"An Appraisal of the Investor Protecting Measures adopted by the scurrilities & exchange Board of India"

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Abstract

The present study, "A Critical Appraisal of the management and working of SEBI with Special Reference to Investors protection" is aimed at analyzing management and working of SEBI for practices followed in the capital Market with a view to achieving the objective of Investors Protection and preventing misuse of hard earned money of the investors. An effort has been made by the author to analyse the Guidelines issued by SEBI from time to time to regulate the functioning of capital market and put forward some suggestions to strengthen the hands of SEBI. A study has been made of the available data and the loopholes in the existing policies and suggestions have been made to make the capital market more safe for the investor.

KEYWORDS : Investor, SEBI, Capital Market, Protection.

INTRODUCTION :

With the change in investment pattern from the traditional investment in gold, jewellery, house property etc. to a portfolio of shares, debentures, bonds, mutual funds and other securitised instruments, today capital market has become an integral part of our life.

The advent of liberalization in 1992-93 integrated the world and now the world has become a global market characterized by economic interdependence and emergence of large economic blocks. The important development of global markets is the resurgence of market forces imparting tremendous impact in all spheres of life. The national boundaries have become less significant with the interlinked effect of technology, information flows and foreign investment mobility.

Along with the benefits, globalisation and liberalization has also made the market prone to the manipulations. In this context, The Securities and Exchange Board Act of 1992 provides for the establishment of a board to protect the interests of the investors in securities and to promote the development and regulation of securities market. SEBI carried out the functions of supervisory and advisory body of the government. It initiated the basis for control and regulation of the market, arranged for the licensing of merchant bank, mutual funds etc. and performed the advisory functions to the government. The market being quite vulnerable to manipulations by its players requires a regulator who may act as a watchdog to ensure a level playing field for all the players. India being a country of 1.2 billion population has an immense potential for development of the primary and secondary market. The role of a regulator becomes more important keeping in view demographic map of India. Half of the Indian population is illiterate and the market mostly comprises of small investors which makes it more prone to manipulations by some big investors. In past we have witnessed the stock market scams by Harshad Mehta, Ketan Parekh and misuse of public money by UTI.

Objective of the Study :-

The SEBI has been entrusted with both the regulatory and development functions. The objective of SEBI is as follows:

a) Investor protection, so that there is a steady flow of savings into the capital markets.

b) Ensuring the fair practices by the issuers of security, namely companies so that they can raise resources at least cost.

c) Promotion of efficient services by brokers, merchant, bankers and other intermediaries so that they become competitive and professional.

RESEARCH METHODOLOGY :

The research paper is an attempt at exploratory research, based on secondary data sourced from various journals, magazines, articles and media reports. Available secondary data was extensively used for the study. The investigator also procured the required data through secondary survey.

The term "investor protection" is a wide term encompassing various measures designed to protect the investors from malpractice's of companies brokers, merchant bankers issue managers, Registrars of new issues etc. Investors Beware" should be the watchword of all programmes for mobilisation of savings for investment. As all investment has some risk element, this risk factor should be borne in mind by the investors and precautions should be taken to protect their interests.

In case of malpractices by companies brokers etc. investors can make complaints the complaint of investors come from 2 minor sources:

i) Against member broker of Stock Exchanges

ii) Against companies listed for trading on the stock exchanges.

Besides, there can be complaints against sub-brokers agents, merchant banker's issues managers' etc. which cannot be entertained by the stock exchanges as per their rules.

Protections in the New issues market :

The main source of information on which investors depend in the New Issues market is the prospectus which should contain correct statement of fact. Any false statements fraud etc. are punishable under the companies Act, the Directors are subject to civil liability for any misstatement of facts or untrue statements.

Protection for fixed Deposits :

Sec. 58 (A) of the companies Act deals with the subject of fixed Deposits there are rules which apply to non banking companies, private and public limited companies who wish to raise deposits from the public. No deposits can be invited from the investors or the public unless the companies follow the rules and guidelines made by the Department of company Affairs in consultation with the RBI. When a company fails to repay the deposits the depositor can complain to the Company Law Board (CLB) in the specified form duly filled in together with the fees for non payment of interest or non repayment of deposit. The order of the CLB is final and binding on the company and the company has to comply with it. Any non compliance with the order of the CLB or violation of the provisions of the company law would invite penalty of imprisonment and fine.

Guidelines to Investors :

- 10 golden rules of investing in stock markets.
- Avoid the herd mentality.
- Take informed decision.
- Invest in business you understand.
- Don't try to time the market.
- Follow a disciplined investment approach.
- Do not let emotions cloud your judgement.
- Create a broad portfolio.

SECURITIES AND EXCHANGE BOARD OF INDIA

Controller of Capital Issues

The Govt. has set up the securities & Exchange Board of India (SEBI) in April 1988 to protect the interests of investors in the securities and to promote the development of and to regulate the securities market and for matters connected therewith.

Management of SEBI under the SEBI Act 1992

Sec. 4 of the Act lays down the constitution of the management of SEBI. The Board of members of SEBI shall consist of a Chairman, two members from amongst the officials of the ministries of the Central Govt. dealing with finance and Law, one member from amongst the officials of the Reserve Bank of India, Act, 1934, two other members to be appointed by the Central Govt. who shall be professionals and interalia have experience or special knowledge relating to securities market.

Section 17 of the Act empowers the Central Govt. to supersede SEBI, if on account of grave emergency, SEBI is unable to discharge the functions and duties under any provisions of the Act, on SEBI persistently defaults in complying with any direction issued by the Central Govt. under the Act, or in the discharge of its functions and duties under the Act and as a result of such default, the financial position of SEBI or its administration has deteriorated, or in public interest.

POWERS & FUNCTIONS OF SEBI

SEBI carried out the functions of supervisory and advisory body of the Govt. It initiated the basis for control and regulation of the market, arranged for the licensing of merchant banks, mutual funds etc. and performed the advisory functions to the Govt. The SEBI has pursued its functions vigorously by collecting investor’s grievances and seeking there redressal with companies licensing of merchant banks and evolving guidelines for them as well as the mutual funds. The draft legislation for controlling insider-trading proposal to control and regulate the activities of mutual funds were also prepared and forwarded to the Govt. The legislation giving powers to SEBI was passed on 4th April 1992 in the form of the Securities & Exchange Board of India Act 1992 Sec. 11(1) of the Act casts upon SEBI the duty to protect the interests of investors in securities and to promote the development of and to regulate the securities market through appropriate measures these measures provide for;

a) Regulating the bounces in Stock Exchanges and any other securities market

b) Registering and regulating the working of stock brokers, sub brokers, share transfer agents, bankers to an issue trustees of trust deeds, registrars to an issue, merchant bankers underwriters portfolio managers investment advisors and such other intermediaries who may be associated with securities market in any manner.

c) Registering and regulating the working of collective investment schemes including mutual funds,

d) Promoting and regulating self regulatory organisations (SORs) and Stock Exchanges

e) Prohibiting fraudulent and unfair trade practices in securities market

f) Promoting investor education and training of intermediaries in securities market

g) Controlling insider trading and takeover bids and imposing penalties for such practices

h) Calling for information from undertaking inspection, conducting inquiries and audits of the stock exchange of intermediaries & self-regulatory organisation in the securities market.

i) Performing such functions and exercising such powers under the provisions of the capital issues (control) Act, 1947, (subsequent repealed) and the securities contacts (Regulations) Act, 1956 as may be delegated to it by the Central Govt.

Securities Contracts (Regulation) Act, 1956

This act was framed in the seventh year of the Republic of India to prevent undesirable transactions in securities in regulating the business of dealing therein by providing for certain other matters connected therewith. The act has been amended in 1993 and 1999 to take care of the changing needs of the market. Clause two of the act provides the basic definitions of the terms used in the securities markets. It defines the securities, derivatives, Government securities, stock exchange, securities Appellate Tribunal and other terms related with the transactions and dealings in securities.

Clause 3 to 12 deal with the stock exchange - The powers of the Central Government under the act are far reaching and include the following in particulate.

i) Grant and withdrawal of recognition, approval or change of bye-laws

ii) Call for periodical returns from the stock exchange.

iii) Direct inquiries on the members or on the stock exchange.

iv) Liability of the exchange to submit annual reports.

v) Directing the stock exchange to make certain rules

vi) Supersede the governing board of the exchange.

vii) Impose any other conditions or regulations for trading.

Section 3 to 5 lays down the procedures to be followed for recognition of stock exchange and withdrawal of recognition by Central Government.

Section 7 of the act directs all the recognised stock exchanges to furnish a copy of the annual report containing such particulars as may be prescribed to the Central Government.

Section 74A deals with the powers of the recognised stock exchange to make rules restricting voting rights etc.

Section 9 of the Act details the powers of the recognised stock exchange to make bye-laws for the regulation and control of contracts.

Section 10 deals with the powers of SEBI to make or amend bye-laws of recognised stock exchanges.

Section 13 to 20 of the Act gives guidelines pertaining to Contracts and Options in securities. It gives SEBI power to approve establishment of additional trading floor in a stock exchange. Section 13 & 14 vests Central Government with power to make contracts in notified areas illegal or void in certain circumstances.

Section 15 prohibits members of recognised stock exchanges to act as principals except for the conditions laid down in the act.

Central Government has been given power through section 16 to prohibit contracts in certain cases to prevent undesirable speculation in specified securities in any state or area.

Stock exchange other than recognised stock exchanges have been prohibited from entering into or performing any contracts in securities through section 19.

Section 21 & 22 deal with the testing of securities while section 21 lays down the conditions for listing of the securities in any recognised stock exchange. Section 22 lays down the procedures for appeal against refusal of stock exchanges to list securities of public companies. It deals with the procedure and powers of securities Appellate Tribunal and vests the Tribunal with same powers as are vested in Civil court under the Code of Civil Procedure 1908. Every proceeding before Tribunal shall be deemed to be a judicial proceeding. Civil courts have been barred from entertaining any case which fall in the jurisdiction of Securities Appellate Tribunal. Appeal against the decision of Tribunal may be made to High Court within 60 days.

Section 23 to 25 prescribes the procedures and penalties which may be imposed on the persons or companies acting in contravention to the SC® Act 1956.

Section 26 states that no court inferior to that of a Presidency Magistrate or Magistrate of the first class shall take cognizance of or try any offence punishable under the Act.

Section 28 of the Act mentions that the provisions of this Act shall not apply to;

(a) The Government, RBI, any local authority or any corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause.

(b) Any convertible bond or share warrant or any option or right in relation thereto, in so far as it entitles the person in whole favor any of the foregoing has been issued to obtain at his option from the company or other body corporate issuing the same or from any of its shareholder or duly appointed agents, shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise on the basis of the price agreed upon when the same was issued.

(c) The Central Government may specify any class of contracts to which this act shall not apply.

The Act has provided for recognition to the stock exchanges and gave wide ranging powers to the Government to control and regulate the stock exchanges. It has laid down the types of contracts in securities which can be traded or purchased and sold and for testing of securities of public limited companies, whose shares are being traded.

The Act is applicable to Public Limited Companies, which are listed on Stock Exchanges and ensure transferability of shares and laid down the conditions under which transferability is denied to investors.

STOCK EXCHANGES AND INVESTORS

Stock Exchange means any body on individuals whether incorporated or not, constituted for the purpose of assisting regulating or controlling the business of buying, selling or dealing in securities." It is an association of member brokers for the purpose of self regulation and protecting the interest of its members. It can operate only if it is recognised by the Govt. under the securities contracts (Regulation) Act, 1956. The recognition is granted under Sec. 3 of the Act by the central Govt., Ministry of Finance Bombay, Calcutta, Delhi, Madras, Ahmedabad, Hyderabad, Bangalore, lndore etc. have so far been granted permanent recognition. The Byelaws of the Exchange are concerned with the following subjects:

Opening/closing of the stock exchanges, timing of trading, regulation of blank transfers, regulations of badla or carry over business control of the settlement and the other activities of the stock exchange, fixation of margins, fixation of market prices or making up prices (Hawala rates) regulation of taravani business (jobbing) etc. regulation of brokers trading brokerage charges, trading rules on the Exchange, arbitration and settlement of disputes and clearing of the trading etc.

The Stock Exchanges operate under the rules, byelaws and regulations duly approved by the Govt. and constitute on organised market for securities.

Present Recognised Stock Exchanges:

At present there are 21 stock exchanges recognised under the securities contracts (Regulation) Act 1956 They are located at Bombay, Calcutta, Madras, Delhi, Ahemadabad. Hyderabad, Indore, Bhuvaneshwar, Mangalore, Patna, Bangalore, Rajkot, Guwahati, Jaipur, Kanpur, Ludhiana, Baroda, Cochin, Pune. The recently recognised stock exchanges are at Coimbatore, Meerut. A stock exchange has also been set up at Gangtok, Sikkim early in 1986.

Organisation

The recognised stock exchanges at Bombay, Ahmedabad, Indore or voluntary non profit making associations while Calcutta, Delhi, Bangalore, Cochin, Kanpur, Ludhiana, Guwahati and Kanpur Stock Exchanges are joint stock companies Ltd. by shares and the Madras, Hyderabad and Pune stock exchanges are companies Limited by guarantee.

FUNCTIONS OF STOCK EXCHANGES

Stock exchanges provide liquidating to the listed companies. By giving quotations do the listed companies, they help trading and raise funds from the market. Savings of investors flow into public loans and to joint stock enterprises because of this marketability and unequalled facility for transfer of ownership of stock shares and securities provided by the recognised stock exchanges.

Stock Exchanges & Investor Protection

Measures adopted by the stock exchange for the investors protection :

a) The exchanges have set up a customer protection fund, in tune with the guidelines issued by the Ministry of Finance. The objective of the fund is to compensate the investor clients of member brokers who have defaulted.

b) The other service provided was through the Investor Complaints Cell. The service was strengthened to render expeditious service to the investors and to attend to their grievances.

c) The stock exchange arranged an Insurance policy to broker members through the New India Assurance Co. This policy covers the perils of forgery, fabrication of securities and transfer deeds and receipts, identity of the transferor, loss of securities in transit etc. which the brokers are subject to during these transactions the clients for delivery of shares for transfer.

d) Many Stock Exchanges have also provided a service to investors in the form of fixing up an odd lots trading session on every alternate Saturday and short listing a group of brokers who agreed to deal in odd lots for the benefit of purchase, sale consolidation etc. of odd lots.

Conclusion :

SEBI has introduced a few reforms, but the stock brokers have been slow to accept the needs for reforms. Reform measures include improved transparency, computerisation, enactment against insider trading, improved capital adequacy, restrictions on forward trading and provisions to encourage corporate membership in the stock exchanges, The restriction on forward or continue trading, referred to in India as Badla, has been met with cynicism. New measures include provision for cash margin, a need for physical transfer on settlement date. Though Sebi has been doing a good job but with the changing time, taking the advantage of existing loopholes in the present system, a number of malpractices have crept into the securities market and therefore it is necessary to review the performance of Sebi from time to time and to make necessary amendments in the Acts, if required to plug the loopholes so as to strengthen the faith of the investors in the market and to protect the rights of the investors. Investor Protecting Measure adopted by the Securities and Exchange Board Of India" is aimed at analysing management and working of SEBI in India, a premier organisation of the Government of India for regulating practices followed in the stock exchanges with a view to achieving the objectives of "Investor Protection" and saving misuse of hard earned money of the Investors.

Following are the conclusions and suggestions of the present study for improving the working of the Securities And exchange Board Of India.

1. Ensuring end use of funds.
2. Improvement in market intelligence.
3. Enhancing Investor education.
4. Stopping courts to give verdicts against the rulings of SEB1.
5. Improvement in process of Book Building.
6. Electronic filing system for disclosures.
7. Interlinking of regional stock exchanges.
8. Increasing the value of penalty and power to accept settlements between parties.

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