

ROLE OF SEBI AS A BODY TO REGULATE AND PROTECT THE INTEREST OF INVESTORS

*BY HARMEET KAUR
FROM INDORE INSTITUTE OF LAW*

ABSTRACT:

Today's security market or any other financial investment institutions vitally thrive on protection of investors. In any kind of security related market, certainty of investors has pivotal significance. Without earning the faith and confidence of investors no market can flourish.

These days investor protection has become a very well received expression in the capital market. SEBI is concerned on the regulation of capital market by issuing certain procedure, guidelines, rules and regulations to protect investors' right and to retain their confidence.

Keeping this in view SEBI has been set up to protect the interests of the investors and to regulate the security market, and the body is leaving considerable remarks over the years in this context by implementing its various regulatory and developmental measures.

Key words: security market, investor protection, financial instruments.

RESEARCH AIM:

This research paper aims at discussing the role of SEBI as a body to regulate and protect the interests of investors.

The study will primarily focus on SEBI's objective to protect the interests of investors in securities market.

It will examine various regulatory measures taken by SEBI for the regulation of capital. The study revolves around the various initiatives taken by SEBI in form of formation of board, launching schemes, etc.

SCOPE OF THE RESEARCH:

- To identify the risks to which investors are exposed and to know the role of SEBI in protection of interests of investors.

- To study the schemes taken up by SEBI to promote financial literacy in India.
- To analyze the overall strategy of SEBI to promote and strengthen the financial intermediaries.

RESEARCH METHODOLOGY:

The present case study is based on both primary and secondary data in nature. The data is various published sources such as SEBI Act, 1992, SEBI reports, financial journals, finance articles, regulations and circulars issued by SEBI.

REVIEW OF LITERATURE:

The literature referred for analysis in the present research work includes ‘The role of SEBI in protecting the interest of investors and regulation of financial intermediaries’ by S Mohana Murali, ‘Protection of Investors in India’ by Moushmi Sarmah

RESEARCH QUESTIONS:

1. What functions do SEBI has in protecting the interests of investors?
2. To what risks investors are exposed?
3. Whether SEBI is actually taking a stand for stock holders?

RESEARCH SCHEME:

1. Introduction
2. Risks to which security holders are exposed.
3. Rights of investors as security holders
 - a. As shareholders
 - b. As debenture holders
4. Securities and Exchange Board of India Act, 1992
 - a. Securities Appellate Tribunal
5. Investor Protection and Education Fund
 - a. Utilization of fund
6. Financial literacy initiatives taken by SEBI
7. SCORES (SEBI Complaints Redress System)
8. Conclusion

INTRODUCTION:

Every sound economy in modern times is based upon a financial system this is efficient enough for production, capital and economic growth. Security market is amongst those pillars on which any economy stands. People are diverting their excessive surplus towards these securities markets and buying financial instruments like mutual funds, shares, company fixed deposits, debentures, insurance products, etc.

A security market is a market of those financial instruments that are readily available for sale. The security market transactions promote economic growth of a country i.e. more efficient the market, more is the promotion of economic growth.

But a security market is considered to be healthy and flourishing only on the level of protection provided to the investors. Investors' protection has been placed at high importance when it comes to the economic growth of the country.

The agenda to provide a safer security market globally will be successful only by gaining the faith and confidence of the investors.

RISKS TO WHICH SECURITY HOLDERS ARE EXPOSED

- a. There is a reward/risk relation in every security. In order to receive the reward one has to expose himself to the risks too. Greater the risk more is the reward.
- b. Investment in a share market is not a guaranteed investment. When a company is performing poorly it becomes difficult for holder of shares to sell it on desired rates.
- c. There also involves a 'timing risk'. The risk involved in security market has risen sharply due to the market cycles. Having a skill of understanding market cycles and analyzing the performance of the company during various business cycles can help in reducing the timing risk.
- d. Changing legislation is also a risk for investment.
- e. If any investment is done at a overseas security market then changing currency value also becomes a risk against return.
- f. The prices of shares fluctuate at a high degree. The price may rise and fall even up to 50% per year. The investors may make themselves prepared for this risk.

RIGHTS OF INVESTORS AS SECURITY HOLDER:

According to SEBI guidelines¹ following are the rights of the investors-

As shareholders:

- a. To receive the share certificates, on allotment or transfer (if opted for transaction in physical mode) as the case may be, in due time. Now in IPO, investors will be allotted shares in dematerialized mode only and subsequently they can rematerialize the allotted shares.
- b. To receive copies of the Annual Report containing the Balance Sheet, the Profit & Loss account and the Auditor's Report.
- c. To participate and vote in general meetings either personally or through proxy.
- d. To receive dividends in due time once approved in general meetings.
- e. To inspect the statutory registers at the registered office of the company.
- f. To receive corporate benefits like rights, bonus, etc. once approved.
- g. To apply to Company Law Board (CLB) to call or direct the Annual General Meeting with requisite number of shareholders.
- h. To inspect the minute books of the general meetings and to receive copies thereof.
- i. To proceed against the company by way of civil or criminal proceedings.
- j. To apply for the winding up of the company with requisite number of shareholders.
- k. To receive the residual proceeds in case of winding up.
- l. To receive offer to subscribe to rights issues in case of further issues of shares.
- m. To receive offer in case of takeover or buyback under SEBI Regulations.
- n. Besides the above rights, which you enjoy as an individual shareholder, you also enjoy the following rights as a group:
 - o. To requisite an Extra-ordinary General meeting.
 - p. To demand a poll on any resolution.
 - q. To apply to CLB to investigate the affairs of the company.
 - r. To apply to CLB for relief in cases of oppression and/or mismanagement.

As debenture holders:

- a. To receive interest/redemption in due time.
- b. To receive interest/redemption in due time.

¹ SEBI (Informal Guidance) Scheme, 2003, came into operation from June 24th, 2003

- c. To apply before the CLB in case of default in redemption of debentures on the date of maturity.
- d. To apply for winding up of the company if the company fails to pay its debt.
- e. To approach the Debenture Trustee with your grievance.
- f. You may note that the above mentioned rights may not necessarily be absolute.

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

The preamble to Securities and Exchange Board of India Act 1992 describes the powers and functions of the board. It states that the objective of SEBI is *“to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto”*.²

SEBI is the apex body regulating the stock market of India. It is the duty of the board to protect the interests of the investors in securities. Section 11 (2) of the Act provides for various measures taken up by the board in this furtherance which are as under-

- a. Regulating the business in stock exchanges.
- b. Registering the working of stock brokers, sub-brokers, etc.
- c. Promoting and regulating self regulating organizations.
- d. Prohibiting fraudulent and unfair trade practices.
- e. Promoting investors' education.
- f. Prohibiting insider trading.

For this purpose SEBI (Prohibition of fraudulent and unfair practices relating to securities market) Regulations, 1995 has been regulated.

Further the act provides for penalties and adjudication in respect of failure to furnish information, return etc, to enter into an agreement with his client, to comply with any of the Regulations providing for restrictions on the activities of the asset management companies, to redress the grievances of investors, etc.³

² Preamble to Securities and Exchange Board of India Act 1992

³ Chapter VI-A ibid

SECURITIES APPELLATE TRIBUNAL

Securities Appellate Tribunal is a statutory body established under section 15-K of Securities and Exchange Board of India Act, 1992. The SAT provides protection to three groups of people i.e. the issuer of securities, investors and market intermediaries. SAT is established to hear and dispose of appeals against the order passed by the SEBI or by any adjudicating officer under the act.⁴ SAT consists of three members, a presiding officer and two other members.⁵ For the purpose of discharging their functions, SAT shall exercise the powers of a civil court under the Criminal Procedure Code, 1908.⁶ The limit to file an appeal before tribunal is within 45 days of receiving copy of order made by SEBI or the adjudicating officer along with the prescribed fees.

INVESTOR PROTECTION AND EDUCATION FUND

Education is a way through which investors can secure their interests in this market. If government takes initiatives to educate investors, half of the risks to which investors are prone will be known to them. An aware investor can protect himself; therefore SEBI has taken steps to make investors well educated and aware.

By section 30 of Securities and Exchange Board of India Act, 1992, SEBI has made SEBI (Investor Protection and Education Fund) Regulations, 2009 to protect the interest of shareholders. Under these regulations a fund has been established called the Investor Protection and Education Fund.⁷

According to this fund, following amounts shall be credited to the fund:⁸

- a. contribution as may be made by the Board to the Fund;
- b. grants and donations given to the Fund by the Central Government, State Government or any other entity approved by the Board for this purpose;
- c. proceeds in accordance with the sub-clause (ii) of clause(e) of sub-regulation (10) of regulation 17 and sub-regulation (3) of regulation 21 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) regulations, 2011];

⁴ Section 15-T ibid

⁵ Section 15-I ibid

⁶ Section 15-U of Securities and Exchange Board of India Act, 1992

⁷ Regulation 3 of SEBI (Investor Protection and Education Fund) Regulations, 2009

⁸ Regulation 4 ibid

- d. security deposits, if any, held by stock exchanges in respect of public issues and rights issues, in the event of de-recognition of such stock exchanges;
- e. amounts in the Investor Protection Fund and Investor Services Fund of a stock exchange, in the event of de-recognition of such stock exchange;
- f. amounts forfeited for non-fulfillment of obligations specified in regulation 15B of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998;
- g. monies transferred in accordance with sub-regulation (9) of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- h. amounts disgorged under section 11B of the Act or section 12A of the Securities Contracts(Regulation) Act, 1956 or section 19 of the Depositories Act, 1996;]
- i. interest or other income received out of any investments made from the Fund;
- j. such other amount as the Board may specify in the interest of investors.

Utilization of fund:

The fund shall be used for the purpose of protection of investors and promotion of their education and awareness. The fund shall be used in following ways:

- a. educational activities including seminars, training, research and publications, aimed at investors;
- b. awareness programmes including through media - print, electronic, aimed at investors;
- c. funding investor education and awareness activities of Investors' Associations recognized by the Board;
- d. Aiding investors' associations recognized by the Board to undertake legal proceedings in the interest of investors in securities that are listed or proposed to be listed. Legal Proceeding means any proceedings before a court or tribunal where one thousand or more investors are affected or likely to be affected by:-
 - i. mis-statement, misrepresentation or omission in connection with the issue, sale or purchase of securities;
 - ii. non-receipt of securities allotted or refund of application monies paid by them;
 - iii. non-payment of dividend;
 - iv. default in redemption of securities or in payment of interest in terms of the offer

- document;
- v. fraudulent and unfair trade practices or market manipulation;
 - vi. such other market misconduct which in the opinion of the Board may be deemed appropriate; but does not include any proceeding where the Board is a party or where the Board has initiated any enforcement action.
- e. refund of the security deposits which are held by stock exchanges and transferred to the Fund consequent on de-recognition of the stock exchange as mentioned in clause (d) of regulation 4, in case the concerned companies apply to the Board and fulfill the conditions for release of the deposit;
- f. expenses on travel of members of the Committee, who are not officials of the Board, and special invitees to the meetings of the Committee, in connection with the work of the Committee;
- g. salary, allowances and other expenses of office of Ombudsman;
- h. and such other purposes as may be specified by the Board.⁹

FINANCIAL LITERACY INITIATIVES TAKEN BY SEBI

SEBI has taken various initiatives to spread awareness and education in these forms of programs:

- a. Website of SEBI has been designed in the favor of educational purpose of investors. Also the latest updates are also made time to time through the same.
- b. Efforts are made to update educative materials for the users of website like- How to lodge a complaint against any grievance.
- c. Pocket money is a program launched by National Institute of Securities Markets (NISM) and SEBI for school students of classes 8th to 12th across India. This program imparts awareness of saving, planning and investing. Also NISM takes some random evaluation tests to check the benefits of the program. The school teachers are also trained for the purpose of this program.
- d. To facilitate the queries of general public, SEBI has taken an initiative to launch toll free helpline service numbers in over 14 languages.¹⁰

⁹ Regulation 5 of SEBI (Investor Protection and Education Fund) Regulations, 2009

¹⁰ Taken from <https://www.sebi.gov.in/toll-free-helpline.html> on July 23, 2018 at 12:30 AM

SCORES (SEBI COMPLAINTS REDRESS SYSTEM)

“Participate in fight against corruption- take online integrity pledge”¹¹

With this motto SEBI enables investors to lodge their complaints against any listed company by way of its web based grievances redressal system. Complaints can be lodged online at anytime from anywhere. Market intermediaries and companies receive notice online if any complaint has been lodged against them.

Also due to this system secure automated environment has been created because, SEBI keeps an eye online on all the complaints from its lodging to its closure. Essential features of scores are as under:¹²

- 
- a. Centralized data base of investor complaints
 - b. Online movement of the complaints to the concerned listed company or SEBI registered intermediary.
 - c. Online upload of Action Taken Reports (ATRs) by the concerned listed company or SEBI registered intermediary
 - d. Online viewing by investors of actions taken on the complaint and its current status

CONCLUSION

This paper gives an overview to investor protection and education programs which are presently in force in our country. As a lot of illegal acts and scams were going on in our country so government realized that existing legislations and regulations are not efficient and therefore established an autonomous body for regulating the securities market. Thus, SEBI was established under the SEBI Act, 1992.

Not only this, various other statutory provisions like regulations, circulars, guidelines, etc are also enacted and enforced by SEBI from time to time to protect the interest of investors. Adequate protection provisions have been given in various other legislations also such as Companies Act 2013 and Depositories Act, 1996.

¹¹ Taken from

<https://googleweblight.com/i?u=https://www.scores.gov.in/scores/viewComplaintStatus.html&hl=en-IN&tg=914&pt=148> on July 23, 2018 at 12:44 AM

¹² Circular No. CIR/OIAE/1/2014 issued by SEBI on December 18th, 2014

For further promotion of investors' awareness and protection of their interest Investor Education and Protection Fund has been established under section 125 Companies Act, 2013 also.

Even globally, the investor protection has been considered to play an important role in the economic development of a country. It has been made concern worldwide to make securities market more secure and transparent.

