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An Analysis of the Orders Passed By SEBI and SAT, and Their Impact on Investor Confidence

Study Period: 2019-2021

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FOR MONEYLIFE FOUNDATION

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Sucheta Dalal and Debashis Basu,

(Trustees, Moneylife Foundation)

Executive Summary

A thriving securities market is a vital part of a country's financial infrastructure and one of the most important elements of a dynamic and efficient securities market is investor protection. The Indian stock market is one of the best performing securities markets in the world and a majority of the market participants are retail investors. There has been a steady increase in the number of firms that are dealing with public money apart from the government. This rise also means that the need for investor protection has also increased throughout these years.

The regulatory body of the Indian securities market, SEBI is tasked with the protection of the interest of investors and ensure the healthy growth of the securities markets.

SEBI was formed for the protection of the interests of investors in the securities markets and for the development and regulation thereof, as per the preamble to the SEBI Act.

It is about 30 years now that SEBI obtained statutory authority status with immense powers to crack down on market misconduct. What is generally observed by investors is that despite these developments, the number of orders passed by SEBI keeps rising, showing scant regard for compliance by the market players. In a mature market, there should be huge disincentives for committing violations; investors depend on the prompt and effective enforcement actions taken by SEBI for redressal of their issues. The effectiveness of SEBI also depends on its ability to take actions on violations by so called bigger corporate entities and market institutions without fear or favour. Apparently, over time, SEBI is seen to be cracking down on such market violations, however many of the orders of SEBI are appealed and SAT is seen to be taking a different view and either setting aside the SEBI orders or modifying the penalties. In this paper, we have attempted to analyse the reasons for the same considering thirty (30) of the orders passed from 2019 til 2021.

A thorough reading of the SEBI annual report 2019-2020 tells us that there has been an increase in the number of appeals before the SAT in the last two years (see Table 1).

This could be attributed to the fact that SAT has been seen to taking a different view from that of SEBI.

Table 1 Status of Appeals before SAT

Status of Appeals	2018-19	2019-20
Appeals pending at the beginning of the year	217	379
Appeals filed during the year	400	630
Appeals Dismissed	138	217
Appeals Remanded	21	96
Appeals Allowed	25	78
SEBI orders upheld with modifications	25	121
Appeals Withdrawn	29	18
Appeals Pending at the end of the year	379	479
Source- SEBI Annual Report 2019-2020		

After going through multiple SAT orders from 2019-2021, 30 cases were selected for detailed study. The 30 orders have been selected primarily taking into account the fact that SEBI has been actively trying to crack down on market violations. However, SAT is seen to take a different route and not concur with the reasoning of SEBI. SAT either modifies the penalties or sets aside the orders all together. However, the report also sheds light on certain orders which were deficient according to SAT and there was scope for SEBI to have brought in more evidentiary value to the Orders.

The report is divided into 3 segments i.e.

a. Cases involving Unfair Trade Practices

b. Cases involving Disclosure related violations, and

c. Cases which have Impacted Investors at large.

For any securities market to flourish, it should be free from any illicit activities, frauds, or any kind of unfair and manipulative trade practices. The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (PFUTP Regulations) ensures that a level playing field is maintained. SEBI, through regular amendments, has been widening the ambit of PFUTP Regulations with the intent to ensure adequate safeguards. A crucial element of SEBI's effort to protect the interest of investors is to ensure adequate disclosures and the continuous dissemination of such information. The idea of the study is to investigate cases which are of paramount importance in building investor confidence.

Our Findings

From the analysis of 30 cases during the time period of 2019-2021, we found that SAT had reduced the penalty imposed by the Adjudicating Officer (AO) in 17 of its orders and had completely set aside the orders passed by the AO in 9 cases.

We further observed that,

a. There has been an inordinate delay on the part of SEBI in taking enforcement actions in a number of cases which resulted in wrong doers getting away on technical grounds without any penalties.

b. In a number of cases SAT while upholding the findings of SEBI has reduced the quantum of penalties.

c. There is inconsistency in appreciating evidence amongst the Adjudicating Officers appointed by SEBI. This inconsistency was also observed while deciding the quantum of penalties.

d. In certain cases, while SEBI laudably endeavoured to take early actions, it eventually faltered in conducting follow on investigation which led to delays and dilution of enforcement actions.

Research Methodology

Objective

The objective of this study to understand whether the wide variance in orders passed by Securities and Exchange Board of India (SEBI) and the Securities Appellate Tribunal (SAT) and the reversal or partial modification of the Orders of SEBI at the appellate level have a demoralizing impact on investors.

Research Questions

a) Whether SAT reducing the penalty imposed by SEBI while upholding its findings is demoralizing for investors?

b) Whether contradictory opinions of SAT on matters of suspected regulatory violations, render SEBI toothless which seeks to ensure investor protection.

Scope and Limitations

This study is limited by the fact that it is entirely based on SAT and SEBI orders, reports, statutes, and some media articles. First-hand interviews with regulators or those facing regulatory action do not form part of this study. The appeals if any preferred by SEBI or the Appellants before the Honorable Supreme Court have not been taken into consideration for the purposes of this study unless the Honorable Supreme Court had passed its judgment.

Introduction

In any jurisdiction, one of the key roles of the securities market regulator is to inspire confidence, strengthen infrastructure and improve participation rates in the securities markets.[1] Despite the unpredictability usually attached to stocks and other financial instruments in juxtaposition with other measures of investments (such as real estate, gold, post office savings, etc.), risk adjusted returns from equities tend to multiply the investment exponentially.[2] Therefore, it is incumbent that the government and government affiliated bodies take public interest initiatives in educating the general public on the investment options available in the securities market. The securities market of a nation helps enormously in the advancement of the country's economy and positively impacts sectors like banking, medical care, consumer industry, technology, etc.

Notably, a World Bank policy research paper states that "as economies develop, the marginal increase in economic activity associated with an increase in bank development falls, while the marginal boost to economic activity associated with an increase in securities market development rises."[3]

Therefore, the Securities and Exchange Board of India Act (SEBI Act), 1992, established SEBI in order to develop and regulate the securities market in India. Even in the preamble of SEBI, the over-arching mandate is stated as "to protect the interests of investors in securities and to promote the development of, and to regulate the securities market."[4] This underpins the determination and resolve of the securities market regulator to achieve and sustain investor protection and confidence as the investors are the core driving force behind the market.

Whilst protecting investors, it is also pertinent to ensure that other stakeholders of the securities market such as the individuals or entities who have been incriminated by

[1]https://www.iosco.org/about/?subsection=about_iosco#:~:text=IOSCO%20Objectives,-IOSCO%20members%20have&text=to%20enhance%20investor%20protection%20and,markets%20and%20market%20intermediaries%3B%20and

[2]Jeremy J. Siegel, Stocks for the Long Run: The Definitive Guide to Financial Market Returns & Long-Term Investment Strategies, McGraw-Hill Education, 2014.

[3] Asli Demirguc-Kunt, Erik Feyen and Ross Levine, "The Evolving Importance of Banks and SecuritiesMarkets",WorldBank, https://openknowledge.worldbank.org/bitstream/handle/10986/21618/wber_27_3_476.pdf?sequence=1&isAllowed=y

[4]https://www.sebi.gov.in/sebi_data/attachdocs/1456380272563.pdf

the SEBI stand a chance at appealing the order to uphold the principles of natural justice. For that reason, under the provisions of Section 15K of the SEBI Act, 1992, the Securities Appellate Tribunal was established to dispose off appeals filed by the parties aggrieved by the adjudicating orders of SEBI.

In this study, the primary objective is to scrutinize the cases wherein the SAT Bench has reduced or stayed the penalties imposed by the SEBI in order to gauge the impact it has on investor confidence in India.

Whilst chalking out the hypothesis, Advocate PR Ramesh provided us with the much-needed guidance as to how to structure this study. Under his mentorship, we have hand selected thirty cases delineating the facts, issues and the order of both the SEBI and the SAT. Tracing these precedents aided in recognizing a pattern of the SAT reducing or staying the penalties imposed by the adjudicating orders passed by the SEBI. To ensure that the cases picked out were relevant, recent and had impacted the Indian investors immensely, the timeline of this report remains from 2019 to 2021.

Moreover, with the onslaught of evolution in technology and online trading, market participants' businesses have undergone a plethora of change. Therefore, the timeline of this report is also significant in highlighting how the market regulator and the appellant tribunal attempt to secure investor confidence in cases involving technological advancement such as disclosure compliances occurring online, co-location facilities, etc.

Unfair Trade Practices

Regulated by the statute viz. the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations), fraudulent and unfair trade practices refer to measures employed by individuals or business entities which are manipulative, fraudulent and unfair while dealing in securities. These practices can include indulging in fraudulent or unfair trade practices in the securities market, creating a fake appearance of trading of securities dealing in securities with a purpose of inflating or causing fluctuations in securities, any act to manipulate the price of securities, etc. The SEBI (Prohibition of Insider Trading) Regulations 2015 (PIT Regulations) is another scheme of Regulation which prohibits any Insider from profiting (or avoiding losses) from information which is not available to the common investors. Insider Trading is a serious offense the world over. Insider trading needs to be strictly checked to give all investors a level playing field.

The cases in this chapter consist of some of the orders passed by SEBI under the PFUTP Regulations and PIT Regulations during the years of 2019 to 2021.

Note: The Noticee/Respondent(s) in SEBI order are the Appellant(s) in the SAT order.

I. **Nitin Agrawal Vs SEBI - SEBI order dated 5th October, 2018**

SEBI, pursuant to a Bombay Stock Exchange (BSE) report, it was observed that some promoters of Mahamaya Steel Industries Ltd undertook certain transactions in the shares of the Company during 2016 for which disclosures were required to be made under regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations). However, it was observed that Nitin Agrawal, one of the promoters failed to comply with the disclosure requirements under SEBI Regulations. Nitin Agrawal had submitted that he is not a promoter but he is a part of the promoter group as per the definition provided in 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations). However, it was found that he had himself made disclosures under the promoter category under regulation 7(2) read with 6(2) of PIT Regulations. "*It is not only the promoters, but all those who are related to* *them may be privy to unpublished price sensitive information and are required to disclose the change in their shareholding to the public*," SEBI's order said.[5]

As he is the son of one of the promoters, i.e., Anand Kumar Agrawal, he was liable to make disclosures under regulation 7(2)(a) of PIT Regulations. Moreover, he had been making disclosures under PIT Regulations as promoter. In view of the above, it was held that he did not comply with regulation 7(2)(a) of PIT Regulations and a monetary penalty of 1,00,000/- was imposed.

Issue before SAT

Whether Nitin Agrawal has violated the provisions of regulations 7(2)(a) of PIT Regulations?

SAT order dated 25th March, 2019 in appeal no. 20 of 2019

Having heard the clubbed appeals from the promoters of the company, the SAT observed[6] that the required disclosures were not made by the appellants and thus there was a contravention of Regulation 7(2) (a) of the PIT Regulations. However, the Adjudicating Officer had specified that no disproportionate gain or unfair advantage was made by any of the appellants while undertaking the transactions in the shares of the company nor any loss was caused to the investors as a result of non-disclosure of change of the shareholding.[7]

Therefore, the violation was only technical in nature for which Mr. Nitin Agrawal, Mr. Ravi Agrawal and Ms. Neha Agrawal were imposed a minimum penalty of Rs1,00,000/- each. The SAT found the imposition of penalty of Rs5,00,000/- in the case of Mr. Anand Kumar Agrawal and Rs2,00,000/- in the case of Asha Agrawal to be disproportionate and excessive and thus, reduced to Rs1,00,000/- each."

Analysis

[5] https://www.sebi.gov.in/enforcement/orders/oct-2018/adjudicating-order-in-respect-of-nitin-agrawal-in-the-matter-of-mahamaya-steel-industries-limited_40614.html
[6] https://indiankanoon.org/doc/114966996/
[7] https://www.scconline.com/blog/post/2019/04/05/sat-no-disproportionate-gain-or-unfair-advantage-made-nor-any-loss-caused-to-the-investors-by-non-disclosure-penalty-reduced/

It was observed that subjective terms such as 'disproportionate' and 'excessive' form the reasoning of SAT's order. There is lack of uniformity with which the penalties were reduced.

II. **Jubilant Stock Holding Pvt. Ltd. and Others Vs SEBI - SEBI order dated 31st January, 2018**

The SEBI had held that the respondents have violated Regulation 3 of the SEBI (PIT) Regulations. The firm had pitched that one of its manufacturing facilities in Quebec, Canada, had been given a warning letter dated February 20, 2013, by the United States Food and Drug Administration (USFDA). On February 22, the letter was brought to the notice of the VP of Jubilant Hollister Stier (JHS), Canada, and it was further conveyed to Shyam Bhartia, Hari Bhartia and Amit Arora. Despite this, the organization made a deferred declaration about it on February 27. Aside from that, the USFDA gave another warning letter to a manufacturing office in Spokane, Washington. That warning letter was declared on December 5, 2013, despite the fact that it was received by the organization on December 1.

The SEBI also noticed that China's commerce ministry on May 28, 2013, reported about imposing provisional duties on JHS, just as on other Indian makers and Japanese makers. The Chinese ministry's decision would have an effect on the business of JHS, even then, the organization made a declaration about it on July 25, 2013, with a postponement of around two months. Moreover, the firm had additionally got communication on February 25, 2014 from the USFDA, ordering its pharmaceutical manufacturing office at Montreal, Canada as "acceptable." However, a declaration of this matter in such manner was made distinctly on February 27.

The SEBI found that all of the respondents were liable and were in violation of the above-mentioned causes.[8] Thus, it levied a penalty of Rs10 lakh on the Jubilant Life Sciences Ltd. under Section 23(a) of the Securities Contract (Regulation) Act, 1956(SCRA) for violation of clause 36 of Listing Agreement read with Section 21 of the

[8]https://www.sebi.gov.in/enforcement/orders/jan-2018/adjudication-order-against-1-jubilant-life-sciences-limited-2-jubilant-stock-holding-private-limited-3-mr-shyam-sunder-bhartia-4-mr-hari-shankar-bhartia-5-mr-amit-arora-in-the-matter-of-jub-_37633.html

SCRA. Moreover, the SEBI had also levied a penalty Rs10 lakh each on Jubilant Stock Holding Pvt. Ltd., Mr. Shyam Bhartia, Mr. Hari Bhartia and Mr. Amit Arora.

Issues before SAT

1) Whether the information as in the Show Cause Notice regarding 'warning letters' 'acceptance letter' issued by USFDA were the PSI to have impact on the business/operation and required disclosure of the same under clause 36 of the Listing Agreement read with section 21 of the SCRA?
2) If yes, then, whether Jubilant Life Sciences Ltd. had belatedly disclosed to the Stock Exchange the aforesaid PSI / material information?
3) If yes, then, whether such belated disclosure is in violation of clause 36 of the Listing Agreement read with section 21 of the SCRA?
4) If yes, then, whether the monetary penalty can be attracted?
5) Whether Jubilant Stock Holding is the "Insider" of the Jubilant Life Sciences Ltd in terms of PIT Regulations?
6) If yes, then, whether trading by 'insider' during Unpublished Price Sensitive Information (UPSI) period as alleged in the Notice, is in violation of regulation 3 and 3 A of the PIT Regulations?
7) If yes, then, whether the Jubilant Stock Holding is liable for monetary penalty?

SAT order dated 7th November 2019 in appeal no. 174 of 2018

The SAT reduced the penalty on Jubilant Life Sciences to Rs 5 lakh. The SAT quoted in its order that it has found that they would be liable only on one account i.e. for non-disclosure of the China warning immediately.[9] The penalty, therefore, was reduced to Rs 5 lakh. The SAT upheld the penalty imposed on the promoters and vice-president of the firm.[10] Furthermore, the tribunal disagreed with SEBI's raison d'être for imposing penalty on the firm saying that "*in our view, the disclosure was made at the earliest opportune moment by the appellant*."[11]

[9] https://www.outlookindia.com/newsscroll/sat-reduces-fine-on-jubilant-life-sciences-to-rs-5-lakh/1657565
[10] https://www.moneycontrol.com/news/business/markets/jubilant-life-appeals-in-sat-against-sebi-order-2557127.html
[11] http://www.sat.gov.in/english/pdf/E2019_JO2018175.PDF

Analysis

The SAT's reasoning in this case has been that the appellants had disclosed the necessary information at a moment opportune to them. The SEBI did not examine whether the delay in disclosure was adverse to the market The case shows that there is scope for improving the quality of orders passed by SEBI.

III. **Mrs. Kalpana Dharmesh Chheda and another vs. SEBI - SEBI Order Dated March 28, 2019**[12]

Respondents were individual traders. SEBI conducted an investigation in the trading of Zodiac Ventures Ltd. (ZVL) and the investigation period was between October 1, 2013 to December 22, 2014. Between Oct 1, 2013 and August 20, 2014, the share price of ZVL rose from Rs32.85 to reach a high of Rs537.60 on May 30, 2014 and closed at Rs507.90 on August 20, 2014. It was found by the AO who passed the impugned order that the respondents indulged in unfair trade practices by placing sell orders in very small quantities and at a price higher than the last traded price (LTP) and thereby contributed to the artificial price rise of the scrip. Therefore, it was concluded that the respondents had violated the provisions of PFUTP Regulations and subsequently a penalty of Rs45 lakhs were imposed on respondent no.1 (Mrs. Kalpana Dharmesh Chheda) and Rs5 lakhs on respondent no. 2 (Mr. Utkarsh Dharmesh Chheda) by the AO.

Issue before SAT

Whether trades carried out by the appellants in the scrip of ZVL during the investigation period were in violation of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) and (b) of the PFUTP Regulations?

SAT order dated 25 February, 2020 in appeal no. 454 of 2019[13]

The SAT was of the opinion that although trading at a price higher than the LTP cannot be considered manipulative per se but there seems to be a pattern in the nature of trading of appellants and that the appellants have gained a considerable amount of

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[12] https://www.sebi.gov.in/enforcement/orders/mar-2019/adjudication-order-in-respect-of-kalpana-chheda-and-utkarsh-chheda-in-the-matter-of-zodiac-ventures-ltd-_42527.html

[13] https://indiankanoon.org/doc/165677279/

Rs35.5 lakhs according to the SEBI adjudication order using these fraudulent practices. Further it was observed that the appellants were the top two net sellers during the investigation period and were offloading their shares in very minuscule quantities while holding a large number of shares. Therefore, it can be concluded that this was just a strategy to manipulate the market and unfairly benefit from it and thus, the appellants were in violation of PFUTP Regulations. However, the SAT was of the opinion that the penalty imposed by SEBI was on the higher side because the entire price rise was not solely on the account of trading done by the appellants and that the scrip was going up even when the appellants were not trading in it. The penalty was reduced to Rs20 lakhs for appellant no.1 (Mrs. Kalpana Dharmesh Chheda) and Rs2 lakhs for appellant no.2 (Mr. Utkarsh Dharmesh Chheda).

Analysis

While the SAT upheld the findings of SEBI, it reduced the penalty imposed on Appellant No. 1 from Rs45 lakhs to Rs20 lakhs and from Rs5 lakhs imposed on the Appellant No. 2 to Rs2 lakhs. However, in doing so, it has not laid down any particularly principles as to why it reduced the penalty. Even if the scrip was going up when the appellants were not trading in the scrip, it still does not explain why the appellants should not be adequately penalized for the illegal gains they made from dealing in the scrip. As per the calculations of SEBI, approximately Rs35.5 lakh were made by the appellants by trading in the scrip illegally and the revised penalty by SAT totals to Rs22 lakhs, was substantially lower than the illegal gains made. Would this be enough to act as a deterrent?

IV. **Nirmal Kotecha vs SEBI - SEBI order dated 22nd March, 2018**

SEBI witnessed a significant rise in the price of the scrip of the company and accordingly conducted an investigation from August 20, 2008 to December 31, 2008.

Based on the investigation, a show cause notice dated May 18, 2015 was issued against the respondent and 12 other entities alleging that the respondent along with other Group-1 entities had indulged in trading amongst themselves by way of executing self-trades resulting in no change in the beneficial ownership and thereby created artificial volume in the scrip of the company.

SEBI after considering the material evidence on record came to the conclusion that the self-trades carried out by the respondent was fraudulent and amounted to market manipulation violative of regulations 3 and 4 of the PFUTP Regulations and further held that the respondent had violated disclosure obligations under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SAST Regulations) and PIT Regulations. The SEBI accordingly debarred the respondent from buying, selling or otherwise dealing in the securities market directly or indirectly for a period of two years.

Issue before SAT

The AO passed an order on May 16, 2017 and held that the volume of transaction done by the respondent was minuscule as compared to the total trading and therefore there cannot be any manipulative intent. Further, the AO said self-trades does not create any misleading appearance of trading in the securities market nor was there any fraudulent intention behind the execution of self-trades and consequently there was no violation of Regulations 3 and 4 of the PFUTP Regulations.

The question which arose for consideration was, that once an AO after making an inquiry and after adjudicating the matter quashes the proceedings, is it open to SEBI to adjudicate the same issue on the same facts under Section 11-B through parallel proceedings?

SAT order dated 2nd March, 2021 in appeal no. 261 of 2018

The SAT held that once an issue, on the same facts and between the same parties has been determined; it gives rise to an issue estoppel. It operates not only in the same proceedings but also in subsequent proceedings.[14] Further, when the earlier proceedings are identical on facts and law with the present proceedings and the subject matter/issue involved is the same, in such a case, the SAT is of the opinion

[14] http://sat.gov.in/english/pdf/E2021_JO2019580.PDF

that the bar is absolute in relation to all points decided. The principle of issue estoppel is fully applicable in the instant case.

SAT opined that a consistent view is required to be taken by SEBI for the purpose of orderly development of the securities market. If the order of the AO was incorrect it could have been reviewed under sub-clause (3) of Section 15-I or could have been challenged in a higher forum if permissible in law but it was not open to another authorities of SEBI to take a different view on the same issue based on the same facts and law and between the same parties.

Finally, the SAT allowed the appeal. Even though the appellant had admittedly violated the provisions of Regulation 7(1) of the SAST Regulations read with Regulation 13(1) of the PIT Regulations for not making disclosures, appropriate penalty could have been imposed but since the appellant has already undergone debarment for more than a year, the SAT held that no further penalties could be imposed for the said violation.

Analysis

The SAT order actually shows inconsistency at SEBI. There is significant difference in appreciation of evidence by different SEBI AOs, and they don't follow the precedents. SEBI should take note of this Order of SAT and amend its processes to pass quick, consistent orders.

V. **Shruti Vora vs SEBI - SEBI order dated 4th June, 2020**[15]

The respondent Shruti Vohra was working for Antique Stock Broking Ltd in institutional sales and catered to institutional clients like insurance companies and mutual funds. According to the submission made by her to SEBI, part and parcel of her job was to "accumulate information about movements in the market, possible stock prices, news about important elements in the financial world and communicate the same to the institutional clients of Antique." Certain WhatsApp groups had been

[15]https://www.sebi.gov.in/enforcement/orders/jun-2020/adjudication-order-in-respect-of-ms-shruti-vora-in-the-matter-of-circulation-of-upsi-through-whatsapp-messages-with-respect-to-bata-limited_46777.html

circulating the quarterly financial results of certain companies even before the announcement of the official results by the respective companies. SEBI initiated an investigation into the said allegations and seized 190 devices and records from 26 entities who were a part of this market chatter. According to the report by SEBI, financial reports and earnings data of around 12 companies was leaked in these WhatsApp texts. The AO appointed by SEBI considered this information as unpublished price sensitive information under the provisions of PIT Regulations and subsequently imposed a penalty of Rs1,50,000 on the respondent.

SAT order dated 22nd March, 2021 in appeal no. 308 of 2020[16]

SAT allowed the appeal on the following grounds:

a) It was noted by SAT that despite SEBI trying to find the source of these text messages to see if there was a leak from the side of the respective companies, it was unable to do so.
b) SEBI had mined numerous other messages from the seized devices but only in the present 6 cases, the figures mentioned were matching exactly to the actual financial results of the company. It is also to be noted that the appellant has forwarded the texts as soon as she got them to multiple entities, one of which was a Reuter's journalist.
c) The tribunal observed that the AO failed to appreciate the fact that the WhatsApp messages might have originated from brokerage houses as it is standard practice and that information is public information.
d) SAT held that the information can only be labelled as unpublished price sensitive information when the person on the receiving side is aware of the fact that it is unpublished price sensitive information.

Therefore, the tribunal was of the opinion that due to the failure of the respondent to prove any preponderance of probabilities, the order of the AO cannot be upheld.

Analysis

It is to be noted here that it was not Shruti Vohra who traded based on the information available but merely passed it on to thousands of retail investors. In cases like these,

[16] http://sat.gov.in/english/pdf/E2021_JO2020313_25.PDF

it is the retail investor that almost always ends up losing money. A question that arises here is what more SEBI could have done in its investigation to ensure that the evidences were fully obtained and appreciated. The prompt action of SEBI seizing the phones and records of the entities created a lot of hype and it was expected from SEBI to present a strong case against the appellants. Circulation of such WhatsApp forwards/ text messages adversely affect the retail investors and this case was expected to bring about a change. However, it failed to prove any preponderance of probabilities as to the fact that the information qualified as UPSI or that the appellants knew that such information was UPSI. SEBI, with all its might and power, was unable to trace the origin of the text message and as a result of which SAT had to allow the appeal.

VI. **Udayant Malhoutra vs SEBI - SEBI order dated 15th June 2020**

On 15 June 2020, SEBI issued an *ex-parte* order against the CEO and MD of Dyanmatic Technologies (DTL), Udayant Malhoutra. In its order, SEBI alleged that Dr. Malhoutra was involved in insider trading against profit made or loss avoided by him by selling shares of DTL based on UPSI.

Moreover, elaborating on the charges, SEBI put forth that he avoided a loss of Rs2.66 crores by selling 51,000 shares before the company announced its results. It was claimed by SEBI that Dr. Malhoutra had sold shares of DTL in October 2016 dependent on UPSI identified with the "unaudited financial results." Considering the above mentioned, the SEBI had held that using the UPSI relating to the degrading fiscal health, Dr. Malhoutra had sold the shares of the organization. SEBI had started investigations in the matter in 2017 and from there on, on June 15, 2020, it passed the *ex-parte* order directing Dr. Malhoutra to "deposit a sum of Rs2,66,59,215/- plus interest till date totaling Rs3,83,16,230.73 in an Escrow Account towards notional loss allegedly avoided by him by using unpublished price sensitive information and further directed that his bank accounts / demat accounts shall remain frozen till such time the amount is not deposited."[17]

SAT order dated 27th June 2020 in appeal no. 145 of 2020

Dr. Malhoutra appealed SEBI's order before the Securities Appellate Tribunal (**"SAT"**). SAT quashed the *ex-parte* order pointing out that "*there is no real urgency in the matter to pass an ex-parte interim order especially during the pandemic period*."

The SAT also questioned the necessity of an *ex-parte* order,[18] saying that there's no implicit requirement of it in every case under the guise of protecting the interest of the securities market and the investors. An *ex-parte* order, even if temporary, can limit an individual or organization from pursuing his/her profession and might have serious consequences that cannot be remedied in terms of monetary compensation.

"*No order of the like nature can be passed without recording its satisfaction and cannot be based on the basis of possibility. In the instant case, we do not find any case of extreme urgency which warranted the respondent (SEBI) to pass an 'ex-parte' interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI ACT without considering the balance of convenience or irreparable injury,*" the SAT said whilst rejecting SEBI's order at the admission stage.

SAT further asserted[19] that SEBI can pass an ex-parte interim order "*but such powers can only be exercised sparingly and only in extreme urgent matters. The SEBI cannot direct disgorgement of money without following the due process of law or the merits of the case.*" The SAT asked SEBI to give the opportunity of a fair hearing to Dr. Malhoutra. After this, SEBI had preferred an appeal before the Supreme Court but the Apex Court did not find the order erroneous.[20]

Analysis

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[17] https://indiankanoon.org/doc/27800969/
[18] http://sat.gov.in/english/pdf/E2020_JO2020145.PDF
[19] https://www.thehindubusinessline.com/markets/stock-markets/sebi-drops-insider-trading-case-against-dynamatic-ceo/article33432085.ece
[20] https://www.sebi.gov.in/enforcement/orders/dec-2020/order-of-the-hon-ble-supreme-court-in-ca-no-2981-82-of-2020-sebi-vs-udayant-malhoutra_48329.html

The impugned transaction was executed on October 2016 but the *ex parte* order was passed in June 2020 i.e., after about three and a half years. The reasons for the delay were not explained by SEBI and no case was made out as to why an *ex parte* interim order was required at this stage. With the Honorable Supreme Court agreeing with the SAT order, it is for SEBI to ensure that, wherever it deems necessary, *ex parte* interim orders are passed quickly without any extraneous factors. It is strongly suggested there output to be inner audits at SEBI for issues being deferred, so that investor confidence is not shaken because of SAT striking down SEBI orders.

VII. **Bharti Goyal vs SEBI - SEBI Order dated 28th February, 2020**[21]

From July 1, 2014 to November 30, 2014, i.e. the investigation period, the scrip of Mapro Industries was found to be artificially raised by a group of 16 entities. The scrip was ramped up from Rs79.15 on 1st July 2014 to a high of Rs493.40 on 10th November, 2014. The scrip subsequently closed at Rs430 on 28th November 2014. Initially only six entities were found to be suspected group entities. The scope of that investigation was expanded to another ten entities who were found to be part of the top traders during the investigation period. The respondent Bharti Goyal was a part of the group. The impugned order by SEBI holds that although there is no relationship amongst the suspected entities that could be established, the very nature of their trades is manipulative such as placing buy orders substantially above the last traded price mostly at the beginning of the trading hours. This is believed to have disturbed the market equilibrium in the scrip of Mapro and manipulated the trading system. A total of 1174 shares were traded in 43 trades which resulted in the scrip rising by Rs241.95. Out of all these trades, the ten entities contributed about 69% of the total net LTP by trading in just 234 shares in 29 trades.

Bharti Goyal had bought a total of 284 shares in 9 trades and this contributed Rs28.65 to the LTP. Out of these 9 trades, 4 contributed positively to LTP and all 4 orders were first orders in the system. Therefore, it was concluded that Bharti Goyal had

[21] https://www.sebi.gov.in/enforcement/orders/feb-2020/adjudication-order-in-the-matter-of-mapro-industries-limited_46132.html

manipulated the scrip of Mapro by placing buy orders at a rate higher than the LTP in the early trading hours and subsequently a penalty of Rs5 lakh was imposed on her.

SAT Order dated 25th August, 2020 in appeal no. 159 of 2020[22]

It was observed by the SAT that although the trading patterns of the appellant seems to be in contravention of the provisions of PFUTP regulations; it is possible for an investor to place a buy order at higher price than the LTP by looking at the market movement without any malafide intentions. It was also noted by the tribunal that SEBI had not been successful in establishing any connections between the appellants and the suspected six entities/ promoters, directors etc. of Mapro Industries. With respect to the contentions of the appellants, the tribunal observed that it was highly unlikely that the appellants were keen to invest in the Mapro because of its promising future prospects. The appellants had to have extraordinarily sharp eagle eyes to pick on an ordinary scrip which was witnessing an artificial price surge when they claim to be small time traders with limited funds. The tribunal concluded that the nature and pattern of trading of the appellant were in fact violative of PFTUP regulations but in the absence of the establishment of any nexus between the appellant and the other suspected entities or the promoter group of Mapro in the impugned order, it will not be able to hold the penalty imposed on the appellant and would let them off with a warning.

Analysis

The SAT in its findings has clearly stated that the trading nature and pattern of the appellants are in violation of the PFTUP regulations. Any reasonable person who wants to genuinely invest in the company based on its market performance as stated by the appellant would at least buy a reasonable quantity of shares and not 1,2,5 or 10 shares and that too at a price 2-4% higher than the last traded price at the beginning of the trading session. This is a prima facie case of market manipulation. While the tribunal acknowledged that this is a case of market manipulation it did not uphold the penalty imposed on the appellant and instead replaced it with a warning. Such decisions may affect the confidence of investors. There is also a legal issue as to

[22]http://sat.gov.in/english/pdf/E2020_JO2020160.PDF

whether the SAT can, while agreeing with SEBI that violations are in fact been committed by the appellants, waive the minimum penalty prescribed under the provisions of section 15HA of the SEBI Act, relating to adjudication and penalties.

VIII. **Tanuj Khandelwal vs SEBI - SEBI order dated 31st August, 2020**

A show cause notice was issued for trading in the scrip of Malabar Trading Company Ltd. (MTCL). "It was alleged that the respondent had contributed to more than 5% of the total market positive LTP though 63 trades for a total quantity of 4304 shares during patch-1. Furthermore, the respondent placed sell orders in the range of 1 to 500 shares when the respective buy order quantity was in the range of 100 to 3400 shares especially when more shares were available, in spite of which the respondent on most of the dates traded only on one share."[23]

It was, along these lines, claimed that the respondent was manipulating the share price and made misleading appearance of trading in the scrip by such trades, subsequently disregarding Regulation 3 and 4 of PFUTP Regulations. The AO saw that the respondent was liable of the claims made in the show cause notice and that it had no bonafide aim to sell when adequate buy orders were available. In spite of having satisfactory holdings in the scrip of MTCL respondent sold just one share for every transaction which brought about making of positive LTP and in this manner, made false misleading appearance of trading in the securities market.[24] The AO held that such trading pattern adds up to control of the price of the scrip and thus, forced a penalty amount of Rs8 lakhs for infringement of Regulation 3 and 4 of PFUTP Regulations.

Issues before SAT

1) Whether Tanuj Khandelwal has violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and (e) of PFUTP Regulations?
2) Whether Tanuj Khandelwal is liable for monetary penalty under Section 15HA of the SEBI Act?

[23] https://indiankanoon.org/doc/95934864/
[24] https://www.sebi.gov.in/enforcement/orders/aug-2020/adjudication-order-in-respect-of-tanuj-khandelwal-in-the-matter-of-malabar-trading-company-ltd-_47445.html

3) If so, what amount of monetary penalty should be imposed on Tanuj Khandelwal?

SAT order dated 4th January, 2021 in appeal no. 357 of 2020

The SAT held[25] that the case of Tanuj Khandelwal is distinguishable and consequently the precedents relied upon are not applicable and are distinguishable on facts. The SAT found that except on three instances, Mr. Khandelwal just sold one share at a time on a daily basis. This trading pattern made a misleading appearance with intention to manipulate the market if not the price. Accordingly, regardless of whether there is an association with the buyer, the trading pattern shows a deliberate work to manipulate the market and along these lines the SAT's assessment held that the appellant was not going about as a genuine seller.

The tribunal additionally held that the appellant had no bonafide intention to sell on the grounds that regardless of adequate purchase orders being put with amounts being available in the market, the appellant was placing buy orders of one share at a time. This unmistakably showed his intention of controlling the market for vested reasons. Subsequently, the SAT upheld the finding of the AO that Tanuj Khandelwal had violated Regulation 3 and 4 of PFUTP Regulations. In any case, the tribunal believed that when the appellant was just selling minuscule quantities, the fine of Rs8 lakhs was harsh and excessive and was not comparable to the supposed infringement. Given the encompassing conditions, the SAT decreased the punishment to Rs1 lakh in the given conditions.

Analysis

It is observed that while the SAT upheld the violations, it reduced the penalty. The reasons for which this leniency is shown is not brought disclosed. Perhaps, the SEBI counsels arguing the matters before SAT should be briefed to oppose any leniency citing the benefits accrued to the appellant. It is also observed that the impugned order does not bring out profit made of loss avoided. This calls for introspection at SEBI as

[25] https://indiankanoon.org/doc/95934864/

the quantification is an important factor to be considered by the adjudicating officer under Section 15J of the SEBI Act.

IX. **Kaushik Rajnikant Mehta vs SEBI - SEBI order dated 20th March 2020**[26]

The present appeal was filed against an order issued by the AO appointed by SEBI on 20th March 2020 for imposing a penalty of Rs5 lakhs on the respondent for violation of Regulation 3 and 4 of PFUTP Regulations.

SEBI issued a show cause notice (SCN) on 20th November, 2013 which alleged that the respondent was involved in synchronised trading in the scrip of Well Pack Papers and Containers Ltd. It was alleged that there was no actual change of ownership in the shares and the sole intention of the respondent and the allied entities was to create artificial volume in the scrip and thereby increase the price of the scrip. This was a prima facie case of market manipulation. The respondents also allegedly placed buy orders at higher rates and within minutes of that sell orders were placed to match them which is not only manipulative but fraudulent.

The AO appointed by SEBI passed an order on 16th February, 2015 which imposed a penalty of Rs6 lakhs on the respondent. The respondent then filed an appeal against the said order which was allowed by SAT by an order dated 14th March, 2016. In that order, the tribunal set aside the order passed by the AO and the matter was remanded to the AO to pass a fresh order.

SEBI then appointed an AO on 17th March 2018. However, no action was taken by this AO and a new AO was appointed on 18th March 2019 who took 9 months to fix a date for hearing. The impugned order was passed on 20th March 2020 which stated that the respondent had indulged in market manipulation and fraudulent trade practices and thereby imposed a penalty of Rs5 lakhs after considering all the facts and circumstances.

[26] https://www.sebi.gov.in/enforcement/orders/mar-2020/adjudication-order-in-the-matter-of-well-pack-papers-and-containers-limited-in-respect-of-shri-kaushik-rajnikant-mehta_46450.html

SAT order dated 7th January, 2021 in appeal no. 378 of 2020[27]

The tribunal held that the contention raised by the appellant about the non-availability of the investigation report/ trade and order logs is largely erroneous. There was no substance and nothing put on record to show that the investigation report or the trade and order logs are important to this case. It was also held by the tribunal that the AO had not travelled beyond the SCN as it implicitly and explicitly states that this is a case of creation of artificial volume in trading. The tribunal further held that the appellant was connected to Walmiki Shah group through Vipul Hiralal Shah.

However, the tribunal was of the view that there has been an inordinate delay on the part of SEBI which causes prejudice to the appellant. It stated that "When there is a delay in initiating the proceedings or there is undue delay in the disposal of the case, the uncertainty creeps in which causes prejudice."

The Tribunal observed that no steps were taken by SEBI to decide the matter afresh and because of this undue delay; the penalty imposed was liable to be reduced. Therefore, the tribunal while holding the appellant liable for violation of Regulation 3 and 4 of PFUTP Regulations reduced the penalty from Rs5 lakhs to Rs2.5 lakhs.

Analysis

It is to be noted here that none of the contentions of the appellant were upheld by SAT except for one i.e. the inordinate delay on the part of SEBI. This appears to be a prima facie case of market manipulation and fraudulent trade practices wherein the appellant and the related entities indulged in synchronized trading and thereby artificially increasing the price of the scrip. While the appellant was held to be in violation of Regulation 3 and 4 of PFUTP Regulations, the imposed penalty was reduced to half because of the inordinate delay on part of SEBI. Being the market regulator and having all the necessary resources, it is expected of SEBI to be prompt in its enforcement actions.

X. **NSE Co-Location Case - SEBI order dated 30th April, 2019**

[27] http://sat.gov.in/english/pdf/E2021_JO2020378.PDF

In 2015, the SEBI received a complaint from a whistleblower asserting different irregularities in regard of the co-location facility provided by the National Stock Exchange (NSE). It was alleged that a few brokers in collusion with top NSE officials had mishandled the co-location facility. A select arrangement of brokers in collusion with NSE officials got the first access to the NSE's servers, giving them a head start. NSE was then utilizing tick-by-tick (TBT) server protocol to relay data to members; implying that the whoever gains admittance to the system first would get data sooner than the rest. It was similarly affirmed that Directors/KMPs for discharging different functions at NSE, neglected to guarantee fairness, receptiveness, transparency and to give fair, equal and unrestricted access to its co-location facilities and trade data and so forth, to all market participants in conformity with the SEBI (Stock Exchanges and Clearing Corporations) Regulations, 2012.

Different irregularities were observed during a fundamental investigation conducted by the SEBI and common show-causes were issued in the year 2017 to various entities including respondents. Investigation conducted by SEBI uncovered different irregularities notwithstanding the fundamental findings and accordingly, another show cause notice was given during 2018. In April 2019, SEBI directed NSE to secure an amount of Rs62.58 crore in addition to interest in a co-location case that permitted the utilization of Dark Fiber. SEBI further stated that the NSE should not bring about any new derivative product for the following half of the year.

The SEBI had decided that the NSE has neglected to guarantee a level playing field for all the trading members who had subscribed to NSE's co-location facilities and were getting the tick-by-tick data. However, SEBI felt that the exchange cannot be accused of fraud as there is "no proof of collusion of employees with brokers, or proof of certain brokers having been discriminated against, or some NSE authorities or brokers having gained financially due to the loopholes."[28]

[28]https://www.moneylife.in/article/is-sebi-winding-up-nse-colo-scam-with-some-tepid-action/63923.html

Likewise, SEBI felt that the inability to have a randomizer or load balancer can't be viewed as a breach of the principle of fairness and justness. So, the NSE can't be held guilty under the regulations of fraudulent and unfair trade practices.[29]

However, SEBI held that the NSE did not utilize essential due diligence while setting up the TBT mechanism. Additionally, its strategy on retention of electronic records was not up to the mark. For the above failings, the NSE was directed to disgorge a part of the profits produced using the tick-by-tick data from 2010-11 and 2013-14. That amount totals to be Rs625 crore alongside an interest of 12% from April 2014.

Moreover, OPG Securities Private Limited, Mr. Sanjay Gupta, Ms. Sangeeta Gupta, Mr. Om Prakash Gupta were directed to pay Rs5 crores jointly and severally. In addition to this, OPG Securities Private Limited and Mr. Sanjay Gupta would pay Rs10 lakhs individually.

SAT Order dated 17th May, 2021 in appeal no. 333 of 2019

In the Order dated 17.05.2021,[30] the SAT has heard the matter of appeal against the penalty of Rs625 crores. Additionally, the SAT has allowed NSE to release Rs6,085 crore from escrow account which it earned by providing co-location facility. However, NSE has to secure money worth Rs420 crore in interest bearing account.[31] Due to the pandemic, the SAT has reserved its order. This matter relates to 2015 and still has not been settled. A quick enforcement action and conclusion of appellate proceedings would have been in the interest of the investors.

XI. **In the matter of Cairn India Ltd - SEBI order dated 19th May, 2021**

Cairn made a public announcement on January 14, 2014 for buyback of 17,08,95,522 equity shares of Rs10 each at a maximum price of Rs335 per share for a maximum amount of Rs5,725 crores from the open market route in accordance with SEBI Buyback

[29] https://www.sebi.gov.in/enforcement/orders/feb-2021/adjudication-order-in-respect-of-four-entities-in-the-matter-of-nse-co-location_49104.html
[30] http://sat.gov.in/english/pdf/E2021_JO2019333_26.PDF
[31] https://www.moneycontrol.com/news/business/markets/sat-gives-relief-to-nse-allows-the-exchange-to-release-co-location-income-from-escrow-account-6905271.html

Regulations. The buyback offer was scheduled to open on January 23, 2014 and close on July 22, 2014 i.e.,

a) Upon completion of six months from the opening of the offer on January 23, 2014 or
b) when the company competes, the buyback offers by deploying the amount equivalent to the maximum buyback size or
c) When the company completes the buyback offer to the extent of buying back equity shares equal to the maximum buyback shares provided that the company has deployed an amount equivalent to minimum buyback size or at such earlier date as may be determined by the Board or
d) Its duly authorized committee, after giving notice of such earlier closure, subject to the company having deployed an amount equivalent to the minimum buyback size (even if the maximum buyback shares have not been brought back).

Cairns submitted that til June 27, 2014, it was able to buyback a total of 3,67,03,839 shares which represented 21.48% of the maximum shares utilising a total of Rs1,225.45 crores which represented 28.59% of the maximum buyback size. Thus, it was noted that Cairn was not able to utilise the minimum amount of 50% of the buyback size as required under Buyback Regulations. Therefore, Cairn had sought for extension of the buyback period which was not acceded to by SEBI. Subsequently, Cairn had submitted that it could not achieve the minimum amount of 50% of buyback size. Further, Cairn had made an application to SEBI to release the Cash Escrow (Rs143.125 crores), containing 2.5% of buyback size, under Regulation 15B (8) of Buyback Regulations.

The investigation found that out of 123 trading days, buy orders were placed by Cairn for 82 days on NSE and all 123 days on BSE. The investigation found that Cairn did not place any buy orders on NSE on 24 days and placed orders for less than 5,000 shares on 14 days out of total 54 days on which the price was favourable for buyback and instead it placed orders in BSE where sell orders were much less. Thus, Cairn had failed to achieve even the minimum buyback size as it could not buyback even half the number of shares announced by it, despite availability of sufficient sell orders on NSE, when the market price was lesser than the maximum buyback price.

Therefore, it was alleged that the public announcement and subsequent actions of Cairn show that the announcement of buyback of shares by Cairn was a misleading announcement designed to influence the decision of the investors. It was to induce them to trade in the shares of Cairn which is reflected in the increase trading volume after the buyback announcement. Further, it is alleged that P Elango (Respondent 2), being the CEO and Director of Cairn, Aman Mehta (Respondent 3) being the Director on the Board of Cairn and Neerja Sharma (Respondent 4), being the Director (Risk Assurance) & Company Secretary of Cairn, who had signed the public advertisement dated January 14, 2014, alleged to have facilitated the company in making the said misleading announcement.

In its order, the SEBI said that Cairn did not place enough buy orders at appropriate time towards the aim of completing the buyback, hence failed to show intent and acted fraudulently. Accordingly, the AO held that there is a violation of the provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(K) and (r) of the SEBI (PFUTP) Regulations and Regulation 19(1)(a) of the SEBI (Buyback) Regulations. Also, the material made accessible on record has not quantified the amount of disproportionate gain or unfair advantage made by the other respondents.[32] The ramifications due to such infringement is of serious nature and are prejudicial to the interests of investors in the securities market. In the event that infringement of this nature and magnitude are not dealt with quickly and seriously then investors will lose faith in the Indian Securities Market. Hence, Rs5.25 crores penalty is levied on Cairn India.[33]

Issue before SAT

Whether the appellants have violated the provisions of PFUTP Regulations and Regulation 19(1)(a) of the SEBI (Buyback) Regulations?

SAT order dated 22nd June, 2021 in appeal no. 420 of 2021

[32]https://www.sebi.gov.in/enforcement/orders/may-2021/adjudication-order-in-respect-of-cairn-india-ltd-p-elango-aman-mehta-and-neerja-sharma-in-the-matter-of-cairn-india-ltd-_50186.html

[33]https://www.livemint.com/companies/news/sat-stays-sebi-s-penalties-on-cairn-india-others-on-share-buyback-case-11624540657915.html

The SAT has stayed the penalty[34] by the SEBI for making a misleading declaration in regards to the buyback of shares in 2014. In doing so, the tribunal also directed Cairn India, which was merged with Vedanta Limited in 2017, to deposit an amount of Rs2.5 crore[35] within three weeks of time.

Analysis

The interim order granted is extended till further orders and the final order is yet to be passed.[36]

XII. **Vasudev Ramchandra Kamat vs SEBI - SEBI order dated 23rd September, 2014[37] and 22th November, 2019[38]**

Vasudev Ramchandra Kamat, the respondent, allegedly, along with a connected group of entities traded in the scrip of LGS Global Limited and indulged in synchronised trading wherein there was no change in the beneficial ownership of the shares and hence violated Regulation 3 and 4 of the PFUTP Regulations, 2003. Subsequently, a show-cause notice dated October 8, 2013 was sent to the respondent. After considering all the material evidence on record and the replies made by the respondent and the group of entities, SEBI imposed a penalty of Rs 5 Lakh on the respondent on September 23, 2014. The respondent aggrieved with the order filed an appeal before the SAT which was allowed. The tribunal vide its order dated January 20, 2016, set aside the order of the AO asked the AO for a fresh decision on merits in accordance with the law. After 3 years a fresh show-cause notice was issued by the AO on August 1, 2019 which alleged that the respondent had indulged in synchronised trading within a group to create artificial volume which resulted in a false and misleading appearance in the scrip of that particular company. The AO

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[34] http://www.businessworld.in/article/Share-Buyback-Case-SAT-Stays-Sebi-s-Penalties-On-Cairn-India-Others/25-06-2021-394352/

[35] http://sat.gov.in/english/pdf/E2021_JO2021420_2.PDF

[36] http://sat.gov.in/english/pdf/E2021_JO2020420_21.PDF

[37] https://www.sebi.gov.in/enforcement/orders/sep-2014/adjudication-order-against-17-entities-in-the-matter-of-lgs-global-limited_28051.html

[38] https://www.sebi.gov.in/enforcement/orders/nov-2019/adjudication-order-in-the-matter-of-lgs-global-limited-now-known-as-ybrant-digital-limited-_45043.html

passed the impugned order on Nov 22, 2019, imposing a penalty of Rs 1 lakh on the respondent.

SAT order dated 25th February, 2020 in appeal no. 8 of 2020[39]

SAT observed that after the remand in its last order, no proceedings were initiated by SEBI and a fresh show-cause notice was issued by the AO on August 1, 2019, after three long years. The AO alleged that the appellant had indulged in synchronised trading within a group to create artificial volume which resulted in a false and misleading appearance in the scrip of that particular company. The AO passed the impugned order on Nov 22, 2019, imposing a penalty of Rs 1 lakh on the appellant.

The tribunal held that the impugned order cannot be sustained because the tribunal vide its order dated January 20, 2016, remanded the matter back to the SEBI with a specific direction of restoring the matter to the file of AO and deciding the matter afresh on its merits. It held that the AO was required to decide the matter afresh pursuant to the show cause notice issued on Oct 8, 2013, and not issue a fresh show-cause notice incorporating a new charge. Therefore the impugned order cannot be sustained and is quashed.

Analysis

SAT, in its decision dated 20th January 2016 while hearing the appeal of the appellant against the order passed by the AO on 23rd September, 2014 held that the findings of the AO in paragraph 37 and paragraph 43 of the order are contradictory in nature. Therefore, it set aside the order and restored the matter to the file of the AO to be decided afresh on merits and in accordance with the law. However, it is important to note here until the next three years, no proceedings with respect to the case were initiated by SEBI. On August 1, 2019, it issued a fresh show cause notice and passed a new order on 22nd November, 2019, imposing a penalty of Rs 1 lakh on the appellant. SAT ultimately had to quash the order dated 22nd November 2019 due to the noncompliance of SEBI with its order dated 20th January 2016. The appellant might have been involved in synchronized trading and made illegal gains but because of the

[39]https://indiankanoon.org/doc/107256560/

laxity of SEBI in this particular case the appellant went scot-free. These types of cases where the directions of SAT are not followed by the relevant departments at SEBI, needs a review by the higher authorities at SEBI.

XIII. **Mr. B. Renganathan vs SEBI - SEBI order dated 16th July, 2020**[40]

Ecap Equities Limited is a wholly-owned subsidiary of Edelweiss Financial Services Ltd. acquired 100% of Alternative Investment Market Advisors Private Limited, a fintech company's equity capital. A term sheet with regard to the above transaction was signed between Alternative Investment Market Private Limited and Ecap Equities Limited on January 25, 2017. Edelweiss made a disclosure to the stock exchanges after the signing of the Share Purchase Agreement under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). But no trading window was closed by the company. The Compliance Officer who mandated to make sure the code of conduct regarding the PIT disclosure and compliances is implemented, overlooked this. Therefore, the code of conduct was violated. The Adjudicating Officer of SEBI imposed a penalty of Rs5 lakhs on the respondent for violating provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor, and Report Trading by Insiders under Schedule B read with Regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. The respondent filed an appeal to challenge the order of the Adjudicating Officer.

Issue before SAT

Whether the acquisition of a company directly or indirectly by an already listed company becomes an Unpublished Price Sensitive Information in itself, irrespective of its materiality, and thereby makes it obligatory for the Compliance Officer to close the trading window under the PIT Regulation?

SAT order dated 24th March, 2021 in appeal no. 272 of 2020[41]

[40] https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-b-renganathan-in-the-matter-of-edelweiss-financial-services-ltd-_47075.html
[41] https://indiankanoon.org/doc/164377736/

SAT held that the test of materiality to determine whether it is UPSI cannot be done arbitrarily. The entities involved start interpreting acquisitions by the size of the acquired company in comparison to the size of their company. This leads to confusion and regulatory certainty is questions. According to the LODR regulations, acquisition of even 5% of equity capital of a company directly or indirectly by a listed company is ought to be disclosed. Here, the appellant had acquired 100% of the company which was supposed to help grow the fixed income advisory business of Edelweiss. Therefore, the contention that the acquisition of 4 crore by a 40 thousand crore company cannot be termed as material event was not accepted by the tribunal. It upheld the decision of the impugned order that the appellant had violated the Model Code of Conduct under Regulation 9(1) of PIT Regulations, 2015 and held that irrespective of its value or size, a 100% acquisition of a company is material information and is liable to bring in UPSI.

However, it did not agree with the penalty imposed by the AO. It was of the considered view that the approach of the AO in making a single violation repetitive was not correct. Hence, it reduced the penalty imposed from Rs 5 lakhs to Rs 1 lakh.

Analysis

The SAT order states that irrespective of the size of the company being acquired relative to the acquiring company if there is a 100% acquisition, it has to be considered as a material event for the determination of UPSI. Entities cannot be allowed to interpret acquisitions by their relative size. If that is allowed the regulatory certainty will be lost.

While it held the contention of SEBI about materiality it differed from its view with regards to making a single violation repetitive. It held that whether there were earlier violations or not is a different question altogether and has to be probed into following proper rules, regulations, and procedure and the AO cannot come to a catch-all conclusion. SEBI's approach in imposing the penalty was to ensure compliance culture amongst the officials of the listed company, however the same was reduced substantially by SAT.

Disclosure Violations

Disclosures contain information that is obligatory by the statute or law to protect the interest of the shareholders. Disclosures are primarily a measure to secure the faith of the investors in the listed company and to make the shareholders, who are not involved in the everyday management of the company be mindful of the changes occurring in it. Disclosure are required to be issued by businesses and corporations, disclosing all relevant information that might possibly influence an investor's decision. It helps investors take informed decisions and choose stocks or bonds that suit their investment needs and investment portfolio.

This chapter deals with cases wherein there have been disclosure violations by individuals and entities where SEBI imposed monetary penalties upon them.

I. **Indus Weir Industries Limited - SEBI order dated 15th January, 2018**[42]

The respondent is a registered company under the Companies Act. It had issued Redeemable Preference Shares for 4 years starting from 2010 till 2014. During this period, it collected a total amount of Rs33,39,,86,230 from 32,454 gullible investors. It was held in the impugned order by SEBI that the respondent has violated Regulation 4(2) and 16 of the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 since the money was collected from more than 49 investors which is deemed to be a public issue and has to be done following proper procedure. Therefore, a penalty of Rs1 crore was imposed by SEBI under Section 15HB of SEBI Act for violation of Regulations 4(2) and 16 of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

Issue before SAT

Whether the appellant has violated Regulations 4(2) and 16 of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013?

SAT order dated 17th January, 2019 in appeal no. 85 of 2018[43]

[42]https://www.sebi.gov.in/enforcement/orders/jan-2018/adjudication-order-in-the-matter-of-indus-weir-industries-ltd_37386.html

[43]https://indiankanoon.org/doc/132237144/

SAT was of the view that the appellants deserved some concession on the penalty because they had *suo moto* stopped the mobilization of funds with effect from July 13, 2013 and had cooperated with SEBI in the investigation. Sample verification was done by the independent auditors appointed by SEBI where 500 investors were randomly asked if they had been refunded their money. All of them responded in the affirmative. It was also noted by the tribunal that there were no pending investor grievances that were produced before it and the appellant's claim of refund to all the investors was not effectively refuted. Therefore, any kind of loss to any investor was not confirmed. Because of the above stated reasons, the tribunal was of the view that imposing the maximum applicable penalty is not fit for this case and hence, reduced it to Rs50 lakhs.

Analysis

It is to be noted here that the appellant had still been running this scheme for almost a year after the Apex Court's judgment in the Sahara Case came out. The appellant had mobilised substantial amount from 32,454 investors most of them being poor and uneducated residing in remote parts of the country. It was found by SEBI that in March 2013, the board of the appellant company had passed a solution to further collect funds. Therefore, it can be concluded that the appellant had no intention of winding up the scheme and did so only after the intervention of SEBI. It is further noted that the refund status was neither verified nor verifiable since the appellant claims to have refunded 90% of the money in cash. Therefore, the grounds on which the appellant was asking for concession are nothing but try to get away with gross violations of regulations. Considering the seriousness of the violation, the SAT order appears to be demoralizing the investors.

II. **Mr. Ganesh Singhania And Another vs SEBI - SEBI order dated 15th June, 2017**[44]

[44] https://www.sebi.gov.in/enforcement/orders/jun-2017/adjudication-order-in-respect-of-mr-ganesh-kumar-singhania-and-ms-anita-singhania-in-the-matter-of-m-s-square-four-projects-india-ltd-formerly-known-as-m-s-essen-supplements-india-ltd-_35113.html

The respondents are the promoters of a company named M/s. Square Four Projects (India) Ltd. SEBI, while perusing documents related to a public disclosure announcement made by the company on 20th Oct 2010 found out that the respondents had not complied with certain provisions of the Takeover Regulations on specific earlier occasions. The alleged violations were as follows:

a) The company had failed to disclose the acquisition of 53.14% shares of the target company on July 24, 2009, in a takeover transaction within the stipulated time and delayed it by one day. This was a violation of Regulation 7(1) read with 7(2) of the Takeover Regulations
b) It also failed to disclose the acquisition of 5.35% of shares during 1-20 October 2009 under 7(1) & 7(1A) read with 7(2) of the Takeover Regulations.
c) It failed to make public announcements for an open offer of shares under Regulation 11(2) read with 14(1) of the Takeover Regulations acquired on February 18, 2010.

Subsequently, SEBI imposed a penalty of Rs2,07,00,000 on the respondents for violating provisions of the SAST Regulations relating to disclosure and open offer.

SAT order dated 20th May 2019 in appeal no. 385 of 2017[45]

The appellants contended that the 1-day delay in disclosure in the first instance was completely unintentional. In the second instance, the spirit of disclosure had been compiled with and concluded that there was no violation in the third instance. SAT did not find any merit in the contentions of the appellants. It stated that the disclosure requirements are obligatory under Takeover Regulations considering the fact that substantial acquisition in a company has wide-scale implications on the markets and the shareholders and any deviance from these regulations could prove to be detrimental to the interests of the investors. Therefore, it upheld the imposition of the penalty of Rs1 lakh on the appellants.

It also held that the acquirers have the obligation to make the disclosures under Regulation 7(1) and 7(1A) and the argument that the company had followed the spirit

[45]https://indiankanoon.org/doc/40309324/

of Regulation by making the disclosure to the Stock Exchange under regulation 7(3) cannot be considered. Therefore, the penalty of Rs3 lakhs each is also upheld.

In regards to the third instance, where the appellants have contended that there was no violation because there was no acquisition of additional shares is contradictory to the submissions made by the appellants themselves regarding the acquisition in July 2009, October 2009, and February 2010. Hence, the argument that it was not necessary to make an open offer fails.

The impugned order by SEBI found that the investors, who sold shares between the acquisition date off-market on 18th Feb 2010 and the next date of public announcement, 20th October, 2010 had incurred a loss of Rs65 lakhs. According to section 15H (ii), failure to make a public announcement to acquire shares at the minimum price attracts a penalty of Rs25 crore or three times the amount of profits made out of such failure, whichever is higher.

SAT held that although it could be linked that the loss incurred by the investors can be construed to be the profit made by the appellants because of their failure to make a public announcement for an open offer, taking such arithmetical calculations as it is maybe too harsh on the appellants. It further observed that not all of the investors would have tendered their shares in the open offer and might have gone by their individual liquidity requirements.

Taking all the above-mentioned factors, SAT reduced the penalty imposed under Section 15H (ii) to Rs 1 crore but upheld all the other penalties and directed the appellants to pay a total of Rs1.07 crores.

Analysis

Section 15H(ii) states that the "penalty for failure to make a public announcement to acquire shares at the minimum price is Rs25 crore or three times the amounts of profits made out of such failure, whichever is higher." In this particular case, investors had incurred a loss of Rs65 lakhs because of the failure of the appellants to make a public announcement and accordingly a penalty was imposed by SEBI. SAT showed leniency towards the appellants by stating that penalty imposed is too harsh and cannot be decided just on the basis of arithmetical calculations. When it was clearly established that the appellants have violated Takeover regulations, which is a serious offence and the tribunal did not find any merits in the contentions of the appellant, reducing the penalty tilts the case in favour of the appellants. The interests of retail investors should be given prime importance and all judgements need to be passed appropriately.

III. **PG Electroplast Limited - SEBI order dated 2nd August, 2017**

PG Electroplast had come out with an IPO for the issue of 57.45 lakhs equity shares of face value of Rs10 each in 2011. SEBI on noticing certain fluctuations in the price following the day of listing initiated an investigation into the scrip.

Based on the preliminary findings a show cause notice was sent out in 2013 concerning:

1. Non-disclosure of certain material information in the offer documents and;
2. Diversion of IPO proceeds and other funds to entities which purchased the respondents' shares to ensure full subscription to the IPO.

In an order dated 11 March 2014, SEBI prohibited the company from raising any capital and restricted the respondents from dealing in the securities market in any manner for a period of 10 years. The company was also directed to recover all the monies which were not recovered and submit a report to SEBI. Also, the monies so recovered were to be deposited in an escrow account.

The AO found the respondents guilty of the following non- disclosures:[46]

1. Inter-corporate deposit (ICD) agreements which were in the form of a bridge loan in the prospectus
2. Board resolution dated 17 August 2011 to invest the IPO proceeds in ICDs of other companies; and
3. Agreements for purchase of land executed with other entities.

[46]https://www.sebi.gov.in/enforcement/orders/aug-2017/adjudication-order-in-respect-of-pg-electroplast-limited-its-directors-and-91-entities-in-the-matter-of-pg-electroplast-limited_35504.html

Then the AO passed the impugned order dated 2 August 2017, stating that the respondents had violated ICDR Regulations and Section 11C (2) and (3) of the SEBI Act, 1992 and consequently imposed a penalty of Rs1 crore on each of the respondents under section 15HB of the SEBI Act, 1992.

SAT order dated 2nd August 2019 in appeal no. 281 of 2017

The SAT held that even though the said non-disclosure was vital, it was only 'technical' in nature.[47] Considering non-disclosure of the board resolution to invest the proceeds of the IPO in ICDs, SAT found that the appellants had disclosed in their prospectus that the company intended to invest such proceeds in interest bearing liquidity instruments, therefore, for the given issue, SAT held that appellants satisfied the disclosure requirements under ICDR regulations. Although, SAT was of the view that the appellants should have disclosed in categorical terms that 'the IPO proceeds were to be invested in ICDs', it however opined that non-inclusion of the expression "ICD" in the prospectus was technical only and could not be construed as a non-disclosure.[48]

On the basis of the above, SAT opined that SEBI had completely misinterpreted its earlier order and imposed a penalty which was grossly disproportionate to alleged misconduct. Since it was not a case of complete non-disclosure of material information or violation of the PFUTP Regulations but merely partial non-disclosure, was at best, a technical violation.

In this case, SAT further opined that SEBI's direction to penalize all the directors was wholly unwarranted. Merely because the appellants were directors of the company, it shall not be adequate grounds to make them liable for the alleged violation. Furthermore, there was no evidence to conclude that the alleged act was, in fact committed by one of the directors. Therefore, they could not be held liable.

[47]http://sat.gov.in/english/pdf/E2017_JO2017288.PDF

[48]https://www.thehindubusinessline.com/companies/announcements/others/pg-electroplast-ltd-order-passed-by-honble-securities-appellate-tribunal-sat/article28805780.ece

SAT remarked that, *"Vicarious liability can be inferred against a company and its directors only if the requisite assertions / allegations are averred in the show cause notice so as to make the company and its directors vicariously liable for the violation of the provisions of the Act and its Regulations"* and in the present case, no such allegations has been made in the show cause notice.

SAT considered this matter -- a case where no penalty could be imposed on the applicants, the question of imposing the maximum penalty under the given facts and circumstances did not even arise. The AO had not only misinterpreted[49] the initial order of SAT but also clearly exceeded its power in imposing the maximum penalty. Therefore, it held that the maximum penalty of Rs1 crore imposed upon each of the appellants is grossly disproportionate to the violation and was therefore set aside. It further clarified the order of debarment which was reduced from 10 years to 7 years vide SAT's initial order dated 30 August 2016 was more than sufficient penalty to cover the 'technical violation' for imposition of penalty for violating the provisions of Section 11C of the SEBI Act, 1992 and the ICDR regulations.

Analysis

The premise for penalties is to reduce violations. However, when entities cannot comply and appeal the matter to SAT, they pay a reduced penalty. This, in turn is not a deterrent for non-compliance. There is no guidance on what constitutes 'technical violations' so as to benefit from precedent value.

IV. **SPL Industries vs BSE Limited - SEBI order dated 30th November, 2015**

SPL Industries has its shares listed on the BSE and NSE. On December 14, 2017, a meeting of its Board of Directors was held and unaudited financial results for the quarter ending 30th September, 2017 were approved. As per the circular dated 30th March, 2017, the "unaudited financial result" was required to be uploaded on the company's website as well as on the stock exchange platform within 30 minutes of the conclusion of the meeting of the Board of Directors as well as within 24 hours.

[49] https://www.moneylife.in/article/penalty-must-be-commensurate-with-offense-says-sat-while-quashing-sebi-order-in-pg-electroplast-case/57948.html

However, SPL Industries failed to put up the audit report in the financial results in XBRL which was to be uploaded to the website of the BSE. Thereafter, the company was charged with a fine of Rs5,54,000 by the BSE.[50]

SAT order dated 20th August, 2019 in appeal no. 411 of 2018

According to the SAT, it was clear that the regulations and the circular require the financial results to be disclosed to the public so that the investors are made aware of the financials of the company.

The financial results have price sensitive information and cannot remain unpublished. However, this was not complied with. The financial results uploaded in XBRL mode did not contain the audit report which is a significant aspect and, therefore, filing of the financial result is not in consonance with Regulation 33 read with circular of 30th March, 2017.

Finally, the SAT opined that the penalty imposed in this case is excessive and disproportionate as there was an "unintentional failure" on the part of the company to comply. Also noting that the company had uploaded requisite documents on the website of the NSE within 20 minutes of the meeting among the board of directors, the SAT was of the opinion that there was no malicious intent behind the non-disclosure. The SAT, in its order said that "*there is no deliberate intention on the part of the appellant to violate Regulation 33 of the Listing Regulations. The violation, if any, appears to have been done by inadvertent mistake, by a human error*."[51] Therefore, in this case, the SAT got the penalty reduced to Rs2,50,000/-

Analysis

There has been a pattern of the SAT upholding allegations against appellants but reducing the penalty by terming it as 'excessive' or 'harsh.' However, it is pertinent to question what factors determine the quantum of penalty. Terms such as 'excessive' or 'harsh' are broad and subjective. There appears to be no uniformity in reducing

[50] https://www.sebi.gov.in/sebi_data/attachdocs/1291371544234.pdf
[51] http://sat.gov.in/english/pdf/E2019_JO2018411.PDF

penalties and SAT has not laid down any general principles for consideration which will help development of jurisprudence.

V. **Ms. Gargi Dash vs SEBI - SEBI order dated 12th January, 2018**[52]

Gargi Dashwas an employee in ING Vyasya Bank Limited was heading Retail Finance in the Finance and Accounts department in the company. She had a team of 5-6 people working under her as subordinates and they were given directions by her from time to time. Between 5th Dec 2010 and 5th August 2013, she had exercised the employee stock options scheme that the bank had formulated. She acquired 36,000 shares of the bank in the said time period and subsequently sold a total of 18000 shares between 2nd Nov 2012 and 20th March 2013. On three occasions she had sold shares the value of which exceeded Rs5 lakhs. Since necessary disclosures under Regulation 13(4) and Regulation 13(5) of the PIT Regulations were not made, SEBI imposed a penalty of Rs4 lakhs on her.

Issue before SAT

Whether the appellant has violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations?

SAT order dated 4th September, 2019 in appeal no. 84 of 2018[53]

It was held by SAT that the appellant was an "officer" as defined under Section 2(30) of the Companies Act, 2013 because she was the head of the Retail Finance Division of the company and had 5-6 subordinates working under her and had the power of directing the subordinates to do anything. Therefore, being an "officer", she had to comply with Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and since she failed to comply, the penalty imposed by SEBI was justified.

However, the tribunal reduced the penalty imposed from Rs4 lakhs to Rs1 lakh because it was of the opinion that the penalty amount imposed by the AO of SEBI is disproportionate to the violation made by the appellant. It held that the AO was

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[52]https://www.sebi.gov.in/enforcement/orders/jan-2018/adjudication-order-in-respect-of-ms-gargi-dash-in-the-matter-of-ing-vysya-bank-limited_37375.html

[53]http://sat.gov.in/english/pdf/E2019_JO201884_1.PDF

unable to quantify the amount of disproportionate gain or unfair advantage because there was nothing on record to indicate that any investor had suffered any loss due to the non-disclosure by the appellant. Therefore, the violation was only technical in nature and hence, only a minimum penalty should be imposed.

Analysis

This is a case of non-disclosure of shares acquired in ESOP by employees and consequently did not have market wide impact. However, in order to ensure compliance culture amongst the officials of the listed company, the enforcement actions were apparently taken by SEBI. SAT again reduced the penalty amount on the ground the violation was technical in nature. As mentioned above, it would develop jurisprudence if SAT were to give some general guidelines which could be followed by SEBI in handling technical violations.

VI. **Electrosteel Steels Limited vs SEBI - SEBI order dated 31st March, 2016**

In 2016, SEBI considered whether the rejection of an application made by Electrosteel Castings Ltd, the promoter of Electrosteel, to the Ministry of Environment and Forest ('MoEF') (as it then was) in relation to the diversion of forest land for an iron ore mine located at Kodolibad, Jharkhand, was 'material' information required to be disclosed in the offer documents relating to Electrosteel's IPO.

Upon closer scrutiny, SEBI held that the above-mentioned rejection was 'material' information and since the respondent had failed to disclosure the same, it led to a violation of Regulations 57(1) and 57(2)(a) of the ICDR Regulations which stated that "disclosure of all material information relevant to exercise an informed investment decision and disclosure of a prescribed list of items must be made."

While pursuing the investigation in the case, SEBI was of the view[54] that the respondent could not determine what constituted as 'material' information and laid

[54] https://www.sebi.gov.in/sebi_data/attachdocs/1459423211818.pdf

down that any such information that might reasonably aid an investor in making an informed investment decision can be termed as 'material.'

Moreover, SEBI held that "the merchant bankers' failure to disclose the rejection of the MoEF Application was premised on a hypothetical assumption that a re-filed application would be accepted by the Ministry of Environment and Forest therefore, the merchant bankers failed to discharge their due diligence obligations under the ICDR Regulations by not disclosing the rejection of the MoEF Application."

Upon these findings, SEBI levied a penalty of Rs1 crore on each of the merchant bankers and Electrosteel as well as Rs50 lakhs on Electrosteel Castings Ltd.

SAT order dated 14th November, 2019 in appeal no. 223 of 2016

It is noteworthy that the SAT upheld SEBI's factual finding that non-disclosure of material information in this case i.e., the rejection of the MoEF Application should have been included in the IPO of the company.

With this reasoning, the SAT observed: "The emphasis is on disclosure; not otherwise, which means disclose even when the issuer doubts whether there is any materiality. In other words, it would imply that only facts/ events which the issuer is undoubtedly sure of having no relevance to the issuer or to the issue can be excluded from disclosure."[55]

However, even after upholding SEBI, the tribunal said that even if the appellant is liable of non-disclosure, the imposition of such high penalty is not warranted in this case. Therefore, it brought down the penalty amount to Rs50 lakhs vis-à-vis Electrosteel and on the merchant bankers to Rs50 lakhs, to be paid jointly and severally

Analysis

The SEBI Order directed that issuer and merchant bankers should assess information from the point of view of a reasonable investor. The SAT Order, then again, underlines the limited scope of what is 'material', it however proceeds to infer that it falls on the

[55]http://sat.gov.in/english/pdf/E2019_JO2016223.PDF

issuer to determine what is 'irrelevant' to it or the issue while deciding if the disclosure is required or not.

The SAT Order appears to have directed that all information that is pertinent to the issuer requires disclosure without deciding if such information is material for investors to take an informed investment decision. What might be relevant for the issuer, in this case, Electrosteel, may not be relevant for the investor. This finding of SAT might make more disarray than clearness on what disclosure standards is to be followed for issuers undertaking essential issuances of securities through IPO documents. [56]

Accordingly, the SAT Order might be slightly troublesome as on one hand, the question arises on what is 'material'; and, on the other hand, the information is to be determined on the basis of relevancy to the issuer. These two standards of the disclosure may now have an immense impact on disclosure content of IPO documents.[57]

The replacement of whether information is 'material' to be 'relevant' actually goes against the legislative intent behind the disclosure regime under the 2018 ICDR Regulations, and may just serve to grow the liability on issuers and merchant bankers. As a result, to avoid liability and penalty, offer documents might witness over-disclosure and non material disclosure which might be troublesome for the investors to read and decipher in the offer document.

VII. **ICICI Bank Limited vs SEBI - SEBI order dated 12th September, 2019**

On May 18, 2010 an executive director of ICICI Bank signed an agreement with the majority shareholders of Bank of Rajasthan proposing an amalgamation of the two lenders. Subsequently, the disclosure regarding this agreement and the proposed amalgamation was made to the stock exchange on the same date. However, SEBI's order finds that the signing of the agreement was a material and price sensitive

[56] https://indiacorplaw.in/2019/11/sat-rules-materiality-disclosures.html

[57] https://corporate.cyrilamarchandblogs.com/2019/12/order-of-securities-appellate-tribunal-electrosteel-steels-limited-v-securities-and-exchange-board-of-india/

information. However, the SAT order pointed out that the delay SEBI has held the respondent liable for,[58] was a delay of a trading day in making the disclosure to the stock exchanges and therefore, it cannot be said to be the respondent's fault.

"After all the charge against the appellant is one trading day's delay in disclosure, but the delay on the part of SEBI to show cause is 2,955 days from the date of the event and about 2,130 days from the date of the preliminary investigation report, which is too wide a gap to be ignored. Several years delay in show-causing and concluding proceedings in such known incidence of violation/ alleged violations is a failure in effectively performing the behaviour modification function of a market regulator," the SAT noted.

The tribunal was of the view that imposition of a penalty order against ICICI Bank in September, 2019 for certain disclosure violations in mid-May 2010 by issuing a show cause notice on June 26, 2018 have caused prejudice to the bank.

SAT order dated 8th July, 2020 in appeal no. 583 of 2019

There was an eight year delay[59] in issuing a show cause notice to the appellant by the SEBI and therefore, a penalty of Rs8 lakhs was unjust. The SAT criticised SEBI for "*failure in effectively performing the function of a market regulator.*"[60] It observed that SEBI had a case on merit, but it failed on procedural grounds. Furthermore, it converted SEBI's penalty into just a warning to the bank "to meet the ends of justice." SEBI had noticed violation of insider trading norms due to inadequate disclosure by ICICI Bank in 2010 when it entered into a deal to acquire Bank of Rajasthan. The disclosure of the deal agreement, a price sensitive information, was delayed by a day. But on SEBI's part, "*there was a delay of 2,955 days in issuing SCN from the date of the event and 2,130 days from the date of the preliminary investigation report, too wide a gap to be ignored*," SAT said.

[58] https://www.sebi.gov.in/sebi_data/attachdocs/dec-2019/1577181091876.pdf
[59] https://www.thehindubusinessline.com/markets/stock-markets/8-year-procedural-delay-hurts-sebis-case-against-icici-bank/article32070748.ece
[60] https://www.sebi.gov.in/sebi_data/attachdocs/1404123694713.pdf

The SEBI penalty of Rs10 lakhs have been substituted for a warning in light of procedural delay, but the disclosure provisions enumerated in the order will stand as the agreement was price sensitive information.

Analysis

In this case, the eight years delay on SEBI's account has played a far more demoralizing effect on the investors than the reduction of penalty ordered by the SAT. SEBI needs to introspect about such substantial delays in taking enforcement action. Such delays are bound to have detrimental effect on investor confidence.

VIII. **Oasis Securities Ltd vs SEBI - SEBI order dated 25th June, 2018**[61]

Respondent No. 1, Oasis Securities Ltd. was a stock broker and a Company listed on the Bombay Stock Exchange Ltd. and Respondent No. 2 and 3 the promoters of Respondent No. 1, Oasis and were also the Directors at the same time.

The respondents, in 2010, decided to consolidate the stock broking and depository participants business and therefore entered into an agreement with IKAB Securities and Investment Ltd to transfer the said business. The board approved the said decision in Nov 2008 and the shareholder's approval for the same was taken on December 20, 2008. Subsequently, the approval of NSE/BSE was taken in April and June 2010. On October 30, 2012 SEBI sought certain details from Respondent No. 1, Oasis. On perusal of further information collected by SEBI, it was alleged that the respondents had violated Clauses 36, 41 and 50 of the Listing Agreement read with Section 21 of the SCRA. It was contended by the respondent that substantial compliance had been made by the company of clause 36 and 50 and only a minor noncompliance was there in the form of GBM disclosure or a minor mistake under the accounting head. It was further contended by the respondent that the penalty is imposed after an inordinate and unexplained delay of 8-10 years and hence cannot be sustained. After receiving the replies and after providing an opportunity of hearing etc. SEBI imposed a penalty of Rs20 lakhs under Section 23A and 23E of SCRA on

[61] https://www.sebi.gov.in/enforcement/orders/jun-2018/adjudication-order-against-oasis-securities-limited-indra-kumar-bagri-and-anil-kumar-bagri-in-the-matter-of-oasis-securities-limited_39348.html

Respondent No. 1, Oasis and Rs5 lakhs each on Respondent Nos. 2 and 3 under Section 23A of the SCRA.

Issues before SAT

1) Whether the impugned order fails solely on the grounds of inordinate delay by SEBI in issuing the show cause notice?
2) Whether the appellants have violated the clause 36, 41 and 50 of the listing agreement read with section 21 of the SCRA?

SAT order dated 17th March, 2020 in appeal no. 316 of 2018[62]

It was observed by SAT that the laches was not solely on the side of SEBI and the appellant was responsible for the inordinate delay too. SEBI had been asking for the information since October 2012. However only in July 2015, the appellant finally provided SEBI with all the information. It was further observed by the tribunal that the appellant had not disclosed all material facts. The complete details relating to the sale of the business had to be compulsorily disclosed to the exchanges immediately, which were not done. The tribunal also refuted the appellant's contention that it is not the mandate of SEBI to adjudicate on matters of accounting standards. However, it was held by the tribunal that this particular instance was a case of partial disclosure rather than non-disclosure and hence reduced the penalty from Rs30 lakhs to Rs16 lakhs.

Analysis

While in many cases SAT has set aside the orders of SEBI on grounds of delay in taking enforcement, this case shows that where the delay is attributable to the Appellant, no concession is given by SAT. However, what is not explained is why SEBI did not initiate action immediately after 2012 for the alleged violations and gave a long rope to the appellant until 2015.

[62] https://indiankanoon.org/doc/139446646/

Major Cases That Impacted a Large Number of Investors

The chapter takes a look at notable cases such as Franklin Templeton, CARE Ratings, PNB Housing that are interdisciplinary in nature. The cases put forth an interplay of moratorium under the insolvency and bankruptcy proceedings, scrutinizing the responsibility of credit rating agencies, violation of takeover regulations, asset management company stake dilution, etc.

I. **Brickwork Ratings India Pvt. Ltd. vs SEBI - SEBI order dated 31st August, 2018**[63]

The appellant here is a Credit Rating Agency registered under SEBI. During an inspection conducted by SEBI during the period 1st April 2014 and 30th September 2015, it was found that the appellant had flouted various circulars issued by SEBI and certain provisions of SEBI (Credit Rating Agencies) Regulations, 1999. Subsequently, a show-cause notice was issued by SEBI alleging that there had been a delay on the part of the appellant in recognising a default in the case of Bhusan Steel Limited (BSL). Further, the appellant agency had failed to downgrade the ratings of a Non-Convertible Debenture (NCD) issued by Gayatri Projects Limited (GPL) even after the appellant was duly notified by the Debenture Trustee about the default. The appellant was also in violation of the provisions of the IOSCO Code of Conduct.

The AO appointed by SEBI after taking into consideration the reply filed by the appellants and the above-mentioned facts imposed a penalty of Rs3 lakhs on the appellant.

SAT order dated 3rd June, 2019 in appeal no. 439 of 2018[64]

SAT found that on 15th December 2014, the appellant was intimated about the default by BSL by the Debenture Trustee. However, no steps were taken by the appellant agency to downgrade the ratings of BSL. Only after the intimation of the second

[63] https://www.sebi.gov.in/enforcement/orders/aug-2018/adjudication-order-ao-dated-august-31-2018-in-respect-of-brickwork-rating-india-pvt-ltd-_40173.html
[64] https://indiankanoon.org/doc/20203079/

default by BSL on 24th December 2015, the appellant action. Therefore, it was held that there had been a lapse of 11 days by the appellant in taking any action against the company. Even after this, the appellant on 26th December 2014 sought further time till 30th December 2014 to downgrade the rating of BSL. This delay was in contravention of the provisions of 2.2.2 of SEBI circular dated 3rd May 2010 which stated that "upon non-payment of interest on the principal amount, the CRA shall recognise the default at the first instance of delay."

The tribunal further went on to dismiss the contention of the appellant that delay occurred because of the ongoing Christmas season.

Further, in regards to the contention of the AO that GPL had defaulted on the non-convertible debentures due on 1st December 2014 but the appellant had failed to downgrade its rating to "default", the tribunal held that the approach adopted by the AO was not correct because it was a conscious decision taken by the appellant to downgrade the rating to "BWR BB-" and not "default". Further, the tribunal also observed that there was nothing put on record by the respondents that require the appellant to downgrade the rating to "default" in case there is a default in payment by the issuer company.

The tribunal further upheld the findings of the AO that the founder-director of the appellant company had violated Clause 2.12 of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies

The appeal was partly allowed and the penalty was reduced from Rs3 lakhs to Rs2 lakhs.

Analysis

Most investors rely on the ratings released by Credit Rating Agencies such as Brickwork ratings to make their investment decisions. After the IL&FS catastrophe, the investor confidence on CRAs hit a record-breaking low. To reestablish this confidence, the regulatory authorities need to make rigid moves against any infringement by the CRAs that might affect investor confidence.

II. **Pawan Kumar Satyanarayana vs SEBI - SEBI order dated 25th June, 2018**[65]

Heena Developers Pvt. Ltd., in an off-market transaction had transferred 5,19,000 shares of IFL Promoters Ltd to the respondent and other noticees of the impugned order by SEBI. According to the SCRA, in order for an off-market transaction to be legal, it has to qualify as a spot delivery i.e., the delivery of shares and the payment must be made on the same day or the next day. Here, Heena Developers claim to have not received any payments against the 5,19,000 shares it transferred to the respondent and other noticees. The Adjudicating Officer found that the said off market transaction was in violation of Section 2(i)(a) of the SCRA and consequently imposed a sum of Rs12,00,000 upon the respondent. The respondent in an appeal filed to challenge the SEBI order contends that he has in commercial dealing with noticee no.1 Chetan Dogra who owed him Rs11.25 lakhs. It was further contended by the respondent that Chetan Dogra transferred him 74000 shares of IFL Promoters Ltd. in lieu of the money he owed him. The respondent then sold those shares in the open market and realized Rs10,55,004.57.

Issue before SAT

Whether the appellant has violated Section 16 of the SCRA and Sections 13 and 18 of SCRA read with Section 2(i) of the SCRA.

SAT order dated 27th June, 2019 in appeal no. 399 of 2018[66]

SAT, after the perusal of all related provisions found that in order for a transaction to be qualified as spot delivery contract, the transfer of shares and the payment must be done on the same day or the next day of the delivery of shares. However, in this particular case, although the shares had been transferred by Heena Developers Pvt Ltd., they did not receive any consideration for the same. Hence, the transaction was not in conformity with the provisions of Section 2(i) of the SCRA and, therefore, the appellant contravened the provisions of Section 15 of the SCRA.

[65] https://www.sebi.gov.in/sebi_data/attachdocs/jun-2018/1529928629932.pdf
[66] https://indiankanoon.org/doc/32224221/

While upholding certain findings of SEBI, the SAT was of the opinion that the penalty imposed on the appellant by SEBI was disproportionate and not based on any cogent reason. It considered the fact that this was a one-off violation by the appellant and reduced the penalty to Rs2 lakhs.

Analysis

It is important to note here that the appellant failed to file any documents in support of the submissions made by them. No documents were received showing that the appellant was to receive any money from Chetan Dogra. It is also to be noted that the Heena Developers had already transferred 5,19,000 shares to the noticees and out of which 74000 shares have been sold by the appellant in open market. As the per SEBI adjudication order, it is available on record that the consideration amount was not paid by the appellants/noticees. Therefore, it can be reasonably concluded that illegal gains to the tune of Rs88,18,600 were made by the noticees and the appellant is believed to have gained at least Rs1055004.57 by selling the shares in open market. While no information was available on record to determine the quantum of penalty, the above stated fact was taken into consideration by SEBI to reach at the exact amount of penalty.

Even if there aren't any provisions for disgorgement under the Act, it was established by both SEBI and SAT that the appellant was in contravention of the provisions of Sec 15 of the SCRA because the said transaction did not conform with the provisions of Sec 2(i) of the SCRA.

III. **PNB Housing Finance Ltd. vs SEBI - SEBI order dated 18th June, 2021**

The respondent here is a publicly listed housing finance company. They were trying to raise funds for the last 2 years but were unable to do so. The company's largest shareholder i.e., the Punjab National Bank which had a shareholding of 33% in the company, in February 2021, intimated that it will not be able to provide the respondent company with funding as it they were unable to obtain the necessary regulatory approval from the RBI. However, some of the other shareholders offered to infuse funds into the respondentcompany by the way of the issuance of preference shares.

Based on this offer, the board of directors of the respondent company approved the fundraising by passing a resolution on 31st May 2021 in favour of allotment of preference shares to the proposed allottees at Rs390 per share. This resolution of the board had to be approved by all shareholders and an Extra-Ordinary General Meeting (EGM) was proposed to be held for this purpose. Subsequently, a notice was issued intimating all the shareholders about the EGM to be convened on 22nd June 2021. The above-mentioned resolution and issuance of the notice to the shareholders were notified to the stock exchanges and subsequently, the stock exchanges submitted a joint report to SEBI. SEBI in its letter dated 17th June 2021, directed the respondents to submit para-wise comments to the joint report submitted by the Stock Exchanges and specifically asked the respondents that whether all the methods of valuation were explored by the board of directors while ascertaining the share price. After a reply was received by the SEBI from the respondent in this regard, it was communicated by SEBI that the resolution is *ultra vires* of the Article of Association and that it shall not be acted upon until a report has been received from the registered valuer under Article 19(2) of the article of association. And by this impugned communication, SEBI has restrained the respondent company from holding an EGM.

Issue before SAT

"Whether the appellant is required to get its shares valued from a registered valuer as required under Article 19(2) of the Articles of Association or whether the appellant is required to get the pricing calculated in accordance with the pricing mechanism provided under Regulation 164 of the ICDR Regulations"

SAT order dated 9th August, 2021 in appeal no. 423 of 2021[67]

Justice Tarun Agarwala

[67]https://indiankanoon.org/doc/152646337/

He laid down that there can be no provision in the Article of Association that is repugnant to the Companies Act, and if there exists such a case, the provision in the Companies Act would prevail. Therefore, the question before SAT was whether Article 19(2) of the Articles of Association of the appellant company was repugnant to the provisions of Companies Act.

The tribunal found that under Section 62(1)(c) "the price of the share is required to be determined by the valuation report of a registered valuer." Thus, there was no conflict between the Article of Association and the Companies Act till this extent. However, it was further observed by the tribunal that "a combined reading of Section 62(1)(c) read with Rule 13 of the Rules of 2014 makes it clear and explicit, namely, that such shares shall be offered by a Company where the price of such shares is determined by the valuation report of a registered valuer but in the case of a listed Company whose shares or other securities are listed on a recognised Stock Exchange, the Company is not required to determine the shares through a registered valuer in view of the second proviso to Rule 13(1) read with Rule 13(2) and that the price is required to be determined in accordance with the Regulations framed by SEBI which in the instant case is Regulation 164 of the ICDR." It further went on to state that the contention raised by the respondent that the words "shall not be less than" as mentioned in Regulation 164 means that the value of shares should not be less than the value ascertained by the registered valuer under Art 19 (2) of the Article of Association cannot be accepted because the ICDR Regulations is a complete code in itself and there is nothing in the ICDR Regulations that mandates that the words "shall not be less than" would mean not less than the price ascertained by the registered valuer.

Justice Tarun Agarwala held that such one-sided choice of confining the litigant organisation from convening an EGM is obviously mistaken and resembles discretion. He further stated that this move was in violation of principles of natural justice as the appellant was not given a chance to be heard and in view of the above stated facts, he quashed the impugned communication.

Justice M.T Joshi

Learned Justice M.T Joshi observed that valuation of the shares of the appellant company is a matter of concern to the retail investors as this move of allotting preferential shares is going to change the shareholding pattern of the company and the control would shift from Punjab National Bank to the allottees of the preferential shares. This, in turn, would trigger provisions of SAST Regulations. Considering the above-mentioned facts, these allottees would have to make an open offer to the general public to give them an opportunity to exit at a price which would be highly impacted by the price of the proposed preferential shares. It was further observed that the timeline of the events shows that in light of the impending EGM of the company, SEBI took the impugned and therefore the procedure cannot be faulted with.

In regards to the contention that SEBI had no jurisdiction to impose the impugned restriction, Justice Joshi opined that SEBI had jurisdiction to take such steps as there is no bar in the SEBI Act to pass such orders, though extraordinary in nature. He stated that SEBI may take any such measure that it finds necessary to protect the interests of investors. Based on the above facts, he dismissed the appeal without costs.

In view of the split verdict, the interim order dated 21st June 2021 would continue till further orders

Analysis

SAT currently is the appellate authority of the market regulator SEBI, insurance regulator IRDAI and pension regulator PFDRA. Recently, after the retirement of the technical member of SAT, it is left with just two members. There has also been an inordinate delay in filling up of vacancies at SAT. If there were three members, the majority decision would have prevailed giving a conclusion to the proceedings at this stage.

IV. <u>In the Matter of M/S. Sky Industries Limited - SEBI order dated 9th October, 2017 and 21st February, 2018</u>

SEBI conducted an investigation on trading in the scrip of Sky Industries Ltd. From January 1 2009 to May 10, 2010. The scrip was listed on the Bombay, Jaipur and

Calcutta Stock Exchange Ltd. However, there was no trading during the investigation period on Jaipur and Calcutta Stock exchanges. It was also observed that JV Stock Broking Pvt. Ltd. was one of the entities appearing in the list of top 10 buyers and sellers in the scrip during the investigation period. Further, JV Stock had executed self-trades for 14,235 shares through the broker SPFL Securities Ltd.

It was alleged that JV Stock entered into self-trades through its broker SPFL, who acted as the broker and counter-party broker for the self-trades of JV Stock. Consequently, it was alleged that both of them entered into self-trades which created artificial volume in the scrip, leading to false and misleading appearance of trading in the scrip in the securities market, and hence, allegedly fraudulent.

JV Stock Broking was fined for indulging in manipulative trading in the shares of Sky Industries and SPFL[68] was penalized for violating code of conduct for stock brokers.[69] SEBI held JV Stock and SPFL liable for the violations and imposed a penalty of Rs25,00,000 on J V Stock and Rs25,00,000 on SPFL.[70]

Issues before SAT

1. Whether JV Stock executed self-trades that led to artificial volume in the scrip, resulting in misleading appearance of trading of SIL scrip in the securities market?
2. Whether SPFL failed to carry out its business with due skill, care and due diligence under A (2) of Code of Conduct for Stock Broker?
3. Does the violation attract a monetary penalty and if so, how much?

SAT order dated 11th October, 2019 in appeal no. 362 of 2017

By its order, the SAT confirmed the SEBI's order but reduced the amount of the fine imposed on the companies through orders issued in 2017.

[68] http://sat.gov.in/english/pdf/E2019_JO2017365.PDF
[69] https://www.sebi.gov.in/enforcement/recovery-proceedings/aug-2020/releasing-order-of-j-v-stock-broking-private-limited-in-the-matter-of-sky-industries-limited_47248.html
[70] https://www.newindianexpress.com/business/2017/oct/09/sky-industries-case-sebi-slaps-rs-50-lakh-fine-on-two-entities-1669172.html

In the case of JV Stock Broking, the fine has been reduced to Rs15 lakhs and SPFL now has to pay the fine of Rs10 lakhs. Previously, for both companies, the fine amount was Rs25 lakhs each. The tribunal while reducing the fine amount said the "violation is of similar nature, the period of violation is broadly the same and, hence, we find there is an inter se disproportionality in the penalty imposed particularly in respect of the broker." While the SAT maintains the contested orders on the merit, it opined that an intervention is needed in regards to the amount of the penalty.

Analysis

The SAT order, herein, intervenes with the amount of penalty imposed but not the charges itself. Thus, the tribunal has no difference of opinion with regards to the investigations and charges levied. A similar pattern of slashing penalties is witnessed in many cases even if the charges are upheld. The SAT Order fails to adequately justify how it derived a figure of Rs15 lakhs in the case of JV Stock Broking and Rs10 lakhs in SPFL. It presents a reason as to why the penalties must be reduced however; it does not justify how it determined the new reduced amount. Perhaps, there is a need to come up with some guidelines with regards to the parameters kept in mind whilst imposing penalties. As a rule of thumb, the quantum of the offense should be proportionate with the penalties imposed. If the statute and precedents have indicated this reasoning then why do the penalties imposed by SAT and SEBI differ? That is a question that needs to be answered.

V. **Susheel Somani VS SEBI - SEBI order dated 27th December, 2017**

An open offer was made by Ms. Rekha Soni, Mr. Harendra Gupta and Mr. Shankar Das Vairagi to the shareholders of Svaraj Trading and Agencies Limited (STAL Company), Target Company, through a public announcement dated September 03, 2012 for acquisition of 26,000 fully paid-up equity shares of the face value of Rs10 each, representing 26% of the total paid up equity share capital/voting rights of the Target Company at a price of Rs75 per share payable in cash.

Upon examination by SEBI, it was found that Susheel Somani, one of the respondents, acquired 31,680 shares of STAL by way of 'inter se transfer' of 20,000 (i.e., 20%) shares and 11,680 (11.68%) shares of STAL from Shree Satyanarayan Properties Pvt Ltd and Kramer Pharmaceuticals Pvt. Ltd respectively. This acquisition increased Mr. Susheel Somani's shareholding in STAL from 350 (0.35%) shares to 32,030 (32.03%) shares i.e., by 31.68%.

Since this was a major acquisition, Mr. Susheel Somani was mandated to disclose the same under Regulation 3(1) read with Regulation 13(1) of the SAST Regulations, 2011. However, due to his failure to disclosure such critical information, he was found liable of violating the aforementioned provisions.

In furtherance of this case, SEBI also found that because of this single, major acquisition by Susheel Somani, the other respondents' collective shareholding increased from 29.42% to 61.10% i.e., by 31.68%. Even before this acquisition, the respondents were holding shares that bestowed upon them more than 25% of the voting rights of the STAL and the new acquisition increased this percentage to a further 31.68% of the voting right. This was more than the threshold limit of five per cent of the voting rights of STAL. This critical information was to be disclosed by the respondents and upon their failure to do so, they were held liable of violating the SAST Regulations, 2011.

SEBI noted[71] that the very fact that the respondents have failed to make open offer when they were required to do so under provisions of SAST Regulations, 2011, warrants that penalty shall be imposed for such violation, however, further taking into consideration the facts and circumstance of the case and mitigating factors as mentioned above, a justifiable penalty needs to be imposed upon the respondents to meet the ends of justice. Therefore, in view of the above, a penalty was imposed of Rs15,00,000 under provisions of Section 15H(ii) of SEBI Act upon the respondents for violation of provisions of Regulation 3(2) read with Regulation 13(1) of SAST Regulations, 2011. The respondents were jointly and severally liable to pay the said monetary penalty.

Issues before SAT

[71]https://www.sebi.gov.in/sebi_data/attachdocs/dec-2017/1514378901682.pdf

1) Whether the appellant had violated the provisions of the SAST Regulations, 2011?
2) Does the violation, if any, call for an imposition of penalty? If so, how much?

SAT order dated 17th March, 2020 in appeal no. 184 of 2018

The SAT Order[72] opined that the inquiry was with respect to whether the appellants were exempted from making a public declaration. It conceded to the fact that the appellants have made essential disclosures on seventh day as against the provisions of Regulation 29(3) that the disclosures are needed to be made within two working days. Along these lines, technically the appellants were not exempted from disclosing declarations and, hence, are infringing upon the pertinent guidelines. The AO has seen that as the state of making disclosures within two working days isn't satisfied, the act was not sufficient to award an exemption. In these conditions, the penalty was forced. The SAT additionally said that the AO has not considered the fact that the appellants made the disclosures, however behind schedule, following five days as under Regulation 29 of the SAST Regulations. Hence, it was a technical breach and, along these lines, in their view as opposed to forcing a penalty of Rs15 lakhs, a penalty of Rs5 lakhs would have been adequate.

Analysis

The SAT has been inconsistent in passing orders pertaining to appeals regarding non-disclosure. In the UTI AMC Case, it had waived off the penalty, replacing it with a warning. However, here, the quantum of penalty imposed has been one-third of the amount levied by SEBI. It is not comprehensible as to how the SAT Bench derived the amount of Rs5 lakhs from a previous penalty of Rs5. This would absolutely make a confounding impact on organisations too who appeal before the SAT as they would not know whether their penalty would be waived off or decreased as there is no consistency in these penalties.

VI. **Dewan Housing Finance Limited vs SEBI - SEBI order dated 29th May, 2020**

[72] http://sat.gov.in/english/pdf/E2020_JO2018184.PDF

DHFL (Dewan Housing Finance Corporation Ltd) was undergoing the corporate insolvency resolution process (CIRP). On 20th November, 2019, the RBI suspended the Board of Directors of DHFL under Section 45-IE(2) of the Reserve Bank of India Act, 1934 (RBI Act) and appointed an administrator to manage the affairs of the company. Subsequently, the RBI filed a company petition before the NCLT under Rule 5(a)(1) of the Insolvency and Bankruptcy (Insolvency and liquidation proceedings of financial service provider and application to Adjudicating Authority) Rules, 2019 to initiate CIRP against DHFL under the provisions of IBC, 2016.

The petition once admitted by the NCLT paved way for the appointment of an administrator as the resolution professional. The moratorium came into force upon the filing of the application by the RBI. On 24th December, 2019, the AO issued a SCN to DHFL.

The SCN stated that "*DHFL failed to create requisite debenture redemption reserve and failed to invest 15% of the amount of non-convertible debentures maturing as on 31st March, 2020 as required under the ILDS Regulations and failed to submit the audited financial result and line items as prescribed in the LODR Regulations.*" In response to the notice, DHFL pointed out that in the light of Section 14 of IBC, no proceedings could be instituted or continued during the currency of the moratorium period.

In this case, the AO passed the impugned order,[73] imposing a penalty of Rs20 lakhs upon DHFL. According to the AO, violation of Regulation 16(1) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations) r/w Rules 18(7)(b)(ii) and18(7)(c) of Companies (Share Capital and Debenture) Rules, 2014 (SCD Rules) stand established and a monetary penalty of Rs20 lakhs was imposed. SEBI, in its order, held that the AO can still ascertain the liability of the corporate debtor[74] and that the moratorium would apply to the "enforcement or recovery" of the liability and

[73] https://www.sebi.gov.in/enforcement/orders/jul-2021/adjudication-order-in-respect-of-dewan-housing-finance-corporation-limited-in-the-matter-of-transaction-of-the-shares-held-by-dhfl-in-dhfl-pramerica-life-insurance-company-ltd-and-related-matters-the-_51467.html

[74] http://finseclawforum.com/2020/sat-bars-sebi-initiating-proceedings-moratorium-declared-ibc/

the proceedings in this case are have helped determined the liability for non-compliance.

Issue before SAT

Whether DHFL has violated the provisions of Regulation 16(1) of ILDS Regulations, 2008 r/w Rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and Regulations 52(1) r/w 52(4) of LODR Regulations, 2015?

SAT order dated 9th October, 2020 in appeal no. 206 of 2020

The SAT noted that the regulations are clear and explicit and need no further elaboration. Coming to the moratorium under Section 14, "*the institution of suits or proceedings against the corporate debtor is prohibited or continuation of a suit or proceedings. Further, execution of any judgment or order in any court of law, tribunal, arbitration panel or other authority is also prohibited.*" Thus, the tribunal opined that "where a moratorium has been declared, the SEBI or the AO will have no jurisdiction to institute any proceedings; where a proceeding has already been instituted and during the pendency of the proceedings a moratorium order is passed then the authority is prohibited from continuing with the proceedings." Furthermore, the SAT held that the SEBI order imposing a penalty and proceeding to recover upon failure to pay cannot be sustained and is quashed.[75] Since the proceedings could not be instituted, the SAT also quashed[76] the show cause notice and the entire proceeding of the case.

VII. <u>**UTI AMC's Stake Dilution Case - SEBI order dated 14th August, 2020**</u>

UTI Mutual Fund is endorsed by four public sector financial institutions as sponsors, namely, State Bank of India, Life Insurance Corporation of India, Bank of Baroda and Punjab National Bank.

These institutions in their letters (dated May 29, June 27, 2018 and March 07, 2019 respectively) disclosed to SEBI their shareholding which was in excess of 10% in Asset Management Companies (AMC) of other Mutual Funds sponsored by them except UTIMF and they sought an extension in order to comply with the requirements of the

[75] http://sat.gov.in/english/pdf/E2020_JO2020206_10.PDF
[76] https://www.bloombergquint.com/law-and-policy/sat-quashes-sebis-penalty-order-on-dhfl-for-alleged-violation-of-debenture-listing-norms

amended regulations as referred above. This request to comply with the requirements of Regulation B of Mutual Funds Regulations could not be granted and these financial institutions were advised to comply with the requirements within March 12, 2019.

Upon scrutinizing the shareholding pattern of UTI AMC and UTI Trustee as on March 13, 2019, SEBI observed that LIC, SBI and BoB continued to hold 18.24% each in UTI AMC and 18.50% each in UTI Trustee. Furthermore, since LIC, SBI and BoB also held significant stakes in AMCs and Trustee companies of LIC Mutual Fund, SBI Mutual Fund and Baroda Mutual Fund respectively, the status of compliance with Regulation 7B was also sought from the noticees.

These financial institutions requested that the proceedings sought to be initiated against them be dropped and extension for compliance with Regulation 7B of MF Regulations to be granted.

After holding these financial entities liable of the charges mentioned above, the SEBI issued that they comply within a month's time or in case where the entities have failed to comply with the directions, their corporate benefits will be frozen till the date of compliance.[77]

In August 2020, SEBI had levied a fine of Rs10 lakh each on SBI, BoB and LIC. This was because they failed to reduce their stake to below 10% in UTI AMC within the given timeline.[78]

This case is in the backdrop of the new regulation that SEBI came up with in March 2018 which stated that "*no sponsor of a mutual fund is allowed to hold over 10% of any other mutual fund or a trustee firm.*" LIC, SBI and BoB held over 18% stake in both UTI MF and UTI Trustee Company. They are required to abate their stake in the UTI AMC to 10% each for which they were given a timeline of one-year i.e till March 2019. However, they could only comply by October 2020.

[77] https://www.sebi.gov.in/enforcement/orders/dec-2019/order-against-life-insurance-corporation-of-india-state-bank-of-india-and-bank-of-baroda-in-the-matter-of-uti-mutual-fund_45238.html#

[78] https://www.thehindu.com/business/Industry/sat-sets-aside-sebis-penalty-on-sbi-bank-of-baroda-lic-in-uti-amc-case/article33558640.ece

Issues before SAT

1) Whether there is non-compliance by the appellants with Regulation 7B of MF Regulations.
2) If affirmative, whether the said non-compliance warrants remedial action by SEBI in the form of direction considering the facts and circumstances of the case.
3) If affirmative, what kinds of directions are warranted in the matter?

SAT order dated 7th January, 2021 in appeal no. 304 of 2020

The SAT set aside the SEBI order to impose Rs10 lakhs fine each on SBI, Bank of Baroda, and LIC and replaced it with a mere warning.[79] According to the SAT, the three entities were facing "excruciating factors" in achieving their stake dilution in UTI AMC and the steps taken by them in implementing the directions issued by SEBI clearly show that the entities had been serious in their endeavor to achieve the objective.[80]

In its order, the SAT said it did not find any justifiable reason to impose any monetary penalty over a 'technical violation.' The SAT said, "*Every technical violation need not be visited with a monetary penalty. In these matters, a warning is sufficient*. *They (SBI, BoB and LIC) have been clearly prisoners of protracted procedure thrust upon them by their own promoters, though this need not be an excuse for complying with the regulations in its letter and spirit,"*

It also noted that the financial entities are in full compliance with the mutual fund regulations w.e.f 12 October 2020. In addition to that, they have complied with all other norms and the directions issued by SEBI's whole-time member in avoiding conflict of interest; which again reflects the intention of the entities in wanting to comply with the existing regulations.

Furthermore, stating that the SAT Bench does "*not find any justifiable reason to impose any monetary penalty in the present matters, as every technical violation need not be visited*

[79]http://sat.gov.in/english/pdf/E2021_JO2020304.PDF
[80]https://www.outlookindia.com/newsscroll/sat-sets-aside-sebis-penalty-on-sbi-bank-of-baroda-lic-in-uti-amc-case/2008956

with monetary penalty, SEBI is at liberty to impose penalty for similar violations in future," the order reduced the penalty to a warning.

SC Order: (yet to be heard) SBI, BoB and LIC moved to the Apex Court against the SAT order that partly upheld SEBI's decision. Prior to this, even SEBI had appealed the reduction of penalties in the SAT Order against the entities. The SC, however, had directed a stay on the SAT order.

Analysis

The SAT order terms the violation as a 'technical' one, thus reducing the nature of seriousness of the violation. It substituted the penalty with a warning. The non-compliance by these three financial entities went on for 18 months as opposed to the 12-month period of compliance given to them. The SAT relied on the fact that the entities were serious in their endeavor to comply. However, when the entities do not comply within a time period, their seriousness is questionable. Exigencies aside, a monetary penalty would have acted as an example for other non-complying entities in the market.

VIII. **CARE Ratings Limited vs SEBI - SEBI order dated 24th July, 2020**[81]

CARE Ratings Limited (CARE) is a Credit Rating Agency (CRA) and had been rating the Non- Convertible Debenture issued by Reliance Communication amounting to Rs2000 crore which had tenure of 7 years was due to mature in Feb 2019. As on the date of initiating proceedings, NCDs having a value of Rs750 crore was being rated by the CARE.

On 7th Feb 2017, Rcom defaulted in the principal amount payment of Rs375 crore and subsequently the interest amount of Rs9.7 crore on March 7 2017. A delayed payment was made by Rcom on 10th April, 2017. Further, CARE had downgraded the ratings for the said NCDs from 'A-' to 'BB' and then to 'D' after the disappointing quarterly results. However, it was alleged in the impugned order that CARE failed to monitor

[81] https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-care-ratings-limited-in-the-matter-of-reliance-communication-limited_47145.html

the credit worthiness of the company in a timely manner and there was significant delay in conducting the downgrading of the ratings and therefore violated various regulations. Subsequently, the AO imposed a penalty of Rs1 crore on CARE for the lack of due diligence.

Issue before SAT

What is the exact nature of responsibility of a CRA towards the public? What is the level of due diligence expected from a CRA?

SAT order dated 9th June, 2021 in appeal no. 454 of 2020[82]

SAT observed that while investing in the stock market, investors rely on the information provided by the company, the exchanges and other market intermediaries. The credit ratings assigned to debt instruments by these CRAs are considered to be the best possible information available on the credit worthiness of these companies. Thus the ratings given out by CRAs cannot be confined to the personal opinion of the CRAs but has to be based on proper scientific analysis of the performance and financials of the company. It further observed that there has to be continuous monitoring by the CRA of the assigned rating and appropriate steps are to be taken immediately if any deviation is observed by the CRA.

The tribunal noticed that the rating committee did not conduct any meeting between September 2016 and May 2017 which goes against the provisions of CRA Regulations. These regulations require the rating committee to conduct timely reviews of the ratings given by the CRA on a continuous basis. It concluded that there was an apparent laxity on the part of the rating committee as it did not act in a timely manner and on a continuous basis.

The tribunal also found that the appellant didn't take into consideration the downgrading of the ratings by international firms such as Moody's and Fitch. It also found that even after significant deterioration of the financial results of Rcom, it did not actively seek information regarding the financial position of Rcom from the

[82] http://sat.gov.in/english/pdf/E2021_JO2020454.PDF

company. Therefore, the tribunal held that the appellant had violated Regulation 15(1) and Regulation 13 of the CRA Regulations read with Clauses 3 and 8 of the Code of Conduct provided under third Schedule of the CRA Regulations.

However, it was of the opinion that the AO was not correct in imposing a penalty of Rs1 crore. It held that there was nothing on record to show that there was any harm to the investors by the actions of the appellant and for that reason the unfair gain or advantage could not be quantified. It further observed that this was a case of carelessness and not a case of oversight. The tribunal took into consideration the fact that this was the first violation of the appellant and slashed the penalty from Rs1 crore to Rs10 lakhs.

Analysis

SAT while upholding almost all the contentions of SEBI went ahead to substantially reduce the penalty. Time is of the essence when it comes to the rating of any asset. These credit ratings are considered to be information of the highest quality regarding the financial performance of a company and investors make their investment decisions relying on these ratings as provided by the CRA. This makes it all the more important for the CRAs to review the ratings assigned by it. It has been established by both SAT and SEBI that the appellant had violated CRA regulations and ignored all warning signs about the deterioration of Rcom's credit worthiness until it was too late. SAT's argument that the appellant had only been lazy and careless but did downgrade the ratings at the end does not seem to be in the best interests of the investors who rely on such ratings to make investment decision. The reasoning that a penalty of only Rs10 lakhs was imposed as opposed Rs1 crore against CRA which makes it excessive and arbitrary is incorrigible. The entire premise fizzles out when taken into consideration that a company can be reasonably be expected to default but it is not conventional from a CRA to fail on its duties and responsibilities.

IX. **Franklin Templeton Case - SEBI order dated 7th June, 2021**[83]

[83]https://www.sebi.gov.in/enforcement/orders/jun-2021/in-the-matter-of-inspection-of-six-debt-schemes-of-franklin-templeton-mutual-fund_50442.html

Franklin Templeton, the respondent, is a mutual fund investment company who has been active in this business for more than 20 years now. It decided to wind up 6 debt schemes run by the company w.e.f April 23, 2020. This resulted in an outbreak of public anger against the company and numerous complaints were filed by the investors against it. A number of articles were also published regarding the matter. SEBI, taking the outrage into consideration ordered a forensic audit pursuant to Regulation 66 of the Mutual Fund Regulations to check if the respondent had fully complied with the provisions of securities law.

SEBI then issued a show-cause notice on 24th November 2020 based on the forensic report alleging that the debt scheme run by the respondent was similar to a credit risk fund scheme but the respondent was projecting these debt schemes as duration bases schemes instead of credit risk fund schemes. Further, it was alleged that in 3 of these debt schemes, the respondent had failed in disclosing the strategy adopted by it to invest in high yield securities with AA and A credit ratings. It was further alleged by SEBI that the respondent had "incorrectly calculated the Macaulay duration taking interest-rate reset date as deemed maturity date even though there was no explicit exit to both the parties i.e., the issuer and the investor on the interest-rate reset date." Several other allegations, including that the due diligence was not exercised by the respondent were made by SEBI.

Taking into consideration the above-mentioned facts and the replies received from the respondents, SEBI passed the impugned order directing the respondent to refund the investment advisory and management fees along with an interest of 12% per annum. The refund amounting to Rs512,50,92,534 was to be deposited within 21 days. Further, a penalty of Rs5 crore was imposed on the respondent and it was prohibited from launching any new debt scheme in the market for 2 years.

SAT order dated 28th June, 2021 in appeal no. 443 of 2021[84]

SAT observed that the appellant had been in this business for more than 20 years now and a few of its schemes have running for more than 10 years and in all these years of

[84] http://sat.gov.in/english/pdf/E2021_JO2021443_2.PDF

business there has never been a complaint on record to indicate any poor management of the schemes by the appellant. Further, the tribunal enquired about all the existing schemes by the company and found that it was running a total of 48 schemes out of which 28 were debt schemes and even after the winding up of 6 schemes, 21 schemes are still running.

The tribunal further noted that upon enquiry, it found that the amount of refund was a gross estimation and the expenses incurred by the appellant to carry out the business were not taken into consideration. The tribunal decided to consider the contentions raised by the parties at the final stage of hearing and asked the respondent to file a reply within four weeks and a rejoinder 3 weeks after that and the matter was listed final disposal on August 30, 2021.

However, the tribunal decided to grant a stay on the impugned order by SEBI during the pendency of the appeal. It was of the opinion that the appellant was still running 21 debt schemes and cannot be debarred from launching any other debt schemes merely because it was winding up its 6 debt schemes.

As far as the refund is concerned, the tribunal held that directing the appellant to refund Rs512,50,92,534 is excessive at this stage. It observed that only profits could be directed to be refunded after making the necessary deductions incurred in running the business and in this particular instance, the Whole Time Member of SEBI has taken the gross amount as illegal gains. Therefore, in place of the refund amount and the penalty amount of Rs5 crore, the tribunal ordered the appellant to deposit Rs 250 crore in an escrow account which would be subject to the outcome of the appeal.

Analysis

The forensic audit report brought on record a number of instances of irregularities in the running of the debt schemes which were not in the best interests of the unit holders of the scheme. One more thing to be noted here is that Mr. Vivek Kudva, the head of Asia Pacific distribution at Franklin Templeton sold his fund investments in Franklin Templeton between March 20 and April 3, i.e., before the winding up of the debt schemes. He took the unfair advantage of being on the board and withdrew his investments having known the poor condition of six debt funds.[85] The Supreme Court while hearing an appeal filed by Franklin Templeton against the order of Karnataka HC held that for closing of a MF scheme, the trustees are required to obtain consent from the majority unit-holders after publishing a notice stating the reasons for the winding up of debt schemes.

SEBI in the impugned order has found that the debt funds suffered losses due to the mismanagement by the AMC. This has resulted in causing loss to the investors. Section 11(1) of the SEBI Act states that "it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit." Where the interest of the investors should have been given paramount importance, SAT stating that the measures taken by SEBI to protect the investor's interest are "excessive" could have a demoralising impact on the investors.

[85] https://www.moneycontrol.com/news/business/personal-finance/franklin-templeton-case-sebi-ensures-mutual-fund-executives-cant-lay-hands-on-own-investments-unfairly-7062671.html

Conclusion

From an assessment of thirty cases from the timeline of 2019 to 2021, it is seen that the Securities and Exchange Board of India has initiated enforcement actions in a variety of matters including matters relating to insider trading, non-disclosures, prohibition of fraudulent and unfair trade practices and non-compliances by the designated officials.

Out of the 30 cases discussed above it is observed that in **17** of the 30 cases, SAT has reduced the penalty that was initially imposed by the AO, either on the grounds that the penalty imposed was disproportionate to the nature of the violation or the violation was technical in nature. Further, SAT has completely set aside the order passed by AO in **9** cases on the grounds that there was a deficiency in the investigation conducted by the AO appointed by SEBI.

Our analysis showed that;

1. In a number of cases, there has been delay in taking the enforcement actions. While no limitation is prescribed in the SEBI Act, it has been held by the Honorable Supreme Court that the actions are to be taken within a reasonable time and where prejudice is caused due to delays the orders are liable to be set aside. Ordinary investors look up at SEBI to take prompt and effective actions. Delays are bound to shake the confidence of investors as they give an opportunity to the wrong doers to get away without penalties.

2. While SAT upheld the findings of SEBI, SAT reduced the quantum of penalties in a large number of cases analyzed. While SAT, as a Court is empowered to consider the facts and circumstances of each case while arriving at the reduction, it may be useful to lay down general principles for guidance of the SEBI Adjudicating officers.

3. It is also noted there is no consistency amongst the Adjudicating officers in appreciating evidence and imposing the quantum of penalties. In many cases, there is no quantification of loss avoided or gains made, in the investigation reports thus the AOs, we find, were not able to take a cogent view of the impact caused by the

violations, thus imposing a penalty either too less or far higher, resulting in intervention by SAT.

4. In certain major cases, while SEBI endeavored to take early actions through interim orders, the follow on investigations faltered, resulting in delays and dilution of enforcement actions. Collection and analysis of evidence is also an area that seemed to be wanting, thus resulting in the orders getting set aside on appeal. SEBI has been in existence for 30 years and substantial powers have been granted by the Parliament to SEBI considering its status and role in the economy. It is expected that SEBI would have geared up its investigation skills.

Some Recommendations

Investigations: The investigating process of SEBI is bridled with uncertainty. With no clear time limitations on the cases, the investors or market stakeholders cannot anticipate a timeframe within which the investigations will either be initiated or concluded. There is no provision of limitation within the SEBI's statutory framework therefore, investigations can be initiated whenever and can continue to be pending for quite a few years. It is recommended that; a framework should be set up whereby any case or investigation that is initiated would automatically come up for review after the predefined time span. This would guarantee that investigations are not continued pending unreasonably for years. This suggested measure does not require any amendment, as it could be facilitated by a policy decision.[86]

Delays in the appointment of AO: There are no cadres of adjudicating/enquiry officers (EO/AO). SEBI appoints EO/AO officers from the operational department. To avoid any delays in handing out appointments, establishing an assignment mechanism will ring in benefits for the department. These officers must be adept in securities law, administration law, etc. to assess the case technicalities along with the determining aspect of the orders.

[86] http://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf

Inconsistency in SAT Orders and lack of the technical member: Innumerable cases await to see the light of the day with SAT. The vacant position of the third member creates a huge pressure for the other two. They are forced to hear matter only for interim relief. Furthermore, should SAT lay down guiding factors; these can be in turn followed consistently by the AOs of SEBI.

Technical upgradation: In the NSE Co-location case, there was visibly a lapse in the technical adequacy; both on the part of NSE and SEBI. In other cases, the evidence was partial or inadequate. To prevent mistrials, technical upgrades encompassing cyber security, resilience, co-location facility, etc. is highly suggested.

Annexure

LIST OF ABBREVIATIONS

SEBI - Securities and Exchange Board of India

SAT - Securities Appellate Tribunal

AO - Adjudicating Officer

SCN - Show Cause Notice

NSE - National Stock Exchange

BSE - Bombay Stock Exchange

CRA - Credit Rating Agency

PFUTP Regulations - SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003

PIT Regulations - SEBI (Prohibition of Insider Trading) Regulations, 2015

ICDR Regulations - SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

SCRA - Securities Contract (Regulation) Act, 1956

SAST Regulations - SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

CIRP- Corporate Insolvency Resolution Process

LODR Regulations- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

ILDS Regulations- SEBI (Issue and Listing of Debt Securities) Regulations, 2008

SCD Rules- Companies (Share Capital and Debenture) Rules, 2014