

## **How repeated complaints even after the matter has been resolved from SEBI's side do not help the system**

### **Challenges before SEBI for resolving complaints**

Despite the best efforts of SEBI, many grievances cannot be resolved by SEBI or resolved to the satisfaction of the complainant. It is, therefore, possible that a grievance has been closed in SEBI's records while the complainant still feels aggrieved. For example, a grievance cannot be resolved because the matter is sub-judice. Similarly, resolution of a grievance may require dispute resolution through arbitration. The Stock Exchange / Depository may have advised the complainant to go for arbitration. Instead of doing so, he may still be seeking a resolution from SEBI.

### **Disputes cannot be handled by SEBI**

1. In cases of non-redressal of investor grievances against brokers, adjudication under Sections 15HB and 15C of SEBI Act and Section 23I of the SCR Act may result in imposition of monetary penalty on determination of violation of Act/Regulation by the Adjudicating Officer as per the provisions of the SEBI & SCR Act/ (Procedure for holding inquiry and imposing penalties by the Adjudicating Officer) Rules, 1995 & 2005. SEBI Act, and SCR Act do not provide for settling disputes awarding compensation by SEBI. Therefore, the complaint/application towards obtaining a direction for compensation/damages suffered by the investors or contractual disputes regarding any claims or monetary payment cannot be adjudicated by SEBI. Such disputes for settlement of claims or compensation/damages have to be adjudicated either by a court of competent jurisdiction i.e. Civil Court and an Arbitrator.
2. Section 9 of the SCR Act empowers any stock exchange to make bye-laws for regulation and control of contracts providing therein for the method and procedure for settlement of claims/disputes, including settlement by arbitration.
3. Further, Hon'ble SAT has also held in the following cases that contractual disputes cannot be adjudicated by SEBI viz.:

### **Case 1: Ibrahim Ahmed vs. SEBI (Appeal No. 40 of 2009)**

**Facts of the case:** SEBI received complaints from the shareholders of the company inter-alia about the rejection of request to dematerialize shares held by them in physical form. One of the grievances was that the person was holding 7,78,000 shares issued by the company and that company was not dematerializing these shares. The company took the stand that the share certificates produced by the appellant were forged and on the basis of those certificates, the shares could not be transferred in his name. In the light of the stand taken by the company, the appellant filed a petition before the Company Law Board under Section 111 of the Companies Act for the rectification of registration of members of the company and that is still pending. In view of the pendency of the petition before the Company Law Board, SEBI did not decide on merits the complaint filed by the appellant and left it to the Company Law Board to adjudicate on

those issues. The appellant also felt aggrieved against the SEBI order dated February 20, 2009 by which the company and its whole time directors had been restrained from accessing the capital market and filed the appeal.

**SAT Judgement:** *"This dispute between the parties cannot be gone into by the Board which is a statutory regulator meant to protect the interest of the investors and to regulate the securities market. The appellant should pursue his remedy elsewhere."*

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#### **Case 2: MCS Ltd vs. SEBI (Appeal No. 107 of 2008)**

**Facts of the case:** SEBI received complaints from some issuer companies alleging that on the termination of their agreement with the MCS as Share Transfer Agent (STA), the latter did not hand over the records/data and other relating documents which were in its possession in its capacity as STA. The complaints were forwarded to the appellant to make necessary compliance.

SEBI vide order dated August 11, 2008 held that the MCS had acted contrary to the code of conduct prescribed for STAs and issued directions to MCS to transfer all data/records and issue no objection certificates to the companies and the depository, if not already done, failing which strict action would be taken against it.

However, it was contended by MCS that SEBI while directing it to transfer all data/records to the issuer companies should have also directed Companies to pay the dues to the MCS which, according to it, are due under the contract.

SAT rejected this contention of MCS as the code of conduct prescribed for STAs requires that as an when the contract with the issuer companies is terminated, the former should handover to the latter the data/records and other documents that may be in their possession. Since this was not done, the Board rightly directed the MCS to return the records and the data.

SAT observed that SEBI's direction has been complied with and as regards the dues which the MCS is claiming, it would be open to it to resort to proceedings in an appropriate forum in accordance with law to receive those dues. The Board cannot take upon it to adjudicate such contractual disputes between the parties.

**SAT Judgement:** *The Board rightly directed the appellant to return all the data/records and the same has been complied with by the appellant. As regards the dues which the appellant is claiming, it would be open to it to resort to proceedings before an appropriate forum for recovering the same. The Board cannot take upon itself to adjudicate such contractual issues."*

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#### **CASE 3 : Mr. Hameed Ullah Lalji alias Tony Ullah vs. SEBI (Appeal No. 123 of 2008)**

**Facts of the case:** Orbit Construction and Realtors Private Limited a subsidiary of the company which has since been amalgamated with it. The company came out with a

public issue and in the Red Herring Prospectus vetted by the Board, the company assured the public investors that it had made all reasonable inquiries and accepts responsibility for all that was stated in the prospectus. It had also given an assurance that all statements and information contained therein were true and correct in all material aspect and were not misleading in any manner and that the opinions and intentions expressed therein were honestly held by the company.

The public issue went through and shares were allotted to the public shareholders and listed on the NSE and BSE in April, 2007. The shares of the company are also being traded in the market for nearly two years.

Long after the public issue had gone through, the appellant made a complaint to the SEBI alleging a wrong statement in the prospectus to lure the public to invest in the shares of the company. The prayer made in the complaint was that the Board should prosecute the directors of the company and that the company should be permanently debarred from accessing the capital market and that the shares be delisted. The residuary prayer made in the complaint was that the Board may take such other further action against the company as may be deemed appropriate. The complaint was considered by the Board along with the relevant statements made by the company in the prospectus along with the documents furnished therewith and came to the conclusion that the issues raised by the appellant were disputes of a civil nature and that it could not settle those issues. The appellant was advised to approach the Civil Court. Aggrieved, the investor filed an appeal in SAT.

**SAT Judgement:** The appeal is wholly misconceived and that the appellant has no locus standi to file the same. It must be understood that the Board is a statutory regulator set up under the Securities and Exchange Board of India Act, 1992 (for short the Act) primarily to protect the interests of investors in securities and to promote the development of and to regulate the securities market. In the very nature of things, it cannot adjudicate civil disputes which have to be settled by the Civil Courts in terms of section 9 of Code of Civil Procedure. The appellant before us is not an investor. He claims to be the owner of the property which, according to the company, is in the process of being conveyed to it through the documents which have been executed between the company and the duly constituted attorneys of the appellant. ..... If the appellant feels that his property is being usurped by the company the remedy is not by way of a complaint to the Board. These disputes are obviously of a civil nature and can appropriately be decided by a Civil Court.

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#### **CASE 4: Mrs. Ramkishori Gupta vs. SEBI (Appeal No. 207 of 2012)**

**Facts of the case:** Appellants appealed to SAT seeking a direction to SEBI to pay them compensation to the tune of Rs.51,53,190/- for the loss suffered by them in the process of purchasing 1,71,773 shares from M/s. Vital Communication Limited, hereinafter referred to as "VCL", which is a listed company on the Bombay Stock Exchange Ltd., hereinafter referred to as "BSE".

The case of the Appellants was that they were impressed by the allegedly misleading advertisements published in various newspapers particularly as regards issue of buy-

back as well as bonus shares. It is contended by the Appellants that both the schemes of buy-back and bonus shares did not materialize at all. In the process they suffered huge losses. Therefore, they requested for a direction to SEBI to consider their prayer for grant of compensation for the loss suffered by them in the course of the transaction. They are seeking a direction to get compensation in respect of 1,71,773 shares in question @ Rs.30 per share at least.

The Appellants approached the consumer forum under the Consumer Protection Act, 1986 for redressal of their grievances and payment of alleged compensation suffered by the Appellants due to the above facts. The National Consumer Disputes Redressal Commission, New Delhi, while hearing the appeal of the Appellants on 17/1/2010 simply opined that the complaint of the Appellants was not within the purview of Consumer Protection Act, and if the Appellants wished to pursue their remedy, they might approach SEBI for the redressal of their grievance as per law. The petition was filed in respect of complaints regarding announcements relating to buyback of shares, preferential allotment and bonus issue etc.

SEBI declined the request of the Appellants for grant of compensation stating, *inter alia*, that they do not have such jurisdiction to consider and grant compensation to the investors who incidentally suffer losses in the process of purchasing/selling shares in the open market.

**SAT Judgement:** "... We deal with the issue as to whether any compensation can be granted by SEBI to an investor who loses money in the process of sale and purchase of certain securities, etc. We have minutely perused the scheme of the SEBI Act, 1992 and we note that its express object is to protect the interest of investors in securities and to promote the development of the securities market and also its regulation so as to have an orderly, systematic and a more organised capital market. ...Section 11(2) [of the SEBI Act, 1992], ... enumerates around 15 directives to SEBI to be undertaken by it in the discharge of its duties to attain the objectives for which it has been established. There is no directive or mandate in any of the 15 or 16 measures empowering SEBI to undertake the task of considering and granting compensation to an investor for the alleged losses he might have suffered due to certain misleading or fraudulent advertisements by a company. In fact, the Appellants' prayer for compensating him for the alleged loss is in the nature of a claim for damages on account of such alleged fraudulent and misleading representations by the (company) through various advertisements. This aspect needs to be looked into by a civil court of competent jurisdiction in a trial and not by SEBI under the SEBI Act, 1992 for the simple reason that SEBI has neither the expertise nor infrastructure for this purpose. There is no mandate in law requiring SEBI to do so in case any investor suffers loss on account of trading in shares etc. Such jurisdiction is not envisaged anywhere in the entire scheme of the SEBI Act, 1992. In fact, the law of damages/compensation is a complex area and SEBI is not supposed to undertake the same for reasons stated hereinabove."

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