

# Securities and Exchange Board of India: Recent Initiatives and Criticism



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Securities and Exchange Board of India (“SEBI”) has come a long way since its inception to being considered as one of the most pro-active regulators globally. SEBI, as a regulator, has been pivotal in bringing vast changes to securities law framework in India including appointment of woman director on boards of the listed entities, initiation of business responsibility and sustainability report for top market cap companies, streamlining disclosure for companies going for an IPO, introduction of new investment vehicles like InvITs and ReITs and most recently its proposal for introducing a new asset class, which could be a potential game changer for HNI investors.

SEBI, most notably has brought down the time taken for listing of shares pursuant to public offer to three days in a phased manner, which used to take approximately 12 days not too long ago. Coupled with other steps i.e. making ASBA (application supported by blocked

amount) mandatory for all investors other than anchor investors, introduction of UPIs payment mechanism has reduced the cost involved for the retail investors and increased the reach of the retail investors.

To protect the interest of the investors SEBI has recently issued a comprehensive guidelines for stock exchanges with commodity segments to establish an investor protection fund (“IPF”) to be administered through a separate trust set up for this purpose. Such a trust can have a maximum 5 directors comprising public interest directors, one representative from investors associations recognised by SEBI and chief regulatory/compliance officer of the stock exchange.

To enable better investor awareness and better disclosures, SEBI has also mandated the stock exchanges to disclose the Investor Charter for Stock Exchanges inter-alia detailing the services provided to the investors, rights of investors, various activities of the stock exchanges with timelines, Dos and DON'Ts for the investors, responsibilities of investors, code of conduct for stock exchanges and grievance redressal mechanism. Above steps will enable the investors to know more about the rights available to them in respect of their investment.

SEBI has also recently come down heavily on unregistered fin-fluencers by banning the regulated entities to deal with unregistered fin-fluencers. The above restriction does not apply to persons regulated by the SEBI or their agents for their association (i) with persons who are exclusively engaged in investor education and do not, directly or indirectly, provide advice/ recommendation/ claim of return or performance or (ii) with specified digital platform, which has a mechanism in place to take preventive as well as curative action, to the satisfaction of the SEBI. While this move has been welcomed and will help protect the investors from undue and misleading advice but has raised questions as to whether such a blanket ban is required and why a code of conduct or standards similar to advertising standards could not be notified.

SEBI has also introduced several changes for ensuring ease of business to prevent undue compliance burden on the corporates. To provide ease of operation to various entities, the SEBI, has recently come up with various discussion papers on ease of doing business Some of the proposed steps for providing ease of business include proposal for streamlining the process of reclassification of promoter or promoter group entities of a listed entity, exempting transactions which are uniformly applicable or offered to all shareholders / public from the definition of Related Party Transaction (“RPT”), exempting transactions like payment of statutory dues, fees or charges to the Government, transactions between two public sector companies etc. from approval requirements for RPTs, and permitting ratification of RPTs by the audit committee subject to certain conditions. SEBI is also contemplating to combine pre-issue advertisement and price band advertisement as single advertisement, permitting issuers to disclose proforma financials of subsidiary divested or acquired.

While identifying the stellar role played by SEBI in strengthening investor confidence and improving investment activities, however, its journey has not been free from criticism. One of the foremost criticism of the SEBI has been its perceived high-handedness in deciding matters, which have subsequently been over-turned by the appellate authority, SAT. In the famous ‘Shruti Vohra Vs SEBI’<sup>1</sup> known as “WhatsApp case” Securities Appellate Tribunal (“SAT”) overruled the penalties levied by SEBI on the ground that SEBI has failed to prove the allegations made by it. SAT in this case held that SEBI has failed to appreciate the fact that the ‘**WhatsApp**’ messages may have been originated from brokerage houses or from the estimates found on the Bloomberg platform and therefore could not be held to be Unpublished Price Sensitive Information. Similarly, in the case of “**Jio Financial Services**”<sup>2</sup> SAT overruled the penalties imposed by SEBI stating that that the respondent i.e. SEBI has not considered the evidence properly. SAT further stated that to hold a simple one way trade as manipulative when it is not a circular or reversal trade and in the absence of any shred

of evidence of mutual arrangement with a motive to manipulate the market would not be correct. SAT also overruled SEBI decisions in Brickwork Ratings<sup>3</sup> case and Zee Entertainment Limited<sup>4</sup> cases. SEBI was also reprimanded by SAT, in the Kirloskar<sup>5</sup> case, for failing to de-freeze the demat accounts of the concerned shareholders.

SEBI has also been criticized for its approach in the case of “**Ashok Dayabhai Shah And Ors. Versus Securities And Exchange Board of India And Ors**”<sup>6</sup> wherein the Bombay High Court stated that “there has been persistent non-compliance of such orders passed by the Court, despite the Special Leave Petition of the SEBI being rejected, is too far to be imagined totally unacceptable.” The High Court also stated that SEBI is a public body, it is required to act in public interest, it needs to comply with the orders passed by this Court, more particularly, when the orders have attained finality in the facts and circumstances of the present case, cannot be countenanced that SEBI would resort to such actions only when and / or, as may be, commanded by respondents. Such approach of the SEBI, in our opinion, would cause a dent to the confidence, the investors would repose in the SEBI, which needs to function solely to further the object and purpose, for which it is created by the Act of the Parliament.

Another criticism of SEBI has been that despite ample powers and regulations, SEBI has been unable to detect the frauds and market speculations in the market. Usually, SEBI has been seen in action only after the fraud has been committed. In a recent case, SEBI has been criticized by the Supreme Court of India in different cases for more than 10 years delay in issuing show cause notices for the alleged defaults<sup>7</sup>.

While SEBI have been proactive with taking steps to protect the interest of the investors, SEBI has been also alleged to over regulate and bringing frequent changes in its rules and regulations. SEBI's role is to maintain a fine balance between regulating the market and development of the market, overregulation and frequent changes in rules and regulation not only create uncertainties in mind of concerned but also impacts the markets.

SEBI is placed at a unique juncture where it not only needs to protect the interest of the public but also create an environment providing ease of operations, certainty and stability in in laws and avoiding undue and unwarranted litigation.

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<sup>1</sup> Appeal No. 308 of 2020 before SAT

<sup>2</sup> Appeal No. 745 of 2023 before SAT

<sup>3</sup> Appeal No. 694 of 2022 before SAT

<sup>4</sup> Appeal no. 714 of 2023 before SAT

<sup>5</sup> Appeal no. 499 of 2020 before SAT

<sup>6</sup> WP No. 530 of 2023, High Court of Judicature at Bombay

<sup>7</sup> Civil Appeal no. 7827 of 2023 before Supreme Court of India