEBI found that the RPS was made to 50 persons in violation of Section 67(3) of the Companies Act, 1956 and consequently the WTM directed the company and its directors to refund the monies collected through RPS along with interest at the rate of 15% per annum and further restrained the directors from associating them with any listed company which would operate from the date of completion of refund to the investors. The appellants being aggrieved by the order of the WTD of SEBI have filed the appeal. The appeal is allowed on the finding that no evidence has come forward to show that the company had made a public offer other than these 49 persons. Once allotment is made to less than fifty allottees by way of private allotment the first proviso to Section 67(3) clearly makes it a private issue and not a public issue. Consequently, there is no violation of the provisions of the Companies Act, 2013. Thus, the order of the WTM cannot be sustained and is quashed. The appeals are allowed.

12.	**27.02.2020**	**Mr. Sandeep Chatterjee (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Inordinate delay in appeal to Tribunal not allowed

The appellant were directed jointly and severally to refund the money collected through the issue of nonconvertible redeemable secured debentures to the allottees alongwith interest at the rate of 15% per annum and were further restrained from associating themselves with any listed public company for a period of four years or till the date of refund of money to the allottees. Further, there is a delay of 1181 days in filing the appeal to the tribunal in as much as the appeal was filed on February 6, 2020. Accordingly, an application of condonation of delay has also been filed by the appellant. The Application for condonation of the delay is rejected on account of inordinate delay in approaching the Tribunal, as a result of which the appeal is also dismissed.

CASE SNIPPETS

1. JM Financial Ltd's former vice president Atul Saraogi on July 16, 2020 had settled an alleged insider trading case with SEBI by paying an amount of Rs 15 lakh towards settlement charges. During the span of investigation, SEBI observed that Saraogi had entered into two off-market trades in shares of JMFL and had not obtained pre-clearance from JMFL for the two off-market trades. Besides, he had entered the off-market transaction when the trading window was closed.

2. JHS Svendgaard Laboratories promoter Nikhil Nanda settled with SEBI a case of alleged violation of takeover norms by paying an amount of Rs 37.42 lakh towards settlement charges. Nikhil Nanda has submitted that due to the conversion of warrants into equity shares happened in a manner that resulted in the alleged default of Regulation 3(2) of the SEBI (SAST) Regulations, 2011, subsequently he filed a suo motu settlement application.
3. Shareholders of the Kapashi Commercials Ltd., a BSE Listed company, have settled with SEBI a case of alleged violation of takeover norms by paying over Rs 34 lakh amount towards settlement terms. They had filed an application with the SEBI proposing to settle the case for alleged violation of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in respect of change in their shareholding in Kapashi Commercials. It was alleged that the four individuals made delayed disclosures to the company and BSE about the change in their shareholding in Kapashi Commercials.
4. Northward Financial Planners (NFP) and its partners have settled with SEBI a case related to alleged violation of Investment Advisers regulations upon payment of Rs. 21.67 lakh towards settlement charge. NFP and partners were carrying on investment advisory activities since F.Y. 2013-14 and filed application for SEBI registration after a delay of over 4 years and continued to carry on investment advisory activity without seeking registration.
5. Manappuram Finance Limited (MFL), its directors and compliance officer have settled the proceedings with SEBI, without admitting or denying the findings of facts and conclusions of law, upon payment of Rs. 5.25 crore towards settlement charge. They allegedly communicated unpublished price sensitive information to market participants before the same was disclosed to the exchange and failed to supervise the implementation of code of conduct under Insider Trading Regulations.
6. Ms. Priyanka Jain, compliance officer of Ambit Capital has settled the proceedings through a settlement order with SEBI upon payment of Rs. 15,30,000 in the matter of Manappuram Finance Limited (MFL) where MFL had selectively given guidance pertaining to quarterly results to certain analyst of Ambit Capital and Compliance officer of Ambit Capital failed to implement the code of conduct in violation of regulations of SEBI Insider Trading Regulations.

LESSON 3
Depositories Act, 1996

SECURITIES AND EXCHANGE BOARD OF INDIA (DEPOSITORIES AND PARTICIPANTS) (AMENDMENT) REGULATIONS, 2020 (February 21, 2020)

In the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018-

(1) In regulation 79, the following explanation shall be inserted after sub-regulation (12), -

"Explanation:- For the purpose of these regulations, "pledge" includes re-pledge of securities for margin and / or settlement obligations of the client or such other purposes as specified by the Board from time to time".

For Details: https://www.sebi.gov.in/legal/regulations/feb-2020/sebi-depositories-and-participants-amendment-regulations-2020_46094.html

Margin obligations to be given by way of Pledge/ Re-pledge in the Depository System

(SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020)

1. SEBI had extensive consultations with Stock Exchanges, Clearing Corporation and Depositories and industry representatives of Trading Members (the "TM") / Clearing Members (the "CM") / Depository Participants (the "DP"), to devise a framework that mitigates the risk of misappropriation or misuse of client's securities available with the TM / CM / DP. The misappropriation or misuse would include use of one client's securities to meet the exposure, margin or settlement obligations of another client or of the TM / CM. The matter was also discussed in the Secondary Market Advisory Committee meeting.
2. With effect from June 01, 2020, TM / CM shall, inter alia, accept collateral from clients in the form of securities, only by way of 'margin pledge', created in the Depository system in accordance with Section 12 of the Depositories Act, 1996 read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 and the relevant Bye Laws of the Depositories.
3. Section 12 of the Depositories Act, 1996 read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 and the relevant Bye Laws of the Depositories clearly enumerate the manner of creating pledge of the dematerialised securities. Any procedure followed other than as specified under the aforesaid provisions of law for creating pledge of the dematerialised securities is prohibited. It is clarified that an off-market transfer of securities leads to change in ownership and shall not be treated as pledge.
4. Transfer of securities to the demat account of the TM / CM for margin purposes (i.e. title transfer collateral arrangements) shall be prohibited. In case, a client has given a power of attorney in favour of a TM / CM, such holding of power of attorney shall not be considered as equivalent to the collection of margin by the TM / CM in respect of securities held in the demat account of the client.
5. Depositories shall provide a separate pledge type viz. 'margin pledge', for pledging client's securities as margin to the TM / CM. The TM / CM shall open a separate demat account for accepting such margin pledge, which shall be tagged as 'Client Securities Margin Pledge Account'.

6. For the purpose of providing collateral in form of securities as margin, a client shall pledge securities with TM, and TM shall re-pledge the same with CM, and CM in turn shall re-pledge the same to Clearing Corporation (CC). The complete trail of such re-pledge shall be reflected in the de-mat account of the pledgor.
7. The TM shall re-pledge securities to the CM's 'Client Securities Margin Pledge Account' only from the TM's 'Client Securities Margin Pledge Account'. The CM shall create a re-pledge of securities on the approved list to CC only out of 'Client Securities Margin Pledge Account'.
8. In this context, re-pledge would mean endorsement of pledge by TM / CM in favour of CM/CC, as per procedure laid down by the Depositories.
9. The TM and CM shall ensure that the client's securities re-pledged to the CC shall be available to give exposure limit to that client only. Dispute, if any, between the client, TM / CM with respect to pledge, re-pledge, invocation and release of pledge shall be settled inter-se amongst client and TM / CM through arbitration as per the bye-laws of the Depository. CC and Depositories shall not be held liable for the same.
10. Securities that are not on the approved list of a CC may be pledged in favour of the TM / CM. Each TM / CM may have their own list of acceptable securities that may be accepted as collateral from client.
11. Funded stocks held by the TM / CM under the margin trading facility shall be held by the TM / CM only by way of pledge. For this purpose, the TM / CM shall be required to open a separate demat account tagged 'Client Securities under Margin Funding Account ' in which only funded stocks in respect of margin funding shall be kept/ transferred, and no other transactions shall be permitted. The securities lying in 'Client Securities under Margin Funding Account' shall not be available for pledge with any other Bank/ NBFC.
12. The TM / CM shall be required to close all existing demat accounts tagged as 'Client Margin/ Collateral' by June 30, 2020. The TM / CM shall be required to transfer all client's securities lying in such accounts to the respective clients' demat accounts. Thereafter, TM / CM are prohibited from holding any client securities in any beneficial owner accounts of TM/CM, other than specifically tagged accounts as indicated above, and in pool account(s), unpaid securities account, as provided in SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019.
13. Clients having arrangements with custodians registered with SEBI for clearing and settlement of trades shall continue to operate as per the extant guidelines.
14. The operational mechanism for margin pledge is provided in Annexure A. The framework for utilisation of pledged clients' securities for exposure and margin is provided in Annexure B.
15. This circular is applicable for all securities in dematerialised form and which are given as collateral / margin by the client to TM / CM / CC by way of pledge and repledge.

For Details: https://www.sebi.gov.in/legal/circulars/feb-2020/margin-obligations-to-be-given-by-way-of-pledge-re-pledge-in-the-depository-system_46082.html

Implementation of Circular on 'Margin obligations to be given by way of Pledge / Re-pledge in the Depository System' – Extension.

(SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/88 dated May 25, 2020)

SEBI, vide circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020, specified guidelines with regard to Margin obligations to be given by way of Pledge/ Re-

pledge in the Depository System. The provisions of this circular were to come into effect from June 01, 2020.

In view of the situation arising due to Covid-19 pandemic, lockdown imposed by the Government, representations received from the Depositories and the Clearing Corporations and that the changes to the systems and software development still under progress, it has been decided to extend the implementation date of the aforesaid circular to August 01, 2020. Accordingly, in terms of paragraph 12 of the circular, the trading member (TM) / clearing member (CM) shall be required to close all existing demat accounts tagged as 'Client Margin / Collateral' by August 31, 2020.

However, the provision as specified in paragraph 4 of the aforesaid circular regarding holding of Power of Attorney by TM / CM not to be considered as equivalent to the collection of margin by TM / CM in respect of securities held in the demat account of the client, shall be applicable from June 01, 2020.

Further, with regard to paragraph 4 of annexure A regarding confirmation from the client / pledgor through OTP on mobile number / registered e-mail id or other verifiable mechanism, it is clarified that such confirmation shall be required only once from the client / pledgor at the time of initial creation of pledge in favour of TM / CM and subsequent repledging by TM / CM shall not require any further confirmation from the client / pledgor. Paragraph 4 of Annexure A of the aforesaid SEBI circular stands modified accordingly.

For Details: https://www.sebi.gov.in/legal/circulars/may-2020/implementation-of-circular-on-margin-obligations-to-be-given-by-way-of-pledge-re-pledge-in-the-depository-system-extension_46705.html

Implementation of provision regarding Power of Attorney in circular dated February 25, 2020 – Extension.

(SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/90 dated May 29, 2020)

SEBI, vide circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020, specified guidelines with regard to Margin obligations to be given by way of Pledge/ Repledge in the Depository System. The provisions of this circular were to come into effect from June 01, 2020.

Vide SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/88 dated May 25, 2020, it was reiterated that the provision as specified in paragraph 4 of the SEBI circular dated February 25, 2020 regarding holding of Power of Attorney by TM / CM not to be considered as equivalent to the collection of margin by TM / CM in respect of securities held in the demat account of the client, shall be applicable from June 01, 2020.

However, in view of the situation arising due to Covid-19 pandemic, lockdown imposed by the Government, representations received from stock brokers and stock broker associations regarding difficulty in implementing this provision in lockdown situation due to work in progress by Market Infrastructure Institutions, it has been decided to extend the implementation date of the aforesaid provision to August 01, 2020 and align it with the implementation of mechanism of pledge re-pledge through the Depository system.

For Details: https://www.sebi.gov.in/legal/circulars/may-2020/implementation-of-provision-regarding-power-of-attorney-in-circular-dated-february-25-2020-extension_46739.html

CASE LAWS

1	**29.11.2019**	**Central Depository Services (India) Limited ("CDSL"/"Noticee No. 1") and National Securities Depository Limited ("NSDL"/" Noticee No. 2") vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

Facts of the Case

In the matter of Kyra Landscapes Ltd. (KLL), Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated adjudication proceedings against Central Depository Services (India) Limited ("CDSL"/"Noticee No. 1") and National Securities Depository Limited ("NSDL"/" Noticee No. 2") (hereinafter together referred to as the "Noticees") under Section 19G of the Depositories Act, 1996 ("Depositories Act") for alleged violation of –

(1) SEBI Circular No. CIR/MRD/DP/24/2012 dated September 11, 2012 read with Circular No. CIR/MRD/ DP/21/2012 dated August 2, 2012, and

(2) Clause 1 of the Sixth Schedule of the Code of Conduct for Depositories read with Regulation 14(A) of the SEBI (Depositories and Participants) Regulations, 1996 ("DP Regulations 1996" - now repealed) read with Regulation 98 of the SEBI (Depository and Participants) Regulations, 2018 ("DP Regulations 2018") by CDSL and NSDL.

Order

SEBI on being satisfied from the submissions of the Noticees that they had followed the prevailing applicable law as laid out in the SEBI Circulars dated March 08, 2001 and SEBI Circular dated September 29, 2003, and the Regulation 78(2) of the ICDR Regulations, with regard to credit, lock–in and release of lock-in of demat securities of KLL.Hence, the allegations pertaining to violation of Clause 1 of the Sixth Schedule of the Code of Conduct for Depositories read with Regulation 14(A) of the DP Regulations 1996 read with Regulation 98 of the DP Regulations 2018 by the Noticees also do not stand established.

Accordingly, in view of the findings noted, the adjudication proceedings initiated against the Noticee vide SCN dated July 23, 2019 were disposed of.

2	**31.03.2020**	**Jaypee Capital Services Ltd (Noticee) vs. SEBI**	**Whole Time Member, Securities and Exchange Board of India**

Facts of the Case

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further

period of five years and the renewed certificate was valid till August 10, 2016.

SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to noncompliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various bye-laws of NSDL.

Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.

Order

The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs as given under third schedule read with Regulation 20AA of the DP Regulations. SEBI, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, cancelled the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-291-2008/IN-DPCDSL-368- 2006) with immediate effect.

LESSON 4

An overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SEVENTH AMENDMENT) REGULATIONS, 2019 (January 1, 2020)

In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-

I. in regulations 4, 29, 43, 44, 101, 127, 139, 140, 152, 156, 182, 186, 189, 201, 227, 250, 264 and 265, for the word "registering", wherever it occurs, the word "filing" shall be substituted.

II. in regulations 25 and 123, the words "registering or" shall be omitted

III. in regulations 25 and 123, for the word "registering", wherever it occurs, the word "filing" shall be substituted.

IV. in regulations 29, 127, 189 and 250, for the word "registered", the word "filed" shall be substituted.

V. in regulation 246, for the word "registration" the word "filing" shall be substituted.

VI. in Schedule V,-

i. in form C, for the word "registering" the word "filing" shall be substituted;
ii. in form C, for the word "registered" the word "filed" shall be substituted;
iii. in form D, for the word "registered" the word "filed" shall be substituted.

VII. in Schedule VI, Part A,-

i. for the word "registering" the word "filing" shall be substituted;
ii. in clause (7), in sub-clause (O), in para (d), for the word "registered" the word "filed" shall be substituted;
iii. in clause (14), in sub-clause (S), in para (6), for the word "registered" the word "filed" shall be substituted.

VIII. in Schedule XIII, in Part A,-

i. for the word "registering" the word "filing" shall be substituted;
ii. in clause (3), in sub-clause (c) for the word "registered" the word "filed" shall be substituted;
iii. in clause (14), for the word "registered" the word "filed" shall be substituted.

For details: https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-seventh-amendment-regulations-2019_45626.html

Streamlining the Process of Rights Issue

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated January 22, 2020)

1. The Securities and Exchange Board of India (SEBI), has simplified the rights issue process

to make it more efficient and effective, by amending the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations") and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Accordingly, following changes are made with respect to the Rights Issue process:

1.1 The period for advance notice to stock exchange(s) under Regulation 42(2) of LODR Regulations has been reduced from at least 7 working days to at least 3 working days (excluding the date of intimation and the record date), for the purpose of rights issue.

1.2. Issuance of newspaper advertisement disclosing date of completion of dispatch and intimation of same to the stock exchanges for dissemination on their websites, as per Regulation 84 (1) of ICDR Regulations, shall be completed by the issuer at least 2 days before the date of opening of the issue.

1.3. Introduction of dematerialized Rights Entitlements (REs) –

1.3.1. In the letter of offer and the abridged letter of offer, the issuer shall disclose the process of credit of REs in the demat account and renunciation thereof.

1.3.2. REs shall be credited to the demat account of eligible shareholders in dematerialized form.

1.3.3. In REs process, the REs with a separate ISIN shall be credited to the demat account of the shareholders before the date of opening of the issue, against the shares held by them as on the record date.

1.3.4. Physical shareholders shall be required to provide their demat account details to Issuer / Registrar to the Issue for credit of REs not later than two working days prior to the issue closing date, such that credit of REs in their demat account takes place at least one day before the issue closing date.

1.4. Trading of dematerialized REs on stock exchange platform –

1.4.1. REs shall be traded on secondary market platform of Stock exchanges, with T+2 rolling settlement, similar to the equity shares. Trading in REs on the secondary market platform of stock exchanges shall commence along with the opening of the issue and shall be closed at least four days prior to the closure of the rights issue.

1.4.2. Investors holding REs in dematerialized mode shall be able to renounce their entitlements by trading on stock exchange platform or off-market transfer. Such trades will be settled by transferring dematerialized REs through depository mechanism, in the same manner as done for all other types of securities

1.5. Payment mode - Application for a rights issue shall be made only through ASBA facility.

1.6. No withdrawal of application shall be permitted by any shareholder after the issue closing date.

2. The detailed procedures on the Rights Issue process are given at Annexure I of the circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated January 22, 2020 for due compliance. This circular shall be applicable for all rights issues and fast track rights issue where Letter of Offer (LoF) is filed with the stock exchanges on or after February 14, 2020. All entities involved in the Rights Issue process are advised to take necessary steps to ensure compliance with this circular including the procedures stated at Annexure I of this circular.

For Details: https://www.sebi.gov.in/legal/circulars/jan-2020/streamlining-the-process-of-rights-issue_45753.html

General Information Document

(SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/37 dated March 17, 2020)

Regulation 34(1) read with Schedule VI, Part E of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, inter alia specify that information which is of generic nature and not specific to the issuer be brought out in the form of a General Information Document (GID) as specified by the Board.

SEBI Circular dated October 23, 2013, specified the GID. However, the subsequent changes in laws, regulation and processes, necessitated changes in the GID.

In pursuance of the above, the generic disclosures to be brought out in the General Information Document are enumerated in the Annexure of the SEBI circular no. SEBI/HO/CFD/DIL1/CIR/P/2020/37 dated March 17, 2020.

For Details: https://www.sebi.gov.in/legal/circulars/mar-2020/general-information-document_46341.html

SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020 (June 16, 2020)

SEBI has notified amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as under:-

In regulation 172, in sub-regulation (3) for the words “six months” the words “two weeks” shall be substituted.

With this amendment the relevant provision of regulation 172(3) under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be read as;-

Eligibility Conditions for Qualified Institutions Placement

172(3) The issuer shall not make any subsequent qualified institutions placement until the expiry of two weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

For Details: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2020_46885.html

SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020 (June 22, 2020)

Rationale behind the amendment

Due to serious challenges faced by the corporate sector in the wake of developments related to COVID-19, SEBI has decided to provide an additional option to the existing pricing methodology for preferential issuance. In this regards SEBI has notified the Issue of Capital and Disclosure Requirements (Second Amendment) Regulations, 2020, whereby new regulation 164A to the SEBI (Issue of Capital and Disclosure Requirements), 2018 has been inserted which states pricing norms in the preferential issue of shares of companies having stressed assets.

"Pricing in preferential issue of shares of companies having stressed assets

164A. (1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) No allotment of equity shares shall be made unless the issuer company meets any two of the following criteria:

a) the issuer has disclosed all the defaults relating to the payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;
b) there is an Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019;
c) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to "D".

(3) The issuer company making the preferential issue shall ensure compliance with the following conditions:

a) The preference issue shall be made to a person not part of the promoter or promoter group as on the date of the board meeting to consider the preferential issue. The preference issue shall not be made to the following entities:
(i) undischarged insolvent in terms of the Insolvency and Bankruptcy Code, 2016;
(ii) 'wilful defaulter' as per the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
(iii) a person disqualified to act as a director under the Companies Act, 2013;
(iv) a person debarred from trading in securities or accessing the securities market by the Board; Explanation: The restriction under (iv) shall not apply to the persons or entities mentioned therein who were debarred in the past by the Board and the period of debarment is already over as on the date of the board meeting considering the preferential issue.
(v) a person declared as a fugitive economic offender;
(vi) a person who has been convicted for any offence punishable with imprisonment
A. For two years or more under any Act specified under the Twelfth Schedule of

the Insolvency and Bankruptcy Code, 2016

B. For seven years or more under any law for the time being in force:

Provided that such restriction shall not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment.

(vii) A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part.

(4) The resolution for the preferential issue and exemption from open offer shall provide for the following:

a) The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that already hold specified securities shall not be included in the category of 'public' for this purpose:

Provided that where the company does not have an identifiable promoter; the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

(5) The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.

(6) a) The issuer shall make arrangements for monitoring the use of proceeds of the issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer:

(i) The monitoring agency shall submit its report to the issuer in the format specified in terms of Schedule XI (with fields as applicable) on a quarterly basis until atleast ninety five percent of the proceeds of the issue have been utilized.

(ii) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.

(iii) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submit the same to the stock exchange(s) on which the equity shares of the issuer are listed.

b) The proceeds of the issue shall also be monitored by the Audit Committee till utilization of the proceeds.

(7) The allotment made shall be locked-in for a period of three years from the last date of trading approval.

(8) The statutory auditor and the audit committee shall certify that all conditions under sub-regulations (1), (2), (3), (4) and (5) of regulation 164A are met at the time of dispatch of notice for general meeting proposed for passing the special resolution and at the time of allotment."

For Details: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2020_46907.html

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LESSON 5

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2020 (January 10, 2020)

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, in regulation 17, in sub-regulation (1B), the number "2020" shall be substituted by the number "2022".

For Details: https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2020_45649.html

Format for Statement indicating Deviation or Variation in the use of proceeds of issue of listed non-convertible debt securities or listed nonconvertible redeemable preference shares (NCRPs)

(SEBI Circular No. SEBI/HO/DDHS/08/2020 dated January 17, 2020)

1. As per Regulations 52(7) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR Regulations'), a listed entity is required to submit to the stock exchange, a statement indicating deviation or variation, if any, in the use of proceeds of issue of non-convertible debt securities or non-convertible redeemable preference shares (NCRPs), from the objects stated in the offer document/Information memorandum.

2. SEBI vide circular no. CIR/CFD/CMD1/162/2019 dated December 24, 2019, has prescribed a format for the statement indicating deviation or variation in the use of proceeds of issue for entities whose specified securities are listed. It is felt that a similar format be issued for listed entities which have listed its non-convertible debt securities or NCRPs on the stock exchange(s).

3. Accordingly, it has been decided that listed entities which have issued nonconvertible debt securities or NCRPs, shall submit the statement indicating deviation or variation, if any, in the format placed at Annexure-A of circular no. SEBI/HO/DDHS/08/2020 dated January 17, 2020 on half yearly basis.

4. The salient features of the format are as under:

a. Applicability: The format for the statement indicating deviation or variation shall be applicable for funds raised by entities through issuance of non-convertible debt securities or NCRPs, which are listed.

b. Frequency of Disclosure: The statement indicating deviation or variation shall be submitted to the Stock Exchange(s) on half yearly basis within 45 days of end of the half year until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.

c. Role of the Audit Committee: The statement indicating deviation report shall be placed before the Audit Committee of the listed entity for review on half yearly basis and after such review, the comments of Audit Committee along with the report shall

be disclosed/submitted to the stock exchange, as part of the format.

In cases where the listed entity is not required to have an audit committee under the provisions of SEBI LODR Regulations or Companies Act, 2013, the word 'Audit Committee' shall be replaced with 'Board of Directors'.

5. The first such submission shall be made by the listed entities for the half year ended March 31, 2020; subsequent submissions shall be made on half yearly basis as explained above.

For Details: https://www.sebi.gov.in/legal/circulars/jan-2020/format-for-statement-indicating-deviation-or-variation-in-the-use-of-proceeds-of-issue-of-listed-non-convertible-debt-securities-or-listed-non-convertible-redeemable-preference-shares-ncrps-_45710.html

Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities.

(SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020)

SEBI has issued circular specifying the uniform structure for imposing fines as a first resort for non-compliance with certain provisions of the Listing Regulations, freezing of entire shareholding of the promoter and promoter group and the standard operating procedure for suspension of trading in case the non-compliance is continuing and/or repetitive. The stock exchange shall with having regard to the interests of investors and the securities market take action in case of non-compliance with the listing regulations and follow the standard operating procedure for suspension and revocation of suspension of trading of specified securities.

Henceforth, the stock exchanges shall, having regard to the interests of investors and the securities market:

a) Take action in case of non-compliances with the Listing Regulations as specified in Annexure I of the SEBI Circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020, and.

b) Follow the Standard Operating Procedure ("SOP") for suspension and revocation of suspension of trading of specified securities as specified in Annexure II of the SEBI Circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020. Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.

For Details: https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-_45752.html

CASE LAWS

1	**04.03.2020**	**Picturehouse Media Ltd. vs. Bombay Stock Exchange Ltd.**	**Securities Appellate Tribunal**

Penalty imposed for non-compliance of SEBI LODR Regulations on delay appointment of women director

The provisions of the LODR regulations require that every listed company should have a women director. The appellant hereby is a public listed company and one women director resigned and consequently the post became vacant which was require to be filled up by another woman under the LODR Regulations. Since there was a delay in appointing a woman director of the company, the penalty was imposed by BSE under LODR Regulations. The appellant has filed the appeal against the order passed by BSE imposing a penalty of Rs.7,59,920/- for violation of Regulations 17(1) and 19(1) and 19(2) of SEBI LODR Regulations, 2015. In the light of default committed by the appellant SAT did not find any error in the impugned order and dismissed the appeal.

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LESSON 6

An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020 (June 16, 2020)

SEBI has notified amendments to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as under:-

1. In regulation 3, in sub-regulation (2), the following new proviso shall be inserted before the existing provisos, namely –

"Provided that the acquisition beyond five per cent but upto ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company."

With this amendment the relevant provision of regulation 3(2) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 shall be read as;-

3(2) - No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulation.

Provided that the acquisition beyond five per cent but upto ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company

Rationale behind this amendment

As per regulation 3(2) any acquirer along with a person acting in concert, holding 25% stake (or more) in listed entities, were allowed to acquire further 5% stake in any financial year, without triggering open offer obligation under Takeover Code.

SEBI has granted one-time relaxation, allowing acquired and PAC to acquire 10% stake in listed companies, already holding 25% and more stake (but less than 75% stake), without triggering open offer obligation under Takeover Code in Financial Year 2020-21. The increase in limit is permitted only via a preferential issue of equity shares.

2. In regulation 6, in sub-regulation (1), the following shall be inserted after the first proviso, namely,-
"The relaxation from the first proviso is granted till March 31, 2021."

With this amendment the relevant provision of regulation 6(1) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 shall be read as;-
Voluntary Offer
6.(1) An acquirer, who together with persons acting in concert with him, holds shares or

voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding:

***Provided** that where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.*

The relaxation from the first proviso is granted till March 31, 2021.

Rationale behind this amendment

Earlier, a shareholder holding 25% or more of shares or voting rights was permitted to make a voluntary open offer, but only if he had not acquired any shares of the company via the creeping acquisition route in the preceding 52 weeks. That condition has now been relaxed till March 31, 2021.

For Details: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2020_46884.html

SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020 (June 22, 2020)

SEBI has notified amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as under:-

In regulation 10 a new sub-regulation (2B) inserted as:-

"any acquisition of shares or voting rights or control of the target company by way of the preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 **shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.**

Explanation: The exemption from the open offer shall also apply to the target company with infrequently traded shares which is compliant with the provisions of sub-regulations (2), (3), (4), (5),(6), (7) and (8) of regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of regulation 165 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018."

Rationale behind the amendment

Listed Companies coming up with preferential issues under Regulations 164(A) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 will not trigger mandatory open offers to be made by such investors, under Regulations 3 & 4 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

For Details: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2020_46908.html

Case Laws

1	**07.07.2020**	**M/s Sungold Capital Limited vs. SEBI**	**Whole Time Member, Securities and Exchange Board of India**

One of the principles underlying under SAST Regulations is exit opportunity to the public shareholders of the Target Company at the best price and accordingly, the provisions of SAST Regulations deals with offer price, that offer price in an open offer highest of the prices of shares of the Target Company derived through various methods.

Facts of the case:

The respective acquirers/PAC's after acquiring shares/voting rights of Sungold Capital Limited ("Target Company") beyond the threshold of initial/creeping acquisition have failed to make an open offer in terms of Regulation 10 and 11(1) of SAST Regulations, 1997, on, April 1, 2007 and September 14, 2007, respectively. As per Regulation 21(19) of SAST Regulations, 1997, the acquirer and the PAC's were jointly and severally liable for discharge of obligations under SAST Regulations, 1997.

SAST Regulations, 1997 has been repealed by Regulation 35(1) of SAST Regulations, 2011 and has been replaced by SAST Regulations, 2011. Regulation 35(2)(b) of SAST Regulations, 2011,provides that all obligations incurred under the SAST Regulations, 1997, including the obligation to make an open offer, shall remain unaffected as if the repealed regulations has never been repealed.

Therefore, the obligations to make open offer, incurred by the acquirers/PAC's under SAST Regulations, 1997, are saved and can be enforced against them by virtue of Regulation 35 of SAST Regulations, 2011.

Order:

SEBI directed acquirers/PAC's of the target company to make a public announcement of a combined open offer for acquiring shares of Sungold Capital Ltd., under Regulation 10 and 11(1) of the SAST Regulations, 1997, within a period of 45 days from the date when this order comes into force, in accordance with SAST Regulations, 1997. The acquirers/PAC's shall along with the offer price, pay interest at the rate of 10% per annum for delay in making of open offer, for the period starting from the date when the Noticees incurred the liability to make the public announcement and till the date of payment of consideration, to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

2.	**17.03.2020**	**Susheel Somani & Ors. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Penalty imposed by SEBI on violating SAST Regulations, further reduced by SAT considering it a technical breach Facts of the case: Aggrieved by the order of the Adjudicating Officer of the respondent SEBI dated December 27, 2017 imposing a penalty of Rs. 15 lacs for violation of provisions of public announcement of an open offer under Regulation 3(2) read with Regulation 13(1) of the SEBI (SAST) Regulations, 2011, the present appeal is preferred. The appellants contended before the AO that there was no violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulations, 2011 since the transfer was inter se between the promoters, the same was exempted from making a public announcement as provided by Regulation 10 of the SAST Regulations. As regard the exemption, the AO found that while Regulation 10 of the SAST Regulations provides for making disclosures to the stock exchanges and to the company within a period of two working days. In the present case, the appellants made the disclosures on 7th day as against the provisions of Regulation 29(3).
[Reg. 29(3) - the disclosures are required to be made within two working days]
Thus, technically the appellants were not exempted from making public announcement and, thus, are in violation of the relevant regulations. The AO has observed that as the condition of making disclosures within two working days is not fulfilled, the act was not fit for grant of exemption. In the circumstances, the penalty was imposed. The appellants made the disclosures though belatedly after five days as required by Regulation 29 of the SAST Regulations. Thus, it was a technical breach and, therefore, AO instead of imposing a penalty of Rs. 15 lacs, imposed a penalty of Rs. 5 lacs which would have been just and sufficient. The appeal was partly allowed.

3.	**07.09.2017**	**Mega Resources Ltd. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Ignorance of law will not excuse the appellant to escape the liability of violating the law
Facts of the case:
The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non compliance with the disclosure requirements in respect of acquisition of

shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. However, It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct.

Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs. Five Lakh to Rs. Twenty Five crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Order:

It is true that the maximum monetary penalty imposable for non disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. Five Lakh and by the amendment dated October 29, 2002 it is up to Rs. Twenty Five Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. Twenty Five Crore, SAT finds that the penalty of Rs. Fifty Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. Fifty Lakh is upheld and the appeal is dismissed.

4.	**16.03.2020**	**G P Shah Investment Private Limited & Ors. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Facts of the case:

The present appeal has been filed against the order of the Adjudicating Officer, SEBI dated March 13, 2019 imposing a penalty of 5 crores to be paid by the appellants jointly and severally, under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011" for convenience). This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement of an open offer for acquiring the shares of the target company.

Order:

SAT finds that no relief can be granted to the appellants as AO granted several opportunities

but the appellants chose not to appear or file any reply. In the light of the aforesaid, SAT are of the opinion that sufficient opportunity was given to the appellants to contest the matter which they failed to do so. Thus, remanding the matter back to the AO in the given circumstances does not arise. With regard to the quantum of penalty, SAT finds that the order of the Whole Time Member (WTM) directing the appellants to make a public announcement was issued as far back as on July 08, 2013 which after 7 years has not as yet been complied with. Considering the aforesaid and the admitted violations, SAT did not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of ` 25 crores or three times the amount of profits could have been imposed. In view of the aforesaid, SAT do not find any merit in the appeal and the same is dismissed with no order as to costs.

Lesson 8

SEBI (Delisting of Equity Shares) Regulations, 2009

Case Laws

1.	**19.06.2020**	Ronson Traders Limited (Applicant)	Whole Time Member Securities and Exchange Board of India

FACTS OF THE APPLICATION

Ronson Traders Limited ("RTL" / "Applicant" / "the company"), is a Non-Banking Financial Company incorporated under the Companies Act, 1956 on October 16, 1982, having its registered office at 9/1, R. N. Mukherjee Road, 5th Floor, Kolkata - 700 001. The equity shares of the applicant are listed on Calcutta Stock Exchange Limited ("CSE").

Securities and Exchange Board of India ("SEBI") received an application dated December 06, 2019 ("Application") from RTL seeking exemption / relaxation under Regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations") from strict enforcement of Regulation 27 of Delisting Regulations. Additional information and clarifications were also submitted by the applicant vide letters dated December 26, 2019, February 14, 2020 and June 15, 2020.

Regulation 27 of the Delisting Regulations permits delisting of equity shares of a small company from all recognised stock exchanges without having to follow the extensive procedure under Chapter IV of the Delisting Regulations, subject to the fulfilment of criteria specified therein.

Regulation 25A of the Delisting Regulations states that SEBI has the Power to relax strict enforcement of the regulations.

ORDER

In the interest of investors in securities and in exercise of powers under sections 11(1) and 11B of the SEBI Act,1992 and regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009, SEBI find it appropriate to grant the company i.e. Ronson Traders Limited, relaxation from the applicability of Regulation 8(1B)(i) (limited to the extent of compliance with minimum public shareholding norms) and Regulation 27(1)(a) (with regard to the net worth requirement) for the specific purpose of seeking voluntary delisting of its equity shares, subject to the conditions as specified in the order.

Lesson 11
SEBI (Prohibition of Insider Trading) Regulations, 2015

RECENT JUDGEMENTS AND DEVELOPMENTS:

- During the year 2018 it was came to the knowledge of the SEBI that several unpublished price sensitive information were circulated in private social media networking groups about certain companies ahead of their official announcements to the respective stock exchanges. This calls for immediate change in ongoing PIT Regulations with newer requirements like Policy for leak of unpublished price sensitive information, maintaining structure digital database of persons with whom information are shared, reward and incentive system for informants etc.
- In the matter of Insider Trading in the Scrip of Deep Industries Ltd., the SEBI during the investigation go beyond the prescribed definition of Connected Persons under the regulation and establishes relationships and nexus of persons, leak of information on the basis of social media network websites and KYC documents with intermediaries of suspected persons and entities involved in the insider trading.

CASE LAWS

1	**16.06.2020**	**Aditya Omprakash Gaggar (Noticee) vs. SEBI**	**Adjudicating Officer, Securities Exchange Board of India**

Acts such as making UPSI available on a discriminatory basis will compromise the confidence of investors and has a serious impact on the price of the securities.

Facts of the case:
During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "UPSI") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, SEBI initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp.

Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 during the period of January 1, 2016 to February 10, 2016.

It was observed that Bata India Ltd. had announced financial results for quarter and nine months

ended on December 31, 2015 on February 10, 2016. The investigation inter alia revealed that Mr. Aditya Omprakash Gaggar (hereinafter also referred to as "Noticee") among other had communicated the UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for quarter ended December 2015 through WhatsApp messages from the WhatsApp chat of Ms.Shruti Vora.

Order:

The instant case before SEBI is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI when the messages are deleted and manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market gossips/rumors will compromise the confidence of investors and the activity of such kind has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. SEBI in the opinion that the peculiar nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

Thus, SEBI imposed a penalty of ₹15,00,000/-(Rupees Fifteen Lakhs only) on the Noticee viz., Mr.Aditya Omprakash Gaggar in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Sections 12 A (d) & 12 A (e) of the Securities and Exchange Board of India Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order.

2	**06.07.2020**	**Mr. Amalendu Mukherjee (Noticee) in the matter of Ricoh India Limited vs. SEBI**	**Whole Time Member, Securities and Exchange Board of India**

The practice of insider trading is intended to be prohibited in order to sustain the investors' confidence in the integrity of the security market.

Facts of the Case:

The Noticee, Amalendu Mukhergee, traded through the account of Fourth Dimension Solutions Limited ("FDSL") in the scrip of Ricoh India Limited ("Ricoh") while in possession of UPSI during the period of UPSI. Noticee traded through the account of FDSL from August 14, 2014 to November 17, 2015. While trading so, the Noticee made a wrongful gain of Rs.1,13,56,118/- in the account of FDSL. Similarly, the Noticee wrongfully avoided a loss of Rs.1,16,77,892/- in the account of FDSL.

The Noticee is the Managing Director and Promoter, having shareholding of 73.23% in FDSL and control over its financials and operations. In view of,

a. improper conduct of insider trading

b. the fraud of manipulation of accounts of Ricoh with the involvement of FDSL and its Managing Director i.e, the Noticee, and

c. being the ultimate beneficiary as controlling promoter and dominant shareholder of FDSL.

d. for the protection of interest of investors relating to Ricoh, the corporate veil of FDSL requires to be lifted in the present facts and circumstances of the case.

As the corporate veil is lifted, the Noticee is also liable for the above discussed insider trading and its consequences. Therefore, Noticee is also individually liable for an amount of INR2,30,34,010/-and interest there on.

Order:
SEBI directed Fourth Dimension Solutions Limited (FDSL) Managing Director Amalendu Mukherjee to disgorge an amount worth over INR2,30,34,010/- for insider trading in the scrip of Ricoh India Ltd. The amount has to be paid along with 12 per cent interest within 45 days. In addition, Amalendu Mukherjee has been restrained from accessing securities markets for a period of seven years.

3	**16.07.2020**	**Mr. B Renganathan ('Noticee') in the matter of Edelweiss Financial Services Ltd. vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

Compliance officers are expected to discharge a responsible role in the corporate functioning. The standards of good compliance aid and build up good corporate governance to add value and confidence to the market and its investors.

SEBI, upon receipt of examination report from National Stock Exchange (NSE), conducted investigation in the dealings in the scrip of Edelweiss Financial Services Ltd. ('EFSL'/'Company') to examine the violation, if any, of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations, 2015') for the period of January 25, 2017 to April 05, 2017 ('Investigation Period'/'IP').

The Company is listed on NSE and Bombay Stock Exchange (BSE). It is observed that Mr. B Renganathan ('Noticee') was the compliance officer and Company Secretary of EFSL during IP. During the course of investigation, it was observed by SEBI that Ecap Equities Limited ('Ecap'), a wholly owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Private Limited ('AIMIN'), a fintech company, on April 05, 2017 by entering into a

share purchase agreement (SPA). The same was disclosed by EFSL to NSE and BSE on the same day. Further, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on January 25, 2017. Therefore, it was alleged that the acquisition of AIMIN by Ecap was a price sensitive information which had come into existence on January 25, 2017 upon signing of Term Sheet. Despite that, the Noticee, being the compliance officer of the company, failed to close the trading window during the period of January 25, 2017 to April 05, 2017. By his failure to close the trading window during this period, it is alleged that the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders mentioned in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. In view of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the 'SEBI Act'.

Order:

Adjudicating Officer, SEBI find non-compliance on the part of the Noticee by failing to close trading windows when necessary as per law. Therefore, there were repeated instances wherein the Noticee had failed to close the trading window. In view of the above the argument of the Noticee that there was no repetition of violation is not acceptable. Adjudicating Officer's considered view that a repetitive violation, in disregard to the applicable provisions of law, cannot be construed to be a technical violation.

After taking into consideration the facts and circumstances of the case, material/facts on record, the reply submitted by the Noticee, Adjudicating Officer imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order.

4	**27.06.2020**	**Dr. Udayant Malhoutra (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters.

Facts of the case:

The present appeal has been filed against an ex-parte order dated June 15, 2020 passed by the Whole Time Member ('WTM') of SEBI directing the appellant to deposit a sum of Rs. 2,66,59,215/-plus interest till date totaling Rs.3,83,16,230.73 in an Escrow Account towards notional loss allegedly avoided by him by using unpublished price sensitive information and further directed that the bank accounts / demat accounts of the appellant shall remain frozen till such time the amount is not deposited. The WTM further directed the appellant to show cause as to why an order of disgorgement should not be passed.

The facts leading to the filing of the present appeal is, that the appellant is the Chief Executive

Officer and Managing Director of a listed company known as Dynamatic Technologies Limited ('DTL') which is engaged in the manufacturing of aerospace, automotive and engineered products. The appellant has been the Managing Director since 1989. The charge leveled against the appellant is, that he had sold 51,000 shares of the company DTL on October 24, 2016 having inside knowledge of the price sensitive information, namely, the unaudited financial results of the quarter ending September 30, 2016. It was alleged that the financial results were approved by the Board of Directors on November 11, 2016 whereupon the price of the scrips of the company drastically went down. It was alleged that the appellant had inside information of the price sensitive information and, being a connected person had sold the shares and thus made a notional gain or averted a notional loss.

Order:

In the instant case, SAT do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 without considering the balance of convenience or irreparable injury. In the light of the aforesaid, the impugned order cannot be sustained and the same is quashed at the admission stage itself without calling for a counter affidavit except the show cause notice. The appeal is allowed.

LESSON 12
MUTUAL FUNDS

Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure
(SEBI Circular No. SEBI/HO/MRD1/DSAP/CIR/P/2020/29 dated February 26, 2020)

SEBI vide its Circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013, and CIR/MRD/DSA/33/2014 dated December 09, 2014 had permitted mutual fund distributors to use recognised stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund / Asset Management Companies.

Subsequently, SEBI vide its Circular no. SEBI/HO/MRD/DSA/CIR/P/2016/113 dated October 19, 2016 allowed SEBI Registered Investment Advisors (RIAs) to use infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/ Asset Management Companies on behalf of their clients, including direct plans.

In order to further increase the reach of this platform, it has been decided to allow investors to directly access infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/ Asset Management Companies.

Also, the recognised stock exchanges, clearing corporations and depositories may make necessary amendment to their existing byelaws, rules or regulations, wherever required.

Prior to the amendment, SEBI had permitted Mutual Fund Distributors and SEBI Registered Investment Advisors (RIAs) to use infrastructure of the recognised stock exchanges.

Accordingly, in order to further increase the reach of this platform now SEBI has allowed investors to directly access infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies.

For details: https://www.sebi.gov.in/legal/circulars/feb-2020/facilitating-transaction-in-mutual-fund-schemes-through-the-stock-exchange-infrastructure_46093.html

SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (AMENDMENT) REGULATIONS, 2020 (March 6, 2020)

In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, -

Regulation 26 (1) of SEBI (Mutual Funds) regulations, 1996 related to “Appointment of custodian” stating that the mutual fund shall appoint a Custodian to carry out the custodial services for the schemes of the fund and sent intimation of the same to the SEBI within 15 days of the appointment of the Custodian. The first proviso to sub-regulation (1) shall be substituted stating that in case of a gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in the custody of a custodian registered with the SEBI.

Formerly, in gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in custody of a bank which is registered as a custodian with the Board.

Whereas, with the said amendment, in gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in custody of a custodian registered with the Board.

Regulation 28(4) related to "Procedure for launching of schemes" shall be substituted stating that the sponsor or asset management company shall invest not less than 1% of the amount which would be raised in the new fund offer or Rs. 50 lakh, whichever is less, and such investment shall not be redeemed unless the scheme is wound up. However the investment by the sponsor or asset management company shall be made in such option of the scheme, as may be specified by the SEBI.

Formerly, sponsor or Asset Management Company could invest in the growth option of the scheme.

Whereas, with the amendment, sponsor or Asset Management Company now can made investment in such scheme as may be specified by the SEBI.

For Details: https://www.sebi.gov.in/legal/regulations/mar-2020/sebi-mutual-funds-amendment-regulations-2020_46259.html

Listing of Mutual Fund schemes that are in the process of winding up
(SEBI/HO/IMD/DF3/CIR/P/2020/086 May 20, 2020)

The SEBI has allowed listing of mutual fund units of the schemes that are in the process of winding up on the stock exchanges with immediate effect. This will allow Mutual Fund to list their units for those investors who wish to exit. **Exemplary Franklin Templeton Mutual Fund** had decided it would wind up six schemes - Franklin India Low Duration Fund, Franklin India Dynamic Accrual Fund, Franklin India Credit Risk Fund, Franklin India Short Term Income Plan, Franklin India Ultra Short Bond Fund and Franklin India Income Opportunities Fund - citing severe illiquidity and redemption pressures caused by the COVID-19 pandemic. This SEBI circular will allow Franklin Templeton Mutual Fund to list their units for those investors who wish to exit.

- **Changes made by SEBI**

1. Presently, in terms Regulation 32 of SEBI (Mutual Funds) Regulations, 1996 ("MF Regulations") and SEBI Circular no. SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, every close-ended scheme and units of segregated portfolio shall be listed on recognized stock exchanges.

2. As per MF Regulations, there are several steps envisaged with respect to winding up of Mutual Fund schemes before the scheme ceases to exist. During this process, such units can be listed and traded on a recognized stock exchange, which may provide an exit to investors.

   In terms of Regulation 31B(1) of the MF Regulations, the units of Mutual Fund schemes can be listed in the recognized stock exchange. Accordingly, the units of Mutual Fund schemes which are in the process of winding-up in terms of

Regulation 39(2)(a) of MF Regulations, shall be listed on recognized stock exchange, subject to compliance with listing formalities as stipulated by the stock exchange. However, pursuant to listing, trading on stock exchange mechanism will not be mandatory for investors, rather, if they so desire, may avail an optional channel to exit provided to them.

3. Initially, trading in units of such a listed scheme that is under the process of winding up, shall be in dematerialised form.
4. AMCs shall enable transfer of such units which are held in form of Statement of Account (SoA) / unit certificates.
5. Detailed operational modalities for trading and settlement of units of MF schemes that are under the process of winding up, shall be finalized by the stock exchanges where units of such schemes are being listed, in consultation with SEBI. The operational modalities shall include the following:
    a. Mechanism for order placement, execution, payment and settlement;
    b. Enabling bulk orders to be placed for trading in units;
    c. Issue related to suspension of trading, declaration of date for determining the eligibility of unit holders etc. in respect of payments to be made by the AMC as part of the winding up process;
    d. Disclosures to be made by AMCs including disclosure of NAV on daily basis and scheme portfolio periodically etc.
6. The stock exchange shall develop a mechanism along with RTA for trading and settlement of such units held in the form of SoA/ Unit Certificate.
7. The AMC, its sponsor, employees of AMC and Trustee shall not be permitted to transact (buy or sell) in the units of such schemes that are under the process of being wound up. The compliance of the same shall be monitored both by the Board of AMC and Trustee.

For Details: https://www.sebi.gov.in/legal/circulars/may-2020/circular-on-listing-of-mutual-fund-schemes-that-are-in-the-process-of-winding-up_46689.html

Participation of Mutual Funds in Commodity Derivatives Market in India

(SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/96 dated June 05, 2020)

1. In partial modification to SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/65 dated May 21, 2019, paragraph 3(iii) regarding holding of physical goods by mutual fund schemes, is modified as under:

"3(iii) No Mutual fund schemes shall invest in physical goods except in 'gold' through Gold ETFs.

However, as mutual fund schemes participating in ETCDs may hold the underlying goods in case of physical settlement of contracts, in that case mutual funds shall dispose of such goods from the books of the scheme, at the earliest, not exceeding the timeline prescribed below: -

a) For Gold and Silver: - 180 days from the date of holding of physical goods,

b) For other goods (except for Gold and Silver):

1) By the immediate next expiry day of the same contract series of the said commodity.
2) However, if Final Expiry Date (FED) of the goods falls before the immediate next expiry day of the same contract series of the said commodity, then within 30 days from the date of holding of physical goods."

All other conditions in the aforesaid circular shall remain unchanged.

Brief Analysis

Currently, investors are not allowed to invest in physical goods excluding gold through Gold Exchange Traded Funds (ETF). However, the market regulator SEBI believes that as mutual fund schemes participating in ETCDs may hold the underlying goods in case of physical settlement of contracts.

If that is the case, the SEBI has asked mutual funds to dispose of such goods from the books of the scheme, at the earliest. A detailed timeline has been given to Mutual funds for carrying disposal.

For Details: https://www.sebi.gov.in/legal/circulars/jun-2020/participation-of-mutual-funds-in-commodity-derivatives-market-in-india_46782.html

Investment by the sponsor or asset management company in the scheme.

(SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/100 dated June 12, 2020)

1.In terms of Regulation 28 (4) of SEBI (Mutual Funds) (Amendment) Regulations, 2020,the sponsor or asset management company is required to invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less in such option of the scheme, as may be specified by the Board.

2. In this regard, SEBI has prescribed that the above referred investment shall be made in growth option of the scheme. For such schemes where growth option is not available the investment shall be made in the dividend reinvestment option of the scheme. Further, for such schemes where growth option as well as dividend reinvestment option are not available the investment shall be made in the dividend option of the scheme.

Rationale behind the Amendment

This will ensure that the money remains within the scheme, whether in growth or reinvestment option. The idea is that the corpus remains with scheme instead of it being paid out as dividend. This is to fence the unit holders in case there is wind up. This will provide some cushion to the unit holder in such conditions.

For Details: https://www.sebi.gov.in/legal/circulars/jun-2020/investment-by-the-sponsor-or-asset-management-company-in-the-scheme_46848.html

Case Laws

1	**09.07.2020**	**Mr. Mayank Prakash** **In the matter of Fixed Maturity Plans Series 127 & 183 of Kotak Mahindra Mutual Fund**	**Adjudicating Order,** **Securities and Exchange Board of India**

Facts of the case

Securities and Exchange Board of India (hereinafter be referred to as, the "SEBI"), initiated adjudication proceedings under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "SEBI Act") for the violations of various provisions of SEBI (Mutual Funds) Regulations, 1996 (hereinafter be referred to as, the "MF Regulations") and various Circulars issued thereunder, alleged to have been committed by Mr. Mayank Prakash (hereinafter be referred to as, the "Noticee ").

Kotak Mahindra Mutual Fund (hereinafter be referred to as, the "Kotak MF") is a mutual fund having a certificate of registration granted by SEBI, which offered certain Fixed Maturity Plans (hereinafter be referred to as, the "FMP") viz. FMP Series 127 and Series 183 inter alia.

Kotak Mahindra Asset Management Company Limited (hereinafter be referred to as, the "Kotak AMC") is the asset management company of Kotak MF. Noticee 6 was fund managers of the two Fixed Maturity Plans (hereinafter be referred to as, the "FMP") schemes, i.e. FMP Series 127 & 183 who decided to invest in securities.

Regulation 25(6B) of the MF Regulations provide that, "The fund managers (whatever the designation may be) shall ensure that the funds of the schemes are invested to achieve the objectives of the scheme and in the interest of the unit holders."

In the context of investments made by FMP 127 and FMP 183, Mr. Mayank Prakash, being fund manager of the aforesaid schemes of Kotak AMC, was alleged to have –

(i) failed to ensure that the funds of the FMPs were invested to achieve the objectives of the FMPs and in the interest of the unit holders with the high standards of service and due diligence required of them, thus violating Regulation 25(6B) of the MF Regulations.

(ii) failed to ensure that the basis for taking individual scrip-wise investment decisions were recorded or that detailed research reports for each investment decision for initial and subsequent investments were prepared, and that the funds of the schemes were invested to achieve the objectives of the scheme and in the interest of the unit holders, thus violating Regulation 25(6B) of the MF Regulations read with SEBI Circular: MFD/CIR/6/73/2000 dated July 27, 2000.

In response to the SCN, Noticee replied vide letter dated August 21, 2019 that he had

resigned as an employee of Kotak AMC effective close of business hours on August 12, 2015. Since August 13, 2015 till date, Noticee is employed with BNP Paribas Asset Management India Private Limited.

Kotak AMC also confirmed the in its letter dated October 23, 2016 that the Noticee resigned from the services of the AMC with effect from August 12, 2015 and hence was not involved as Fund Manager of the referred FMP schemes. As such, he was neither involved in the decision to invest nor at the time of the said investment.

Order of SEBI

SEBI note from the reply of the Noticee that he had resigned from the services of the Kotak AMC with effect from August 12, 2015. As Noticee was not the fund manager in respect of relevant transaction, Noticee cannot be held responsible under Regulation 25(6B) of the MF Regulations for ensuring that the funds of the schemes are invested to achieve the objectives of the scheme and in the interest of the unit holders. In view of the above, SEBI find that the Noticee cannot be held to have violated Regulation 25(6B) of the MF Regulations read with SEBI Circular: MFD/CIR/6/73/2000 dated July 27, 2000. In light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticee vide SCN dated May 16, 2019 are disposed of.

2	**04.03.2020**	**Onelife Capital Advisors Limited**	**Final Order,** **Securities and Exchange Board of India**

Facts of the case

Securities and Exchange Board of India (hereinafter referred to as "SEBI") was in receipt of an application dated March 16, 2018 from Onelife Capital Advisors Limited (hereinafter referred to as "Onelife") wherein Onelife offered to takeover equity shares of Sahara Asset Management Company Private Limited (hereinafter referred to as "Sahara AMC") and become sponsor of Sahara Mutual Fund.

The application was returned on April 06, 2018 as Onelife did not fulfill the eligibility criteria to become sponsor of a mutual fund as mandated in regulation 7(a)(iv) of the SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as "MF Regulations").

SEBI vide order dated April 11, 2018 inter alia had directed Sahara Mutual Fund to wind up all its schemes by April 21, 2018 other than the Sahara Tax Gain Fund which was permitted to continue till July 27, 2018.

Sahara AMC and others and Onelife filed an appeal before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"), challenging SEBI order dated April 11, 2018.

Meanwhile, Onelife re-submitted the application on April 17, 2018 after fulfilling the eligibility stipulated under regulation 7(a)(iv) of the MF Regulations.

Hon'ble SAT directed SEBI to dispose of the application of Onelife by April 24, 2018. SEBI vide its letter dated April 24, 2018 returned the application stating that Onelife is not a SEBI approved Asset Management Company and that the timeline for completing the process of transfer of business of Sahara Mutual Fund to SEBI approved Asset Management Company had expired.

Subsequently, Hon'ble SAT vide its order dated May 03, 2018, issued the following directions:

1. Onelife to make a fresh application on or before May 10, 2018 for seeking approval of SEBI for being sponsor by purchasing its 100% equity capital of Sahara AMC.

2. If such an application is made on or before May 10, 2018, SEBI shall consider the said application on merits and in accordance with law.

3. If the application is made on or before May 10, 2018, then, till the decision on said application is communicated to the appellants and one week thereafter, SEBI shall not enforce the orders impugned in these two appeals (Appeal nos. 127 of 2018 and 128 of 2018).

The present application was filed by Onelife on May 07, 2018.

Show Cause Notice

Consequent to the examination of the application dated on May 07, 2018 filed by Onelife, a Show Cause Notice (hereinafter referred to as "SCN") dated July 26, 2019 was served on Onelife in the extant matter to show cause as to why its application dated on May 07, 2018 to become the sponsor of Sahara Mutual Fund should not be rejected.

Findings and Consideration

SEBI has accepted the said application for withdrawal dated May 7, 2018 to act as a Sponsor of Sahara Mutual Fund. The issue at hand is to determine whether Onelife is eligible to act as a Sponsor of Sahara Mutual Fund as SEBI has prima facie found that Onelife is not in compliance with regulation 7 (d) of MF Regulations.

In light of Onelife's decision to withdraw its application dated May 7, 2018 and the acceptance of the same, the consideration of the present show cause on merits does not arise. In other words, as the application to act as a Sponsor of Sahara **Mutual Fund has** been decided to be withdrawn and the same has been accepted by SEBI, the extant proceedings becomes infructuous and therefore, the issue mentioned above does not arise for

consideration as the proceedings has become infructuous.

Order

In the facts and circumstances of the case, SEBI, in exercise of the powers conferred in terms of Section 19 read with Sections 11 and 11B (1) of the Securities and Exchange Board of India Act, SEBI concluded the instant proceedings as infructuous and accordingly the show cause notice dated July 26, 2019 against Onelife Capital Advisors Limited (PAN: AAACO9540L) stands disposed of.

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Lesson 13
Collective Investment Schemes

Case Laws

1	**05.06.2020**	• ***Dairyland Plantations (India) Limited* – Noticee No. 1** • **Mrs. Roshan D. Nariman – Noticee No. 2** • **Ms. Taz N. Nariman – Noticee No. 3** • **Ms. Jeroo Nariman – Noticee No. 4** • **Mrs. Silloo R. Nariman – Noticee No. 5** • **Mr. Urvaksh Naval Hoyvoy – Noticee No. 6** • **Mrs. Shernaz Kershasp patel – Noticee No. 7** • **Mrs. Meher Khushru Patel – Noticee No. 8** • **Mrs. Rukhshana Meher Anklesaria – Noticee No. 9**	**Whole Time Member** **Securities and Exchange Board of India**

Facts of the Case:

Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination into the business activities being carried out by Dairyland Plantations (India) Limited (hereafter referred to as "Company/DPL/Noticee no.1"). The examination of the business activities of the Company revealed that the Company had launched a scheme named as Green Gold Bonds scheme (hereinafter referred to as "Scheme") which apparently possessed the requisite ingredients of a collective investment scheme (hereinafter referred to as "CIS"). It was noticed that the said Scheme entailed a one-time payment of Rs. 5 000 in lieu of a unit of 5 Teakwood trees with a holding period of 20 years and on maturity, the contributor/ investor had the option to get the teak trees or the realised sale proceeds thereof. The examination of the details of the scheme further revealed that the Company had mobilised approx. Rs. 1,00,82,000/- (Rs One Crore and Eighty-Two Thousand) from 1660 contributors/investors. It was observed that the Scheme was launched by the Company during the period from 1992 to 1996 and during the said period as well as subsequently thereafter during the operation of the Scheme, the Noticees no. 2 to 9 were its Directors and were responsible for the affairs of the management of the business of the Company. It was also noticed that the said Scheme was being carried on without obtaining registration from SEBI, in violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and SEBI (Collective Investment Schemes) Regulations, 1999 (hereafter referred to as "CIS Regulations").

It is noted that Section 12 (1B) of SEBI Act, which came into effect on January 25, 1995 prohibited a person from carrying out any CIS, unless he obtains registration from SEBI. However, the section permitted existing entity who were carrying out CIS activities prior to the commencement of the aforesaid provision to continue with the existing scheme till Regulations governing CIS are promulgated. Subsequently a separate CIS Regulations of SEBI was enacted which came into force on October 15, 1999 in terms of which, all the existing CIS (prior to the commencement of CIS Regulations) were required to apply for registration or else, were required to wind up the existing CIS after making repayment to the contributors/investors and also were further required to file a Winding Up and Repayment report (hereinafter referred to as "WRR") with SEBI in terms of the said CIS Regulations. Accordingly, various companies including the Noticee Company, which were running CIS schemes at the time of promulgation of the afore-stated CIS Regulations, were asked vide several letters and public notices, to abide by the provisions of the CIS Regulations and submit their compliance reports as mandated under the said Regulations. However, the Noticee Company neither obtained provisional registration, nor applied for registration of its CIS Scheme by the prescribed date of March 31, 2000, and did not even take necessary steps for winding up of the Scheme. Therefore, a Show Cause Notice dated May 12, 2000 (hereinafter referred to as "SCN") was issued to the Company calling upon it to show cause as to why suitable directions shall not be issued against it for continuing with its CIS activities, in violations of the provisions of SEBI Act r/w the CIS Regulations.

Order:

SEBI issue following directions:-

a) The Noticee Company shall, within a month from the date of issue of this order, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, mentioning in bold letters the name of the Scheme i.e 'Green Gold Bonds Scheme' in the said News Papers and inviting complaints/claims from any investor in respect of the said Green Gold Scheme from contributors/investors that are still outstanding. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their complaints/claims, with the superscription "Complaints/Claims in the Matter of Dairyland Plantations (India) Ltd.", to SEBI.

b) A period of one month from the date of the advertisement shall be provided to contributors/investors for submitting any claim/complaint as stated aforesaid.

c) The Company shall furnish to SEBI the details of the investors viz; name of the investors, amount invested, year of investment, address and other material information etc., within a period of 15 days from the date of this order.

d) An interest bearing escrow account shall be opened by the Noticee Company in a nationalised public sector bank and the entire outstanding amount payable to the investors

under the above stated Scheme shall be transferred/deposited to this escrow account within one month from the date of this order.

e) The Company shall wind up its existing CIS and refund the money collected by the Company under the Scheme to the contributors/investors which are due to them strictly as per the terms of offer of the scheme. Those investors who want to opt for repayment in the form of 5 Teak-wood trees and not in cash, the Noticees shall refund them in the form of Teak-wood Trees on a best efforts basis but in the event the repayments cannot be made in the form of Teak-wood trees for want of permission/authorisation to cut the trees or any other genuine hardships, those investors shall also be repaid their dues in cash as per the terms of the scheme. All the monetary refunds to the contributors/investors shall be made through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non-Transferable") or through any other appropriate banking channels such as NEFT or RTGS with appropriate audit trail.

f) The present incumbent Directors (Noticees no. 4 to 6) shall ensure that the aforesaid directions are complied with.

g) Noticee Company and present incumbent Directors shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, contributors/ investors so refunded and other details of escrow account duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to the investors, bank account statements of the Company indicating refunds so made to the investors and receipts taken from the investors acknowledging such refunds along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, within a period of six (06) months from the date of this Order.

h) Any amount remaining balance in the aforesaid escrow account after making repayment to contributors/ investors, shall be transferred to Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009 after a lapse of 1 year from the date of this order.

i) All the Noticee Directors along with the Company (Noticee No.1) except for the Noticee no. 2 and 3 (against whom the proceedings stand abated on account of death), are restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of one (01) year with effect from the date of filing of WRR to SEBI. It is clarified that during the period of restraint, the existing holding of securities of the Noticees including units of mutual funds, shall remain frozen.

j) In the event the Noticee Company and the present Directors fail to carry out the directions issued at sub-paragraph (a) to (h) above or any complaint is received hereinafter suggesting

that the Company has failed to pay all the dues to the investors, the Noticee Company and its Directors (Noticees no. 4, 6, 7, 8 and 9) shall be jointly and severally liable to refund to the contributors/ investors such amounts in the manner provided under the direction in sub-para (e) above within a period of 03 months from the end of the six (06) months as directed under sub-para (g) above.

k) The Noticee Company and its present Directors shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the Company except for the purpose of making refund to its investors as directed above.

l) The Noticee Company and Director Noticees no. 4, 6, 7, 8 and 9 shall provide inventory of details of all their assets (movable and immovable) within a period of one (01) month from the date of this order.

2	**25.02.2019**	***Nicer Green Housing Infrastructure Developers Ltd. &Ors. (Appellant)* vs. *SEBI (Respondent)***	**Securities Appellate Tribunal**

In the absence of any evidence that the appellants had refunded and that they are ready and willing to pay the balance amount to investors in a time bound manner, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations.

Facts of the case:

The Nicer Green Housing Infrastructure Developers Ltd., Appellant No. 1 is a company incorporated under the Companies Act, 1956 as a public limited company and is engaged in the business of acquiring agricultural land and developing the same for the purpose of re-sale. SEBI found that the activity of fund mobilization by the appellant no. 1 under its scheme fell within the ambit of "Collective Investment Scheme" as defined under Section 11AA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act').

SEBI issued an order dated November 9, 2015 under Section 19 read with Sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 issuing a slew of directions restraining the appellant and its directors from collecting any money from the investors or to launch or to carry out any investments schemes.

SEBI further directed to refund the money collected under its scheme to the investors and thereafter wind up the company. The appellants being aggrieved by the said order filed an Appeal before the Securities Appellate Tribunal wherein the appellants contended that they are

ready and willing to comply with the order passed by SEBI contending that out of an amount of Rs. 31.71 crore collected the appellants have already refunded Rs. 27.48 crore and that the appellants are ready and willing to refund the balance amount in a time bound manner.

Order:

SAT finds that no proof has been filed either before SEBI or even before this Tribunal to show that the appellants had refunded a sum of Rs. 27.48 crore and that they are ready and willing to pay the balance amount in a time bound manner. In the absence of any evidence being filed, SAT is of the opinion that there is no infirmity in the order passed by SEBI disposing of their representations. The appeal lack merit and is dismissed summarily.

LESSON 14

SEBI (Ombudsman) Regulations, 2003

SEBI launches mobile application for lodging investor grievances
(Press Release No.14/202 dated March 05, 2020)

In its efforts to improve the ease of doing business, SEBI today launched a Mobile Application for the convenience of investors to lodge their grievances in SEBI Complaints Redress System (SCORES).

Launching the mobile app, "SEBI SCORES", Shri Ajay Tyagi, Chairman, SEBI said "SCORES mobile app will make it easier for investors to lodge their grievances with SEBI, as they can now access SCORES at their convenience of a smart phone. The Mobile App, I am sure, will encourage investors to lodge their complaints on SCORES rather than sending letters to SEBI in physical mode". "This is another effort of SEBI in improving digitalization in securities market", he added. Whole Time Members, Executive Directors and other officials from SEBI were also present on the occasion.

The App has all the features of SCORES which is presently available electronically where investors have to lodge their complaints by using internet medium. After mandatory registration on the App, for each grievance lodged, investors will get an acknowledgement via SMS and e-mail on their registered mobile numbers and e-mail ID respectively. Investors can, not only file their grievances but also track the status of their complaint redressal. Investors can also key in reminders for their pending grievances. Tools like FAQs on SCORES for better understanding of the complaint handling process can also be accessed. Connectivity to the SEBI Toll Free Helpline number has been provided from the App for any clarifications/help that investors may require.

SCORES is a platform designed to help investors to lodge their complaints online with SEBI, pertaining to securities market, against listed companies, SEBI registered intermediaries and SEBI recognized Market Infrastructure Institutions. Since its launch in June 2011, SEBI on an average has received about 40,000 complaints every year. A total of 3,57,000 complaints has been resolved using SCORES platform, so far. As per SEBI norms, entities against whom complaints are lodged are required to file an Action Taken Report with SEBI within 30 days of receipt of complaints.

The Mobile App "SEBI SCORES" is available on both iOS and Android platforms.

For Details: https://www.sebi.gov.in/media/press-releases/mar-2020/sebi-launches-mobile-application-for-lodging-investor-grievances_46217.html

Case Laws

1.	**17.03.2020**	**Usha India Limited. (Noticee) vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

Fact of the Case:
Securities and Exchange Board of India (hereinafter referred to as, "SEBI") vide Circular No.

CIR/OIAE/2/2011 dated June 03, 2011, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter referred to as, "SCORES") authentication and also redress any pending investor grievances in that platform only. Subsequently, SEBI also vide Circulars No CIR/OIAE/1/2012 dated August 13, 2012, No. CIR/OIAE/1/2013 dated April 17, 2013 and No CIR/OIAE/1/2014 dated December 18, 2014, (hereinafter referred to as, "SEBI circulars") inter alia directed all companies whose securities were listed on Stock Exchanges to obtain SCORES authentication within a period of 30 days from the date of issue of this circular and also to redress the pending investor grievances within the stipulated time period. It was alleged that Usha India Limited (hereinafter referred to as, "Noticee/Company") had failed to obtain the SCORES authentication and to redress investor grievances pending therein within the timelines stipulated by SEBI, therefore not complying with the aforesaid SEBI Circulars.

Order

After taking into consideration all the facts and circumstances of the case, Adjudicating officer imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) under Section 15HB of the SEBI Act and Rs. 1,00,000/- (Rupees One Lakh Only) under section 15C of the SEBI Act, i.e. penalties totalling to Rs. 2,00,000/- (Rupees Two Lakh Only) on the Noticee viz. Usha India Limited, which will be commensurate with its non-compliances.

2.	**29.11.2017**	**Shikhar Consultants Ltd. (Noticee) vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

Facts of the Case:

Securities and Exchange Board of India (hereinafter referred to as "SEBI") had issued its first circular viz. CIR/ OIAE/2/2011 dated June 03, 2011 for inter alia obtaining authentication on SEBI Complaints Redress System (hereinafter referred to as "SCORES") for processing investor complaints received by SEBI. Thereafter, SEBI issued two more Circulars, i.e. CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013 inter alia directing all the companies whose securities were listed on stock exchanges to obtain SCORES authentication and also redress the pending investor grievances within the stipulated time period. On December 18, 2014, SEBI issued Circular No. CIR/OIAE/1/2014 dated December 18, 2014 consolidating the earlier Circulars/ directions. The said Circular dated December 18, 2014 further inter alia stated that failure by any listed company to obtain SCORES authentication would not only be deemed as non-redressal of investor grievances, but, also indicate willful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions of Circular dated December 18, 2014. The aforenamed SEBI Circulars are hereinafter collectively referred to as the "SEBI Circulars".

SEBI observed that Shikhar Consultants Ltd. (hereinafter referred to as the "Noticee"/ "Company") had failed to comply with the said provisions of the SEBI Circulars.

It was, therefore, alleged that the Noticee has failed to obtain SCORES authentication and

thereby violated the SEBI Circulars, thus, making the Noticee liable for imposition of penalty under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act").

ORDER BY SEBI

After taking into consideration all the facts and circumstances of the case, Adjudicating Officer imposed a penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only) on the Noticee, Shikhar Consultants Ltd., under Section 15HB of the SEBI Act, which will be commensurate with the violations committed by the Noticee.

APPEAL TO SAT AGAINST ORDER OF SEBI

Shikhar Consultants Ltd. – Appellant Versus Securities and Exchange Board of India - Respondent

This appeal is filed to challenge the order passed by the Adjudicating Officer ('A. O.' for short) of Securities and Exchange Board of India ('SEBI' for short) on November 29, 2017. By the said order penalty of Rs. 8 lac is imposed on the appellant under Section 15HB of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short), inter-alia, for not complying with the directions contained in the SEBI circular dated August 13, 2012.

As per SEBI circular dated August 13, 2012, it was obligatory on part of all the listed companies including the appellant to obtain SCORES authentication by September 14, 2012.

Admittedly, the appellant did not apply for and obtain SCORES authentication within the time stipulated under the SEBI circular dated August 13, 2012. Appellant applied for SCORES authentication belatedly on July 26, 2017 and the same was granted to the appellant on July 31, 2017.

As the appellant failed to obtain SCORES authentication within the time stipulated in the circular August 13, 2012, the A. O. has held that the appellant is guilty of violating the SEBI's circular dated August 13, 2012 and, accordingly, imposed penalty of Rs. 8 lac on the appellant.

SAT ORDER DATED APRIL 9, 2018

By failing to obtain SCORES authentication within the stipulated time, appellant has violated the SEBI circular dated August 13, 2012 is not in dispute. However, apart from various mitigating factors set out hereinabove, it is seen that in several similar cases, the A. O. of SEBI has deemed it fit not to impose any penalty against those entities even though the minimum penalty imposable is Rs. 1 lac under Section 15HB of SEBI Act.

In these circumstances, while directing the adjudicating Officers of SEBI to ensure that they pass orders in consonance with the provisions of SEBI act, in the facts of present case, having regard to the mitigating factors set out hereinabove, SAT deem it proper to reduce the penalty from Rs. 8 lac to Rs. 1 lac being the minimum penalty imposable under Section 15HB of SEBI Act. 10. Appeal is partly allowed in the aforesaid terms with no order as to costs.

3.	**27.04.2018**	**Atcom Technologies Ltd. (Noticee) vs. SEBI**	**Adjudicating Officer, Securities and Exchange Board of India**

Facts of the case:

The Securities and Exchange Board of India (hereinafter referred to as "SEBI") issued its first circular viz. CIR/ OIAE/2/2011 dated June 03, 2011 for inter alia obtaining authentication on SEBI Complaints Redress System (hereinafter referred to as "SCORES") for processing investor complaints received by SEBI. Thereafter, SEBI issued two more Circulars, i.e. CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013 inter alia directing all the companies whose securities were listed on stock exchanges to obtain SCORES authentication and also redress the pending investor grievances within the stipulated time period provided therein. On December 18, 2014, SEBI issued Circular No. CIR/OIAE/1/2014 dated December 18, 2014 consolidating the earlier Circulars/ directions. The said Circular dated December 18, 2014 further inter alia stated that failure by any listed company to obtain SCORES authentication shall not only be deemed as non-redressal of investor grievances, but also indicate willful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions of Circular dated December 18, 2014. The aforementioned SEBI Circulars are hereinafter collectively referred to as the "SEBI Circulars".

It was observed by SEBI that Atcom Technolgoies Ltd.(hereinafter referred to as the "Noticee"/ "Company"/"Atcom") had failed to comply with the provisions of the SEBI Circulars.

It was, therefore, alleged that the Noticee violated the SEBI Circulars by failing to obtain SCORES authentication within the time period provided thereinthus, making the Noticee liable for imposition of penalty under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act").

ORDER BY SEBI

After taking into consideration all the facts and circumstances of the case, Adjudicating Officer imposed a penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only)on the Noticee, Atcom Technologies Ltd.,under Section 15HB of the SEBI Act, which shall be commensurate with the violations committed by the Noticee. The Noticee shall remit / pay the said amount of penalty within forty five (45) days of receipt of this order.

4.	**01.12.2014**	**Vidharbha Industries Ltd. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Penalty under Section 15HB of SEBI Act, 1992 for not obtaining SCORES authentication

Appellant is aggrieved by the order passed by Adjudicating Officer (AO), SEBI on August 28, 2014. By that order the penalty of 2 lakh rupees was imposed on the appellant under Section 15HB of the SEBI Act, 1992 on ground that appellant had failed to comply with the requirements specified in SEBI circular dated April 17, 2013 for SCORES authentication.

Relevant facts are that SEBI had introduced an online electronic system for resolution of investors grievances i.e., SCORES in the year 2011. For the purpose of accessing the complaints of the investors against the companies as uploaded in the SCORES, listed companies were required to log in to SCORES system electronically through a company

specific user id and password to be provided by SEBI.

Where a listed company fails to obtain SCORES authentication within the time stipulated by SEBI, then it amounts to violating the directions of SEBI and in such a case penalty is imposable under Section 15HB of SEBI Act which shall not be less than one lakh rupees but which may extend to one crore rupees. Thus, in the present case, the AO had imposed penalty of Rs. 2 Lac which cannot be said to be arbitrary, excessive or unreasonable. Accordingly, the appeal was dismissed with no order as to costs.

5.	**11.09.2015**	**M/s. Golden Proteins Ltd. (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Facts of the case:
The appellant has challenged the impugned order dated January 15, 2015 passed by the learned adjudicating officer under Section 15C of the Securities and Exchange Board of India Act, 1992 (for short 'SEBI Act, 1992') read with Rule 5(c) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (for short Adjudication Rules) imposing a monetary penalty of ` 1 lac for not resolving investors' grievances on time.
After the introduction of online electronic system for investors' grievances, namely, SCROES, SEBI particularly vide letters dated December 7, 2011 and January 18, 2012 advised the appellant to obtain SCORES authentication and resolve grievance of one investor pending as on August 27, 2012.
Despite repeated opportunities, the appellant failed to resolve the same and hence a show cause notice dated August 30, 2013 was issued to the appellant company under the provisions of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show as to why an appropriate penalty should not be imposed on him for the alleged violations in question.
After conducting an inquiry as per the rules and after affording an opportunity of personal hearing to the appellant, the learned adjudicating officer came to the conclusion that the appellant as a listed company was expected to comply with the extant regulatory and statutory requirements. As already observed, the noticee failed in resolving the investor's grievance pending against it despite being called upon to do so by SEBI.
After hearing both the learned counsel for the parities, SAT find no merit in the appeal and the same is liable to be dismissed. SAT have noted from the pleadings that the appellant sought registration under SCORES only on January 14, 2015 i.e. almost after one and half years of issuance of show cause notice in this regard. It is also not clear from the pleadings whether action taken report (ATR) has been filed as per the requirement of SCORES by the appellant. Therefore, the noticee is liable to pay monetary penalty under Section 15C of the SEBI Act, 1992.

Order by SAT:
In the circumstances, penalty of `Rs. 1 lac imposed on the appellant is not justified. The

appellant company is a sick company within the meaning of The Sick Industrial Companies Act, 1985 is not ground for the appellant to evade SEBI norms particularly regarding redressal of investor's grievance on time. This Tribunal has consistently held that timely redressal of the investors' grievances by the companies is of utmost importance. Keeping this importance in mind, SEBI by circular dated August 2, 2011, SEBI introduced a system of processing investors' complaints in a centralized web based complaints redress system, which is commonly known as 'SCORES'. Under this system, a centralized database of all the complaints and their online movement to the concerned intermediaries is monitored. Similarly, online upload of action taken reports (ATR) by the concerned entities and its viewing by investors of the action on the complaints and their current status etc. all are displayed. Violation of such an important regulatory measure cannot be taken lightly in the facts and circumstances of the present case. The appeal, accordingly, stands dismissed with no order as to costs.

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LESSON 15
Structure of Capital Market

FOREIGN PORTFOLIO INVESTOR

SEBI (Foreign Portfolio Investors) Regulations, 2014 to be replaced with SEBI (Foreign Portfolio Investors) Regulations, 2019

For details: https://www.sebi.gov.in/legal/regulations/dec-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019-last-amended-on-april-17-2020-_44436.html

Exemption from clubbing of investment limit for foreign Government agencies and its related entities

SEBI vide notification dated 19 December 2019 amended the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 and omitted the following regulation:

"Regulation 20 (9) In cases where the Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, the Board may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it."

In line with rule 1(a)(iv) of Schedule II of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 regarding "Investments by Foreign Portfolio Investors", certain foreign Government agencies and its related entities are exempt from clubbing of investment limit requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.

In view of the above, clause 1(x) of Part C of Operational guidelines for FPIs & DDPs and EFIs regarding "Monitoring of investment limit at investor group level" has been amended accordingly. The amended operational guidelines are annexed herewith.

For details: https://www.sebi.gov.in/legal/circulars/jan-2020/exemption-from-clubbing-of-investment-limit-for-foreign-government-agencies-and-its-related-entities_45697.html

Common Application Form for Foreign Portfolio Investors

(SEBI Circular No. IMD/FPI&C/CIR/P/2020/022 dated February 04, 2020)

The Foreign Portfolio Investors (FPIs) seeking FPI registration shall be required to duly fill Common Application Form (CAF) and 'Annexure to CAF' and provide supporting documents and applicable fees for SEBI registration and issuance of PAN. The other intermediaries dealing with FPIs may rely on the information in CAF for the purpose of KYC.

For Details: https://www.sebi.gov.in/legal/circulars/feb-2020/common-application-form-for-foreign-portfolio-investors_45899.html

Disclosure Standards for Alternative Investment Funds (AIFs)

(SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020)

1. As a part of SEBI's initiatives to streamline disclosure standards in the growing AIF space, SEBI through a Consultation Paper dated December 4, 2019 sought public

comments on 'Introduction of Performance Benchmarking' and 'Standardization of Private Placement Memorandum (PPM) for AIFs'. Considering inputs from public consultation and deliberations in Alternative Investment Policy Advisory Committee (AIPAC), it has been decided to introduce template(s) for PPM, subject to certain exemptions, and mandatory performance benchmarking for AIFs with provisions for additional customized performance reporting.

A. Template(s) for PPM

2. PPM is a primary document in which all the necessary information about the AIF is disclosed to prospective investors. To ensure that a minimum standard of disclosure is made available in the PPM, it has been decided to mandate a template for the PPM providing certain minimum level of information in a simple and comparable format. AIFs are also permitted to provide additional information in their PPM.

3. Thus, the template for PPM shall have two parts viz.

Part A – section for minimum disclosures, and

Part B – supplementary section to allow full flexibility to the Fund in order to provide any additional information, which it deems fit.

4. The template for PPM of AIFs raising funds under Category I and Category II is provided at Annexure 1 of SEBI circular no. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020. The template for PPM of AIFs raising funds under Category III is provided at Annexure 2 of SEBI circular no. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020.

5. Further, in order to ensure compliance with the terms of PPM, it will be mandatory for AIFs to carry out an annual audit of such compliance. The audit shall be carried out by either internal or external auditor/legal professional. However, audit of sections of PPM relating to 'Risk Factors', 'Legal, Regulatory and Tax Considerations' and 'Track Record of First Time Managers' shall be optional.

6. The findings of the audit, along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI.

7. The terms of contribution or subscription agreement (by any name as it may be called), shall be aligned with the terms of the PPM and shall not go beyond the terms of the PPM.

8. The requirements as mentioned at para no. 2 and 5 above shall not apply to the following:

(i) Angel Funds as defined in SEBI (Alternative Investment Funds), Regulations 2012.

(ii) AIFs/Schemes in which each investor commits to a minimum capital contribution of INR 70 crores (USD 10 million or equivalent, in case of capital commitment in non-INR currency) and also provides a waiver to the fund from the requirement of PPM in the SEBI prescribed template and annual audit of terms of PPM, in the manner provided at Annexure 3 of SEBI circular no. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020.

9. The aforesaid requirements shall come into effect from March 01, 2020.

B. Performance Benchmarking of AIFs

10. Based on the request of the industry, it was considered appropriate that an industry

benchmark be developed to compare the performance of AIF industry against other investment avenues, as also global investment opportunities. Accordingly, a proposal for performance benchmarking of AIFs was incorporated in the aforementioned Consultation Paper.

11. As the industry needs the flexibility to showcase its performance based on different criteria and benchmarking of performance of AIFs will help investors in assessing the performance of the AIF industry, it is decided to introduce:

a. Mandatory benchmarking of the performance of AIFs (including Venture Capital Funds) and the AIF industry. b. A framework for facilitating the use of data collected by Benchmarking Agencies to provide customized performance reports

12. In this regard, the following is mandated:

i. Any association of AIFs ("Association"), which in terms of membership, represents at least 33% of the number of AIFs, may notify one or more Benchmarking Agencies, with whom each AIF shall enter into an agreement for carrying out the benchmarking process.

ii. The agreement between the Benchmarking Agencies and AIFs shall cover the mode and manner of data reporting, specific data that needs to be reported, terms including confidentiality in the manner in which the data received by the Benchmarking Agencies may be used, etc.

iii. AIFs, for all their schemes which have completed at least one year from the date of 'First Close', shall report all the necessary information including scheme-wise valuation and cash flow data to the Benchmarking Agencies in a timely manner.

iv. The form and format of reporting shall be mutually decided by the Association and the Benchmarking Agencies.

v. If an applicant claims a track-record on the basis of India performance of funds incorporated overseas, it shall also provide the data of the investments of the said funds in Indian companies to the Benchmarking Agencies, when they seek registration as AIF.

vi. In the PPM, as well as in any marketing or promotional or other material, where past performance of the AIF is mentioned, the performance versus benchmark report provided by the benchmarking agencies for such AIF/Scheme shall also be provided.

vii. In any reporting to the existing investors, if performance of the AIF/Scheme is compared to any benchmark, a copy of the performance versus benchmark report provided by the Benchmarking Agency shall also be provided for such AIF/scheme.

viii. As a first step, Association will appoint Benchmarking Agencies and thereafter will set timeline for reporting of requisite data to Benchmarking Agencies by all the registered AIFs. In this regard, Association and Benchmarking Agencies will ensure that the first industry benchmark and AIF level performance versus Benchmark Reports are available latest by July 01, 2020, for the performance upto September 30, 2019. Further the Association shall submit a progress report in this regard to SEBI on a monthly basis till the creation of first industry benchmark.

13.The operational guidelines for performance benchmarking are provided at Annexure 4 of SEBI circular no. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020.

14.In addition to the standard benchmark report prepared by the Benchmarking Agencies, if any AIF seeks customized performance reports in a particular manner, the same may be generated by the Benchmarking Agencies, subject to:

(i) Consent of the AIFs, whose data needs to be considered for generation of the customized performance report.

(ii) Terms and conditions, including fees, decided mutually between the Benchmarking Agencies and the AIF.

15. The requirements as mentioned at para no. 11 to 14 above shall not apply to Angel Funds registered under sub-category of Venture Capital Fund under Category I - AIF.

For Details: https://www.sebi.gov.in/legal/circulars/feb-2020/disclosure-standards-for-alternative-investment-funds-aifs-_45919.html

Clarifications with respect to Circular dated February 05, 2020 on 'Disclosure Standards for Alternative Investment Funds (AIFs)'
(SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020)

1. SEBI has issued a Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 ("Circular") dated February 05, 2020 on 'Disclosure Standards for Alternative Investment Funds (AIFs)'.

2. In this regard, it is clarified as under:

(i) Audit of compliance with terms of PPM as provided in Paragraph 5 of the Circular, shall be conducted at the end of each Financial Year and the findings of audit along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI, within 6 months from the end of the Financial Year.

(ii) The requirement of audit of compliance with terms of PPM shall not apply to AIFs which have not raised any funds from their investors. However, such AIFs shall submit a Certificate from a Chartered Accountant to the effect that no funds have been raised, within 6 months from the end of the Financial Year.

(iii) For the Financial Year 2019-20, the above requirements shall be fulfilled on or before December 31, 2020.

Paragraph 12 (i) of the Circular is amended as under:

"Any association of AIFs ("Association"), which in terms of membership, represents at least 33% of the number of AIFs, may notify one or more Benchmarking Agencies, with whom each AIF shall enter into an agreement for carrying out the benchmarking process."
In light of market events due to the COVID-19 pandemic, the timeline for making available the first industry benchmark and AIF level performance versus Benchmark Reports, is extended till October 01, 2020.

For Details: https://www.sebi.gov.in/legal/circulars/jun-2020/clarifications-with-respect-to-circular-dated-february-05-2020-on-disclosure-standards-for-alternative-investment-funds-aifs-_46847.html

SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO INVESTORS) (AMENDMENT) REGULATIONS, 2020 (April 7, 2020)

In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019

In regulation 5, in clause (a), in sub-clause (iv), after the words "member countries" and before the words "which are", the words and symbol ", or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments," shall be inserted.

For Details: https://www.sebi.gov.in/legal/regulations/apr-2020/sebi-foreign-portfolio-investors-amendment-regulations-2020_46504.html

CASE LAWS

In the case of Securities and Exchange Board of India Vs. Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174- 3177 and 3180 of 2011 decided on February 8, 2018) (The Supreme Court of India)

Fact of the Case:

Fairness, integrity and transparency are the hallmarks of the stock market in India. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") is the vigilant watchdog. Whether the factual matrix justified the watchdog's bite is the issue arising for consideration in this case.

In the present case, M/s Rakhi Trading engaged in the business of stock exchange. Rakhi Trading was issued a show cause notice by SEBI alleging execution of non genuine transactions in the Futures and Options segment (hereinafter referred to as the "F&O segment"). The trades in question pertain to NIFTY options. The SEBI found that the trade logs that on various occasions, the time of transactions was not matched by the respective parties and these transactions resulted in a closeout difference of Rs 115.79 lakhs without any significant change in the value of the underlying. Thus, according to SEBI manipulative/deceptive devise was used for synchronization of trades and the trades were fraudulent/ fictitious in nature. Consequently, a penalty of Rs.1,08,00,000 was imposed under Section 15HA of the SEBI Act,1992.

On appeal, SAT held that the 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 and it has not affected the NIFTY index in any manner or induced investors. It also observed that such trades are illegal only when they manipulate the market in any manner and induce investors. It has also taken a view that there being no physical delivery of any asset, there is no change of beneficial ownership and what is traded in the F&O segment are only contracts and hence, such synchronised and reverse trades in NIFTY options in the F&O segment "can never manipulate the market". It has also held that the trades being settled in cash through a stock exchange mechanism, are genuine and therefore cannot create a false or misleading appearance of trading in the F&O segment.

The Supreme court observed that "no person shall indulge in a fraudulent or an unfair trade practice in securities". It has been held that a trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between the parties engaged in business

transactions. Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine; it is an unfair trade practice.

Conclusion:

Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the SEBI's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities. If the findings of SAT are to be sustained, it would have serious repercussions undermining the integrity of the market. Thus, the impugned order of SAT is set aside by the Supreme Court of India.

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LESSON 16
SECURITIES MARKET INTERMEDIARIES

Strengthening of the rating process in respect of 'INC' ratings
(SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/2 dated January 03, 2020)

In order to strengthen the rating process of the Credit Rating Agencies with regard to 'Issuer not cooperating' (INC) ratings, the directions are being issued.

a. If an issuer has all the outstanding ratings as non-cooperative for more than 6 months, then the CRA shall downgrade the rating assigned to the instrument of such issuer to non-investment grade with INC status. If non-cooperation by the issuer continues for further six months from the date of downgrade to non-investment grade, no CRA shall assign any new ratings to such issuer until the issuer resumes cooperation or the rating is withdrawn.

b. The withdrawal norms for the ratings have been stipulated vide Circular no. SEBI/HO/ MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018. However, in case of multiple ratings on an instrument (where there is no regulatory mandate for multiple ratings), a CRA may withdraw a rating earlier than stipulated in the aforementioned circular, provided the CRA has:

   i. rated the instrument continuously for 3 years or 50 per cent of the tenure of the instrument, whichever is higher; and

   ii. received No-objection Certificate (NOC) from 75% of bondholders of the outstanding debt for withdrawal of rating; and

   iii. received an undertaking from the issuer that another rating is available on that instrument.

c. At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide Circular dated November 01, 2016. The Press Release shall also mention the reason(s) for withdrawal of rating.

These provisions shall be applicable with immediate effect except para (a) which shall be effective from July 01, 2020.

For Details: https://www.sebi.gov.in/legal/circulars/jan-2020/strengthening-of-the-rating-process-in-respect-of-inc-ratings_45553.html

Operating Guidelines for Investment Advisers in International Financial Services Centre (IFSC)
(SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/04 dated January 09, 2020)

The Securities and Exchange Board of India (SEBI) has issued clarifications on Operating Guidelines for Investment Advisers in the International Financial Services Centre (IFSC).

The net worth requirement for registered Investment Adviser in IFSC is revised to UD 700,000.

The SEBI also clarified that existing recognized entities in the International Financial Services

Centre (IFSC) can also apply for IA registration without forming a separate company or LLP.

For Details: https://www.sebi.gov.in/legal/circulars/jan-2020/operating-guidelines-for-investment-advisers-in-international-financial-services-centre_45620.html

SECURITIES AND EXCHANGE BOARD OF INDIA (PORTFOLIO MANAGERS) REGULATIONS, 2020 (January 16, 2020)

These regulations may be called the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020. These regulations shall come into force on 16th January, 2020. The Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993, shall stand repealed from the date on which these regulations come into force.

Following are the relevant provisions as are covered under SEBI (Portfolio Managers) Regulations, 2020

Definition of Portfolio Managers

"Portfolio manager" means a body corporate, which pursuant to a contract with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or funds of the client, as the case may be:
Provided that the Portfolio Manager may deal in goods received in delivery against physical settlement of commodity derivatives.

Definition of Discretionary Portfolio Manager

"Discretionary portfolio manager" means a portfolio manager who under a contract relating to portfolio management, exercises or may exercise, any degree of discretion as to the investment of funds or management of the portfolio of securities of the client, as the case may be.

General Obligations and Responsibilities of Portfolio Managers

Every portfolio manager shall abide by the Code of Conduct as specified in SEBI (Portfolio Managers) Regulations, 2020.

Code of Conduct

1. A portfolio manager shall, in the conduct of his business, observe high standards of integrity and fairness in all his dealings with his clients and other portfolio managers.

2. The money received by a portfolio manager from a client for an investment purpose should be deployed by the portfolio manager as soon as possible for that purpose and money due and payable to a client should be paid forthwith.

3. A portfolio manager shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment. The portfolio manager shall either avoid any conflict of interest in his investment or

disinvestment decision, or where any conflict of interest arises, ensure fair treatment to all his customers. It shall disclose to the clients, possible source of conflict of interest, while providing unbiased services. A portfolio manager shall not place his interest above those of his clients.

4. A portfolio manager shall not execute any trade against the interest of the clients in its proprietary account.
5. A portfolio manager shall not make any statement or indulge in any act, practice or unfair competition, which is likely to be harmful to the interests of other portfolio managers or is likely to place such other portfolio managers in a disadvantageous position in relation to the portfolio manager himself, while competing for or executing any assignment.
6. A portfolio manager shall not make any exaggerated statement, whether oral or written, to the client either about the qualification or the capability to render certain services or his achievements in regard to services rendered to other clients.
7. At the time of entering into a contract, the portfolio manager shall obtain in writing from the client, his interest in various corporate bodies which enables him to obtain unpublished price-sensitive information of the body corporate.
8. A portfolio manager shall not disclose to any clients, or press any confidential information about his client, which has come to his knowledge.
9. The portfolio manager shall where necessary and in the interest of the client take adequate steps for the transfer of the clients' securities and for claiming and receiving dividends, interest payments and other rights accruing to the client. It shall also take necessary action for conversion of securities and subscription for/renunciation of rights in accordance with the clients' instruction.
10. A portfolio manager shall endeavor to-
    (a)ensure that the investors are provided with true and adequate information without making any misguiding or exaggerated claims and are made aware of attendant risks before any investment decision is taken by them;
    (b) render the best possible advice to the client having regard to the client's needs and the environment, and his own professional skills;
    (c) ensure that all professional dealings are effected in a prompt, efficient and cost effective manner.
11. (1) A portfolio manager shall not be a party to-
        (a)creation of false market in securities;
        (b)price rigging or manipulation of securities;
        (c)passing of price sensitive information to brokers, members of the recognized stock exchanges and any other intermediaries in the capital market or take any other action which is prejudicial to the interest of the investors.

    (2) No portfolio manager or any of its directors, partners or manager shall either on their own or through their associates or family members or relatives enter into any transaction in securities of companies on the basis of unpublished price sensitive information obtained by them during the course of any professional assignment.
12. (a) A portfolio manager or any of its employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether

real-time or non-real-time, unless a disclosure of his long or short position in the said security has been made, while rendering such advice.

(b) In case an employee of the portfolio manager is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.

13. (a)The portfolio manager shall abide by the Act, Rules, and regulations made thereunder and the Guidelines / Schemes issued by the Board.

(b) The portfolio manager shall comply with the code of conduct specified in the SEBI (Prohibition of Insider Trading) Regulations, 2015.

(c) The portfolio manager shall not use his status as any other registered intermediary to unduly influence the investment decision of the clients while rendering portfolio management services.

General Responsibilities of a Portfolio Manager.

(1) The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of the client, in a manner which does not partake character of a Mutual Fund, whereas the non-discretionary portfolio manager shall manage the funds in accordance with the directions of the client.

(2) The portfolio manager shall not accept from the client, funds or securities worth less than fifty lakhrupees:

Provided that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients:

Provided further that existing investments of clients, as on the date of notification of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, may continue as such till maturity of theinvestmentor as specified by the Board.

(3) The portfolio manager shall act in a fiduciary capacity with regard to the client's funds.

(4) The portfolio manager shall segregate each client’s holding in securities in separate accounts.

(5) The portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Scheduled Commercial Bank.

Explanation.─For the purposes of this sub-regulation, the expression ‘Scheduled Commercial Bank’ means any bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(6) The portfolio manager shall transact in securities within the limitation placed by the client himself with regard to dealing in securities under the provisions of the Reserve Bank of India Act, 1934.

(7) The portfolio manager shall not derive any direct or indirect benefit out of the client's funds or securities.

(8) The portfolio manager shall not borrow funds or securities on behalf of the client.

(9) The portfolio manager shall not lend securities held on behalf of the clients to a third person except as provided under these regulations.

(10) The portfolio manager shall ensure proper and timely handling of complaints from his clients and take appropriate action immediately.

(11) The portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations and circulars issued thereunder from time to time.

For Details: https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-portfolio-managers-regulations-2020-last-amended-on-april-17-2020-_45744.html

Guidelines for Portfolio Managers

(SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020)

SEBI, based on the recommendations of a Working Group and inputs from public consultation, reviewed the framework for regulation of Portfolio Managers and the SEBI (Portfolio Managers) Regulations, 2020 ("PMS Regulations") has been notified on January 16, 2020. In addition to the above, certain changes to the regulatory framework for Portfolio Managers are mandated.

Accordingly, to protect the interest of investors in securities market and to promote the development and to regulate the securities market, SEBI vide its circular no. SEBI/HO/IMD/DFI/CIR/P/2020/26 dated February 13, 2020, has made guidelines for Portfolio Managers with respect to fees and charges, direct on-boarding of clients by Portfolio Managers, nomenclature 'Investment Approach', periodic reporting, reporting of performance by Portfolio Managers, disclosure documents, supervision of distributors.

For Details: https://www.sebi.gov.in/legal/circulars/feb-2020/guidelines-for-portfolio-managers_45981.html

'Guidelines for Portfolio Managers' - Extension of implementation timeline

(SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/111 dated June 29, 2020)

In light of market events due to CoVID-19 pandemic, SEBI, vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/57 dated March 30, 2020 extended, inter alia, the timeline for applicability of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020 on 'Guidelines for Portfolio Managers'.

After taking into consideration requests received from portfolio managers and the prevailing business and market conditions, it has been decided to extend the timeline for compliance with the requirements of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020, by further three months. Accordingly, the provisions of said SEBI Circular shall be applicable with effect from October 01, 2020.

For Details; https://www.sebi.gov.in/legal/circulars/jun-2020/guidelines-for-portfolio-managers-extension-of-implementation-timeline_46959.html

Review of Post-Default Curing Period for Credit Rating Agencies (CRAs)

(SEBI Circular No. SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/ 87 dated May 21, 2020)

Under Credit Rating, there is a post-default curing period of 90 days for the rating to move

from default to speculative grade and generally 365 days for default to move to investment grade.

In a few recent cases of defaults that even though the rated entity was able to correct the default within a relatively shorter span of time, the rating could not be upgraded and continued to be under sub-investment grade due to the extant provisions on post-default curing period.

There is a possibility that such cases may increase in the wake of Covid-19 pandemic.

SEBI has felt the need to review the existing policy on post-default curing period with a view to providing some flexibility to Credit Rating Agencies (CRAs) in taking appropriate view in such cases.

- **Changes made by SEBI**

Accordingly, in partial modification to Annexure-A1 of SEBI circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016, the revised policy of the provision on post-default curing period in this regard is as under:

A. After a default is cured and the payments regularized, a CRA shall generally upgrade the rating from default to non-investment grade after a period of 90 days based on the satisfactory performance by the company during this period. CRAs may deviate from the said period of 90 days on a case to case basis, subject to the CRAs framing a detailed policy in this regard. The said policy shall also be placed on CRA's website. Cases of deviations from stipulated 90 days, if any, shall be placed before the Ratings Sub-Committee of the board of the CRA, on a half yearly basis, along with the rationale for such deviation.

B. The CRA shall frame a policy in respect of upgrade of default rating to investment grade rating and place it on its website.

C. The policies framed as above may include scenarios like technical defaults, change in management, acquisition by another firm, sizeable inflow of long-term funds or benefits arising out of a regulatory action, etc. which fundamentally alter the credit risk profile of the defaulting firm.

For Details: https://www.sebi.gov.in/legal/circulars/may-2020/review-of-post-default-curing-period-for-cras_46690.html

Lesson 16

Securities Market Intermediaries

CASE LAWS

1.	**01.07.2020**	**Mr. Vishal Vijay Shah (Noticee) in the matter of Maharashtra Polybutenes Limited v. SEBI**	**Securities Appellate Tribunal**

Facts of the Case:

In the facts of the instant proceedings, it is observed that the Vishal Vijay Shah ("Noticee"), a registered Stock Broker had received funds in the client and settlement bank accounts from third parties in cash and had made payments to third parties on behalf of clients. It is further observed that the Noticee had also made withdrawal of cash from the client bank accounts. Under the SEBI Circulars, a responsibility has been cast on the Stock Broker to ensure that payments are received directly from the respective clients and not from third parties. Accordingly, the Noticee should have taken expedient steps to ensure that funds received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party monetary amounts were received. However, there is nothing on record to suggest that such steps were indeed taken.

Further, the Noticee in its submissions has itself admitted to having carried out such irregular practices. The aforementioned conduct of the Noticee clearly demonstrates that it failed to maintain fairness in the conduct of its business, exercise due skill and care and comply with the statutory requirements. Thus, in addition to the violation of the SEBI Circulars the Noticee has also violated the provisions of Clauses A(1), (2) & (5) of the Code of Conduct as specified under Schedule II read with Regulation 9(f) of the Stock Brokers Regulations.

The BSE had earlier conducted inspection of the Noticee and upon a consideration of the BSE Inspection Reports in light of the Inspection Report, it is observed that the violations committed by the Noticee in the instant proceedings are repetitive in nature. Further, it is a well settled position of law that SEBI may initiate multiple proceedings for the same set of violations.

Order:

The Noticee had violated the aforementioned provisions of the Stock Brokers Regulations and aforementioned SEBI Circulars. Having regard to the facts and circumstances of the instant proceedings, SEBI accepted the recommendation of the Designated Authority that the Certificate of Registration of the Noticee be suspended for a period of one year.

2	**05.06.2020**	**Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (Noticee) vs. SEBI**	**Whole Time Member, Securities Exchange Board of India**

The Noticee cease and desist from acting as an Investment Adviser as it refused to refund the money so taken by it as service fee from complainant.

Facts of the Case:

SEBI had received a complaint against Mr. Narendra Singh Tanwar, Proprietor of M/s Capital True Financial Services (hereinafter referred to as "Noticee"), a registered Investment Adviser (hereinafter referred to as "IA") inter alia alleging that a promise was made on behalf of the Noticee to the complainant assuring him a huge return of Rs. 28.80 lakh on a meagre investment

of Rs. 20,000/- over a short period of 4 months and 10 days. Pursuant to such an assurance, an amount of Rs. 1,30,000/- was transferred by the complainant to the Noticee towards first instalment of the service fee, out of total service fee of Rs. 4,47,200/- demanded by the Noticee in instalments. However, after suffering loss on the very first day of availing the services of the Noticee, the complainant asked the Noticee to return the amount paid to him. As the Noticee refused to refund the money so taken by it as service fee and also stopped attending the phone calls of the complainant, a compliant was lodged with SEBI. The said complaint was forwarded to the Noticee for resolution and to submit an Action Taken Report (ATR) in the SEBI Complaints Redress System (SCORES).

Order:

In view of the foregoing findings and in the interest of investors and for the protection of their rights, SEBI issue following directions:

i. The Certificate of Registration as Investment Adviser bearing Registration number INA000009038 issued in favour of the Noticee is hereby cancelled.

ii. The Noticee shall forthwith cease and desist from acting as an Investment Adviser.

iii. The Noticee shall not use the term 'Investment Adviser' directly or indirectly in any manner whatsoever on the letter-head, on the website, signage board, or otherwise.

iv. The Noticee is debarred from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with securities market in any manner, for a period of 2 years and during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticees shall remain frozen.

3	**29.05.2020**	**Arihant Capital Markets Ltd. (Noticee) vs. SEBI**	**Adjudicating Officer, Securities Exchange Board of India**

SEBI imposed penalty for the alleged violation of the provisions of SEBI (Stock Broker and Sub Brokers) Regulations, 1992.

Facts of the case:

SEBI conducted investigation into trading activities of certain entities in the scrip of Moryo Industries Ltd. for the period of January 15, 2013 to August 31, 2014. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Arihant Capital Markets Ltd.(hereinafter be referred to as, the "Noticee") under Section 15HB of the Securities and Exchange Board of India Act, 1992 , for the alleged violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (as existed at

the relevant time) of the Securities and Exchange Board of India (Stock Broker and Sub Brokers) Regulations, 1992.

Order:

In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon SEBI under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, SEBI hereby impose monetary penalty of Rs.5,00,000/-(Rupees Five Lakhs only) on the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order or May 31, whichever is later.

4	**24.12.2019**	**Star India Market Research (Appellant) vs. SEBI (Respondent)**	**Securities Appellate Tribunal**

Penalty imposed by SEBI on violating SEBI (Investment Advisor) Regulations, 2013, further reduced by SAT keeping in view the financial capability of appellant

SEBI imposed a penalty of Rs. 40 lakh on a SEBI registered Investment Advisor on violation of Regulation 15, 16 and 17 with Schedule III of the SEBI(Investment Advisor) Regulations, 2013. The main alleged violations against the appellant are (i) Offering products without considering the risk profile of the clients (ii) Offering high net-worth individual (HNIs) services to unsuitable clients (iii) Receiving payments in advance for future services (iv) Charging high and unreasonable fee from clients. Appellant filed appeal to SAT and appeal was partly allowed. Though it is admitted fact that the appellant has committed certain violations however SAT finds that the penalty imposed was too harsh and disproportionate. The appellant is a small investment advisor with a profit of about Rs. 30 lakh in a year and with a small amount of net worth. The penalty therefore is reduced from Rs. 40 lakh to Rs. 20 lakh.

5	**31.03.2020**	**Jaypee Capital Services Ltd (Noticee) vs. SEBI**	**Whole Time Member, Securities and Exchange Board of India**

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') granted a Certificate of Registration as a Depository Participant to Jaypee Capital Services Limited (JCSL/Noticee) in accordance with provisions of SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations) initially for a period of five years which was valid from August 11, 2006 to August 10, 2011. The certificate of registration was, thereafter, renewed in 2011 for a further period of five years and the renewed certificate was valid till August 10, 2016.

SEBI received a letter dated April 05, 2016 from Central Depository Services (India) Limited (hereinafter referred to as 'CDSL') informing that it has terminated the agreement with the Noticee w.e.f April 04, 2016 due to noncompliance on the part of JCSL with the bye-laws of CDSL. CDSL vide the said letter also requested SEBI to cancel the certificate of registration

granted to the Noticee at act as a Depository Participant with immediate effect. Thereafter, National Securities Depositories Limited (hereinafter referred to as "NSDL") vide its letter dated April 22, 2016 informed SEBI that it has also terminated the agreement with JCSL w.e.f May 23, 2016 due to the non-compliance on part of JCSL with the various bye-laws of NSDL.

Based on the information provided by the Depositories viz. CDSL and NSDL, as above, it was alleged that the Noticee was no longer eligible to be admitted as a participant of depository and had failed to inform SEBI about the termination of its agreements with CDSL and NSDL.

Order

The failure on the part of the Noticee to inform SEBI of the termination of the agreement by the depositories would therefore have to be considered as a violation of Clause 14 of the Code of Conduct for the DPs as given under third schedule read with Regulation 20AA of the DP Regulations. Whole Time Member, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the Noticee / Jaypee Capital Services Limited (SEBI Registration No. IN-DP-NSDL-29

"self regulatory organization" means an organization of a class of intermediaries duly recognised by or registered with the SEBI and includes a stock exchange.

SECURITIES AND EXCHANGE BOARD OF INDIA (REGULATORY SANDBOX) (AMENDMENT) REGULATIONS, 2020 (April 17, 2020)

S. No.	Reference to Chapter No.	Amendments to Regulations/Rules/Act/Circular/ Notification	Brief Particulars/Link of the Amendment
1.	**Lesson – 4** An overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018; **Lesson – 5** SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; **Lesson – 6** An overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; **Lesson – 7** SEBI (Buy-Back of Securities) Regulations, 2018; **Lesson – 8** SEBI (Delisting of Equity Shares)	SEBI with its notification dated 17th April 2020, has amended various SEBI regulations related to Regulatory Sandbox. SEBI through this amendment has inserted a new chapter under various SEBI regulations with respect to **"Power to relax strict enforcement of the regulations"** stated as:- **"Exemption from enforcement of the regulations in special cases.** The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets. (2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis. Explanation. —For the purposes of these regulations, "regulatory sandbox" means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board." **SEBI VIDE ITS CIRCULAR NO. SEBI/HO/MRD-1/CIR/P/2020/95**	***https://www.sebi.gov.in/legal/regulations/apr-2020/securities-and-exchange-board-of-india-regulatory-sandbox-amendment-regulations-2020_46757.html*** ***https://www.sebi.gov.in/legal/circulars/jun-2020/framework-for-regulatory-sandbox_46778.html***

	Regulations, 2009; **Lesson – 9** SEBI (Share Based Employee Benefits) Regulations, 2014 – An Overview; **Lesson – 10** SEBI (Issue of Sweat Equity) Regulations, 2002 – An Overview; **Lesson – 12** Mutual Funds; **Lesson – 13** Collective Investment Schemes; and **Lesson – 16** Securities Market Intermediaries	**DATED JUNE 5, 2020** has prescribed the framework for Regulatory Sandbox given hereunder:- 1. Participants in the capital market in India have been early adopters of technology. SEBI believes that encouraging adoption and usage of financial technologies ('FinTech') can act as an instrument to further develop and maintain an efficient, fair and transparent securities market ecosystem. 2. Towards this end, SEBI vide circular SEBI/HO/MRD/2019/P/64 dated May 20, 2019, stipulated a framework for an industry-wide Innovation Sandbox, whereby FinTech start ups and entities not regulated by SEBI were permitted to use the Innovation Sandbox for offline testing of their proposed solution. 3. Further, SEBI now has decided to introduce a framework for "Regulatory Sandbox". Under this sandbox framework, entities regulated by SEBI shall be granted certain facilities and flexibilities to experiment with FinTech solutions in a live environment and on limited set of real customers for a limited time frame. These features shall be fortified with necessary safeguards for investor protection and risk mitigation. 4. The guidelines pertaining to the functioning of the Regulatory Sandbox are provided at Annexure A of this circular. **Rationale behind the Regulatory Sandbox** To encourage innovation with minimal regulatory burden, SEBI shall consider exemptions/ relaxations, if any, which could be either in the form of a comprehensive exemption from certain regulatory requirements or selective exemptions on a case-by-case	

		basis, depending on the FinTech solution to be tested. The registration granted by SEBI to all entities registered with SEBI under Section 12 of the SEBI Act, 1992 is activity based. An entity which is registered with SEBI for a particular activity is authorized to carry out activity in that domain. In order to enable the cross domain testing of FinTech solutions, an existing registered entity would be required to first obtain a limited certificate of registration for the category of intermediary for which it seeks to test the FinTech solution(s). This concept of limited registration shall facilitate the entities to operate in a Regulatory Sandbox without being subjected to the entire set of regulatory requirements to carry out that activity.	