

## H] LITIGATIONS APPEALS AND QUOTE PRONOUNCEMENTS

### Civil Litigation

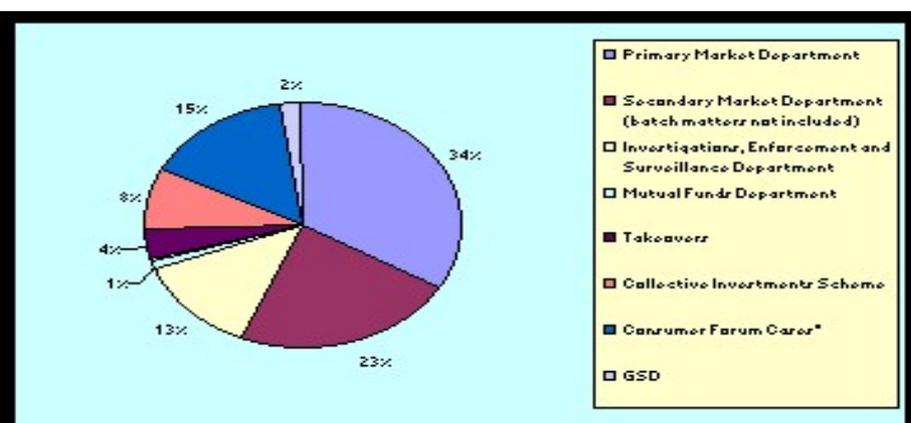
The details of cases that were filed in the Courts during 1998-99 where the SEBI was a party are given in

**Table 2.40 : Status of Litigation where SEBI was a party**

Sr.No.	Subject matter	1998-99		
		Cases filed	Cases dis-missed	Cases allowed
1.	Primary Market Department	57	39	0
2.	Secondary Market Department (batch matters not included)	39	5	0
3.	Investigations, Enforcement and Surveillance Department	22	9	0
4.	Mutual Funds Department	2	0	0
5.	Takeovers	7	4	0
6.	Collective Investments Scheme	14	4	0
7.	Consumer Forum Cases*	26	7	0
8.	GSD	4	3	1
	Total	171	72	1

Source : SEBI

\* Only those cases where SEBI has received notice has been included. There may be other cases where notices from the forum have not been received. Some cases might have been disposed off without SEBI's knowledge.



Graph 2.26 : Litigation

**Table 2.41 : Status of litigation where SEBI is a petitioner**

<i>Sr.No.</i>	<i>Subject Matter</i>	<i>Cases filed</i>	<i>Cases pending</i>	<i>Cases Dismissed / allowed</i>
	Primary Market Department	2	1	1
	Secondary Market Department	1	1	0
	Investigations, Enforcement and Surveillance Department	2	1	1
	Mutual Funds Department	1	0	1
	Collective Investments Scheme	6	6	0
6.	GSD	1	1	0
	Total	13	10	2 / 1

Source : SEBI

### Appeals

Persons aggrieved by an order of the SEBI passed under the SEBI Act,1992 can prefer an appeal to the Central Government under Section 20 of the SEBI Act,1992. Table 2.42 gives status of appeals that were filed before the Appellate Authority in the financial year 1998-99.

**Table 2.42 : Appeals filed under Section 20**

<i>Status of Appeals</i>	<i>No.of Appeals</i>
Appeals filed	35
Appeals dismissed	33
Appeals allowed	2

Source : SEBI

### Appeals before the Securities Appellate Tribunal (SAT)

Persons aggrieved by an order of the Adjudicating Officer passed under Chapter VIA of the SEBI

Act,1992 can prefer an appeal to the Securities Appellate Tribunal under section 15T of the SEBI Act,1992. Table 2.43 gives the status of the appeal pending before the Tribunal.

**Table 2.43 : Appeals Before The Securities Appellate Tribunal (Sat)**

<i>Appeals filed</i>	<b>6</b>
Appeals dismissed	1
Appeals allowed	1
Appeals pending	4

*Source : SEBI*

### **Important court pronouncements relating to securities laws**

#### *High Court of Gujarat - SEBI vs. Alka Synthetics Ltd.*

In the instant case, the Hon'ble Division Bench of the Gujarat High Court held that section 11B is essentially a power to issue directions after inquiry and therefore at the time of issuing the directions of ad interim nature it cannot be assumed that the pre-decisional hearing has to be given on the basis of the use of the word 'inquiry'. It was also held that by the impounding of monies there was no violation of Article 300A. SEBI had only taken a remedial measure to ascertain the evils and the directions have been issued to preserve the subject matter of dispute till the final decision was taken. Thus, SEBI had the authority of law to take measures under the provisions of the Act.

#### *High Court of Bombay - Ramrakh R.Bohra Vs. SEBI*

The Hon'ble Division Bench of the Mumbai High Court held that the power which has been conferred by section 11B to issue direction are of a widest amplitude and are exercisable in interests of investors in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interests of investors or securities market. It was also held that the power to issue directions under section 11B carries with it by necessary implication all powers and duties incidental and necessary to make exercise of these powers fully effective including power to pass interim orders in aid of final orders. It was further held that the interim order could be passed directing a share broker refraining from undertaking any fresh business as a broker till disposal of inquiry.

#### *High Court of Delhi - M.Z.Khan vs. SEBI*

The Hon'ble Court held that SEBI has the power to carry out investigations and to take action in accordance with the regulations against the one who violates the takeover regulations viz. acquirer, the seller, the target company, the merchant banker, as the case may be. SEBI has power to pass interim orders before and during the inquiry or investigation to effectuate the purpose of the SEBI Act and the Regulations. The power under section 11 of the SEBI Act is not hedged in by any restrictions. This power will embrace the power to issue interim orders. The SEBI in a fit case can pass interim orders in

the interests of investors and to promote the development of and to regulate the securities market. The final orders after the inquiry are contemplated under section 11B and at that stage it can issue such directions to any person referred to in the section as may be appropriate in the interests of investors and securities market. If at the initial stage it becomes necessary to pass an interim order, the SEBI has been endowed with such a power under section 11. And in case the provisions of section 11 are construed in a restrictive manner, the interests of the investors in securities and development and regulation of securities market will suffer.

*Gujarat High Court - The Stock Exchange, Ahmedabad vs. Assistant Commissioner of Income-Tax.*

In the instant case, the Court observed that there is a property element in rights of membership of ASE and the right to nominate as available under rules of stock exchange, is a right to property and it can be attached for purpose of recovery of income-tax payable by assessee. The Court also held that words 'any property' under section 281B are words of widest amplitude and would include proprietary rights of legal heirs of a deceased member of stock exchange to make nomination to stock exchange and the property right of a member's card of stock exchange can be attached.

*High Court of Bombay - SEBI Vs. Libra Plantation Limited*

The instant case is a public interest petition filed by SEBI against the plantation companies. The Court held once again that where the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The Court also held that the absence of a statutory provision will not inhibit the Court while acting under Article 142 from making appropriate orders for doing complete justice between the parties. The Court further observed that in India the Courts are not only Courts of law but also the Courts of equity and thereafter passed an appropriate order attaching certain properties of the directors of the company in the instant case. The court ordered Commissioner of Police to appoint DCP to enquire into the various aspects of the Respondent company and to find out the assets of the directors of the company and whether any amount of the company is siphoned off to any sister concerns or in the name of relatives of the directors.

*High Court of Gujarat - Rich Paints Ltd. vs. Vadodara Stock Exchange Ltd.*

The Court held that no fault can be found with the findings given by the Appellate Authority under section 22 of (SCR) Act. In any case, findings cannot be interfered with since it is neither perverse nor based on no evidence. SEBI was entitled to examine the grievance of the investors against the petitioner company. The appellate authority hearing the company's appeal against refusal of listing permission by the BSE was not only empowered but also duty bound to satisfy itself that the company had complied with the mandatory statutory requirement of minimum subscription. It has also been held that the bankers to the issue hold the application monies in the nature of a trust fund i.e. the statute has erected a kind of trust for the protection of persons who pay the money on the faith of a promise to refund the money in case certain conditions are not fulfilled. It is only the bankers to the issue who can be expected to make sure that before withdrawal the company has got the listing permission from each stock exchange specified in the prospectus. It is only the bankers to the issue who are subject to the statutory control of SEBI through the SEBI (Bankers to an Issue) Rules and Regulations, 1994.

It was also held that since the entire application money paid to and received by the company is to be kept out of the reach of the company till all the conditions for valid allotment are satisfied. The petition dismissed. Notice is discharged with costs.

In the instant case, the respondent BSE rejected the petitioner's application for readmission as member of the stock exchange. Although the membership of the Exchange is a personal permission from the Exchange and a member was prohibited from assigning any rights or privileges attached to the membership, the petitioner had abdicated his responsibility in respect of his membership and had in effect assigned his membership rights and privileges to VFSSL. There was total non-compliance with the relevant rules relating to readmission of member to the stock exchange. It was held that there is no illegality committed by the Committee in declining to accept the petitioner's request for readmission as a member of the Stock Exchange. It was held that the arrangement is totally different and has no bearing to the facts of the present case.

*The Securities Appellate Tribunal, Mumbai - Sharad Doshi Vs. The Adjudicating Officer and anr. Ancient Traders Limited matter.*

Certain irregularities relating to acquisition of shares of Ancient Traders Limited by the appellant were noticed which case was a intentional violation of the regulations 6 and 9 of the Takeover Regulations for personal gains by not disclosing his aggregate holding in the ATL to the stock exchange within the time stipulated in the regulation. The Adjudicating Officer imposed One lakh rupees as penalty against the petitioner as against the maximum penalty of five lakh rupees provided in the SEBI Act which was reasonable one. The question raised before the SAT in appeal was that the shares not registered in Company's books do not carry voting rights and acquisition of shares not carrying voting rights is beyond the purview of the Takeovers Regulations and that the takeover regulations would be attracted only after registration of transfer of shares. SAT held that in view of the stringent penal consequences provided in the Act, it is difficult to accept the appellant's version that non-compliance of regulations is a mere technical lapse to be viewed leniently and therefore SAT did not find any merit in the appeal and accordingly dismissed the same in favour of SEBI with the observation that the Adjudicating Officer's order is a reasonable one.

*The Securities Appellate Tribunal, Mumbai - Fascinating Leasing & Finance (P.) Ltd. versus SEBI.*

The questions raised before the SAT were, inter alia, whether the holding of shares is a prerequisite to attract regulation 10 of 1994 Takeover Regulation. In the instant case, the appellants were not holding any shares in the HFL at the relevant time and that the shares acquired were not listed on any exchange and further that the purchase was not from the open market. It was also observed that Tribunal is an appellate forum and that its jurisdiction is confined to deciding appeals arising out of the orders made by the Adjudicating Officer.

The Tribunal is not a substitute for the Adjudicating Officer as is being made out by the opposite counsel. Regulation 9 and 10 are distinct from the point of view of their application and meant for compliance in different situations. Regulation 9 is on the acquisition of shares through negotiation whereas regulation 10 is on the acquisition from the open market. The Tribunal has no jurisdiction to investigate the transaction and decide afresh the applicability of regulation 9. SAT set aside the Adjudication order and allowed the appeal.

*Madras High Court - A Vaidyanathan Vs.UoI and anr.*

The single bench of the Hon'ble High Court of Madras held that trading in securities is not a fundamental right but a statutory right and the trading can be regulated by statute. It was also held that rejection of membership of a recognised stock exchange cannot be challenged on the ground of violation of Articles 14 and 19(1)(g) of the Constitution of India and the same would be held untenable in law especially when petitioner's right to do business in securities is not barred by Section 12 of the SEBI Act. Held, Rule 8(2) (b) of SC(R) Rules, 1957 is constitutionally valid.

*Delhi High Court - Mathran Shares & Securities Pvt.Ltd. vs.SEBI*

In the present facts and circumstances, we are of the view that the Calcutta Stock Exchange had in fact granted permission to the petitioner on 13<sup>th</sup> April, 1995 and the requirement of section 73 of the Act was fully met. The relevant provisions should be construed in the manner so as to subserve the intendment underlying the said permission. The purpose of section 73 is to prevent a company from fraudulently representing to the prospective subscriber that they have secured the requisite permission within the stipulated time to trade in the named stock exchanges. In light of the Calcutta Stock Exchange's letter dated 16<sup>th</sup> December, 1995, which clarifies that the actual approval by the relevant sub-committee was on 13<sup>th</sup> April, 1995 and was only formally required to be affirmed by the committee on 27<sup>th</sup> April, 1995, it is clear that section 73's requirements had been met.

*High Court of Bombay - Stock Exchange, Mumbai vs. Vinay Bubna*

The Division Bench of the Hon'ble Mumbai High Court overruled the decision of the single bench which held that the reference of dispute to an even number of arbitrators under bye-law 249(a) of BSE was invalid in view of the provisions of section 2(4) of Arbitration and Conciliation Act, 1996. The Court held that the word 'enactment' in section 2(4) of the Arbitration and Conciliation Act, 1996, would mean and include bye-laws framed under SC(R) Act, 1956 and would form part of that Act and the same will prevail over provisions of section 10 of the Arbitration and Conciliation Act. Bye-law 249(a) of BSE for reference of dispute to an even number of arbitrators is a statutory bye-law having force of enactment within the meaning of section 2(4) and since the said bye-law is inconsistent with section 10 insofar as the number of arbitrators is concerned, the said bye-law would prevail.