

SECURITIES CONTRACTS (REGULATION) ACT, 1956

Short title, extent and commencement:

1. (1) This Act may be called the Securities Contracts (Regulation) Act, 1956.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions :

“contract” means a contract for or relating to the purchase or sale of securities;

“corporatisation” means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860 (21 of 1860), by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society;

“demutualisation” means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;

“derivative” includes—

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;

“Government security” means a security created and issued, whether before or after

the commencement of this Act, by the Central Government or a State

Government

for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);

“member” means a member of a recognised stock exchange;

“option in securities” means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call in securities;

“prescribed” means prescribed by rules made under this Act;

“recognised stock exchange” means a stock exchange which is for the time being recognised by the Central Government under section 4;

“rules” with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association;

“scheme” means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for—

(i) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange;

(ii) the restrictions on voting rights;

(iii) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange;

(iv) the transfer of employees of a recognised stock exchange to another recognised stock exchange;

(v) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange.

“Securities Appellate Tribunal” means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]

“securities” include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) derivative; units or any other instrument issued by any collective investment scheme to the investors in such schemes;

security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Government securities; such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

“spot delivery contract” means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt

with by a depository;]

“stock exchange” means—

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or

otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

RECOGNISED STOCK EXCHANGES :

Application for recognition of stock exchanges.

(1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular, to—

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c) the admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto;

(d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorised representatives and clerks.

Grant of recognition to stock exchanges :

(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange; it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

(2) The conditions which the Central Government may prescribe under clause (a) of subsection (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

(3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

(4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

(5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.

Corporatisation and demutualisation of stock exchanges.

4A. On and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B:

Provided that the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such appointed date.

Explanation.— For the purposes of this section, “appointed date” means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges.

Procedure for corporatisation and demutualisation.

4B. (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Securities and Exchange Board of India, may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

(a) the Securities and Exchange Board of India in the Official Gazette;

(b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India, and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

(5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such

order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

(6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;

(b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;

(c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, have full effect.

(8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one percent of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.

Cancellation of Recognition :

If the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefor or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition: Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B.

LISTING OF SECURITIES :

Conditions for listing.

Where securities are listed on the application of any person in any recognised

stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.]

Delisting of securities.

(1) A recognised stock exchange may delist the securities, after recording the reasons therefore, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act: Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals: Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.]

Right of appeal against refusal of stock exchanges to list securities of public companies. Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company 55[or collective investment scheme], the company 56[or scheme] shall be entitled to be furnished with reasons for such refusal, and may,—

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or (b) where the stock exchange has omitted or failed to dispose of, within the time. specified in sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956) (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow, appeal to the Central Government against such refusal, omission or failure, as the case may be, and

thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

(i) vary or set aside the decision of the stock exchange, or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission, and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government:

[Provided that no appeal shall be preferred against refusal, omission or failure, as the case may be, under this section on and after the commencement of the Securities Laws (Second Amendment) Act, 1999.]

[Right of appeal to Securities Appellate Tribunal against refusal of stock exchange to list securities of public companies.

(1) Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (1 of 1956), (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow, appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate

Tribunal may, after giving the stock exchange, an opportunity of being heard,—

- (i) vary or set aside the decision of the stock exchange; or
 - (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission, and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed.
- (3) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.
- (4) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

What is SARFAESI Act, 2002?

The SARFAESI Act full form is – “Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act”. The SARFAESI Act allows banks and other financial institutions for auctioning commercial or residential properties to recover a loan when a borrower fails to repay the loan amount. Thus, the SARFAESI Act, 2002 enables banks to reduce their non-performing assets through recovery methods and reconstruction.

The SARFAESI Act provides that banks can seize the property of a borrower without going to court except for agricultural land. SARFAESI Act, 2002 is applicable only in the cases of secured loans where banks can enforce underlying securities such as hypothecation, mortgage, pledge etc. An order from the court is not required unless the security is invalid or fraudulent. In the case of unsecured assets, the bank would have to go to court and file a civil case against the

defaulters.

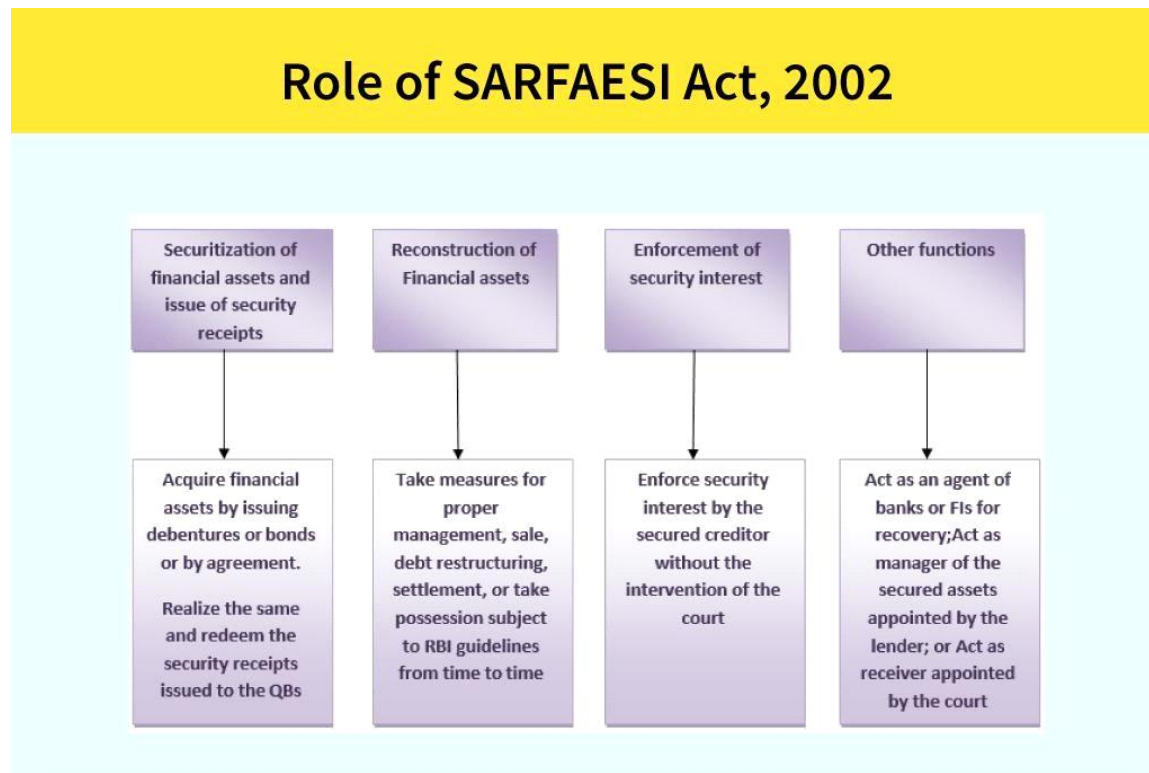
Applicability Of SARFAESI Act, 2002

The Act deals with the following:

- i. Registration and regulation of Asset Reconstruction Companies (ARCs) by the Reserve Bank of India.
- ii. Facilitating securitization of financial assets of banks and financial institutions with or without the benefit of underlying securities.
- iii. Promotion of seamless transferability of financial assets by the ARC to acquire financial assets of banks and financial institutions through the issuance of debentures or bonds or any other security as a debenture.
- iv. Entrusting the Asset Reconstruction Companies to raise funds by issue of security receipts to qualified buyers.
- v. Facilitating the reconstruction of financial assets which are acquired while exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions.
- vi. Presentation of any securitization company or asset reconstruction company registered with the Reserve Bank of India as a public financial institution.
- vii. Defining 'security interest' to be any type of security including mortgage and charge on immovable properties given for due repayment of any financial assistance given by any bank or financial institution.
- viii. Classification of the borrower's account as a non-performing asset in accordance with the directions given or under guidelines issued by the Reserve Bank of India from time to time.
- ix. The officers authorized will exercise the rights of a secured creditor in this behalf in accordance with the rules made by the Central Government.

- x. An appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal.
- xi. The Central Government may set up or cause to be set up a Central Registry for the purpose of registration of transactions relating to securitization, asset reconstruction and creation of the security interest.
- xii. Application of the proposed legislation initially to banks and financial institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities.
- xiii. Non-application of the proposed legislation to security interests in agricultural lands, loans less than rupees one lakh and cases where eighty per cent, of the loans, is repaid by the borrower.

Role of SARFAESI Act, 2002 :



Objectives of SARFAESI Act, 2002

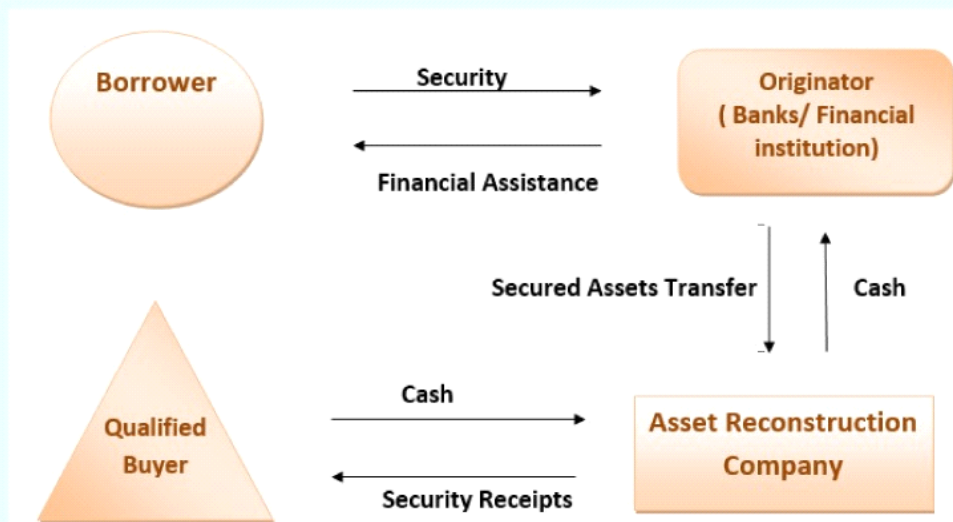
- i. Efficient or rapid recovery of non-performing assets (NPAs) of the banks and FIs.
- ii. Allows banks and financial institutions to auction properties (say, commercial/residential) when the borrower fails to repay their loans.

How SARFAESI Act, 2002 works?

SARFAESI Act, 2002 provides power to a bank or financial institution to seize the property of a defaulting borrower. As per the SARFAESI Act procedure, the banks issue notices to the defaulting borrowers to discharge their liabilities within 60 days period. When the defaulting borrower fails to comply with the bank notice, then the SARFAESI Act gives for the following recourse to a bank:

- i. Take possession of the loan security
- ii. Lease, sell or assign the right to the security
- iii. Manage the same or appoint any person to manage the same.

The process to be followed



Formation of SARFAESI Act, 2002

SARFAESI Act, 2002 was circulated:

- To regulate securitization and reconstruction of financial assets.
- Enforcement of the security interest for.
- Matters connected therewith or incidental thereto.

It extended to the whole of India. Amendment in the (SARFAESI) Act, 2002 vide the enforcement of the Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. It is an Act to further amend four laws:

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).
- Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI).
- Indian Stamp Act, 1899.
- Depositories Act, 1996, and for matters connected therewith or incidental thereto.

Section 27 in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

27. Penalties.—If a default is made—

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25, every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees

for every day during which the default continues.

CASE LAW - Pandurang Ganpati Chaugule vs Vishwasrao Patil Murgud Sahakari ...
on 5 May, 2020

Section 29 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 : Offences

If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Section 30 Cognizance of offences

(1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 33 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 : Offences by companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Security Exchange Board of India

Establishment Of SEBI

The Securities and Exchange Board of India was constituted as a non-statutory body on April 12, 1988 through a resolution of the Government of India. The Securities and Exchange Board of India was established as a statutory body in the year 1992 and the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) came into force on January 30, 1992.

Preamble

The Preamble of the Securities and Exchange Board of India describes the basic functions of the Securities and Exchange Board of India as "...to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"

SEBI (Securities and Exchange Board of India) was set up in 1988 for the regulation of the functions of securities market. It promotes orderly and healthy development in the stock market. However, initially, SEBI did not have complete control over the stock market transactions. It was just left as a watchdog for observing the activities, but could not regulate and control them. As a result, in May 1992, SEBI was granted legal status and is now a body corporate that has a separate legal existence and perpetual succession.

Reasons for the establishment of SEBI

When the dealings of stock markets grew, it also gave rise to a lot of malpractices in the stock market like price rigging, delay in delivery of shares, violation of rules and regulations of stock exchange, etc. The existence of these malpractices made the customers lose faith and confidence in the stock exchange. Therefore, the Government of India decided to set up a regulatory body or an agency known as SEBI (Securities and Exchange Board of India).

Purpose and Role of SEBI

The main purpose of the formation of SEBI was to keep a check on malpractices and protect the interest of investors. Simply put, SEBI was set up to fulfil the needs of three groups, which are:

- i. Issuers. SEBI provides a marketplace for issuers in which they can raise finance easily and fairly.
- ii. Investors. SEBI provides protection for investors and supplies accurate and correct information.
- iii. Intermediaries. SEBI provides a competitive professional market for intermediaries.

Objectives of SEBI

The main objective of SEBI is protection of the interest of investors, promotion of the development of stock exchange, and regulation the activities of stock market.

The objectives of SEBI are as follows:

- i. Regulation of the activities of stock market.
- ii. Protection of the rights of investors and ensuring safety of their investment.
- iii. Prevention of fraudulent and malpractices by having a balance between self-regulation of business and its statutory regulations.

- iv. Regulation and development of a code of conduct for the intermediaries like underwriters, brokers, etc.

Functions of Securities and Exchange Board of India (SEBI)

To meet the three objectives SEBI performs the three main functions; namely, Protective Functions, Developmental Functions, and Regulatory Functions.

1. Protective Functions

The functions performed by SEBI to protect the interest of investors and provide safety of investment are protective functions. The functions performed by SEBI as protective functions are as follows:

i) Check a Price Rigging

Manipulation of price of securities to inflate or depress the market price of securities is known as Price Rigging. SEBI through protective functions prohibits these kinds of practices as it can cheat and defraud the investors.

ii) Prohibits Insider Trading

Any person who is connected with the company such as promoters, directors, etc., is an insider. They have all the sensitive information about the company which can affect the price of the securities. However, this sensitive information is not available to the people at large, and if the insiders use this privileged information to make profit, it is known as Insider Trading. SEBI to protect the interest of investors, keep a strict check on the insiders when they buy securities of the company and takes strict actions against them on insider trading.

For example, the directors of a company know that the company will be issuing Bonus Shares to the shareholders at the end of the financial year and they use this information to make profit by purchasing shares from the market. This purchase of shares by the directors will be considered insider trading.

iii) SEBI prohibits fraudulent and unfair trade practices

SEBI does not allow the companies to make any statement that can mislead the

people and induce the sale or purchase of securities by any other person.

iv) Educate Investors

SEBI undertakes various steps to educate the investors so that they can easily evaluate the securities of different companies and select the most profitable security.

v) SEBI under protective functions, promotes fair practices and code of conduct in the security market.

To do so, SEBI takes the following steps:

It has issued guidelines for the protection of the interest of debenture holders wherein the company cannot change the terms in the mid-term.

It empowers investigating cases of insider trading and also has provisions for imprisonment and a stiff fine.

It has also stopped the practice of making preferential allotments of shares that are unrelated to market prices.

2. Developmental Functions

SEBI performs developmental functions to promote and develop the activities in stock exchange and to increase the business in stock exchange. The functions performed by SEBI under developmental functions are as follows:

i) It promotes the training of intermediaries of the securities market.

ii) It tries to promote the activities of the stock exchange. To do so, it adopts a flexible and adaptable approach in the following ways:

- a. SEBI has given permission for internet trading through registered stock brokers.
- b. In order to reduce the cost of issue, SEBI has also made underwriting optional.

- c. Lastly, it has permitted initial public offer of primary market through stock exchange.

3. Regulatory Functions

SEBI performs regulatory functions to regulate the business in stock exchange. The functions performed by SEBI under regulatory functions are as follows:

- i. To regulate the intermediaries like underwriters, brokers, etc., SEBI has framed a set of rules and regulations and a code of conduct.
- ii. It also conducts inquiries and audits of stock exchanges.
- iii. SEBI registers and regulates the working of mutual funds, etc.
- iv. SEBI has brought the intermediaries under the regulatory purview and has made private placement more restrictive.
- v. SEBI regulates the takeover of companies.
- vi. Ultimately, it registers and regulates the working of stock brokers, share transfer agents, sub-brokers, merchant brokers, trustees, and everyone who is associated with the stock exchange in any manner.

Powers Of SEBI:

To function efficiently and keep an eye over the share market, SEBI has been granted some powers.

Quasi-Judicial:

To ensure fairness, transparency, and accountability in the securities market, SEBI has the powers to deliver judgments related to any kind of fraud and other unethical practices in terms of the securities market. It includes the drafting of the legislature pertaining to the Capital Markets.

Quasi-Executive:

SEBI has the powers to implement the regulations and judgments and take legal

actions against the violators. Also, this body is authorized to inspect books of accounts and other documents if it violates the regulations.

Quasi-Legislative:

SEBI has the right to frame the rules and regulations to protect the interest of the investors. It also consists of insider trading regulations, listing obligations, and disclosure requirements.

Note: Besides these powers, SEBI's functions and decisions need to go through the Securities Appellate Tribunal and the Supreme Court of India.

Powers of SEBI in India - An Extension

SEBI has various powers to fulfil the purposes of the SEBI Act, 1992. Securities and Exchange Board of India can take preventive action & disciplinary actions to safeguard the investors & encourage the securities market. Such measures can be in the form of circulars, press releases, etc. Moreover, the measures can also be taken if it is exercised in maintenance & consonance of the specified objectives. Following are the powers of SEBI:

1. Registration & Regulation of Securities Market Intermediaries: Securities and Exchange Board of India has the power to issue regulations or rules for Registration & can deliver for the eligibility criteria, rules for capital adequacy, code of conduct etc. Unless the Registration Certificate is provided by the Securities and Exchange Board of India, no individual can involve in activities that a SEBI registered mediator undertakes.

2. Rule of the Self-Regulatory Organisations: These organisations are given the responsibilities of being the 1st level regulator for a segment of mediators in the securities market being its members. SEBI issued recognitions to self-regulatory organisations & looks after the activities of such organisations, and help them in maintaining ethical benchmarks. It aids in maintaining accountability, fairness, and transparency to investors.

3. Regulation of Substantial Shares Acquisition and Companies Takeover: SEBI

mandates open offer & needs disclosure to be made by the acquirer and the person acting in concert with such acquirer. It offers who would be an acquirer, Target Company, etc. What it does is makes sure the Takeover process is transparent and fair. SEBI also mandates enough disclosures from the promoters & acquirers of the listed companies. Among the powers of SEBI, it can make regulations under Section 30(2) of the SEBI Act. Regulations have been offered for securities market intermediaries, AIF (Alternative Investment Funds), Foreign Portfolio Investors (FPI), mutual funds, insider trading, takeovers and matters concerning securities matters. But, it may be noted that rules if SEBI is governmental in nature and legal in character.

4. Regulation of Other Securities Market and Stock Exchange Business: Securities and Exchange Board of India concentrates on maintaining integrity, clarity, and proper working of the stock exchanges via different methods such as Broker Registration, addressing investor complaints, rising trading hours, etc. Securities and Exchange Board of India also has the power under Securities Contract (Regulation) Act, 1956 to grant identification to stock exchanges, supersede business of stock exchange, withdrawal of acknowledgement, etc. These powers have been delegated by the Central Government of India.

5. Regulation & Registration of the working of Collective Investment Schemes, Venture Capital Fund: Previously, the Mutual Funds were regulated by the RBI (Reserve Bank of India) guidelines, which was appropriate to Mutual Funds supported by Banks. Securities and Exchange Board of India gives Registration Certificate to the Mutual Fund. It also regulates the structure & the constitution of the fund, its AMCs, Trust Deed Registration and has the power to control various schemes and businesses of mutual funds.

6. Power to ban Fraudulent and Unfair Trade Practices in Securities Market: Securities and Exchange Board of India informed the SEBI (Prohibition of Fraudulent & Unfair Trade Relating to Securities Market) Regulations 2003. Fake transactions & unfair trade practices recognised by SEBI comprise price rigging, circular trading, inflating, variable securities price, publishing any false statement or misguiding advertisement, among others.

7. Barring Insider Trading in Securities: Securities and Exchange Board of India has taken measures for barring Insider Trading by the participants in the securities market. Securities and Exchange Board of India framed the 1st Prohibition of Insider Trading Regulations in the year 1992, after that replaced it with the Prohibition of Insider Trading Regulations, 2015, furnishing for the insider meaning, unpublished price sensitive details, trading, etc. Securities and Exchange Board of India establish various committees with a purpose of strengthening the market integrity and to boost the confidence of investor.

PENALTIES AND PROCEDURES

Penalties 23. (1) Any person who-

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub- section (4) of section 6; or

(b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or

(c) contravenes the provisions contained in section 17 or section 19; or

(d) enters into any contract in derivative in contravention of section 18 A or the rules made under section 30.44

(e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or

(f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or

(g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye- laws of such stock exchange or not being a dealer in

securities licensed under section 17

(h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other person for any business connected with contracts in contravention of any of the provisions of this Act; or

(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act; shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any person who enters into any contract in contravention of the provisions contained in section 15 [or who fails to comply with the provisions of section 21 or with the orders of]45 the Central Government under section 22 or with the orders of the Securities Appellate Tribunal shall,46 on conviction, be punishable with fine which may extend to one thousand rupees. Offences by companies 24.

(1) Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other

officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.