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INVESTOR SAFEGUARDS ACTIONS IN CAPITAL MARKET

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ABSTRACT

The present study shows that SEBI has left no stone unturned for the safeguard of investors from the malpractices and fraudulent practices of Issuers and market Intermediaries. SEBI is redressing the investors' grievances by carrying out investigation and action has been taken in case the grievances are not redressed by the concerned quarter within the time frame. SEBI has issued various guidelines which are amended from time to time to cope with the problems arises during the course to ensure that the savings of investors may remain safe and to maintain the investors 'confidence across the country. However, SEBI is not fully successful in its mission as evident from the report of Swaroop committee report which states that the investor population in our country has declined from 20 million in the 1990s to just over 8 million in 2009. The main reasons for this steep fall in investor population can be attributed to the rampant malpractices observed in the capital market, the short changing of investors at various levels and the absence of any mechanism for expeditious and satisfactory disposal of investor complaints in a time bound manner.

KEYWORDS

capital market, investor safeguards

INTRODUCTION

The Securities and Exchange Board of India Act, 1992 (the SEBI Act) was amended in the years 1995, 1999 and 2002 to meet the requirements of changing needs of the securities market and responding to the development in the securities market. The Primary function of Securities and Exchange Board of India under the SEBI Act, 1992 is the protection of the investors' interest and the healthy development of Indian financial markets. No doubt, it is very difficult and herculean task for the regulators to prevent the scams in the markets considering the great difficulty in regulating and monitoring each and every segment of the financial markets and the same is true for the Indian regulator also. But what are the responsibilities of the regulators to set the system right once the scam has taken place, especially the responsibility of redressing the grievances of the investors so that their confidence is restored? The redressal of investors' grievances, after the scam, is the most challenging task before the regulators all over the world and the Indian regulator is not an exception. SEBI had issued guidelines for the protection of the investors through the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.

REGULATION OF THE CAPITAL MARKET

The securities market is regulated by various agencies, such as the Department of Economics Affairs (DEA), the Department of Company Affairs (DCA), the Reserve Bank of India (RBI) and the SEBI. The Activities of these agencies are coordinated by a high level committee on capital and financial markets.

THE SECURITIES AND EXCHANGE BOARD OF INDIA (S.E.B.I)

With the announcement of the reforms package in 1991, the volume of business in both the primary and secondary segment of the capital market has been increased enormously till now. A Multi crore securities scam rocked the Indian financial system in 1992(Harshad Mehta scam). The then existing regulatory framework was found to be fragmented and inadequate and hence, a need for an autonomous, statutory, and integrated organization to ensure the smooth functioning of capital market was felt. To fulfill this need, the Securities and Exchange Board of India (S.E.B.I), which was already in existence since April 1988, was conferred statutory powers to regulate the capital market.

The SEBI got legal teeth through an ordinance issued on 30 January 1992. The ordinance conferred wide- ranging powers on the SEBI, including the authority to prohibit 'insider trading and regulate substantial acquisition of shares' and takeover of business'. The function of market development includes containing risk, board basing, maintaining market integrity and promoting long-term investment. The SEBI Act, 1992 which establishes the SEBI with four-fold objectives of protection of the interests of investors in securities, development of the securities market, regulation of the securities market and matters connected therewith and incidental thereto.

The capital market, i.e., the market for equity and debt securities is regulated by the Securities and Exchange Board of India (SEBI). The SEBI has full autonomy and authority to regulate and develop the capital market. The government has framed rules under the securities contracts (regulation) Act (SCRA), the SEBI Act and the Depositories Act.

The SEBI has framed regulations under the SEBI Act and the Depositories Act for registration and regulation of all market intermediaries, for prevention of unfair trade practices, and insider trading. As everyone could know that these i.e. the Government and the SEBI issue notifications, guidelines and circulars which need to be complied with by market participants. All the rules and regulations are administered by the SEBI.

REVIEW OF LITERATURE

Many scholars and researcher have done a lot of valuable work near to the title. Some of the significant references have been taken before this study.

Babu Jawahar, KVS.N. Naidu Damodahr, S. (2012) has studied investor protection measures taken by SEBI. It is pointed out in the study that SEBI vide different guidelines had make it sure that no stone remains unturned in the path of the mission of protecting the investors. Investors' education campaigns have been yielding positive results to some extents; still more needs to be done. Indian investors have been steadily fleeing the market, despite the apparent spread of 'equity cult' which calls for immediate attention of the apex body to frame and effectively implement the measures to protect the interests of investors and restore their confidence in the stock market.

Sabinathan, S. (2010), has reviewed SEBI's performance in the eighteen years since its establishment in its current incarnation as an adequately empowered and independent regulator indicates that there has been all round improvement in the institutional framework in which the securities trade in India is conducted. In terms of the functioning of the market, SEBI has mandated an enormous increase in the flow of information at the time of listing, after listing and related to the

trade. The long history of the functioning of the capital market and securities industry in India suggest that voluntary disclosure may not have become a pervasive trend and that without a regulatory push, there would have been underproduction of information.

The cost of transaction and the risk of settlement have been minimized making Indian Stock Exchanges one of the safest and lowest cost securities market in the world. The Indian mechanism for securities issuance is among the more sophisticated in the world with the introduction of the guidelines for book building of issue. The study suggests that SEBI has achieved considerable progress in terms of detecting and disposing of instances of non-compliance or infractions.

Giri Savita, R. (2014) in her study found that SEBI surmounted several obstacles on the way to development of capital market with due care for investor's interest and greater transparency in the affairs of organization and stock exchanges, though not to the extent of hundred percent. SEBI tried hard to make it sure that no stone remains unturned in the path of the mission of protecting the investors. Investor's education campaigns have been yielding positive results to some extent, still lot more needs to be done.

OBJECTIVES OF THE STUDY

The present study is undertaken to fulfill the following objectives

1. To know about the quantum of grievances received and redressed by SEBI during the period of study.
2. To know about the investigations taken up by SEBI.
3. To know about the nature of investigation taken up by SEBI and action taken by SEBI in these cases.
4. To know about the measures taken by SEBI for investors protection.

SCOPE OF THE STUDY

This study was mainly planned to evaluate the performance SEBI, relating to supervision of securities market of various intermediaries registered with SEBI, and to know what kind of

Investor Protection measures taken by SEBI for the benefit/to safeguard the interest of investors in India since 1992

TOOLS OF DATA COLLECTION

Primary data : The data is collected by interviewing small investors

Secondary data: The data is collected from Text Books, Websites, Brochure and financial press reports.

INVESTOR PROTECTION MEASURES BY SEBI

INVESTOR PROTECTION

An investor is a person who is an individual or a corporate legal entity investing his capital in another venture or business but does not do the business himself or itself. The investor has no role to play in the day-to-day management of the business or its control except as permitted by the law. Investor carries on business when they buy and sell assets, arranges for other to buy and sell assets, manages assets belonging to others, or operates collective investment schemes. An investor engages these activities, but they are not having any control over the day-to-day activities of any corporate. Normally, an investor is a blind person; they do not know any activities made by the company. Investor cannot guide the fate or destiny of the money invested. An investor to that extent is quite fragile and is exposed to certain risks because the utiliser of his money can commit mistakes. Normally they are contributing the funds for productive purpose of the company, and they are exposing him to the business decisions that the company has taken or will be taking. There are no doubt laws some of which are adequate but some are not. An investor obviously needs some protection.

VIEWS

For the Investor, Protection in the Indian Securities Market was the first empirical verification. Neelamegam R. & Srinivasan R. examined the adequacy of various protective measures offered under the existing Companies Act 1956, Securities Contracts (Regulation) Act 1956, and Securities and Exchange Board of India Act 1992 and also examined the trading activities of primary market and secondary market in India. They have found from their study, regulators through the legislative system took various protection measures. The investors have lost their confidence, which is revealed in the increasing trend of grievances and complaints even after the establishment of the SEBI and administrative system of securities market.

REGULATORY FRAMEWORK

At present, the five main Acts governing the securities markets are:

- a) The SEBI Act, 1992
- b) The Companies Act, 1956, which sets the code of conduct for the corporate sector in relation to issuance, allotment, and transfer of securities, and disclosures to be made in public issues.
- c) The Securities Contracts (Regulation) Act, 1956, which provides for the regulation of transactions in securities through control over stock exchanges.
- d) The Depositories Act, 1996 which provides for electronic maintenance and transfers of ownership of demat (dematerialized) shares.
- e) The Prevention of Money Laundering Act, 2002.

LEGISLATIONS

The SEBI Act, 1992: The SEBI Act, 1992 was enacted to empower SEBI with statutory powers for:

- a) Protecting the interests of investors in securities,
- b) Promoting the development of the securities market, and
- c) Regulating the securities market. Its regulatory jurisdiction extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with the securities market.

It can conduct enquiries, audits, and inspection of all concerned, and adjudicate offences under the Act. It has the powers to register and regulate all market intermediaries, as well as to penalize them in case of violations of the provisions of the Act, Rules, and Regulations made there under. SEBI has full autonomy and the authority to regulate and develop an orderly securities market.

Securities Contracts (Regulation) Act, 1956: This Act provides for the direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges, and aims to prevent undesirable transactions in securities. It gives the Central Government regulatory jurisdiction over:

- (a) Stock exchanges through a process of recognition and continued supervision,
- (b) Contracts in securities, and
- (c) The listing of securities on the stock exchanges.

RULES AND REGULATIONS

The Government has framed rules under the SCRA, the SEBI Act, and the Depositories Act. SEBI has framed regulations under the SEBI Act and the Depositories Act for the registration and regulation of all market intermediaries, and for the prevention of unfair trade practices, insider trading, etc. Under these Acts, the Government and SEBI issue notifications, guidelines, and circulars that the market participants need to comply with. The SROs, like the stock exchanges, have also laid down their own rules and regulations

INVESTORS PROTECTION FUND (IPF)

The Government has established an Investor Education and Protection Fund (IEPF) under Sec. 205 C of the Companies Act, 1956 under which unclaimed funds on account of dividends, matured deposits, matured debentures, share application money etc. are transferred through the IEPF to the Government by the company on completion of seven years. The Government is required to utilize this amount through an Investor Education and Protection Fund.

For this purpose, the proceeds from the companies are credited to the Consolidated Fund of India through this fund. The Fund may then be entrusted with full fledged responsibility to carry out activities for education of investors and protection of their rights.

BSE is the first Exchange to have set up the 'Stock Exchange Investors Protection Fund (IPF) in the interest of the customer's of the defaulter members of the Exchange. This fund was set up on 10th July, 1986 and has been registered with the Charity Commissioner, Government of Maharashtra as a Charitable Fund. The maximum amount of Rs. 10, 00,000 payable to an investor from Investor Protection Fund in the event of a default by a Trading Member has been revised to Rs. 15, 00,000; which shall be applicable to the clients of the Trading Member of the Exchange, who will be declared Defaulter after 5th December, 2009. (This has been progressively raised by BSE from Rs.10, 000 in 1988 to the present level).

BSE is the only Exchange in India, which offers the highest compensation of Rs.15lacs in respect of the approved claims of any Investor against the defaulter Trading Members of the Exchange.

The Trading members at present contribute 1 paisa per 1lakh of gross turnover. The Stock Exchange contributes 2.5% of the listing fees collected by it. Also the entire interest earned by the Exchange on 1% security deposit kept by with it by the companies making public / rights issues is credited to the Fund.

INVESTOR AWARENESS PROGRAM

Investor Awareness programs are being regularly conducted by stock exchanges to educate the investors and to create awareness among the Investors regarding the working of the capital market and in particular the working of the Stock Exchanges. These programs have been conducted in almost all over the country.

The Investor Awareness program covers extensive topics like Instruments of Investment, Portfolio approach, Mutual funds, Tax provisions, Trading, Clearing and Settlement, Rolling Settlement, Investors' Protection Fund, Trade Guarantee Fund, Dematerialization of shares, information on Debt Market, Investors' Grievance Redressal system available with SEBI, BSE & Company Law Board, information on Sensex and other Indices, workshops and Information on Derivatives, Futures and Options etc.

Further, for the benefit of the investors' the Bombay stock exchange has

BSE Training Institute which organizes Training programs periodically on various subjects like comprehensive programs on Capital Markets, Fundamental Analysis, Technical Analysis, Derivatives, Index Futures and Options, Debt Market, etc. Further, for the Derivatives market BSE also conducts the compulsory BSE's Certification on Derivatives Exchange (BCDE) certification for Trading Members and their dealers to impart basic minimum knowledge of the derivatives markets.

COMPENSATION TO THE INVESTORS

Capital market includes investment into risk bearing instruments. In such cases, the investor is required to make his own assessment of risk and reward. No compensation could be visualized for such investors whose investments were in risk bearing instruments. Similarly, investment in a fixed return instrument necessitated a careful review of the borrowing entity. Such actions would also be subjected to known or declared risks. Besides, the capital market also provides an opportunity for an investor to exit. The need therefore, is to ensure proper and healthy market operation so that investors could exercise their exit options in a reasonable and equitable environment. However, there may be situations where such a frame work is distorted through frauds. There may be provisions for compensation in the event of fraud by companies being established in securing funds from investors. For this purpose lifting of corporate veil may be enabled by the law.

BSE is the only Exchange in India, which offers the highest compensation of Rs.15Lacs in respect of the approved claims of any Investor against the defaulter Trading Members of the Exchange

SEBI REFORMS ON STOCK EXCHANGES

The reforms are briefly summarized below:

1. Compulsory audit and inspection of stock exchanges and their member brokers and their accounts.
2. Transparency in the prices and brokerage charged by brokers by showing them in their contract notes.
3. Board of Directors of stock exchanges has to be reconstituted so as to include non-brokers, public representative, and Govt. representatives to the extent of 50% of the total number of members.
4. Regulation of Portfolio management Schemes (PMS1): SEBI has already tightened PMS norms by making it mandatory for portfolio managers to keep separate accounts of clients rather than keeping their investments in pool account. Earlier, PMS providers used to open 'pool PMS' as a common account under one head, put money received from a set of clients in it and then invest the same on behalf of the whole group. This move is aimed at ensuring that portfolio managers handled clients' money in a transparent manner.
5. Capital adequacy norms have been laid down for members of various stock exchanges separately and depending on their turnover of trade and other factors.
6. Applications Supported by Blocked Amount (ASBA) in case of IPO: SEBI has introduced a supplementary process of applying in public issues, viz. ASBA process. ASBA is an application for subscribing to an issue, containing an authorization to block the application money in a bank account with a bank which offers the facility of applying through the ASBA process. The bank shall then block the application money in the bank account specified in the ASBA, on the basis of an authorization given by the account holder. The application money shall remain blocked in the bank account till finalization of the basis of allotment in the issue or till withdrawal / failure of the issue or till withdrawal / rejection of the application.
7. Contents of Offer Document: In addition to the disclosures specified in Schedule II of the
8. Companies Act, 1956, the prospectus shall also contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue.
9. IPO grading/credit rating2: Grading of all IPO of equity shares or other securities convertible into equity shares is mandatory. Grading shall be obtained from at least one credit rating agency registered with SEBI and shall be disclosed in the Prospectus or Red Herring Prospectus.
10. Promoters' contribution and the lock in requirements: SEBI has also plugged loop holes in the computation of promoters' contribution and the lock in requirements thereof. Henceforth, securities pledged by the promoters with banks and financial institutions as collaterals, will not be eligible in the computation of promoters' contribution, thus upholding the spirit of the legislation. Further, the promoters' locked in securities can now be pledged with bank or financial institutions only if the purpose of the loan is to finance one or more objects specified in the issue thereby preventing misapplication of pledging for any other purposes.

LIMITATIONS OF SEBI

Finally, in our observation as regulator SEBI has playing immense role for development of capital market from the last more than one and half decade as a genuine autonomous body.

Though it has started as a watchdog in protecting investors' interests, regulating the working of Stock Exchanges and promoting capital market, still it faces a number of problems/ limitations.

Some of these are as follows:

1. The Central Govt. has authorized SEBI to frame its rules and regulations for actively monitoring capital markets. These rules and regulations will have to be approved by the government first. This will cause unnecessary delays and interference by the Ministry of Finance. The bureaucratic delays in clearing the rules will hamper the working of SEBI. The government should direct SEBI to frame or change the rules as per the demand of the situation so that it is able to achieve professional efficiency.
2. Sometimes SEBI will have to get prior approval for filing criminal complaints for violations of the regulations. This will again cause delays at government level.

3. The SEBI, as a regulator, proved to be ineffective in the series of scams that took place in the last decade. The SEBI has been accused of shutting the stable door after the horse had bolted. For instance, the SEBI had occasions to review the affairs of CRB capital markets but took a lenient view and as a result, huge investors lost crores of rupees.
4. The SEBI has gone more than half way to help out potential defaulters to avoid a major payments crisis. Whenever the real racketeers get up to new tricks, surveillance takes a long time to catch up.
5. The SEBI banned badla system in India in 1993, but it banned badla without providing an alternative mechanism. Of course, various committees like G.S.Patel Committee, Jayant Verma Committee had given alternative solution. But these trails were failed. The SEBI introduced rolling settlement after the ban of Automatic Lending and Borrowing Mechanism (ALBM) and borrowing and Lending of Securities Scheme (BLESS). The ban on deferral products killed liquidity in the markets which, in turn, dampened the market sentiments.
6. The SEBI is perceived to be more corporate-friendly than investor-friendly. It not only failed penalize fraudulent companies, but remained a spectator when same companies re-entered the market with new issues.
7. The SEBI does not have the requisite number and a competent staff to regulate and develop the capital market. There are very few officers who are involved in surveillance, investigation and prosecution, as compared to a large army of over 1000 in the Securities Exchange Commission (SEC) of the USA.

CONCLUSION

SEBI has left no stone unturned for the safeguard of investors from the malpractices and fraudulent practices of Issuers and market Intermediaries. SEBI is redressing the investors' grievances by carrying out investigation and action has been taken in case the grievances are not redressed by the concerned quarter within the time frame. SEBI has issued various guidelines which are amended from time to time to cope with the problems arises during the course to ensure that the savings of investors may remain safe and to maintain the investors' confidence across the country. However, SEBI is not fully successful in its mission as evident from the report of Swaroop committee report which states that the investor population in our country has declined from 20 million in the 1990s to just over 8 million in 2009. The main reasons for this steep fall in investor population can be attributed to the rampant malpractices observed in the capital market, the short changing of investors at various levels and the absence of any mechanism for expeditious and satisfactory disposal of investor complaints in a time bound manner.

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