PUBLIC ISSUES OF COMPANIES UNDER THE GUARDIANSHIP OF SEBI

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CHAPTER -01

INTRODUCTION

Capital markets are very crucial for the economic development of a nation. In fact, it has been seen that a well-developed capital market is a precious national asset. Developed capital markets provide for some important macroeconomic benefits, including a) faster economic growth, b) higher productivity and capital growth, c) higher employment, and d) a better-developed financial market. Moreover, a developed capital market also offers some micro-economic benefits, including a) wealth formation for private investors, b) more flexible financing for companies, c) improvement of governance structures, since the raising of long-term finance ce is carried out within the contours of laws governing capital issues, like, SEBI Act, 1992, Issue of Capital and Disclosure Requirements (ICDR) Regulations, Listing Obligations and Disclosure Requirements (LODR) Regulations, etc. of d) higher cross border M&A power, and e) driving entrepreneurial behaviour.

IPO simply means an initial public offer or initial public offering in a company listed in shares on the stock market. It specifically directs to the procedure of offering shares of a private establishment to the public in a new stock allocation for the first time. An IPO authorizes a company to extend equity capital from public investors. The change from a private to a public company can be a critical period for private investors to fully acknowledge returns from their investment as it commonly includes a share premium for existing private investors. Meanwhile, it also permits public investors to participate in the offering of the stocks. Before an IPO, a corporation is considered private. As a pre-IPO private company, the company has grown with a moderately undersized number of shareholders including premature investors like the founders, family, and friends along with professional investors such as experiential capitalists or angel investors.

An IPO is a major measure for a company as it furnishes the company with credentials to raise a lot of capital. This provides the company with a tremendous capability to develop and expand. The increased translucency and share listing credibility can also be an element in supporting it to obtain more reasonable terms when pursuing borrowed funds as well. Whenever a corporation arrives at a stage in its growth process where it assumes it is mature sufficiently for the stringencies of SEC limitations along with the advantages and responsibilities to public shareholders, it will commence advertising its interest in going public. IPO also provides the capability of a company that is priced via underwriting due diligence. Whenever a company proceeds public, the formerly possessed private share ownership transforms to public ownership, and the current private shareholders' shares evolve worth the public trading price. Share underwriting can also contain exceptional requirements for private to public share ownership. The phrase initial public offering (IPO) has firstly buzzed on Wall Street and among investors for decades. The Dutch are credited with instructing the first contemporary IPO by proposing shares of the Dutch East India Company to the general public. Since then, IPOs have been operated as a way for companies to expand capital from public investors via the issuance of public share ownership. Through the years, IPOs have been comprehended for uptrends and downtrends in the allotment. Respective sectors also participate in uptrends and downtrends in disbursement due to innovation and various other economic characteristics.

Section 23 of the companies act 2013 states that the public issue is a way of generating funds through the general public. It simply means selling or marketing (trading) of the issued shares for the subscription by the general market by making way of issuing the prospectus. As per the new amendment of 2018, there have been drastic changes occurred in Section 26 of the Companies Act 2013. Matters which have been stated under the prospectus now will be delt by the SEBI (Securities Exchange Board of India) under the consultation and regulation as per prescribed by the central government. Till that the SEBI notifies the matter related to the prospectus of the concerned companies and can also refer to the information and the financial reports under the regulation of SEBI India Act, 1992.

Insider trading disregards trust and fiduciary obligation while also conducting severe legal implications. Insider trading has been a hot-table issue for many years. In 1934, Congress created the Securities Exchange Commission (SEC) as a government surveillance agency developed to regulate securities and protect investors. The penalties of insider trading as per

the SEBI, an insider trading conviction can result in a penalty of INR 250,000,000 or three times the profit made out of the deal, whichever is higher.

Whereas a hostile takeover happens when a company or a person tries to take over another company against the desires of the target company's board or management. That is the "hostile" characteristic of the hostile takeover- merging with or acquiring a business without the approval of that company's board of directors. The takeover can be done through various methods like

- Proxy vote
- tender offer
- or by a large stock

Proxy vote simply means a counterfeit vote a tender offer is an offer to purchase shares from a shareholder of an acquirer business at a more elevated price than the market price.

A proxy vote is when an acquiring firm influences current shareholders to negatively vote out the target company's management so that it can be taken over more effortlessly.

In the case of Private company

Section 42 of the Companies Act, 2013 (‘Act’) states that a corporation can create a private placement for a special group of persons. Private placement by companies means offering its securities or inviting to subscribe its securities for a special class of persons other than the public issue via a private placement offer letter.

Private placement of securities can be accomplished only to specified persons or recognized persons (as recognized by the board of the company). A company creating a private placement cannot offer its securities via any public advertising or utilize any marketing, media, or disbandment agents or channelers to notify the public about such an offer. If the offer is announced or marketed, it will be deemed a public offer and not a private placement by the company.

Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (‘Rules’) furnishes the regulations relating to a private placement by companies. The Regulations state that the company must offer or invite to subscribe its securities via a private placement offer letter in Form PAS-4.

All private placement recommendations should be completed only to those persons whose names are registered by the company before shipping the invitation to subscribe. The individuals whose names are registered will acquire the offer, and the company shall preserve a complete narrative of the recommendations in Form PAS-5. A company should dispatch a private placement accepted letter attended by an application form serially numbered organized and addressed either in written or in electronic mode, particularly to the individual to whom such a recommendation is made. The company must send the private placement offer letter to the particular person within thirty days of recording the person's name.

The individual to whom the private placement offer letter is managed in the application arrangement must accept the offer. The organization should file the entire announcement of the offer with the Registrar of Companies ('ROC') within thirty days of distributing the private placement offer letter.

1.1. Methodology of Research

As a sole regulator, SEBI has to keep eye on various activities of companies related to their financials as well as their dropped-off securities in the primary or secondary market, one of the vital functions of SEBI is to protect the investors and traders from insider trading also SEBI has an obligation of securing the companies from hostile takeovers or presenting of irrelevant information to the public. This thesis examines the various research methodologies and research methods that are typically used by researchers in the field of financial systems. The research methodology and research the method used in this research are acknowledged and discussed.

The chapter begins by providing a thorough introduction to the research. Then the research methodologies and research methods particularly used in financial systems are discussed.

A significant effort has been made to clarify and provide critical details about the topic concerned. Various laws had been taken into consideration for the completion of the thesis, and also a bunch of articles have been reviewed to make the base of the thesis more concrete and able to explain critical and tricky events under the financial systems.

Two of the leading case law have been very closely analysed in under this topic "The Sahara Supreme Court" and "the hostile takeover of the lemon tree" which will bring more light on the subject and the research questions that this thesis going to disclose.

The comparative research method as well as comparing laws before SEBI and regulation Scenario vs today's 2022 Supreme Scenario is taken under consideration for the completion of this paper.

This paper also tries to explain the methods now insurance companies can expand their business in India and contribute to the growth of the economy and their relevant regulators, the last and one of the most vital crucial problems of the investor's manipulation, i.e., manipulation of documents, manipulation of information and insider trading has been discussed, their protective measures and how can one can be stay alert from these red flags and how SEBI tackle these difficulties.

1.2 Research Objective

As the economy of India is growing the function, guardianship and responsibility are also increasing in past before the arrival of SEBI the current regulator India had witnessed one of the cruellest Supreme Courts which lead to one of the greatest falls ever recorded but this Supreme Court was only not reported by any person this Scam came into light when the Sahara company tried to list their subsidiary company to the primary market, i.e., issuance of IPO for expansion of their business.

One of the classic examples of a hostile takeover of a business is also disclosure where the power of investors is explained in how any moneyman can take over a business even without willing of the owner. Also one of the main objectives of this research is to enlighten readers on how can a firm raise money from the public, what are compliances required and how can any investor excess the information of IPO, and how can search for the perfect company to invest in to make a profit. This paper intends that provide light on several grey areas where more strength is required and how can primary as well as secondary markets are safer and properly regulated, this research paper also tries to throw light on FOREX trading and how illegally third-party platforms make the general public trade on currencies.

1.3 Hypothesis of research

The main aim of this research paper is to provide knowledge about how a company expands its business, from did the firm manage its finances, to what things they have to disclosure to the regulator for grant authorization from the regulator.

one of the vital roles of this research paper is to enlighten the on how can firmly make them invest in their business without providing any disclosure and without making investors unaware of how that monetary value is channelized into other works rather than sole firms' business.

This research paper going to explain the power of money, how can a money man can easily take over the company from its management and its directors just by bit process, and how SEBI protects the firm as well as investors.

Review of Literature

Life Insurance Markets in Developing Countries

Author(s): J. François Outreville Source: The Journal of Risk and Insurance, Jun., 1996, Vol. 63, No. 2 (Jun., 1996), pp. 263-278

Here in this article, it has been stated how the concept of insurance emerged in the developing countries, why insurance come to play how insurance eases the liability of the insured commodity or as well as the person belonging to it. It also briefly summarizes the history of insurance by taking the examples of various countries by their community and requirements.

Also, this article explains the concern in developing countries regarding life insurance services. The study shows that life insurance development is particularly related to personal disposable income and the country's status of economic development. Life insurance is also markedly influenced by the level of expected inflation. Monopolistic markets are significantly less developed than competitive markets. It has been said that the monetary importance of the insurance sector, and in certain the life insurance sector, is still low when evaluating the share of total business forged in developing countries. One way to plant energy is through economic growth and financial development.

Structural, economic, and technological constraints-such as the small size of markets, under-capitalization of the insurance companies, lack of sufficient knowledge, and know-how-create the comprehensive technological and economic dependence of developing countries' demands on international services. The insurance enterprises of developing nations also usually suffer from a major handicap-a shortage of skilled personnel.

Does Insurance Promote Economic Growth? Evidence from OECD Countries Author(s): Damian Ward and Ralf Zurbruegg Source: The Journal of Risk and Insurance , Dec., 2000, Vol. 67, No. 4 (Dec., 2000), pp. 489-506

This article examines the short- and long-run dynamic relationships exhibited between economic growth and growth in the insurance industry for nine OECD countries. This is achieved by conducting a counteraction analysis on a unique set of annual data for real GDP

Beenstock, Dickinson, and Khajuria(1988) in the first part of the paper, attempted to acquire a demanding procedure for property-liability insurance. They took an individual in a two-period model with insurable assets (value V) and wealth (M). If a loss happens and no insurance has been bought, it provokes a reduction in assets by the quantity of value of insurable assets.

If insurance has been bought and no loss occurs, the initial assets are reduced by the premium paid and if the loss takes place, wealth is reduced by 4 times the amount of value of insurable assets minus the sum insured. By taking these assumptions, some equations were positioned and they terminated demand for insurance as a function of income, probability of a loss occurring (accident), return on wealth (interest rate), and the relative price of insurance. The supply of insurance is assumed as a function of the probability of a loss occurring (accident), retrieval of wealth (interest rate), and the relative price of insurance. Premia is determined by the interaction of demand and supply as a function of income, accident, and interest rates. Then an equation for gratuities including a first-order dynamic adjustment was estimated by using the pooled-data method for the 12 largest property-liability insurance markets for the period 1970-1981.

The potential relationship between growth in the insurance industry and economic growth was examined by Ward and Zurbruegg(2000) for OECD countries. Real Gross National Product and total written premia were considered as measures for economic and insurance activity, respectively. This study tried to answer issues that had not been considered in Outreville's study, such as whether financial development was supply-leading or demand following, to cover developed countries and remove problems that arise by using cross-section data, which did not accommodate the potential for causal relationships to differ in size and direction across countries.

The Economic Significance of Insurance Markets in Developing Countries Author(s): J. François Osterville Source: The Journal of Risk and Insurance, Sep., 1990, Vol. 57, No. 3 (Sep., 1990), pp. 487-498

Here in this article, it has been stated how the concept of insurance emerged in the micro economy, It has been followed that there is a meaningful relationship between the need for life insurance and miSupreme Courtellaneous macroeconomic variables. The increased development of GDP causes an economic effect via higher per capita and disposable income and savings, which in turn make a favorable market demand for life insurance. On the other hand, life insurance also delivers support to the capital market and savings data pertaining to Indian life insurance and macroeconomic variables considerably indicating a close relationship and interdependence between macroeconomic variables and life insurance demand.

As per the article, it has been assumed that there is a very important relationship between the need for life insurance and various macroeconomic variables. The increased development of GDP generates economic expansion through increased per capita and disposable income and savings, which in turn construct a favorable market demand for life insurance. On the other hand, life insurance also supplies back to the capital market and savings data pertaining to Indian life insurance and macroeconomic variables broadly indicate a close relationship and interdependence between macroeconomic variables and life insurance demand.

Foreign Direct Investment and the Supply of Life Insurance in Emerging Countries Author(s): James M. Carson, Pei-Han Chen and J. François Outreville Source: Journal of Insurance Issues, spring 2021, Vol. 44, No. 1 (Spring 2021), pp. 38-64 Published by: Western Risk and Insurance Association

Here in this article, it has been stated how the concept of insurance emerged in the FDI, It has been followed that there is a meaningful relationship between the need for life insurance and foreign direct investment. The increased development of FDI causes an environment where the insurance sector will be much messed to work it’s like the essence to the insurance sector.

Although the connection between FDI and financial expansion, including banking activities, has been concerned in the literature, the same relation for insurance movements has not been examined.

It suggests that appearing countries with more heightened foreign direct investment tend to have higher life insurance penetration. it shows that the relation between FDI and life insurance pool in developing countries differs across models and that it is important to control for the impact of financial development.

FDI has a flattering impact on the economic growth of developing countries. In particular, nations with higher levels of per-capita income, better-educated workers, higher degrees of openness, and a well-developed financial system seem to benefit enormously from FDI (OECD, 2002).

Question for Research

1. what are necessary disclosure and documents required for issuing the IPO or raising fund from the general public at large, what and where does security need to be listed, and how does the valuation of security depends?
2. About the SAHARA INDIA Case, analyse the duty of SEBI and how the SAHARA Supreme Court happened.
3. How a hostile takeover was a great threat to the companies from giant investors?
4. Before the establishment of SEBI what was the scenario of Indian stock markets, and how did SEBI help in tackling insider trading?
5. How unwilling take-over of MIND TREE happened, how big giant investors are a threat to the listed entities.
6. Why Forex Trading in India is illegal, how third-party platforms making trading in Currencies, and what are the complications that need to resolve for making FOREX trading possible?
7. Method's for prohibiting Insider Trading?

CHAPTER- 02

SEBI rules, ICDR and LODR (For Companies) & IRDA regulations (For Insurance Companies) SEBI rules & regulations like The SEBI (Issue of Capitals and Disclosure Requirements) regulation 2009 and SEBI (Listing obligations and Disclosure Requirements), Regulations 2015 (The Listing Regulations) are the two most important regulations when it comes to public issues. The insurance regulatory body and development authority announced that any insurance company would be eligible to come out with an IPO if the concerned company has been doing the business for more than 10 years. The exception for the promotor group is that they can offload their stake in the company itself. The regulation also stipulates that no life insurance company should approach the market regulator i.e., SEBI for an IPO without the prior approval of IRDA. After getting approved by the IRDA the applicant company is eligible to file a red hearing prospectus DRHP for applying for an IPO within a year. While giving consent, the regulator would take into deliberation the company's across-the-board financial position, its records, the assets structure post issue, and reasons for fundraising.

In June, IRDA published drafted guidelines on such listings for public remarks. No issuance and allotment of shares by an insurance company shall be, in any form different than as fully paid-up equity shares, as in the guideline prescribed. Similarly, the insurance companies have to anticipate having an embedded significance of at least two times the paid-up equity capital, it said, counting the insurance company should have been fully compliant with the corporate governance guidelines issued by IRDA.

Further, the insurance companies would have to note in the draft prospectus the risk factors specific to the insurance companies, an overview of the insurance industry, and a glossary of terms used in the sector, and financial statements, among others.

In regulation 37 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the absolute pre-issue capital owned by persons other than promoters requires to be locked in for one year, subject to specific exemptions provided thereunder containing that for equity shares assigned to employees under an employee stock option or employee stock purchase Scheme of the issuer before the initial public offer. The Trusts meant for implementing the aforesaid schemes may transfer the equity shares to employees, upon exercise of the vested option or under an ESPS, during the period of lock-in. Nonetheless, the equity shares so

acquired by the employees shall be subject to lock-in provisions as prescribed under the SEBI (Share Based Employee Benefits) Regulations, 2014.

What is SEBI's role in an issue?

The role of SEBI is to regulate whenever any company making a public issue or a rights issue of securities of worth more than Rs 50 lakhs is mandated to file a draft offer document with SEBI for its recommendations. The validity period of SEBI's observation letter is twelve months only i.e. the company has to open its issue within twelve months starting from the date of issuing the observation letter. There is no necessity of filing any offer document/notice to SEBI in case of preferential allotment and Qualified Institution Placement (QIP). In QIP, the Merchant Banker handling the issue has to file the placement document with Stock Exchanges for making the same available on their websites. Given below are a few clarifications regarding the role played by SEBI: (a) Till the early nineties, the Controller of Capital Issues used to decide about the entry of a company in the market and also about the price at which securities should be offered to the public? However, following the introduction of a Disclosure-based regime under the aegis of SEBI, companies can now determine the issue price of securities freely without any regulatory interference, with the flexibility to take advantage of market forces. (b) The primary issuances are governed by SEBI in terms of SEBI (ICDR) Regulations, 2009. SEBI framed its Disclosers and Investor Protection (DIP) guidelines initially for public offerings which were later converted into Regulations i.e. in 2009 by way of ICDR Regulations. The SEBI DIP Guidelines, and subsequently ICDR Regulations, over the years, have gone through many amendments in keeping pace with the dynamic market Scenario. It provides a comprehensive framework for issuing securities by the companies. (c) Before a company approaches the primary market to raise money by the fresh issuance of securities it has to make sure that it complies with all the requirements of SEBI (ICDR) Regulations, 2009. The Merchant Banker are those specialized intermediaries registered with SEBI, who perform the due diligence and ensures compliance with ICDR Regulations before the document is filed with SEBI. (d) Officials of SEBI at various levels examine compliance with ICDR Regulations and ensure that all necessary material information is disclosed in the draft offer documents[1]

Applicable Rules for Unlisted Companies

"Companies (Prospectus and Allotment of Securities) Rules, 2014 [Effective from 1st April

[1] https://www.investorq.com/question/what-is-sebi-s-role-in-an-issue/

2014]

Rule 9. Dematerialization of securities.—the promoters of every public company making a public offer of any convertible securities may hold such securities only in the dematerialized form:

Provided that the entire holding of convertible securities of the company by the promoters held in the physical form up to the date of the initial public offer shall be converted into dematerialized form before the such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

[1][Rule 9A. Issuance of securities in dematerialized form by the unlisted public companies.—

(1) Every unlisted public company shall—

(a) Issue their securities only in dematerialized structure; and

(b) Facilitate the dematerialization of all its existing securities.

In consonance with provisions of the Depositories Act, 1996 and regulations made there under the issuance of securities.

(2) Every unlisted public company making any offer for the issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, the entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under.

(3) Every possessor of securities of an unlisted public company,

(a) Who plans to transfer such securities on or after 2nd October 2018, shall get such securities dematerialized before the transfer; or

(b) Who subscribes to any securities of an unregistered public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October 2018 shall guarantee that all his current securities are held in the dematerialized form before such subscription.

(4) Every unregistered public company shall promote the dematerialization of all its current securities by making required application to a depository as defined in clause (e) of sub-section

(1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall advise all its existing security holders about the such facility.

(5) Every unlisted public company shall ensure that –

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and shares transfer agent in accordance with the agreement executed between the parties;

(b) it maintains a security deposit at all times, of not less than two years' fees with the depository and registrar to an issue and shares transfer agent, in such form as may be agreed between the parties; and

(c) It complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board of Depository from time to time with respect to the dematerialization of shares of unlisted public companies and matters incidental or related thereto.

(6) No unlisted public company which has defaulted in sub-rule (5) shall make an offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) [4] [Regulations, 2018] and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to the dematerialization of securities of unlisted public companies.

[5] [(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(8A) The Company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialized form.]

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and Protection Fund Authority.

(10) The Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.]

[2][(11) This rule shall not apply to an unlisted public company which is:—

(a) A Nidhi;

(b) A Government company or

(c) A wholly owned subsidiary.]

Rule 12. Return of Allotment.—(1) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.

(2) There shall be attached to Form PAS-3 a list of allottees stating their names, addresses, occupations if any, and a number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.

(3) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS-3 a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration.

(4) Where a contract referred to in sub-rule (3) is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (2 of 1899), and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

(5) A report of a registered valuer in respect of the valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).

(6) In the case of the issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to Form PAS-3.

(7) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62 by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognized stock exchange, there shall be attached to Form PAS-3, the valuation report of the registered value.

Explanation.—Pending notification of sub-section (1) of section 247 of the Act and finalization of qualifications and experience of value's, valuation of stocks, shares, debentures, securities, etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

[3] [Rule 14. Private Placement.—(1) For the purposes of subsection (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations:

Provided that in the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:-

(a) Particulars of the offer including the date of passing of the Board resolution;

(b) Kinds of securities offered and the price at which security is being offered:

(c) Basis or justification for the price (including premium, if any) at which the offer or invitation is being made;

(d) Name and address of the value who performed the valuation;

(e) The amount which the company intends to raise by way of such securities;

(f) material terms of raising such securities, proposed time schedule, purposes or objects of the offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate:

Provided also that in case of an offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

(2) For the purpose of sub-section (2) of section 42, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employee's stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

Explanation. - For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share, or debenture.

(3) A private placement offer cum application letter shall be in the form of an application in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the name of the such person pursuant to sub-section (3) of section 42:

Provided that no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through the application form and any application not conforming to this condition shall be treated as invalid

(4) The company shall maintain a complete record of private placement offers in Form PAS-5.

(5) The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to securities and the company shall keep the record of the bank account from where such payment for subscription has been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application:

Provided further that the provisions of this sub-rule shall not apply in case of the issue of shares for consideration other than cash.

(6) A return of allotment of securities under section 42 shall be filed with the Registrar within fifteen days of allotment in Form PAS-3 and with the fee, as provided in the Companies (Registration offices and Fees) Rules, 2014 along with a complete list of all the allotters containing- (i) the full name, address, permanent Account Number and E-mail ID of such security holder; (ii) the class of security held; (iii) the date of allotment of security; (iv)The number of securities held, nominal value, and amount paid on such securities; and particulars of the consideration received if the securities were issued for consideration other than cash.

(7) The provisions of sub-rule (2) shall not be applicable to _ (a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act,-1934 (2 of 1934); and

(b) housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987 (53 of 1987),

If they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of an offer or invitation to be issued on a private placement basis:

Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations. (8) A company shall issue

a private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry:

Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of sub-section (3) of section 179.]"[2]

[2] http://www.corpcode.co.in/blogDetail.php?blog=Issue-of-securities-in-dematerialized-form-by-unlisted-public-companies/
https://www.caclubindia.com/articles/unlisted-public-companies-to-issue-shares-only-in-demat-form-34437.asp/
https://rocguru.com/every-unlisted-public-companies-to-issue-shares-in-dematerialised-form-w-e-f-2nd-october-2018/
https://www.caclubindia.com/articles/dematerialisation-of-securities-39999.asp/
https://e-book.icsi.edu/Actpagedisplay.aspx?PAGENAME=28910/
https://taxguru.in/company-law/filing-eform-pas-6.html/
https://lexcomply.com/Procedure-under-Companies-Act-2013.php?page=Issue-of-Convertible-Prefrence-Shares--on-Prefrential-Basis
https://ibclaw.in/the-companies-prospectus-and-allotment-of-securities-rules-2014/

CHAPTER- 3

Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) – Clarification regarding the applicability of provisions of Chapter III of the Companies Act, 2013.

Applicable Circulars

Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) – Clarification regarding the applicability of provisions of Chapter III of the Companies Act, 2013.

General Circular No. 43/2014 dated 13-11-2014

The Ministry has been receiving references from stakeholders seeking clarity on the applicability of provisions of Chapter III of the Companies Act, 2013 (Act) to the issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) by Indian companies exclusively to persons resident outside India following applicable sectoral regulatory provisions.

The matter has been examined in the Ministry in consultation with the Ministry of Finance and SEBI. The issue of FCCBs and FCBs by companies is regulated by the Ministry of Finance's regulations contained in the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 (Scheme) and Reserve Bank of India through its various directions/regulations. It is, accordingly, clarified that unless otherwise provided in the said Scheme or the directions/regulations issued by the Reserve Bank of India, provisions of Chapter III of the Act shall not apply to an issue of an FCCB or FCB made exclusively to person's resident outside India following the above-mentioned regulations.

Extension of the last date of filing of Form PAS-6– reg.

General Circular No. 16/2019 dated 28-11-2019

This Ministry has received representations regarding the extension of the last date of filing of Form PAS-6 under rule 9A (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

2. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.

[1] Inserted by Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014 vide Notification No. G.S.R.424 (E) dated 30.06.2014.

[2] Substituted vide Companies (Amendment) Act 2017 vide Notification No. File No. 1/21/2013-CL-V dated 7th August 2018. Before substitution, it read as under-

"(1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through the issue of a private placement offer letter.

(2) Subject to subsection (1), the offer of securities or invitation to subscribe securities, shall be made to the such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—for this section, the expression—

(i) qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(ii) Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through the issue of a private placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments concerning any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Exemption

In the case of a Specified IFSC private company Sub-section (3) shall not apply to vide Notification no. G.S.R. 9(E).dated 04th January 2017.

In the case of a Specified IFSC public company Sub-section (3) shall not apply to vide Notification no. G.S.R. 08(E).dated 04th January 2017.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be required to be complied with.

(5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve percent per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

Exemption

In the case of a Specified IFSC private company for the words “sixty days” the words “ninety

days" shall be read vide Notification no. G.S.R. 9(E).dated 04th January, 2017

In the case of a Specified IFSC public company for the words "sixty days" the words "ninety days" shall be read vide Notification no. G.S.R. 08(E).dated 04th January, 2017

(7) All offers covered under this section shall be made only to such persons whose names are recorded by the company before the invitation to subscribe, and such persons shall receive the offer by name, and a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within thirty days of circulation of the relevant private placement offer letter.

Applicable Circulars

Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) – Clarification regarding the applicability of provisions of Chapter III of the Companies Act, 2013.

General Circular No. 43/2014 dated 13-11-2014

The Ministry has been receiving references from stakeholders seeking clarity on the applicability of provisions of Chapter III of the Companies Act, 2013 (Act) to the issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) by Indian companies exclusively to persons resident outside India following applicable sectoral regulatory provisions.

The matter has been examined in the Ministry in consultation with the Ministry of Finance and SEBI. The issue of FCCBs and FCBs by companies is regulated by the Ministry of Finance's regulations contained in the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 (Scheme) and Reserve Bank of India through its various directions/regulations. It is, accordingly, clarified that unless otherwise provided in the said Scheme or the directions/regulations issued by the Reserve Bank of India, provisions of Chapter III of the Act shall not apply to an issue of an FCCB or FCB made exclusively to persons resident outside India following the above-mentioned regulations.

Extension of the last date of filing of Form PAS-6– reg.

General Circular No. 16/2019 dated 28-11-2019

This Ministry has received representations regarding the extension of the last date of filing of Form PAS-6 under rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

2. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.

[1] Inserted by Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014 vide Notification No. G.S.R.424(E) dated 30.06.2014.

[2] Substituted vide Companies (Amendment) Act 2017 vide Notification No. File No. 1/21/2013-CL-V dated 7th August 2018. Before substitution, it read as under-

"(1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through the issue of a private placement offer letter.

(2) Subject to subsection (1), the offer of securities or invitation to subscribe securities, shall be made to the such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—For this section, the expression—

(i) qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(ii) private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through the issue of a private placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments concerning any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

Exemption

In the case of a Specified IFSC private company Sub-section (3) shall not apply to vide Notification no. G.S.R. 9(E).dated 04th January 2017.

In the case of a Specified IFSC public company Sub-section (3) shall not apply to vide Notification no. G.S.R. 08(E).dated 04th January 2017.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be required to be complied with.

(5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve percent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

Exemption

In the case of a Specified IFSC private company for the words “sixty days” the words “ninety days” shall be read vide Notification no. G.S.R. 9(E).dated 04th January, 2017

In the case of a Specified IFSC public company for the words “sixty days” the words “ninety days” shall be read vide Notification no. G.S.R. 08(E).dated 04th January, 2017

(7) All offers covered under this section shall be made only to such persons whose names are recorded by the company before the invitation to subscribe, and such persons shall receive the offer by name, and a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within thirty days of circulation of the relevant private placement offer letter.

Exemption

In the case of a Specified IFSC private company Sub-section (7) shall not apply to vide Notification no. G.S.R. 9(E).dated 04th January 2017.

In the case of a Specified IFSC public company Sub-section (7) shall not apply to vide Notification no. G.S.R. 08(E).dated 04th January 2017.

(8) No company offering securities under this section shall release any public advertisements or utilize any media, marketing, or distribution channels or agents to inform the public at large about such an offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters, and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within thirty days of the order imposing the penalty.”

[3] Substituted vide Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018 vide Notification No. File No. 1/21/2013-CL-V dated 7th August 2018. Before substitution, it read as under-

"(1)(a) For sub-section (1) of section 42, a company may make an offer or invitation to subscribe to securities through the issue of a private placement offer letter in Form PAS-4.

(b) A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons following sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through the such application form and any application not conforming to this condition shall be treated as invalid.

(2) A company shall not make a private placement of its securities unless—

(a) the proposed offer of securities or invitation to subscribe to securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of an offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once a year for all the offers or invitations for such debentures during the year.

[Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules.][1]

(b) such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or employees of the company under a scheme of employees' stock options as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons;

Explanation.—For this sub-rule, it is hereby clarified that—

(i) the restrictions under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share, or debenture;

(c) the value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of the face value of the securities;

(d) the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) The company shall maintain a complete record of private placement offers in Form PAS-5:

Provided that a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within thirty days of circulation of the private placement offer letter.

Explanation.—For this rule, it is hereby clarified that the date of the private placement offer letter shall be deemed to be the date of circulation of the private placement offer letter.

(4) A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing—

(i) the full name, address, Permanent Account Number, and Email ID of such security holder;

(ii) the class of security held;

(iii) the date of allotment of security;

(iv) the number of securities held, nominal value, and amount paid on such securities; and particulars of the consideration received if the securities were issued for consideration other than cash.

(5) The provisions of clauses (b) and (c) of sub-rule (2) shall not apply to—

(a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934; and

(b) housing finance companies that are registered with the National Housing Bank under National Housing Bank Act, 1987, if they are complying with regulations made by the Reserve Bank of India or National Housing Bank in respect of offers or invitations to be issued on a private placement basis:

Provided that such companies shall comply with sub-clauses (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations."

[4] Substituted for the words "Regulations, 1996" by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 vide Notification No. G.S.R. 376(E) dated 22nd May, 2019 effective from 30th September, 2019.

[5] Substituted by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 vide Notification No. G.S.R. 376(E) dated 22nd May, 2019 effective from 30th September, 2019. Before substitution it read as under:

"(8) The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated."

Exemption

In the case of a Specified IFSC private company Sub-section (7) shall not apply to vide Notification no. G.S.R. 9(E).dated 04th January 2017.

In the case of a Specified IFSC public company Sub-section (7) shall not apply to vide Notification no. G.S.R. 08(E).dated 04th January 2017.

(8) No company offering securities under this section shall release any public advertisements or utilize any media, marketing, or distribution channels or agents to inform the public at large about such an offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters, and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within thirty days of the order imposing the penalty."

[3] Substituted vide Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018 vide Notification No. File No. 1/21/2013-CL-V dated 7th August 2018. Before substitution, it read as under-

"(1) (a) For sub-section (1) of section 42, a company may make an offer or invitation to subscribe to securities through the issue of a private placement offer letter in Form PAS-4.

(b) A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons following sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through the application form and any application not conforming to this condition shall be treated as invalid.

(2) A company shall not make a private placement of its securities unless—

(a) The proposed offer of securities or invitation to subscribe to securities has been previously

approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of an offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once a year for all the offers or invitations for such debentures during the year.

[Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules.

(b) Such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or employees of the company under a scheme of employees' stock options as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons;

Explanation.—for this sub-rule, it is hereby clarified that—

(i) The restrictions under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share, or debenture;

(c) The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of the face value of the securities;

(d) The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) The company shall maintain a complete record of private placement offers in Form PAS-5:

Provided that a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within thirty days of circulation of the private placement offer letter.

Explanation.—for this rule, it is hereby clarified that the date of the private placement offer letter shall be deemed to be the date of circulation of the private placement offer letter.

(4) A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing—

(i) The full name, address, Permanent Account Number, and Email ID of such security holder;

(ii) The class of security held;

(iii) The date of allotment of security;

(iv) The number of securities held, nominal value, and amount paid on such securities; and particulars of the consideration received if the securities were issued for consideration other than cash.

(5) The provisions of clauses (b) and (c) of sub-rule (2) shall not apply to—

(a) Non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934; and

(b) Housing finance companies that are registered with the National Housing Bank under National Housing Bank Act, 1987, if they are complying with regulations made by the Reserve Bank of India or National Housing Bank in respect of offers or invitations to be issued on a private placement basis:

Provided that such companies shall comply with sub-clauses (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations."

[4] Substituted for the words "Regulations, 1996" by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 vide Notification No. G.S.R. 376(E) dated 22nd May, 2019 effective from 30th September, 2019.

[5] Substituted by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 vide Notification No. G.S.R. 376(E) dated 22nd May, 2019 effective from 30th September, 2019. Before substitution it read as under:

"(8) The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated."

ECONOMIC RECESSION OF 2008 AND ITS IMAPCT

- The 2008 financial crisis resulted in a year with the most undersized number of IPOs. After the recession following the 2008 financial crisis, IPOs ground to a halt, and for some years after, new listings were rare. More recently, much of the IPO buzz has moved to a focus on so-called unicorns-start-up companies that have reached private valuations of more than $1 billion.
- The primary market is a clear reflection of what is been happening in the secondary markets. If one considers 41 public issues launched in 2008, only 4 issues have made money for investors; the remaining 34 are currently Supreme Courtripting huge losses (over 58% lower on the current MTM basis). Investors should do their due diligence before buying beaten down (recent IPO) stocks," said SMC Nexgen's equities head Jagannadham Thunuguntla.[3]

The endorsements of the capital market are as under:

1. A strong link between Savers and Investors: The capital market functions as a bridge between savers and investors. It plays a crucial role in marshalling savings and directing them into efficacious investments. Therefore, the money market recreates an essential role in transmitting financial aid from oversupply and uneconomical domains to the deficient but effectual areas, thereby, improving the productivity and wealth of the country.

[3] https://economictimes.indiatimes.com/markets/ipos/fpos/financial-crisis-takes-toll-on-ipos-in-2008/articleshow/3908282.cms

2. Future Productive Savings: With the expansion of the capital market, banking and non-banking companies provide facilities and support, promoting general people to save more. In developing countries markets, in the absence i.e. non-availability of a capital market, there are very infrequent savings, and those who save usually invest their savings in ineffective and extravagant assets, like gold, jewellery, etc., or in highly illiquid assets like land or old theme postal FDs.

3. Promotes Investment rather than wasteful savings: The capital market administers lending to corporate establishments and to the government, thereby, delivering a spin to the investment. It also provides facilities via banks and non-banking financial companies. Various financial securities like, shares, debentures, bonds, etc. encourage savers to lend to the government or invest in the on boarding industry.

4. Promotes Economic Growth: The capital market not only recollects the general condition of the economy but also provides a clear way and accelerates the procedure of economic growth. Miscellaneous associations of the capital market, like nonbank financial intermediaries, assign help rationally to pursue the development needs of the country. The appropriate allocation of reinforcements results in the development of trade and industry in both public and private sectors, thus encouraging proportional monetary growth in the country.

In short-

Capital markets depend on the savings of small and often uninformed retail investors, directly or indirectly. For policymakers, the challenge, therefore, is to attain a balance between the pace of growth and conservatism ensuring transparency and sound growth[4].

[4] https://lawbhoomi.com/role-of-ipos-in-changing-capital-markets-in-india%EF%BF%BC/

CHAPTER- 04

TYPES OF MARKET

There are various types of markets where the securities are listed, traded or exchanged and most of these markets are very closely monitored by the securities regulators and several financial and non- financial institutions. These financial institutions are established by government of India i.e. the central government and at last they have to prepare a yearly report for presenting on before the central government.

THE PRIMARY MARKET

The primary market is simply where securities are created. In this market, firms sell new stocks and bonds to the general public for the first time. An initial public offering, or IPO, is the best illustration of a primary market. These exchanges deliver a prospect for investors to purchase securities from the bank that did the initial underwriting for a particular stock. An IPO materializes when a private company issues stock to the public for the first time.

For example, the company Azx Inc. employs three underwriting firms to specify the financial details of its IPO. The underwriters describes that the issue expense of the stock will be 5 Rs. Investors can then purchase the IPO at this price directly from the issuing company. This is the first chance that investors have to contribute capital to a company via the acquisition of its stock. A company's equity capital is constituted of the funds rendered by the sale of stock on the primary market.

TYPES OF PRIMARY MARKET

Rights offering issue companies to raise maximum equities through the primary market after reading issuing securities over secondary markets. One of the other types of primary market offers private placement and preferential allotment.

Private placement allows companies i.e. Private companies to sell directly their securities to more significant investors without making the securities publically available. This type of preferential allotment is usually seen in hedge funds, banks, and mutual funds having special prices and non-availability to the general public.

Similarly, the government also issues bonds on a short-term - long-term basis, debt to the primary market the new bonds are generally issued with coupon rates that correspond to the current market interest rates at the time of issuance may vary from time to time, and bond to bond.

In significantly simpler terms primary markets are such where the securities are purchased directly from the issuing authority no middle medium or individual is required.

SECONDARY MARKETS

Secondary market concerning buying of securities generally refers to the stock markets this duly includes NSE (national stock exchange), BSE (Bombay stock exchange), NYSE (New York stock exchange), and all other major stock exchanges around the globe. The basic regime of the secondary market is that investors trade with themselves rather than purchasing securities directly from specific companies or listed firms.

for ex- in the case if a person goes and buys the shares of TATA, it simply means that the person had passed shares from another investor who had already possessed the shares of TATA it doesn't mean he directly buys from TATA, he rather dealt with investor whom already hold those stocks, the stocks just got transferred from one individual to other having some exchange of monetary communication.

DEBT MARKET

In the debt market, the bond assures i.e., rather guarantees to pay its possessor the full par value at the time of maturity. The date is decided at the time of purchase of the bond. Still, the best part of this security is that they can be sold off to the other investor in secondary markets for making quite a good profit in case of interest rates have decreased after the issuance of the bond by making it more valuable to the other investor due to high coupon rate.

The secondary market have further divided into two segments -

1. Auction market
2. Dealer markets

Auction markets-

As the name signifies it simply means bid and asks price market where all individual and institutions who wants to trade securities focus on one area and announce the financials at which they are believing to buy or sell.

This type of market is very efficient in terms of trading as it prevails by prising together all parties and letting them publically decide their prices.

The best example of this type of market is NYSE (New York stock exchange).

Dealer Markets-

it is a very different type of market as it does not require parties to converge the location, rather than the participants of this market are directly joined through Electric mediums i.e., and electronic platforms, the dealer generally holds an inventory of the security rather than standing and delivering. These dealers make profits through the spreading of prices between buying and holding the securities. The best example of this market is NASDAQ.

CHAPTER-05

WHAT IS AN IPO

IPO simply means initial public offering, whenever any company or business entity gets listed on the stock market i.e. on the national stock exchange (NSE) or BSE(Bombay stock exchange) for sake of raising funds from the general public the process of listing is known as the IPO.

IPO is only referring to the general public via allotment of shares i.e. the equity, only the public limited company is allowed for raising funds from the general public.

a public limited company is defined under sec 2 (71) of the company law 2013 which is not private and has a minimum paid-up share capital as may be prescribed having the exception that the company is a subsidiary of a company, not a private company shall be deemed to a public company for this act even where the such subsidiary company continues to be a private company in its articles.

Purpose -

An IPO is a fundraising technique operated by large companies, in which the corporation sells its stakes to the public for the first time. In an IPO, the enterprise's shares are traded on a relevant stock exchange. Some of the major motivations for launching an IPO include: boosting capital from the sale of the shares, supplying liquidity to company architects and premature investors or angel investors, and enduring the advantage of a more elevated valuation.

For being a public company several conditions needs to be fulfilled

1. minimum 7 shareholders and 3 directors are required
2. for being a public company the name of the company must end with the word limited
3. Before the procedure of registration, the name of the company should be approved by ROC.
4. Disclosure of all subcription are necessary.
5. the rules and regulations are most stringent as compared to the private limited company

STEPS TO INITIATE IPO

Underwriters propose their recommendations and valuations concerning their services, the most suitable type of security to issue, delivering price, amount of shares, and evaluated time frame for the market offering. The establishment selects its underwriters and formally decides to finance terms via an underwriting agreement. IPO groups are formed containing underwriters, lawyers, certified public accountants (CPAs), and Securities and Exchange Commission (SEC) experts. Knowledge regarding the establishment is collected for needed IPO documentation. The S-1 Registration Statement is the introductory IPO filing document. It consists of two components—the prospectus and the confidentially held filing information.

The S-1 contains introductory knowledge about the expected date of the filing. It will be changed often throughout the pre-IPO process. The included prospectus is also revised constantly.

Trade materials are developed for pre-marketing of the new stock issuance. Underwriters and administrators market the share issuance to calculate demand and specify a final offering price. Underwriters can make modifications to their economic research throughout the transaction process. This can include adjusting the IPO cost or disbursement date as they see fit. Companies take the essential actions to meet specific public share-offering requirements. Companies must attach to both exchange listing essentials and SEC requirements for public companies.

Form a board of directors and guarantee processes for documenting auditable financial and accounting statements every quarter.

The company administers its claims on an IPO date. Capital from the immediate disbursement to shareholders is obtained as cash and registered as stockholders' equity on the balance sheet. Thereafter, the balance sheet share value becomes conditional on the company’s stockholders' equity per share valuation comprehensively.

Some post-IPO requirements may be developed, Underwriters may have a determined time frame to buy a supplemental amount of shares after the initial public offering (IPO) date.

UNLISTED COMPANIES

In the case of unlisted public companies, they can also go for the IPO process although several methods are available as companies that are non-present at listed stock exchanges and due to

this, their shares are not applicable for being traded on any of the stock exchanges here after they can also go for an IPO through the general public.

Whenever any unlisted company first time offers a share to the general public or goes public it is considered much riskier than FPO, as IPO is considered the turning point of any company life that has just started to collect capital from the public investment, as well as investor, also does not show maximum credibility to the company due its uncertain future.

There are two options for raising funds from the general public via the IPO method –

The 1st method has three conditions are –

1. Minimum net tangible asset required in 3 Cr or above within the preceding 3 years individually out of that monetary assets should not be more than fifty percent of the tangible asset.
2. There should be a maintained record which shows that out immediate previous 5 years at least 3 of them have generated profit which can be distributed throughout within members of the firm.
3. In all the preceding 3 years there should be a pre-issue having net worth of at least Rs 1.00 Cr.

Note- the company must not keep their issue size more than 5 times as compared to pre-issue net worth.

The second method by which an unlisted company goes for an IPO is –

Any unlisted company that wants to go for an IPO but does not comply with the condition mentioned above may also make an initial public offering but has to meet both of the following conditions mandatorily-

1. The book-building process should be utilized while the issuance of shares and at least 50% of the must be allotted to qualified institutional buyers and without failing the full subscription money shall be refunded within a specific time.
2. The financial institution participation of at least 15 % must be present in a project out of which at least 10% must be coming from an appraiser, Also qualified institutional buyers must be allotted ten percent of the issue size, failing to comply will result in the refunding of the full subscriptions monies.

3. Must be having Rs 10 crore as a minimum face value capital of the company after issue Compulsory minimum marketing of at least 2 years.

What is an FPO?

FPO – FPO simply means follow-on public offer it is generally a method by which a company issues its shares to the stock exchanges in form of new shares to the existing shareholders or the new investors.

As is very much different from the IPO where a company issues its shares to the general public for the first time to collect funds to grow their business

The main reason behind the performance of an FPO is that it helps in expanding the equity base of the company. The possibility of an FPO is only after an IPO to make shares available to the public and raise capital for the smooth functioning of their business.

The main purposes of an FPO is that

- To reduce the debt of the existing company
- To raise additional operating capital for a company
- To provide diversification of the company
- For expanding the form of business

Types of FPO are –

There are two types of FPO

- Dilutive FPO
- Non-Dilutive FPO

In the case of dilutive FPO, the company issues an additional number of shares but the price value of the share remains the same throughout the process, and the overall decrease is the reduction in earnings per share. Here in this case company's board releases new share offerings to the public, however, an FPO is used by a company to reduce the debt or raise the share capital of the company.

In the case of non-dilutive FPO means the shareholder of the company sells their privately owned shares to the public at large and in this case, the money directly goes to the individual offering, not to the company which results in non-effecting earning per share making the company neutral.

CHAPTER-06

Rules to comply during the filling of the IPO

The regulatory board must approve the proposal first through various submissions of the documents -

The documents are to be submitted at a specific time and prescribed mode to the relevant authority

draft offer document- basically a draft offer document is the offer document filled before SEBI for specifying the changes if any and before filling to ROC (Registrar of Companies) draft documents are also made to the public via the SEBI website along with the concerned stock exchange or concerned merchant bankers if any for availing comments from public if any on draft offer document.

Referring Prospectus- it is an offer document in case of a book-built public issue, it contains all information of the company except the price of the shares being issued or offered, it is the mandatory document to file with ROC before the issuance of securities.

prospectus- it is one of the most vital offer documents which contains all relevant details of the firm, and its financials and it also contains the price of shares and the total number of shares being issued or offered, the document shall be notified with Roc before the issuance of the securities.

Note- if the offer is a fixed price issue then this document needs to be filled before the issuance and in case the offer is a book build issue then after the issuance of securities.

Letter of offer- it is also a kind of offer document which is issued in case of Rights issue of shares or convertible issues of the securities and filled with relevant stock exchanges before the offering of issues.

Abridged prospectus- An abridged version of a prospectus is the version of public documents and issue issues along with the application form of a public issue it generally contains all silent features from the prospectus.

Abridged letter of offer- an abridged letter of offer is an abridged version of a letter of offer it needs to be sent to all shareholders along with the application form.

Private placement- Private placement is an offer document for qualified institutional placement and contains all relevant and material disclosures.

IPO Grading- IPO Grading is the grade assigned by the credit rating company registered with SEBI to an IPO of equity shares or convertible issues, this grades represent a relative assessment of the fundamentals of an IPO in relation to the other listed equity shares. Disclosure of IPO grades is most important for the companies along with an offering of an IPO.

Who fixes the price of securities in an issue-?

The Indian Primary market is always been freed in terms of free pricing since 1992 as well as SEBI does not play any role in the price fixation of any securities whether listed or non-listed companies, basically the issuer consults with the merchant bankers based on the market and demand and supplies of the securities the demand and supply plays a vital role in setting off the price of the securities.

Merchant bankers have to follow several perimeters which are taken into account and even offer documents containing all detailed diSupreme Courtlosures.

These perimeters include EPS, PE multiple, return on net worth, and comparison with these securities with peer group companies.

Advantages of IPO

The main object of the IPO is to raise capital for a business, but as it has several advantages it also attracts several disadvantages with it making the issuance of an IPO more rigid and stressful

Advantages of issuing an IPO are

The most prominent advantage of IPO is that the company gets full access to raise capital from the general public, which facilitates an easier acquisition to the deals i.e.- share conversion, and also boosts companies exposure, goodwill, and public image which also results in boosting of companies sales which leads in making of heavy profits.

Due to the reporting measures of the company having to maintain properly audited balance sheets and annual reports, which generally helps to receive more favourable outcomes for sake of goodwill to make credit borrowings as compared to the private companies.

Disadvantages of issuing an IPO are-

While having a high advantage, it also comes with several disadvantages while issuing its IPO which leads to potentially choosing alternative strategies. The first and most major disadvantage in issuing an IPO is that the issuance of an IPO is a very costly method of raising capital and the maintaining of cost efficiency is most high than private companies due to its several features.

The second most disadvantageous feature is fluctuations in the price of shares, as it also disturbs the management of the company, as due to the high fluctuation rate the management mostly starts shifting to managing stock prices rather than managing real financial results.

the most important disadvantage is the company diSupreme Courtlosure as the company has to diSupreme Courtlose several documents which consist of well-accounted statements quarterly and annual business reports with the business operational information and during this diSupreme Courtlosure, there is a widely chance of leaking information or passing off the information the competitor and rivalry companies and they may copy and implement that information for their benefit.

Rigid administration and management by the board of directors can make it additionally difficult to keep good managers inclined to take risks. Staying private is consistently an option. Rather than going public, companies may also demand recommendations for a buyout. Additionally, there can be some more alternatives that companies may explore for further expansion.

CHAPTER- 07

OFFER THROUGH PRIVATE PLACEMENT

A company may, subject to the provisions of this section, make a private placement of securities. A private placement shall be constructed only for a special group of persons who have been specified by the Board (herein directed to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [except the qualified institutional buyers and workers of the company standing offered securities under a plan of employees stock option in the duration of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such requirements as may be defined. A company creating private placement shall administer private placement offer and application in such format and method as may be specified to recognized persons, whose names and addresses are registered by the company in such a technique as may be specified:

Provided that the private placement recommendation and application shall not contain any ownership of repudiation.

Private placement simply indicates any offer or invitation to subscribe or administer securities to a special class of persons by a corporation (other than by way of public offer) via private arrangement offer-cum-application, which fulfils the requirements established in this section.

Qualified institutional buyer means the qualified institutional buyer as illustrated in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

If a corporation, listed or unlisted, constructs a proposal to assign or invites subscription, or assigns, or documents into an agreement to allocate, securities to additionally than the specified number of persons, whether the cost for the securities has been accepted or not or whether the organization plans to record its securities or not on any recognized stock exchange in or outside India, the exact shall be considered to be an offer to the general public and shall consequently be managed by the provisions of Part I of this Chapter. Every determined person willing to subscribe to the private placement issue shall use the private placement and application allocated to such person along with subscription funds paid either by cheque or demand draft or other banking channel and but not by cash:

Provided that a company shall not utilize finances raised through private placement unless allotment is completed and the return of allotment is filed with the Registrar by sub-section (8).

No new offer or invitation under this section shall be made unless the allotments concerning any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the highest number of specified individuals under sub-section (2), a company may, at any time, can make more than one issue of securities to such category of specified persons as may be defined. A company creating an offer or invitation under this section shall allocate its securities within sixty days from the date of receipt of the application money for such securities and if the corporation is not able to allocate the securities within that duration, it shall reimburse the application funds to the subscribers within fifteen days from the expiration of sixty days and if the corporation fails to reimburse the application funds within the aforementioned period, it shall be responsible to repay that capital with interest at the rate of twelve percent per annum from the expiration of the sixtieth day:

Provided that funds obtained on application under this section shall be maintained in a different bank account in a scheduled bank and shall not be utilized for any objective other than—

(a) For adjustment against the issuance of securities; or

(b) For the reimbursement of funds where the corporation is unable to allot securities.

No corporation allocating securities under this section shall discharge any general advertisements or utilize any media, transaction, or disbandment channels or mechanisms to inform the public at large about such an issue. A corporation making any allocation of securities underneath this section shall file with the Registrar a retrieval of assignment within fifteen days from the date of the allocation in such method as may be specified, including a complete list of all allotted, with their full names, addresses, number of securities allotted after finding such other relevant details as may be specified. If a corporation defaults in filing the return of allotment within the time specified under sub-section (8), the company, its promoters, and directors shall be responsible for damages for each defaulting of one thousand rupees for each day during which such default persists but not surpassing twenty-five lakh rupees. Subject to subsection (11), if a corporation creates a proposal or accepts finances in contravention of this section, the enterprise, its promoters, and directors shall be responsible for damages which may

advance to the amount extended through the private placement or two crore rupees, whichever is more subordinate, and the corporation shall also reimburse all funds with interest as defined in sub-section (6) to subscribers within a period of thirty days of the order assessing the forfeiture. Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance with the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.]

CHAPTER-08

SAHARA SCAM

Brief introduction of the ongoing problem

This paper, we are going to analyse the Sahara India Pariwar Supreme Court judgement. There were two companies of the Sahara group which are Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL), both companies have raised capital from plenty of people without the consent of SEBI (Security and Exchange Board of India). This paper going to explain how the Supreme Court briefed, how both of the companies have raised a huge portion of money without following the rules of SEBI and how SEBI came to understand this Supreme Court judgement and how they the Supreme Court analysis the Sahara group. This paper also tries to understand the measures taken by the Supreme Court are with disclosure rules of SEBI. This paper also examines the corporate governance problems in the Sahara group by which a huge Supreme Court judgement takes place.

Introduction:

Sahara India Pariwar is an Indian organization. Its headquarter is in Lucknow, India. It was started in 1978 at Gorakhpur. This group serves business sectors like infrastructure & housing, finance, healthcare, education, media & entertainment, and the IT sector.

In the month of March 2011 this firm has the biggest market capitalization of USD 26.94 billion. Sahara Pariwar becomes the second largest employer in India in 2014 (according to TIME magazine).

Sahara India Pariwar was started by Subrata Roy. He is the chairperson of Sahara Pariwar. He was born in Bihar on June 1948. When he completes his engineering, he started his first business in Gorakhpur. After that, he moved to Lucknow, where he initiates the Sahara Group. In 2012, he was listed among “the top 10 powerful people of India” by India Today.

Sahara Supreme Court Case:

How the Supreme Court derives its conclusion

This Supreme Court is find a relation associated with the two business entities of Sahara Group that is Sahara India Real Estate Corporation Ltd. (SIRECL) and Sahara Housing Investment Corporation Ltd. (SHICL).

To understand how SEBI (Security exchange board of India) exposed the Sahara Group foremost we have to first understand IPO and DRHP.

IPO (Initial Public Offering) is the process by which a company offers its shares to the public for the first time, to generate funds. Through this process, a private company becomes a public company. To be recorded on the Stock market as a company every entity has to go through this procedure.

DRHP (Draft Red Herring Prospectus) contains all the information of the company and it is not a confidential document as the SEBI uploads it on its website. To be listed in the Stock market to generate more funds then the company has to take permission from SEBI because SEBI is the Capital Market Regulator of India. For this purpose company submits DRHP to SEBI. It includes the whole information of the company like financial information, promoters, objective, and all other management details. After analysing DRHP, the SEBI decides whether to give permission or not.

This begins on Sep 2009, when Sahara Prime City (SPC), a part of Sahara Group submitted its DRHP to SEBI to issue an IPO for raising funds from the public. The DRHP contains 779 pages but the chaos was on page 640 of DRHP. When SEBI is analysing the DRHP of Sahara Prime City they realized that the other two companies of Sahara Group that are Sahara India Real Estate Corporation Ltd. (SIRECL) and Sahara Housing Investment Corporation Ltd. (SHICL) has illegally raised funds. While SEBI is investing in this, after some days SEBI receives complaints against the two companies that they are issuing OFCD in the wrong way.

OFCD (Optionally Fully Convertible Debenture) is a debt instrument by which a company takes money from people and in return gives them interest. OFCD is a type of debenture by which an investor can convert OFCD into Equity and become a shareholder of the company.

For issuing OFCDs under 50 people a company has to take prior permission from ROC and if a company desires to issue OFCDs to more than 50 people then they have to take prior permission from SEBI. When SEBI goes deep into the investigation, they found that these two companies have taken money of about RS 24000 crore from 2-2.5 crore investors, without

informing SEBI. The company has to complete this process of issuing OFCD within 6 weeks but both companies were issuing OFCD for around 104 weeks.

As the SEBI exposed Sahara Group they stop Sahara Group from issuing OFCD and ask them to return investors' money with 15% interest. Sahara Group denies the order of SEBI and they put a case against the SEBI at Allahabad high court. In December 2010 court ceased the order of SEBI but in April 2011 court finds that SEBI was right. Sahara group lost the case in the high court but they did not stop there they appealed in Supreme Court. The court advised them to approach SAT (Securities Appellate Tribunal), But furthermore SAT got to know that Sahara Group is guilty they stated them to follow the orders of SEBI. And hereby Again Sahara challenges the decision of SAT in the Supreme Court.

Sahara group said that both the companies are unlisted and OFCDs issued by them are private investments and they have issued OFCDs to only those people who are connected with the company. Which leads that SEBI doesn't have any regulatory right to order them and nor they are bound to act upon them.

On the other hand, SEBI said that the Sahara group has issued OFCD to more than 50 people, so it is not a private investment but it is a private investment and they didn't take permission from SEBI.

Dr. K. M. Abraham was a board member of the SEBI at that moment and he was investing in this case. He found that most of the investors of the Sahara group are not real and others who are real they do not have any relation with the Sahara group.

In August 2012, Supreme Court declared that the Sahara group is guilty they ordered them to give all the information of investors and money to SEBI with 15% interest so that SEBI can return the money to investors. Sahara group sent 127 trucks full of the document having the information of investors. SEBI analysed those documents and found that the information was incomplete and not real. So, it looks like a matter of Money Laundering.

Sahara group did not return the money of investors within 3 months. So, the court ordered them to send money in three instalments. Sahara group deposit the first instalment of RS 512 crore and said that they have already paid other investors directly. Only 4600 investors come forward to take their money. And then Sahara group said they have already paid other investors so, this

is the reason why only 4600 investors come forward. But the Sahara group fails to give proof of this to the court and they also fail to clarify the source of money.

Supreme Court found this more serious and they have decided to cease the bank account of Sahara group.

On 28th Feb 2014, Subrata Roy was arrested and two other members of the company were also arrested. In Nov 2017, ED (Enforcement Directorate) files a case against the Sahara group. And this case was Money Laundering.

In 2007-08 Sahara India Financial Corporation was banned. It was a subsidiary of the Sahara group. They were banned from issuing fresh deposits by RBI. They were exposed while doing illegal activities. But Sahara didn't stop there and finally ended up doing a huge Supreme Court.

At one time they used to be the biggest corporate group in India having 14 lakhs employees. They are also the main sponsor of the Indian Cricket team and also the owner of the IPL team Pune worriers India. The meaning of Sahara in Hindi is Support but investors of Sahara group lost all the financial support and faced financial crises due to this Supreme Court order.

Timeline of Sahara case:

- November 2010: SEBI banned Sahara Group from issuing new OFCD because they have raised money by illegal methods.
- December 2010: Sahara group appealed in the Allahabad high court, and the supreme court asked SEBI to not take action until the order is passed
- January 2011: High Court of Delhi generated a warrant against Subrata Roy and four other directors of the company
- February 2011: High Court stays proceeding against Subrata Roy and other directors based on the complaint that they have raised money from investors in an illegal manner
- May 2011: Supreme Court asked them to provide all the information on their OFCD and investors
- June 2011: SEBI ordered them to repay all the money of their investors
- October 2011: Securities Appellate Tribunal asks Sahara group to pay back all the money with 15% interest
- November 2011: they filed a case in Supreme Court against SAT but again court find them guilty Supreme Court also told them to follow the order of SAT

- January 2012: Supreme Court gives them a time of 3 weeks to return the money to investors
- May 2012: they inform Supreme Court that SEBI cannot take up this issue of Sahara Group as there was no complaint against them from any investor
- June 2012: SEBI says that the Sahara group does not have any right of raised money by OFCD because they have not taken permission from SEBI
- August 2012: - Supreme Court ordered Sahara India Real Estate Corporation Ltd. (SIRECL) and the Sahara Housing Investment Corporation Ltd. (SHICL) to reimburse over Rs. 25,400 crores to its investors.
- February 2014: Subrata Roy was arrested by UP police for failure to appear in Supreme Court on time
- March 2014: Mr. Roy and two other directors are sent to Tihar jail
- July 2015: SEBI cancelled the license of Sahara's mutual fund business
- May 2016: Roy released on parole from jail
- Till 2022: At this point of time monthly repayment Campanian organised time to time to all investors who possess proper documents.

CHAPTER -8

History of SEBI and its Regulatory Powers

Stock markets in India started in lately 18 century when east India company began trading in loan securities later around the 1830s corporate business started and shares and securities began started to trade in the town hall of the Bombay stock exchange with a very limited stock of banks and cotton press. the stock exchange in India formally started nearly in 1849 when 22 stock brokers started trading the opposite of the town hall of Bombay under a banyan tree. the first company act was introduced in 1850 when those 22stocks started trading opposite the town hall of Bombay.

the introduction of the companies law back in 1850 following which investors started showing interest in corporate securities and a very new concept was also introduced to the general public ie investors was the concept of the limited liability of that time after this revolutionary event the rapid growth is seen under that era and the stock brokers continued to growth which leads in shifting of the stock exchanges location finally in Bombay Dalal street in 1874.

the informal group of traders known as the Native Share and Stock Association classified themselves as the Bombay stock exchange (BSE) in 1875.

and the BSE is one of the ancientest stock exchanges in Asia and was the first awarded permanent recognition under the securities Contract and regulation Act of 1956.

BSE is the most aged stock exchange in Asia and was the first to be awarded enduring credit under the Securities Contract Regulation Act, of 1956

In 1894, the BSE was succeeded by the Ahmedabad Stock Exchange which concentrated on trading in shares of textile mills. Shares of plantations and jute mills started being traded at the Calcutta Stock Exchange in 1908.

The Madras Stock Exchange pursued, being set up in 1920

Post-independence scenario

Post-independence, BSE overwhelmed the volume of trading. However, the low level of translucency and inconsistent clearing and settlement procedures increased the need for a monetary market regulator

The Sensex or Sensitive Index was established in 1986 and pursued by the BSE National Index in 1989.

In 1988, the Securities and Exchange Board of India (SEBI) was born as a non-statutory body, which was additionally blessed statutory position by enacting SEBI Act on 30 January 1992.

National Stock Exchange (NSE) came into existence in 1994. to cater to the need for another stock exchange considerably sufficiently to contend with BSE and the need for translucency in the stock market.

NSE commenced procedures in the Wholesale Debt Market (WDM) component in 1994, the equities element in 1994, and the by-products segment in 2000.

In 1995, the BSE changed to an electronic trading system from the open-floor system. In 2015, SEBI was combined with the Forward Markets Commission (FMC) to maintain things market regulation, facilitate domestic and foreign institutional participation, and establish new products. After the country attained independence, 23 more stock exchanges were counted separated from the BSE, but at present, there are only five identified stock exchanges, apart from BSE and NSE:

- Calcutta Stock Exchange Ltd.

- Magadh Stock Exchange Ltd

- Metropolitan Stock Exchange of India Ltd

- India International Exchange (India INX)

- NSE IFSC Ltd

At present, the BSE is estimated as the world’s 11th-largest stock exchange, with a market capitalization conceivable be approximately $1.7 trillion. The market capitalization of the NSE is estimated to be over $1.65 trillion.

The flagship standard index of BSE is called the Sensex and for NSE it is the Nifty50. The conversations are still at equivalence in periods of share trading volumes. Nowadays, people can accomplish online trading sitting in their homes.

Stock exchanges, stocks, mutual funds, bonds, and nearly every other financial development and player in the Indian financial markets are controlled by SEBI. SEBI is a regulatory body under the Ministry of Finance division of the Government of India. It was founded in the year 1988 to safeguard the interest of the investors and also originate the Indian capital markets to the latest measures by regulating and enforcing the needed rules and regulations.

History of SEBI

SEBI or the Securities and Exchange Board of India was first launched as a non-statutory body in the year 1988. It was designated to regulate Indian securities and capital markets. SEBI acquired statutory powers and was proclaimed an autonomous body when the SEBI Act of 1992 was enacted by the parliament on 30th January 1992.

SEBI is a regulatory body under the Ministry of Finance division of the government of India. SEBI has its head office located in Bandra Kurla Complex, Mumbai. The SEBI has provincial offices in the North, South, West, and East regions of the country. These headquarters are situated in New Delhi, Chennai, Ahmedabad, and Kolkata respectively.

Before SEBI, the Indian financial markets were regulated by the Controller of Capital Issues which was founded under the Capital Issues Act of 1947.

Structure of SEBI

SEBI is a body that is controlled by its members. SEBI incorporates various branches under a corporate framework which are collected by department heads. There is an aggregate of around 20 departments in SEBI. These departments contain legal affairs, corporation finance, debt and hybrid securities, enforcement, economic and policy analysis, commodity products market regulation, and many more. SEBI has a hierarchical structure consisting of these members:

The head of SEBI is the chairman who is appointed by the Union Government of India.

Union Finance Ministry specifies two of its officers as a part of the structure.

Reserve Bank of India appoints one member.

The Union Government of India selects five members.

Functions of SEBI

SEBI was selected for executing various functions. Some of the primary functions of SEBI include:

Safeguarding the interest of investors in the Indian capital markets.

Documenting and controlling stockbrokers, investment advisors, portfolio managers, merchant bankers, underwriters, registrars, share transfer agents, and other associated professionals and entities.

Reviewing the books of accounts of recognized stock exchanges and financial intermediates.

Expansion and evolution of the Indian Securities Markets to the most delinquent standards.

Implementing different rules and regulations for the smooth functioning of the capital markets and also approving by-laws of stock exchanges.

Restrict unsportsmanlike and dishonest trade practices in the securities markets.

Deliver a Complaint and Redressal Platform (SCORES) for investors and additional participants in the Indian financial markets.

Controlling the functions of intermediates like depositories, credit rating agencies, foreign portfolio investors, guardians, etc.

Authority and Power of SEBI

SEBI is a very assertive body because it has three strengths rolled into a single body. These powers are:

Quasi Legislative – SEBI can formulate rules and regulations under this power.

Quasi-Executive – This power authorizes SEBI for conducting investigations and enforce mandated actions.

Quasi-Judicial – SEBI can pass directives and rules under its judicial capacity.

To create accountability, there is an appeal process, where an appeal can be presented to Securities Appellate Tribunal. It is a three-member body that hears and disposes of the appeals against the orders passed by SEBI. After the Tribunal, a second appeal can also be raised to the

Supreme Court of India. SEBI has converted the Indian capital markets. It has appreciated huge success as a regulatory body by implementing rules and reforms systematically and aggressively. From instantaneous transformation to electronic trading to facilitating the settlement cycle to T+2 days, SEBI is credited for various endeavors. Therefore, when any entity enters the world of Indian Capital Markets, it is very substantial to validate whether your Stockbroker or Investment Advisor is documented with SEBI or not.

CHAPTER-09

DETAILED CASE HOSTILE TAKEOVER OF MIND TREE VIA L&T

Mindtree Mindtree Limited is an Indian international information technology and outsourcing company headquartered in Bangalore, India, and New Jersey, USA. It is currently part of the Larsen & Toubro group. Established in 1999, the enterprise operates around 21,991 employees with an annual remuneration of ₹7849.9 crores Established: 18 August 1999 CEO: Debashis Chatterjee (2 Aug 2019–) Parent scenario of organization: Larsen & Toubro (61.08%).

Founders: Subroto Bagchi, Ashok Soota, Krishnakumar Natarajan, Anjan Lahiri, Rostow Ravanan

India's Foremost Hostile Takeover, trumpeted as the first hostile takeover of an enterprise in the country, Indian empire Larson & Toubro has successfully concluded its takeover of IT company Mindtree. As per L&T, originally, Cafe Coffee Day architect VG Siddhartha who was encountering stresses of liquidity came them proposing to sell his stake in the company in March 2019. Interestingly, Siddhartha was the single-largest non-promotor shareholder having 21.32 percent stakes in Mindtree. L&T delivered him Rs 980 per share, which roughly amounted to Rs 3,369 crores. This proposal was crisply resisted by the management of Mindtree which charged the stage for a hostile acquisition at the time. In March 2019, Chairman of L&T AM Naik in his discourse to the media had described how the acquisition of Mindtree was a value multiplication. The Indian syndicate already has a listed IT company - L&T Infotech - which concentrates on BFSI verticle and techno issues whereas, Mindtree primarily concentrates on customers from the hospitality and retail sector. So, a takeover would represent an expansion of L&T's information technology business.

A hostile takeover is expressed to be one where a corporation acquires the target company by proceeding to the target company's shareholders or by battling to replace the administration to get the acquisition approved. And when the administration of the prey company doesn't want the deal to take place, it is called a hostile takeover. In Mindtree's case, promoters Subroto Bagchi, NS Parthasarathy, Rostow Ravanan, and Krishnakumar Natarajan have unconditionally opposed the takeover proposal by L&T.

In a normal method, when a company attempts to acquire another, it can offer to gain authority if it possesses a 25 percent stake in the company it is attempting to acquire. Nevertheless, L&T

did not possess 25 percent ownership of the enterprise. So, L&T manipulated a loophole in the Securities and Exchange Board of India's (SEBI's) Takeover Code. The Indian cartel used Section 3, Clause 1 along with Section 4 of the securities regulator's takeover code, which permits L&T to make an open offer to obtain public shareholding in the company. As per this section, those with a 25 percent stake or more additional cannot take over a company unless a forthcoming offer has been made to acquire shares of a company with a piece of public information. However, the takeover code also says whether or not one carries shares or voting rights in the company, one is not suitable to take control unless a public announcement of a proposal to acquire those shares is made. This permits L&T to make an open offer, without possessing 25 percent shares in the IT major.

The deal began when L&T bought 20.32 percent shares in Mindtree from Cafe Coffee Day founder VG Siddhartha for nearly Rs 3,369 crores in March 2019. Following this, it created an on-market purchase of around 15 percent capital shares. L&T completed an open offer for an additional 31 percent stakes which formed on June 17 and finished on June 28, 2019. On July 2, 2019, Mindtree said in its regulatory filing,

"We wish to inform you that Larsen & Toubro Limited has acquired equity shares to an extent of 60.06 percent of the total shareholding of the company and has reached control and is categorized as promoter according to Sebi Regulations, 2018."

In another exchange filing on 6 July 2019, Mindtree said its top Executive Chairman Krishnakumar Natarajan, Executive Vice-Chairman and Chief Operating Officer (COO) N S Parthasarathy, and Managing Director and Chief Executive Officer (CEO) Rostow Ravanan have stepped down. While Mindtree is still due to announce its new leadership, "Mindtree will be run as a separate entity, distinct from L&T Infotech (LTI) and L&T Technology Services (LTTS). The entities would run at arm's length. It is inappropriate to speculate about the future structure now," L&T CEO SN Subrahmanyan told PTI.[5]

[5] https://www.screener.in/company/MINDTREE/consolidated/#chart https://en.wikipedia.org/wiki/Mindtree https://www.mindtree.com/about/lt-and-mindtree-the-way-forward https://www.thehindubusinessline.com/opinion/post-mergerblues/article29224817.ece#:~:text=The%20primary%20reason%20cited%20for,future%20growth%20of%20the%20company. https://www.timesnownews.com/business-economy/companies/article/larsen-toubros-hostiletakeover-of-mindtree-explained/451060

CHAPTER-10

INSIDER TRADING & TRADING OF FOREX RESERVES

One of the main problems in today's primary markets is insider trading.

Insider trading is the act of buying or selling securities of a publicly traded corporation while in possession of pertinent information that has not yet become public knowledge. Any information that could have a significant impact on an investor's choice to buy or sell a security is referred to as material information.

Non-public information is information that only a small number of persons who are directly related to it possess and that is not legally in the public domain. An insider can be a company executive or a member of the government who has access to economic reports before they are made available to the general public.

NSE insider trading is currently strictly regulated in India by the Securities and Exchange Board of India SEBI under the Companies Act, SEBI Regulations 1992, and SEBI (Prohibition of Insider Trading) ("PIT") Regulations 1992. Any business owner or insider who is found breaking one of the many rules set down by the government organization faces steep fines.

The punishment under Section 15G of the SEBI Act of 1992 and Section 195 of the Companies Act of 2013 cannot be less than INR 10 lakhs and can go up to INR 25 crores, or three times the benefit from the "insider" tort, depending on the circumstances.

The SEBI Regulations 2015, which define the guidelines for the restriction and outlawed of insider trading in India, were drafted by the SEBI.

According to insider trading legislation, it is against the law for insiders to disclose any proprietary information about a firm unless they have permission to do so.

Information misused by the individual or someone acting on their behalf will be regarded as a violation and prosecuted as a criminal offense. This offense carries a maximum penalty of 25 crores in fines or 10 years in prison, whichever is greater. Anyone who violates a regulation under the SEBI rules, other than an offense under section 24 of the act, may face punishment from the arbitrator.

Trading regulations impose the following restrictions:

The Regulations restrict or forbid Insiders from interacting with, providing, or granting access to anyone, including other Insiders, to UPSI pertaining to any publicly traded firm or security.

These laws restrict or outlaw the sale of securities, including UPSIs, to anyone, including other insiders who are connected to publicly traded companies.

The Regulation forbids or restricts an insider from trading in securities that are listed or are being considered for listing on a recognized stock exchange while in possession of UPSI.

SEBI has the power to look into NSE insider trading and associated issues. SEBI may exercise investigative powers for two main reasons:

Investigate complaints made by investors, brokers, or other parties regarding claims of this conduct; and, Conduct investigations based on knowledge or information in its possession to safeguard the interests of investors in securities against violations of these rules.

No matter how many shareholders they have, firm founders who engage in insider trading by employing price-sensitive, unreleased information are subject to punishment under the law.

of civilization without a justification. Insider Trading That Is Legal and Exceptions to the Rule

Disclosure is allowed when it serves a valid purpose or is necessary to uphold a responsibility or legal requirement.

Where disclosure is in the best interests of the business, it is allowed.

Insider Trading Examples - Cases Of Insider Trading In India[6]

On May 21, SEBI fined Indiabulls Venture, former non-executive director Pia Johnson, and her husband Mehul Johnson for violating PIT regulations by exchanging the company's scrip using USPI.

The incidence of this practice seems to be increasing as many large companies, such as SpiceJet, Sun Pharma, Future Group, etc., appear to violate laws.

Rakesh Jhunjhunwala Case - Independent investor and billionaire Rakesh Jhunjhunwala has been summoned by SEBI for alleged NSE Insider Trading at Aptech Limited. According to

[6] Corporateworld.co.in/insidertrading art/34433
Upstoxx.com

reports, the regulator investigates the period between February and September 2016. Apart from Jhunjhunwala, SEBI is also looking into the role of a member of his family in the matter.

Balram Garg Case - Another high-profile case of alleged Insider Trading came to light in December 2019, when SEBI issued a notice to PC Jeweler's Managing Director, Balram Garg. At the same time, the government agency ordered the confiscation of approximately INR 8 Crore, which deserves two promoters and associated units of alleged illegal trade.

There is a tonne of additional cases pending. According to SEBI data, however, the percentage of convictions and sentences is typically relatively low. Due to the shoddy implementation of commercial regulations, the government authority has further come under harsh criticism. To reduce these cases of NSE insider trading, the authoritative body has developed guidelines that you, as a responsible trader, should be aware of.

To enhance the NSE Insider Trading regulations, SEBI still has a long way to go. For example, SEBI lacks technical expertise, which makes it exceedingly challenging for SEBI to identify the offender.

Even if SEBI is able to identify the offender, it is challenging to start an insider trading prosecution because the claims are typically supported by circumstantial evidence, which makes them challenging to establish. Phone wiretaps are neither permitted nor permitted by SEBI.[7]

Currency is another entity that is generally traded across the world, also known as foreign exchange (FOREX) trading, or currency trading occurs on foreign exchange markets. Forex trading is often concluded over a foreign exchange platform, third-party websites, applications, or third-party stimulated websites. Wherein an individual trader gambles on whether a certain currency will rise or drop against the domestic currency where that individual trader belongs or bets.

Since there is no middle party or regulator concerned in this transaction, and it emerges exclusively between the trader and the platform, such transactions are directed to binary transactions. If the trader bets that certain money, as if it rises against the domestic currency

[7] Upstocxx.com

or his local, betted currency, and it does, they earn a portion that was formerly decided upon. If the finances drop, the trader loses the sum they had bet.

The trades are recompensed by cash since it implicates simultaneous buying and selling of currencies. In India, nevertheless, forex trading platforms are banned.

CONCLUSION

As we all know we are in the generation where money markets are very animating when our invested amount starts growing without making any effort rather than just by analyzing the decision to invest or not in that firm in any form of securities, but as it always sid everything has two sides, one is progressive other is regressive here the demerits of this site is insider trading and greed.

People hereby now trading in FOREX reserves and differences of currencies for sake of making huge profits but the superior guardian does not allow that "SEBI" does not authorize rather it prohibits the trading of FOREX reserves as well as restricts the third-party applications do so.

This market is so unstable as a sometime trader or investor is on the risky side and sometimes the actual company is at risk of the influence of money giants, as many money giants in past just by buying their securities as the huge stock made its entry to the management and then to the ownership like we in the hostile takeovers. Sometimes we have also seen how the company takes money from investors by stating bogus facts about the firm just for their consumption the same time fraud we have seen in the SAHARA SCAM CASE.

But never less the guardian of all primary or secondary markets keeps eye on such activities and makes this environment more feasible for investing and day-to-day trading.