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NOTE FROM THE EDITOR IN CHIEF

Dear esteemed readers,

We are excited to present the XIV edition of the NUALS Securities Law e-Newsletter, featuring the latest developments in the dynamic capital markets and securities law landscape in India and around the world. In this edition, we've curated a collection of engaging and informative articles, including an exclusive interview with Manendra Singh, Associate Partner at Economic Law Partners, guest article “Revisiting Intent in the Insider Trading Regime: SEBI vs Abhijit Rajan" by Rashmi Birmole and Anirudh Sood of Finsec Law Advisors, student articles such as "The Regulatory Landscape Governing Green Bonds in India and Challenges" by Shambavi Sharma of Symbiosis Law School, Nagpur, and an analysis of "Enforcement of Security Interest under Section 13(4) of SARFAESI and its Detriments" by Akshay Krishna of Symbiosis Law School, Nagpur. Additionally, we'll cover the regulatory updates on the securities market in India in the past year and international trends in securities and capital markets.

We are also thrilled to announce our plans to introduce the NUALS Securities Law Review Journal and Blog, providing even more comprehensive coverage of the capital markets and securities law.

We understand that this edition took longer to publish than usual, but we wanted to ensure we were providing our readers with the best possible content. Our love for capital markets and securities law drives us to strive for excellence in our publications, and we are grateful for the unwavering support and patience of the Director of the Centre for Law & Development, Dr. Balakrishnan K, and the dedication of our internal team and editors.

We hope you enjoy reading this edition as much as we enjoyed putting it together. Our goal is to bring you the most current and relevant information in the field and provide a deeper understanding of the complexities of the capital markets and securities law. We appreciate your support and look forward to your continued engagement with our publication.

With warmth and appreciation,

Adarsh Vijayakumaran
Editor in Chief

ABOUT

Centre for Law and Development

The Centre for Law and Development (CLD) is a research initiative led by Dr. Balakrishnan K., the Director of CLD and Associate Professor at NUALS. The Centre is primarily known for its contribution in the field of securities law through its securities law newsletter, which has been providing legal literature and excellent dissemination of capital market-related developments for over a decade. The Centre aims to establish itself as an institution that recognizes and prioritizes areas of development, contributes to policy formulation by state and other decision-making authorities, and conducts research on socio-legal, technological, economic, and other relevant perspectives of development. The Centre also provides a platform for industry stakeholders, students, and professionals to deliberate and discuss various subjects related to law and development through seminars, webinars, AMAs, and other workshops. The Centre positions itself as an institution that recognizes its role in recognizing and prioritizing areas of development and contributes to policy formulation by the state and other decision-making authorities. It also provides stakeholder participation in various aspects of developmental projects.

NUALS Securities Law e - Newsletter

The NUALS Securities Law e-Newsletter is a premier online publication featuring articles, case notes, and expert opinions in the field of Capital Markets and Securities Law. It offers updates on the latest legal and regulatory developments in this area. The newsletter team has published 13 editions to date and the 14th edition is now available for readers. The newsletter includes summaries of regulations issued by SEBI, case summaries and international trends for the period under review.

TABLE OF CONTENTS

I. TABLE OF ABBREVIATIONS 1

II. INTERVIEW 3

III . GUEST ARTICLES

1. *Revisiting Intent in the Insider Trading Regime: SEBI v. Abhijit Rajan* 6

IV. STUDENT ARTICLES

1. *An analysis of the enforcement of security interest under section 13(4) of SARFAESI and the detriments of the same.* 8
2. *The Regulatory Landscape Governing Green Bonds in India and Challenges Pertaining to the Same- An Analysis* 11

V. KEY DECISIONS

1. *Supreme Court* 14
2. *High Court* 16
3. *Securities Appellate Tribunal* 17

VI. REGULATORY UPDATES 19

VII. INTERNATIONAL TRENDS 26

TABLE OF ABBREVIATIONS

CIS	Collective Investment Scheme
SAT	Securities Appellate Tribunal
SEBI	Securities Exchange Board of India
u/s	Under Section
FPO	Foreign Portfolio Investor
NSDL	National Securities Depositories Limited
SCB	Scheduled Commercial Bank
PFI	Public Financial Institution
SSF	Special Situation Funds
NPA	Non Performing Assets
LODR	Listing Obligations and Disclosure Requirements
ICDR	Issue of Capital & Disclosure Requirements
AIF	Alternative Investment Funds
CRA	Crediting Rating Agencies
REIT	Real Estate Investment Trusts
SEC	Securities and Exchange Commission
IOSCO	International Organization of Securities Commissions
DeFi	Digital Assets and Decentralized Finance

TABLE OF ABBREVIATIONS

FTF	Fintech Taskforce
OSC	Ontario Securities Commission
ICO	Initial Coin Offering
ICMA	International Capital Market Association
CTF	Climate Transition Finance
SHA	Shareholder Agreements
SPV	Special Purpose Vehicles
PIT	Prohibition of Insider Trading
ETD	Early Termination Date
ESG	Environment Social and Corporate Governance
IPO	Initial Public Offering
OFS	Offer for Sale
MB	Merchant Bankers
DTD	Debenture Trust Deed
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices
ARC	Asset Reconstruction Company
CDR	Corporate Debt Restructuring

INTERVIEW

MANENDRA SINGH

Associate Partner, Economic Laws Practice

1. What would be your advice for a law student planning to pursue a career in M&A, Private Equity & Securities laws? How do you keep yourself abreast of the latest regulatory changes in securities law and the investment market?

Practice areas of M&A, PE, Securities Laws include laws which are vast and complex. These require an in-depth understanding of fundamentals of various corporate law such as Companies Act, 2013, FEMA, SEBI laws, Contract Act, 1872. Additionally, there is a need to understand the practical implications and case study involving these areas. It is important that students pay attention to the case analysis and economics of concepts in these subjects. There is an interplay of certain fundamental laws in all these fields such as Contract Act and Companies Act which are the backbone of any transaction. For example, regarding Twitter takeover by Elon Musk, students should understand how the concept of takeover works in India and understand its parallel study in the USA. This will help them get a comprehensive understanding of the subject. One of the best ways to understand concepts of a law is to read the committee reports, consultation papers etc. of that particular area of law.

Further, I suggest that students should also briefly understand other practice areas such as tax, real estate, and antitrust laws. This will help them get a holistic understanding of a particular issue. Further, in terms of latest updates, it is important to regularly visit websites of regulators such as MCA, SEBI, RBI, IFSCA, DIPP, etc. Reading Economic Times, Financial Express, Moneycontrol, Mint, etc. also helps in keeping track of changes in the market and laws.

2. How effective do you feel Variable Capital Companies are in India? Can it boost India's Fund Management Space?

Presently, funds in India pooled through limited liability companies are governed by the Companies Act, 2013 or by the Limited Liability Partnership Act or trusts governed under the Indian Trusts Act, 1882. Such structures may not be ideal for fund management activities on account of their own respective set of advantages and constraints. Alternative investment funds (AIFs) in IFSC also have the same structural options – that is, company, LLP or trust. Trust is the most preferred option due to flexibility offered in terms of its operations and lesser compliances. The VCC structure aims at doing away with the limitations of these three structures as an additional option through which asset managers could pool the investors' funds and attract business. It has been recommended that VCCs should be introduced as a vehicle for investment management in IFSCs first, so as to boost asset management activities in IFSCs and thereafter, provide a template to consider the introduction of a VCC-structure for the domestic Indian financial system too at a later stage after taking into account the applicable regulatory considerations.

In view of IFSCA's objective of regulating and developing financial products and financial services in the IFSC, it is widely recognized that a thriving asset management

industry requires a flexible regulatory framework at par with frameworks found in globally competitive financial hubs. So, an important element of the legal framework governing asset management is the flexibility of structures and vehicles that asset managers may use to house the asset management activity. Globally, a VCC has been successfully demonstrated (for example, in Singapore) as one such structure which contemplates certain desirable features for conducting fund management activities.

By seeking to set up pooling vehicles in the form of VCCs for investing in financial products in the IFSC which are not impeded by the limitations of the available legal structures in India, the IFSCA aims at boosting management activities in the IFSC through principal based special legislation with flexibility to introduce subordinate legislation for the incentivization and adoption of VCCs as a preferred entity to house funds in the IFSC.

3.What is your take on MCA's recommendation on issuing securities in GIFT IFSC through Freely Convertible Foreign Currency (FCFC)? What should be considered to ensure a smooth transition from the current practices?

Given that the IFSC is contemplated as an international jurisdiction for various cross-border financial services, IFSC companies are necessarily considered as "non-residents" from a FEMA perspective, despite the same being treated as Indian companies incorporated and registered under the Companies Act, 2013 with share capital denominated in INR. Moreover, with the statutory framework mandating the execution of all financial services transactions in foreign currency (in the IFSC), it is necessary for an IFSC company to prepare and present their financial statements and various reports envisaged under the Companies Act, 2013 in foreign currency, leading to a situation wherein the investor's capital/capital structure of such IFSC companies being reflected in INR even though they have made remittance in foreign currency. In view of the aforesaid, a need was therefore felt to rationalize this requirement and to permit IFSC Companies to issue their share capital in freely convertible foreign currency by identifying provisions requiring amendments in the Companies Act, 2013 to enable issue of securities by IFSC companies in freely convertible foreign currency and to allow use of such currency as the currency of disclosure in the books of accounts, financial statements/ other documents and for various filings thereunder.

Keeping in mind the involvement of 2 major regulators, a collaborative and synergistic approach is paramount to ensure smooth implementation of the MCA's recommendation which cover the transitional treatment to be provided for existing IFSC companies and provide them with an easy compliance environment.

4. What is your take on recent amendments by SEBI under the LODR Regulation about the provisions pertaining to independent directors? Do you feel the alternative mechanisms for appointing independent directors have empowered the public shareholders to a greater extent, or is it merely ink on paper?

Before the introduction of alternate routes of appointment, the appointment, re-appointment or removal of independent directors under the LODR Regulation was only by way of a special resolution. For a special resolution to be passed, 75 percent of votes are needed from a company's members in favour of the tabled resolution. The alternate mechanism contemplated by the amendment seeks to, inter alia, address challenges arising from cases where appointment of an Independent Director may be blocked by one or more set of large shareholders, thereby resulting in failure of the proposed special resolution.

Under the alternate mechanism, if a special resolution for appointment of an independent director does not get the requisite majority, then two other thresholds -- ordinary resolution and majority of minority shareholders would trigger. If the resolution crosses the above two thresholds in the same voting process, then such a resolution for appointment of the independent director would be deemed to be approved by shareholders. Similarly, independent directors who have been appointed using this two-stage voting mechanism will be able to be removed after applying the same voting test.

Clearly this mechanism would empower the public shareholders as one of the key conditions for such a deemed appointment is that the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

5. What is your take on SEBI's recent decision to temporarily restrict Alternate Investment Funds (AIFs) schemes which have adopted a priority distribution model among investors from accepting any fresh commitment or making investments in a new investee company? A priority distribution model allows some investors to exit ahead of others, which is currently not against the law as it is not explicitly restricted in AIF Regulations. Do you feel that SEBI's decision concerning the Priority Distribution Model is taking away the commercial freedom of the market participants?

At present, the regulatory framework with respect to investment by the sponsor in the AIF prescribes that the sharing of loss by the sponsor should not be less than pro rata to their holding in the AIF vis-à-vis other unit holders. While it has not been explicitly restricted in AIF regulations that the sharing of loss by a class of investors shall not be less than pro rata to their holding in the AIF vis-à-vis other classes of investors/unit holders, it appears that the regulator seeks to understand the rationale of such priority distributions and whether it would be unfair given that, the same enables losses to be passed on to others in a disproportionate manner in cases where other contributors have been allowed to exit on priority.

The interim step of SEBI to stop raising further capital making fresh investments by such AIFs / schemes should not be there for long in the event the regulator decides that the model is allowed with some caveats. AIF as a product with commercial freedom should be taken into consideration while deciding on the fate of such models.

6. SEBI now permits Foreign Portfolio Investors to participate in the exchange-traded commodity derivatives (ETCD) market; with this, the existing EFE (Eligible Foreign Entities) route for participating in ETCDs has been discontinued. What's your opinion on this? Will this move further increase the depth and liquidity in the market?

Before SEBI's move, foreign entities were required to demonstrate mandatory actual exposure to Indian physical commodities as a condition to participate in exchange-traded commodities in the Indian Commodity Derivatives market. However, based on information disclosed by the stock exchanges, in spite of it being more than three years since the aforesaid enabling framework came into force, there has been no traction of EFEs. Institutional participants play a crucial role in enhancing the liquidity and efficiency of any market. Considering that around 10,000 FPIs are presently registered in India, even if a tenth of these participate in the Indian commodity derivatives market, the same may bring considerable liquidity in Indian ETCDs.

In this context, by dispensing with the existing condition of mandatory actual exposure to Indian physical participation to enhance participation in ETCDs, FPIs would be incentivized and encouraged to participate in ETCDs which would increase depth and liquidity in the ETCD market. This would, in turn, ensure efficient price discovery, reduce transaction costs, benefit from economies of scale, minimize information asymmetries and bring practices across developed markets. Having said that, the regulator is also cautious in the beginning, as it has allowed such participation only in cash settled non-agricultural commodity derivative contracts and indices comprising such non-agricultural commodities.

GUEST ARTICLE

REVISITING INTENT IN THE INSIDER TRADING REGIME: SEBI V. ABHIJIT RAJAN

CO - AUTHORED BY :
Rashmi Birmole, Associate, Finsec Law Advisors
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1. INTRODUCTION

Trading in public securities while being privy to material non-public information is, by and large, viewed among the most abusive practices in the securities market. However, despite the grave public perception and heightened regulatory scrutiny surrounding insider trading, the Indian regulatory framework has evolved in a rather haphazard fashion in response to such practices. In particular, the relevance and subjective determination of motive have been a long-standing bone of contention while dealing with insider trading charges. This debate has been laid to rest by the Supreme Court ("SC") in its recent judgement in Securities and Exchange Board of India v. Abhijit Ranjan, which has recognised the motive to make an unjustified gain as an essential pre-condition to establishing an insider trading violation.

2. BRIEF FACTS

The matter can be traced to certain shareholder agreements ("SHAs") entered into between two infrastructure companies, Gammon Infrastructure Projects Ltd. ("GIPL") and Simplex Infrastructure Ltd. ("SIL"), in respect of the execution of contracts received from the National Highways Authority of India, regarding the setting up of Special Purpose Vehicles ("SPVs"). The terms of the SHAs involved the mutual acquisition of 49% of the shareholding by both entities in the other's SPV.

However, the SHAs were subsequently terminated through a board resolution passed by GIPL on account of an imbalance in the value of the contracts awarded to both entities. Mr. Rajan, the chairman and managing director of GIPL, sold his shares a week prior to the disclosure of the said termination to the stock exchanges, which constituted the unpublished price-sensitive information ("UPSI") in this case. Thus, Mr. Rajan was alleged to have dealt in the securities of GIPL while being in possession of UPSI, in contravention of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992").

During the proceedings, the fact that Mr. Rajan had sold his shares to cover his promoter's contribution in respect of the corporate debt restructuring package under consideration by GIPL was emphasised. The SC noted that the sale of shares by Mr. Rajan was in the nature of a distress sale entered into with the sole aim of rescuing the company, failing which GIPL faced the prospect of bankruptcy, as opposed to gaining an unfair advantage over other public investors. Moreover, the SC also noted that the price of the shares rose after the information was disclosed to the public.

3. FINDINGS

Appreciating the above facts, the SC affirmed the order passed by the Securities Appellate Tribunal ("SAT"), which overturned the order passed by the Securities and Exchange Board of India ("SEBI"). Specifically, the SC found that Mr. Rajan had made the sale out of necessity and recognised the motive to make an undeserved gain as a pre-condition to sustaining an insider trading violation. The actual profit or loss suffered was deemed immaterial. Considering the price rise post the disclosure of the UPSI and the positive nature of the UPSI, SC also dealt with the direction of the trade undertaken by Mr. Rajan and found it to be starkly opposite to the likely positive impact of the UPSI.

The SC also examined the price sensitivity of the board resolution in question, which was contended to have a minor contribution to the overall turnover of GIPL, an argument which found favour with the SAT. In this regard, the SC categorically held that the percentage contribution of the transaction to the turnover of GIPL was an irrelevant consideration, and the de minimis rule had no application to insider trading proceedings.

4. ANALYSIS

The ambiguity surrounding the relevance of 'motive' in insider trading violations can be gleaned from the lack of uniformity between the provisions of the PIT Regulations, 1992, and the related judicial pronouncements. The PIT Regulations, 1992, formerly known as the SEBI (Insider Trading) Regulations, 1992, earlier prohibited dealing in securities on the 'basis of UPSI', and mere possession of UPSI did not pass the muster. 'On the basis of UPSI', being the operative phrase here, was subsequently amended by the SEBI (Insider Trading) (Amendment) Regulations, 2002, and substituted with 'in possession of UPSI'.

This substitution was intended to introduce strict liability for insider trading, as opposed to a fault-based liability, and effectively did away with statutory recognition of motive as a sine qua non for insider trading charges. This position was later affirmed by several pronouncements, such as SEBI v. Shriram Mutual Fund and SEBI v. Cabot International Capital Corporation, on the ground that a violation of the SEBI Act, 1992 and its regulations, being a civil wrong, attracts an immediate monetary penalty, with intent being an immaterial consideration. On the contrary, the dissenting line of judgements, such as Rakesh Agrawal v. SEBI and Chandrakala v. SEBI, stressed the need to examine the intent to make illegitimate gains while dealing with insider trading charges.

The present judgement appears to settle the dust on the relevance of motive in insider trading violations. It goes a step ahead by prescribing the key parameters, i.e., a motive for making an undeserved gain and purpose and direction of the trade, which SEBI must consider while establishing a charge of insider trading. By virtue of the same, the SC has effectively read down regulation 3 of the PIT Regulations, 1992, by qualifying the possession of UPSI with a motive to obtain an unfair advantage as a prerequisite to an insider trading violation. All in all, the judgement has redirected the focus on the need to inquire into an insider's motive to make illegitimate gains based on asymmetrical access to material information, the prevention of which forms the cornerstone of insider trading regulation across the globe. It delineates principles that shall form key considerations in ongoing and future proceedings regarding insider trading violations in India.

AN ANALYSIS OF THE ENFORCEMENT OF SECURITY INTEREST UNDER SECTION 13(4) OF SARFAESI AND THE DETRIMENTS OF THE SAME.

Akshay Krishna P, 4th Year, Symbiosis Law School Nagpur

INTRODUCTION:

To understand the process of enforcing security interests, we must first understand the concept of security interests. Security interests, in simple terms, refers to the enforceable collateral that has been pledged by a person, to a bank or financial institution. It is usually done with the purpose of obtaining a loan. No bank or financial institution would be able to operate on the good faith of the borrower alone as this would make the enforcement of the terms of the loan difficult. In light of this, banks often retain the right to repossess the property that they have provided a loan for or sell off the assets that have been pledged to them as collateral. The banks, after getting this collateral, engage in a process called securitization, whereby they employ or entrust Credit Rating Agencies or CRAs to asses these assets given as collateral and in the case of immovable property, prepare mortgage deeds to be used in the capital market. Therefore, we can conclude that banks act as the grease on the wheels of the ever-changing capitalist society that we are a part of. Without the provision of loans by banks, the purchasing power of the people would drastically reduce and this would lead to great difficulty in the sale of goods and services, thereby slowing down the growth rate of a nation. In light of this, we can indeed conclude that the provision of loans by a bank directly impacts the growth rate of a country and in order for a bank to function, they must have an effective mechanism to enforce the terms of these loans, leading to the birth of various legislations such as the RDDBFI of 1993, SARFAESI act of 2002 and the IBC act of 2016.Therefore, in consonance with the SARFAESI act of 2002, we can conclude that security interest means any right, title or interest created of any kind, except those present in section 31, upon property created in favour of any secured creditor. The procedure for the enforcement of security interest was intended to ensure that banks would be able to collect the secured assets that they had provided to the borrower. However, A grave problem arises when the banks intend to confiscate the secured asset or the value of this secured asset in a manner that could be described as problematic.

Section 13(4) of SARFAESI, in light of the contemporary economic situation of the country, intended to ensure that the banks could get their secured assets or the value of such assets in a time bound and efficient manner. However, as is the condition with many laws, it was abused and multiple banks started enforcing their security interest by sending “muscle men” or via the use of other illegal intimidation tactics. This use of force to ensure the implementation of security interest is something that the author has highlighted in great detail in this paper and hopefully, the author’s solutions can be implemented for the same.

NEED FOR SARFAESI:

The need for the SARFAESI legislation of 2002 can best be summarised in the case of <u>United Bank of India v/s Satyawati Tondon and Ors.</u> In this case, The Supreme court lays down the purpose of the implementation of the SARFAESI legislation. In paragraph 2 of the judgement, the Supreme court has explicitly stated that more than 1,20,000 crores were due to the banks and financial institutions in 2001. This grim report was despite the implementation of the RDDBFI and to combat this, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was born. The act primarily focussed on empowering banks and financial institutions to take possession of securities and sell them without the intervention of the court. This radical change was expected to ensure that the banks would not be forced to stand idly by as the debtors squandered their money completely.

ENFORCEMENT OF SECURITY INTERESTS BY BANKS:

The enforcement of security interests can be done by the bank themselves or by an ARC (Asset reconstruction company) that is independent or currently employed under them. The banks or these ARCs, as per section 13 and section 9 of the SARFAESI act, can engage in procedures to ensure that the borrower pays back that the debt that he owes the bank or the secured creditor. These activities include the taking over of the management of the business of the debtor, the repossession of the asset in question and even requesting the people who have taken money from the borrower to pay them instead of the borrower. The aforementioned process of ensuring that the loan amount is recovered by the bank, once the assets become non-performing or when the debtor defaults on his obligations is called the as the Enforcement of security Interest. The most important section of SARFAESI is the section that empowers the banks to take matters into their own hands. This is section 13(1) which explicitly states that the banks do not need the approval of the courts or tribunals to engage in the process of the enforcement of security interest under this act.

PROBLEMS WITH THE IMPLEMENTATION OF SECURITY INTERESTS VIA THE SARFAESI ACT:

The aforementioned provision of section 13(1) has led to some of the biggest criticism of the SARFAESI act of 2002. This is primarily because of the fact that this act does not elaborate upon the steps needed to enforce security interest. Section 13(2) talks about the writing of a letter before enforcing security interest and section 13(4) states that if the debtor does not pay the amount requested by the bank, the banks have the power to take possession of the property, sell the collateral concerned and even take over the business of the debtor. On paper, these powers empower the banks but in practice, that is far from the case.

With no set procedure to enforce their security interests under SARFAESI, the legality and practicality of the SARFAESI act has been debated upon extensively. While the chief metropolitan magistrate can assist the bank in the recovery of the secured asset, upon the request of the bank, the process for the same has not been specified

The chief metropolitan Magistrate is also obligated to respond to such application in 30 days, which can be extended to 60 days. Under section 14, it is not even a requirement for the bank to approach the chief metropolitan Magistrate for the enforcement of their security interest and this could result in serious problems. In addition to this, the time required to declare an asset an NPA is over 90 days as per the guidelines of the RBI and the act mandates that the waiting period to get the assistance of the magistrate is about 30 days. This would understandably lead to a general frustration amongst the banks and would lead to them taking their own actions, which they are legally entitled to do under this act.With no set procedure, the banks, under this act, are free to harass the borrowers for the enforcement of their security interest. The waiting time for the return of an application under section 14 makes it highly unlikely that banks would utilize the help of the Metropolitan magistrate and the non-interference of the courts under section 13(1) gives the banks a free hand when it comes to the recovery of loans, thereby leading to an obvious violation of the rights of the debtor.

The RBI had duly noted this and even stated in its Guidelines on Fair Practices Code for Lenders dated 5.5.2003 provides at (v)(c) that: "In the matter of recovery of loans, the lenders should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans, etc" .In addition to this, In the case of ICICI bank v/s Shanti Devi Sharma, Paragraph 13 of the judgement specifically talks of the loss in reputation of the bank by employing recovery agents who would act in an unprofessional manner while recovering a secured asset. The relevant part of this judgement is “In the letter accompanying its April 24th, 2008 Guidelines on Engagement of Recovery Agents, RBI stated:

"In view of the rise in the number of disputes and litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse publicity would result in serious reputational risk for the banking sector as a whole."However, due to the power offered to the banks under SARFAESI to proceed with a case without the intervention of the court or the metropolitan magistrate, enforcing these RBI guidelines has become increasingly difficult.

In the case of ICICI Bank vs Shanti Devi Sharma &Ors, 2008, a motorcycle was allegedly snatched by goons, from the respondent's son, thereby leading to his ridicule and suicide. Furthermore, in the case of Smart Security Secret Service Agency vs State Bank of India and ICICI bank v/s Prakash Kaur, the respective courts have held that the banks must resort to legal methods to recover the debt amount and must "discourage" intimidation tactics or the hiring of "muscle men" for the same. However, with no curb to SARFAESI, the banks are free to do as they please and this is the problem. With courts themselves having no concrete statute to stop this practice and the banks engaging in such practices that are currently not covered by the statute, problems can arise for both the creditor as well as the debtor.

SOLUTIONS TO AFOREMENTIONED PROBLEM:

The author believes that the following solutions, if implemented, could fix the matter at hand.

1. Section 13(1) of the SARFAESI act must be amended to mandate the inclusion of a recovery officer, as defined in section 7of the RDDBFI of 1993, to recover the properties concerned. This would not only ensure seamless coordination between the DRT and the bank but also ensure that a government appointed, expert entity is present to ensure compliance of the bank.
2. The government must mandate that banks to not meet the debtors in their(debtor's) own properties, but in a specialized forum via summons that could be issued through the DRT.
3. Ensure compliance of the debtor to the aforementioned summons via law enforcement rather than the hiring of private "muscle men"
4. The banks must be forced to record the process that was followed during the enforcement of security interest and the same could be produced before the concerned court if there is a dispute.
5. The government must come up with exhaustive guidelines for the enforcement of security interests under section 13(4) and 9 of SARFAESI and provide a quick redressal mechanism to the debtor if the banks use coercive tactics for the recovery of loans.

CONCLUSION:

The SARFAESI act was specifically crafted by the parliament to ensure that the banks are no longer victims of the unfortunate scams that have plagued our country since independence. The likes of the Harshad Mehta Scam, the 2G scam and the various scams that have caused a humongous loss to PNB are only the tip of the iceberg. While these people would indeed make us question the legitimacy of the enforcement mechanisms of the country, we must understand that they are a niche case when compared to the millions of Indians who end up defaulting because of genuine hardships in their lives. Under section 13(4) of SARFAESI, the banks have the power to restructure the loan and also take over the possession of the secured asset in the case of a default. These powers are of equal stature to the bank and it is usually up to the bank to decide upon the approach that it intends to use. In light of this, the author would like to express that not all defaults have the same effect or impact and the sum of money and the intention of the parties concerned must play a huge roll in determining the action that must be taken by the bank. To enforce a security interest against a person who earns a minimum wage via the seizure of the secured asset must be done in a manner that would not devalue the person and as a last resort. To subject a hardworking citizen to the seizure of the secured asset, without giving him a chance to pay the loan after a certain amount of time or to just subject him to a humiliating enforcement would not only lead to negative outcomes for him but the bank too, as word of such a seizure of secured assets would indeed dent the business of the bank.

In light of this, the author would like to conclude by stating that there must be some checks on the the application of section 13(4) to ensure that common people are not subjected to humiliation at the hands of the bank and to also ensure that the bank does not resort to tactics of intimidation to recover their secured assets as we have a clear rule of law in our country and this availability of an arbitrary procedure to the bank would threaten the very rule of law regarding the enforcement of security interests.

THE REGULATORY LANDSCAPE GOVERNING GREEN BONDS IN INDIA AND CHALLENGES PERTAINING TO THE SAME - AN ANALYSIS

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AN INTRODUCTION TO GREEN BONDS

Green bonds are a comparatively novel form of financial investment. In 2007, the Intergovernmental Panel for Climate Change (a United Nations agency) published a report that linked global warming and human activity. It prompted several Swedish pension funds to consider financing projects that contributed positively to the environment. In 2008, the World Bank issued its first green bond in response to such increasing demand.

Green bonds are fundamentally similar to conventional bonds. The functioning of green bonds is exactly like a conventional financial bond. A loan is made to an organization by an investor to finance projects. The investor receives the principal amount invested at the end of the term and receives interest upon the amount invested throughout the term of the bond as per the kind of investment. Just like conventional financial bonds, green bonds are a long-term investment with safe and sure results.

The main difference between a green bond and a conventional financial bond is the kind of project for which the investment is being made. While conventional financial bonds are primarily issued to finance general projects and refinance existing debts, green bonds are issued to finance projects which are more sustainable and cater to environmental as well as financial interests. Green bonds are usually issued to fund projects which focus on energy efficiency, renewable energy, pollution prevention, natural resources and land management etc. As combating climate change is becoming a priority for Governments across the globe, green bond investors are being entitled to claim certain tax and other financial incentives by the Governments to encourage the same. India is one of the only South Asian countries that is a member of the UNEP and a signatory of important environment related conventions such as the Paris Convention, Montreal Protocol etc. Time and again, Indian policymakers and politicians have stressed upon the importance of making development more sustainable and have conveyed their willingness to invest in projects which are more sustainable in nature and contribute positively to the cause of climate change.

BENEFITS OF INVESTING IN GREEN BONDS

Green bonds entail numerous benefits for the environment and the investors. One of the main benefits of green bonds is that they improve the reputation of the issuers. Green bonds often need to comply with a set of disclosure requirements. Once the issuer does comply with those requirements, their image is boosted and they are viewed as serious ESG entrepreneurs in the market. With a boost in their reputation, more projects and financial gain may come their way, which in turn would facilitate many more sustainable projects and ventures.

Green bonds are an additional source of sustainable financing and they often aid in improving investor diversification as they create a strong investor demand. Green bond investing is often very transparent and more accountable when compared to investing in general financial bonds. Resultantly, more investors are keen to invest in such bonds. Green bonds also give the investors an opportunity to get assured financial returns on investments while contributing immensely to national ESG projects thus attracting a significant number of investors.

A BRIEF BACKGROUND OF THE REGULATORY LANDSCAPE GOVERNING GREEN BONDS IN INDIA

In India, bonds can broadly be categorized into three types namely organization guaranteed bonds, asset backed bonds and hybrid bonds. While organization guaranteed bonds which are also known as general obligation bonds are based on the credit worthiness of the organization issuing them, in asset backed bonds, the creditworthiness is solely dependent upon the revenue which is expected to be generated by the project. A hybrid bond contains elements of both the previous categories of bonds. Sovereign bonds are a peculiar kind of bond category which is only observed in green bonds. It is issued for an average tenure of 14 years or more. Sovereign Green Bonds is allocated to fund projects associated with climate adaption and climate mitigation. The green bond holders also enjoy tax benefit. Sovereign green bonds are suitable for investors having interest in environment and climate conservation projects.

Sovereign green bonds are also a secure source for fixed income.The first green bond in India was issued by Yes Bank in the year 2015. Ever since then, the green bonds market India has been growing with industrial giants like the Adani Group continually announcing renewable projects with huge financial capital. Despite their growing popularity, the regulatory landscape governing green bonds remains very underdeveloped in the country. Until the year 2017, green bonds were only understood in terms of market parlance. They had to comply with the regulatory provisions of the Companies Act, 2013 and the listings of the Securities and Exchange Board of India commonly abbreviated and known as SEBI.

RECENT CHANGES IN THE REGULATORY LANDSCAPE GOVERNING GREEN BONDS AND ENSUING CHALLENGES

A few years back, the Reserve Bank of India which is also the central bank of the country released a discussion paper on climate risk and sustainable finance. The RBI has acknowledged the need for climate-related disclosures for stakeholders of regulated financial entities, responsibilities of the boards of directors of the relevant entities to implement committees monitoring the same and clear disclosures in relation to the financial risk emanating from climate and environmental degradation. Following the release of the discussion paper, certain critical regulatory changes were brought by Securities and Exchange Board of India in the year 2017.A circular was issued by SEBI in the year 2017 in which green bond and green debts securities were extensively defined. It was the first time when a proper and precise definition of green debts securities was given by a regulatory body. According to the circular, a debt security could be considered as a green debt security if the funds raised in connection with such security were to be utilized for renewable and environment friendly projects.

Further, certain disclosure requirement were put forth by the Organization. It was the primary responsibility of each issuer to disclose the required information and use the proceeds of the bond only for the purpose for which the capital was raised. The Issuer was mandated to provide a detailed statement of environmental objectives which comprised of information such as details of the project / assets in relation to which the issuer proposes to utilize the funds raised (including if any refinancing is proposed), summary of the decision-making process followed by the issuer to determine eligibility of the project / assets and details of the system which would track or monitor the deployment of funds.

The Issuers were mandated to comply with certain additional disclosure requirements which were put forth in the year 2021 following the release of an Operational Circular.Following the COP 26 Summit held at Glasgow, the Securities and Exchange Board of India released a Consultation Paper in the year 2022 which aimed to provide a more extensive definition of green bonds, introduce the concept of blue bonds and reduce compliance costs for Issuers. The paper analyzed the fund raising channels in India and the role of various stakeholders in facilitating the same. Certain growth estimates were provided in the paper. The potential emerging areas were duly identified and green bonds investments were encouraged.

Certain important decisions pertaining to green bonds were announced by the Finance Minister in the Budget Session of the Parliament. Though the private sector is still allowed to invest in green bonds, the Finance Ministry of the country is developing a framework in which sovereign green bonds would be issued after the government identifies projects in which they must invest the money. Strong certification and monitoring strategies have been announced. Lucrative tax incentives have been announced for investors to encourage the growth of these projects.

Though green bonds have been brought under purview of certain regulations, no specific law exists in the country which specifically focuses on green bonds. An absence of a proper legislation governing these bonds often creates loopholes which can be misused by the Issuers of these bonds. The legislators and policy makers must consider green bonds as a serious avenue to raise funds for sustainable projects and must formulate legislations governing the same.

In addition to that, the current regulations do not require the Issuers to conduct surveys and review funds before issuing bonds. Though independent third party reviewers are appointed to check compliances, their reports are often not available in the public domain which puts the investors in a dilemma as they are not sure about the utility of the funds that they contributed. Steps must be taken to increase transparency regarding the whole process and measures must be taken to increase the accountability of Issuers.

Furthermore, green bonds are far more costly than regular financial bonds. As a result of that, they are not issued as frequently as other kind of bonds. Subsidies and incentives must be given to attract Issuers to the green bonds market to promote investment in the area.

CONCLUSION

Green bonds are an extremely efficient and effective way to raise funds for environment friendly projects. Through green bonds are a recent development in the securities market, they have proved to be an effective method of raising funds and their relevance and importance in the global economy is steadily increasing. India is striving hard to make its economy more sustainable, making green bonds more relevant to its economic development and goals. In fact, India is one of the fewest developing economies striving to make its economy more sustainable and promoting green bonds.

The recent SEBI Guidelines and Consultation Paper have attempted to extensively define green bonds and their relevance in the global market. The Board has also identified steps for the promotion of such bonds in the national markets. Attempts are being made for creating a more sustainable economy and disclosure requirements for Issuers have been made more stringent. Further, by issuing Sovereign Bonds, the government is ensuring that sustainable projects are regularly commissioned. Though, changes are being brought in the regulatory landscape and many critical changes have been introduced in the recent years, the current regulatory framework needs quite a few changes. Challenges must be duly identified in the current green bonds market and the regime must overcome these challenges to ensure that the green bonds market continues to generate profits and ensure that environment friendly projects are steadily funded.

SUPREME COURT

1.Securities and Exchange Board of India v. Abhijit Rajan, MANU/SC/1195/2022

In the case, there were shareholders agreements (SHAs) between Gammon Infrastructure Projects Limited (GIPL) and Simplex Infrastructure Limited (SIL). The respondent, the then chairman and managing director of GIPL, sold shares of GIPL during the period between the termination of the SHAs and disclosure of the same to the public through stock exchanges. The two issues before the Court were i) whether the termination of the SHAs constituted price-sensitive information and ii) whether the sale would fall under the mischief of insider trading.The Court noted that the price sensitivity of information was related to its impact on the securities' price. In this case, information regarding the termination of the shareholder's agreement was not price-sensitive information since GIPL's investment in SIL constituted only 0.05% of GIPL's order book value and 0.7% of its turnover. Also, a motive for making a gain is essential for insider trading. In this case, it was noted that there may not have been an intention to indulge in insider trading as they didn't wait for the market trend to show up; they had to dispose of shares as well as other properties to honour a CDR package, without which the parent company would have gone bankrupt.

2. SEBI (Securities Exchange Board of India) VS Mega Corporation MANU/SC/0362/2022

In this Supreme Court case, a statutory appeal was filed under Section 15Z of the Securities and Exchange Board of India (SEBI) Act against the order of the Securities Appellate Tribunal (SAT) that set aside the order of SEBI restricting the respondent company from participating in the commercial market and other activities for one year. The Supreme Court examined its appellate jurisdiction as defined under Section 15Z of SEBI, which limits its scope to questions of law in the context of the jurisdiction of the SATs under Section 15K, 15M, 15L, 15T, 15U, etc. The court defined a question of law as an "erroneous construction" of a statutory provision, rather than every interpretation of the statute made by the SATs in order to protect their independence. Therefore, it set aside the questions of fact put before it on those grounds, leaving them to the jurisdiction of the SATs. However, the court did criticize the actions of SEBI on this matter. The court relied on the case of T. Takano v. Securities and Exchange Board of India to hold that in the issue of cross-examination, the right of disclosure of relevant material exists, but the right to cross-examination is more open-ended. Therefore, the court set aside the tribunal's decision on upholding the right to cross-examination. This case set important precedents by limiting the powers of the Supreme Court in the affairs of SEBI to questions of law alone, thereby upholding the independent powers of the SATs and leaving the issue of cross-examination of the author of a letter that SEBI is adjudicating on to be an open-ended question to be interpreted on a case-by-case basis in the future. These precedents are important because they set a clear limit on the power of the Supreme Court under Section 15Z, preventing potential future infringement into the powers of the SATs and ensuring the independence of the institution in its affairs, as well as allowing the question of cross-examination to be left open for interpretation as needed in the future without setting a rigid principle.

3. PTC (India) Financial Services Ltd. v. Venkateswarlu Kari, MANU/SC/0629/2022

The Supreme Court addressed the legal issue of whether the Depositories Act, 1996 and Regulation 58 of the Securities and Exchange

Board of India (Depositories and Participants) Regulations 1996 overwrite the provisions relating to contracts of pledge under the Indian Contract Act, 1872 and common law in India.The court cited various High Court pronouncements and held that while the pawnee has the right to sell goods after providing notice to the pawnor, they are not required to sell at any specific time. It was established that neither the Depositories Act nor its regulations conflict with sections 176 and 177 of the Contract Act. Although Regulation 58(8) allows a pawnee to record themselves as the "beneficial owner" instead of the pawnor, this does not supersede the pawnor's right of redemption under Section 177 until the "actual sale".

4. Securities and Exchange Board of India v/s Rajkumar Nagpal & Others AIR 2022 SC 5180

This case concerns the takeover of Reliance Commercial Finance Ltd. (RCFL) by Authum Investment and Infrastructure Ltd. The applicability of two circulars issued by RBI and SEBI is challenged. Three Debenture Trust Deeds (DTDs) were executed between RCFL as 'Issuer' and Vistra ITCL as 'Debenture Trustee'. RCFL committed its first default under the Debenture Trust Deeds in March 2019. Seventeen debenture holders sought an injunction order restraining RCFL, BoB, and RBI from implementing the latter's circular at the Bombay HC. The impugned decision of Ld. Single Judge bench allowed the voting process for the takeover of RCFL according to Debenture Trust Deeds signed in compliance with the RBI circular. Here, the Court upheld the retroactive applicability of the SEBI Circular. Though the Court upheld the applicability, it refrained from applying the same as it may lead to unjust outcomes for the retail debenture holders. Finally, the Court extended the benefit under Article 142 to the retail debenture holders by allowing the Resolution Plan to pass muster, and thus, the appeal was partly allowed- Authum was allowed to process the takeover of RCFL.

5. T. Takano v. Securities and Exchange Board of India AIR 2022 SC 1153

The appellant was accused of breaching the Securities and Exchange Board of India (SEBI) (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003 [hereinafter "PFUTP Regulations"]. SEBI issued a show cause notice based on an investigation report prepared by investigation authorities. The appellant requested the investigation report, but SEBI refused to disclose it on the grounds that it was an internal document. The appellant filed a petition in the Supreme Court against the decision of the High Court. Relying on Regulation 10 of the PFUTP Regulations, the court held that the investigation report is required for the adjudication process and that not providing it to the affected party violates the principle of natural justice. Therefore, disclosure is mandatory. The court relied on SEBI v. Pricewaterhouse and held that if non-disclosure might have affected the verdict, then SEBI must disclose the documents to avoid prejudice.

6. Reliance Industries Limited V. Securities And Exchange Board Of India & Ors AIR 2022 SC 3690

In response to a complaint alleging that, in 1994 RIL and its directors fraudulently allotted 12 crore equity shares to entities connected with RIL's promoters, which were funded by RIL and other group companies and, thereby violated Section 77 of the Companies Act 1956, the SEBI initiated proceedings against RIL. RIL requested copies of the related documents at various avenues. SEBI challenged the latest SAT order asking them to reveal the documents. The main issues before the court were whether there was a duty upon SEBI to disclose the documents in contention and whether the precedent laid down in Takano applied here. Calling upon the SEBI's duties as a regulator and a quasi-judicial body, the SC directed it to disclose to RIL the contentious documents. The Court asked SEBI to apply principles of natural justice and fair trial and showcase the same in the form of public cooperation and deference. Thus, the SC dismissed the appeal.

HIGH COURT

1.UV Asset Reconstruction Company Ltd. vs Union of India & Ors, Delhi High Court, November 2022 MANU/DEOR/193934/2022

Burnpur Cements Limited (BCL) had taken out term loans from a consortium of lenders led by SBI and had pledged shares as collateral. When BCL failed to repay the loans, SBI declared the account an NPA and the debt was acquired by an asset reconstruction company (ARC). This was objected to by BCL. The ARC filed a writ petition seeking clarification on whether the consent of the original Pledgor is required when the name of the Pledgee is substituted in the depository's records. The court ruled that an ARC that acquires an NPA from a bank is deemed to be the lender and gets the rights of the bank. Thus, in this case, the ARC becomes the new pledge, this must be recognised by all statutory authorities. The court highlighted the wide amplitude of the language employed in Section 5 of the SARFAESI Act and put an end to the uncertainty due to the absence of a suitable procedure in the Depositories Act, 1996 and the SEBI (Depositories and Participant) Regulations, 2018 governing substitution of the name of an erstwhile Pledgee with a new Pledgee.

2. World Crest Advisors LLP v. Catalyst Trusteeship Ltd, Bombay HC, June 2022 MANU/MH/2023/2022

World Crest pledged its shares in Dish TV to Catalyst Trusteeship Limited, the security trustee of Yes Bank, to secure borrowing from several companies of the Essel Group. The issue was whether the provisions of the Depositories Act, 1996 and Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 altered the legal position applicable to pledges under Sections 176 and 177 of the Indian Contract Act, 1872. The Bombay HC held that lenders are entitled to voting rights on pledged shares as a matter of contract. It noted that once a pledgee becomes a beneficial owner, he can act in all manners as such, according to Sections 47 and 106 of the Companies Act and Section 10(3) of the Depositories Act. It observed that an unequivocal re-affirmation of voting rights of a pledgee upon invocation of a pledge of de-materialised shares is welcome.

3. M/S Securities And Timeshare Owners' Welfare Association V Sebi & Ors., Bombay High Court, November 30, 2022 MANU/MH/4177/2022

The rights of Indian residents are jeopardised due to Time Share Companies' incorrect conduct, the petition was to regulate Time Share Companies as Collective Investment Schemes (CIS). Section 11AA does not specify whether any or all of the conditions set forth therein must be met to be a CIS because no conjunctions have been used. Thus, Time Share Companies would squarely fall within the ambit of the said definition. Time Share Companies with over 100 crores turnover should be explicitly included for submitting to the SEBI-mandated compliance network. Every holiday management scheme or time-sharing scheme is only a collective investment scheme once and when it satisfies the conditions outlined in Section 11AA of the SEBI Act. The request to enforce CIS Regulations restrictions against Timeshare firms was deemed without substance and outside the scope of the constitutional duty under Article 226.

SECURITIES APPELLATE TRIBUNAL

1.Robert & Ardis James Company Ltd. v. SEBI (Appeal No. 528 of 2022)

The appellants appealed a decision by the Securities and Exchange Board of India (SEBI) that barred their participation in a pre-initial public offering (IPO) of a bank and prohibited them from selling their shares through an offer for sale (OFS). The appeal was dismissed by the tribunal, which found that the appellants were not "aggrieved persons" because they were not included in the OFS or the draft red herring prospectus and because a writ petition related to the matter was pending before the Bombay High Court. The tribunal also found that the appellants could not file an appeal challenging SEBI's decision to grant an exemption to Tamilnad Mercantile Bank Limited under Regulation 300 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

2. V.B. Industries Limited v. SEBI (Appeal No. 750 of 2021)

The appellant, a trading company that deals in infrastructure development and financial products, appealed a decision by the Securities and Exchange Board of India (SEBI) that barred them from accessing the securities market and prohibited them from buying, selling, or otherwise dealing with securities for one year. The Whole Time Member of SEBI found that the appellant had violated the Listing Obligations and Disclosure Requirements Regulations and section 11(2)(l) of the SEBI Act by failing to furnish information to the forensic auditor. However, they did not find any violation of the SEBI Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003, as there was no misappropriation of funds, fraud, or unfair advantage. The tribunal partially allowed the appeal, finding that there was no misappropriation of funds or fraud committed by the company or its directors against its investors. It also deemed the debarment and penalty imposed by the Whole Time Member to be harsh and excessive and reduced the penalty by 75%. Since the period of debarment had already been served, no orders were passed in that regard.

3. Terrascope Ventures Limited v. SEBI (Appeal No. 116 of 2021)

The appellant filed an appeal against three different orders issued by the Securities and Exchange Board of India (SEBI) for violating Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clause 43 of the Listing Agreement by varying the use of proceeds from the preferential issue of shares. The bench allowed the appeal, finding that once the use of proceeds had been ratified by the company, there was no variance and therefore no violation of Clause 43 of the Listing Agreement. It also held that even if the company had used the proceeds of the preferential issue for a different purpose than what was specified in the notice of the Extraordinary General Meeting, such variance was ratified and therefore became authorized and valid as per the Special Resolution. The bench relied on the Supreme Court judgement in National Institute of Technology v. Pannalal Choudhry to define the term "ratification".

4. Pranshu Bhutra v. SEBI (Appeal No. 689 of 2021)

The appellant appealed an ex-parte ad-interim order issued by the Securities and Exchange Board of India (SEBI) that prohibited them from buying or selling any securities directly or indirectly until further notice. SEBI had conducted an examination of the trading activities of two partnership firms, Capital One Partners and Tesora Capital, in the scrip of Infosys Limited and had made a prima facie observation that the appellant was in possession of unpublished price-sensitive information (UPSI) and was, therefore, an insider under Regulation 2(1)(g) of the Prohibition of Insider Trading Regulations. The tribunal allowed the appeal and emphasized that the burden of proof is always on the prosecution (in this case, SEBI) to prove that the appellant had access to the UPSI.

It noted that Regulation 3(5) of the Prohibition of Insider Trading Regulations, 2015 requires all listed companies to maintain a database of persons with whom UPSI has been exchanged, but the appellant's name was not included in this database. The tribunal also pointed out that around 600 employees of Infosys were classified as designated persons, but this did not necessarily mean that they possessed UPSI. Additionally, the tribunal found that the telephone conversation in question did not reveal the transfer of UPSI. Finally, the tribunal ruled that it was far-fetched and unjustified to continue the interim order based on the prima facie suspicion or preponderance of probability that the appellant had access to UPSI.

5. V. Shankar v. Securities and Exchange Board of India, Appeal No. 283 of 2022.

In this case, the company secretary of Deccan Chronicle Holding Limited was absolved by the SAT, Mumbai, from the liability imposed by the Adjudicating Officer of SEBI on DCHL for misleading financial statements and information given by the DCHL and alleged violation of Sections 68 and 77A of the Companies Act, 1956. The issue was whether the CS bears the duty of ascertaining the particulars of the financial statements and disclosures before affixing his signature or whether he performs ministerial acts once the board has made the substantive decision. SAT noted that just because a CS is an 'officer in default' as per Section 5 of the 1956 Act, he will not be liable under Sections 68 and 77A. It also held that as per SEBI (Buyback of Securities) Regulations, 1998, which necessitates a company to nominate a compliance officer for compliance and redressal of grievances, the CS of DCHL acted as a compliance office wherein his role was only confined to the redressal of investor grievances.

6. AXIS Bank v SEBI Appeal No.140 of 2021

SEBI fined Axis Bank Ltd 5 lakh for breaching the regulator's Merchant Bankers (MB) Regulations while managing certain public debt offerings. The complaint concerns the period from 2016 to 2019, during which the private bank handled debt difficulties for 22 entities. According to SEBI, Axis Bank breached Section 27 of MB rules. In its submission to the regulator, Axis Bank said that during an internal audit of its debt capital markets department, the non-reporting of securities acquisitions in nine debt issuances was uncovered, and the bank immediately notified it to SEBI. It further stated that no investor suffered any loss or prejudice as a result of its unintentional omission. The market regulator stated in its ruling that it cannot overlook the fact that the bank, as a registered market intermediary, has failed to meet its obligations under the MB Regulations for three years in a row.

7. Seema Agarwal vs Sebi on 13 May 2022 (Appeal No. 191 of 2022)

The appellants appealed against various orders issued by the Securities and Exchange Board of India (SEBI) imposing penalty under Section 15HA of SEBI Act, 1992 for violating Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The tribunal dismissed the appeal and held that the precision of order placement in the alleged execution by the appellants indicates their common intention to execute reversal trades at a predetermined price and a significant price difference between the selling price and the buy price within minutes indicates that the impugned transactions were intended to manipulate a desired loss or profit making such transactions violative of the Regulations. The bench also observed that SEBI need to come out with a fresh scheme under Clause 26 of the Settlement Regulations, 2018, aiming towards lesser penalty, including that of under Section 15HA of the SEBI Act, to attract the notices for proceeding settlement for the alleged defaults that can clear the backlog of these pending matters before various Adjudicating Officers.

1.SEBI Collective Investment Scheme (Amendment) Regulations, 2022

With this amendment, a numerical limit is set for the first time, stating that no single investor shall own more than 25% of the assets under the management of the scheme. Additionally, each CIS will have a minimum subscription value of 20 crores and a minimum of 20 investors. These amendments will help regulate the conduct of investors in the scheme and set a standard. Another amendment is that the management committee of these schemes will have a maximum shareholding of 10 per cent to ensure that no conflict of interest arises between investors and the management committee. Overall, these amendments will give the scheme a more formal structure and ensure peaceful co-existence between all the interested parties.

2. SEBI (Settlement Proceedings) (Amendment) Regulations, 2022

An amendment to the 2018 regulations was made to incorporate the dynamic nature of the securities market. Regulation 4(2), which provided an exception for the delay in filing an application within 60 days from the date of service of notice, was omitted. Clause (j) was added to Regulation 9, dealing with settlement terms, including restriction and/or prohibition from accessing or dealing with securities for a specific period. The amendment increases the time limit from 10 to 15 working days for the applicant to submit updated settlement conditions. Additionally, the Table under Chapter III specifying the mathematical basis for calculating the settlement amount was amended to reduce the value of the Proceeding Conversion Factor (PCF) to 0.40 and the base amount for each unit of an alleged default or joint liability to Rs. 10 lakhs.

3. SEBI (Custodian) (Amendment) Regulations, 2022

This amendment deals with providing custodial services with respect to silver and silver-related instruments and treating "silver or silver-related instruments" at par with gold. It allows applicants to be considered for a grant of a certificate even for providing custodial services in respect of silver or silver-related instruments. It also allows for the Board to grant a certificate in Form B to the applicant on receipt of the registration fee for silver or silver-related instruments, and custodial services are also extended to the same with prior Board approval. Additionally, the amendment replaces the phrase "instruments of a mutual fund" with "held by a mutual fund."

4.SEBI (Portfolio Managers) (Amendment) Regulations, 2022

SEBI, in its notification dated August 22, 2022, amended the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020. The amendments have been brought to regulate the investments made by the portfolio managers of their clients in the securities of their related parties and their associates. A new clause was added, introducing the concept of "related parties" (pa) after clause 2(1)(p). According to the regulations, related parties are those who have pre-existing relationships. Previously, if portfolio managers wanted to invest in related parties or associates, they only had to notify clients, however, SEBI has now made it mandatory for them to obtain prior consent. Additionally, clauses 22 and 24 were amended and overall, the amendment limits discretionary and non-discretionary portfolio managers' investments in securities of related parties or associates, which inherently involve a conflict of interest for portfolio managers. This is to guarantee that clients are not exposed to more risks than they can handle in such transactions.

5. SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2022

Vide this amendment, the following changes have been made to the regulation: In Schedule II, the paragraph regarding fees for

privately placed infrastructure investment trusts (InvITs) has been modified. The new rule stipulates that for initial offers and rights issues, InvITs must pay non-refundable fees of 0.1% and 0.05%, respectively, of the total issue size, including any green shoe option, at the time of filing their draft placement memorandum or letter of offer with the Board. Additionally, the amendments made on November 09, 2022, restrict the private placement of units of unlisted InvITs and authorize the Board to grant exemptions to InvITs that have issued units for the purpose of facilitating listing on a recognized stock exchange. Another noteworthy amendment is the omission of Sub-Regulation (6) of Regulation 17, which stated that after delisting of its units, the InvIT must surrender its certificate of registration to the Board and shall no longer undertake the activity of an InvIT.

6. SEBI (Mutual Funds) (Amendment) Regulations, 2022

Among the new changes introduced by SEBI through this amendment include the exclusion of sponsors who invest on behalf of beneficiaries of insurance policies in various companies from the definition of Associate as defined under sub-clause (iii) of clause (c) of Regulation 02. The new rules came into effect on September 3, 2022. The definition of associate previously included a person who, directly or indirectly, by themselves or in combination with relatives, exercises control over the Asset Management Company or the trustee, among others. A mutual fund pools various assets from shareholders to invest in securities like stocks, bonds, etc.

SEBI further amended its regulations regarding the transfer of dividends and redemption proceeds for mutual fund and asset management companies. These companies are now required to transfer these payments to unitholders within a specified period of time as per SEBI's norms, and if they fil do so, they may be liable to pay interest to the unitholders and face further action. Physical despatch of these payments is only allowed in exceptional circumstances, and companies must maintain records and provide reasons for such instances. These updated regulations will likely have a positive impact for unitholders, who will receive their payments more promptly, which can be beneficial for those who depend on these payments for their financial needs.

Additionally, the requirement to pay interest provides an additional incentive for companies to meet the transfer deadline. The requirement to maintain records and provide reasons for physical dispatch in exceptional circumstances will increase transparency and accountability for these companies.

7. SEBI (Intermediaries) (Amendment) Regulations, 2022

The SEBI (Intermediaries)(Amendment) Regulations, 2022 were issued on August 1, 2022, which amended the SEBI (Intermediaries)(Amendment) Regulations, 2008. The term "designated member" was replaced with "competent authority". According to Regulation 22, Clause (c), "competent authority" means a Whole Time Member or Officer of the Board, not below the rank of a Chief General Manager, as may be designated for the purpose by the Board.

8. SEBI (Issue and Listing of Non-Convertible Securities) Amendment) Regulations, 2022

Pursuant to this amendment, SEBI requires that both the issuer and lead manager ensure that secured debt securities are fully secured or more so, as outlined in the offer document and/or Debenture Trust Deed. This security must be sufficient to pay off the principal amount and interest on the debt securities at all times. Additionally, the debenture trustee must conduct due diligence and provide a certificate to the Board and stock exchange(s) prior to the public release of the debt securities. The format for this certificate is specified in Schedule IV for secured debt securities and Schedule IVA for unsecured debt securities.

9. SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2022

SEBI on November 11th, 2022 notified an important amendment in the area of non-convertible securities. SEBI has drafted changes to the online bond platform

Any person running or providing an online bond platform is referred to as an "online bond platform provider," and any electronic system other than a recognized stock exchange or an electronic book provider platform is referred to as an "online bond platform," where debt securities are traded. SEBI has decreed that under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992, no person shall serve as a supplier of an online bond platform without a certificate of registration as a stock broker from the Board. Those who were operating in the online bond platform before this amendment came have been given a period of 3 months to continue without a certificate, however, after that period, they will need to possess one.
This amendment has been initiated by SEBI with the clear intention of formalizing the sector of online bond platform and ensuring that those trading in it are properly licensed. The impact of this amendment will be that illegal or unauthorized online bond trading will be rooted out and offenders who do such illegal trading can be easily found out and removed from the system, making it more efficient and formalized. In the long-term, the number of offenses and fraud in the online bond platform should come down drastically, provided that enforcement agencies strictly adhere to this amendment.

10. SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2022

SEBI on November 11th, 2022, notified an amendment to Real Estate Investment Trusts (REITs) regulations, reducing the stake that sponsors and sponsor groups can hold in REITs from 25% to 15%. The amendment to regulation 11(3) of the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, limits the influence and power of sponsor groups in REITs, ensuring their powers and stake are limited and under the scrutiny of trustees, unit holders, and the REIT. The amendment also holds sponsors and sponsor groups accountable for any actions by the REIT, trustees, and unit holders. This amendment aims to prevent power centers from forming and ensure collective responsibility and power in the affairs of REITs, with its 15 percent cap.

11. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2022

The Securities and Exchange Board of India (SEBI) has issued amendments to regulations regarding the disinvestment of public sector undertakings by the Central or State Government.These amendments specify that the price determined for disinvestment shall not apply in the case of a change in control of the public sector undertaking. The regulation has been amended to allow for the payment of cash or the provision of an unconditional and irrevocable bank guarantee issued by a scheduled commercial bank with an "AAA" rating from a credit rating agency registered with the Board, subject to the approval of the Reserve Bank of India, as consideration for an open offer. This amendment may lead to increased private sector involvement in the disinvestment process of public sector undertakings and potentially more competition for these assets. It may also lead to increased foreign investment in these undertakings, as foreign investors may be more willing to participate in the disinvestment process if they have more options for payment.

12. SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022

The Securities and Exchange Board of India (SEBI) has issued the SEBI (Payment of Fees) (Amendment) Regulations, 2022 to amend the SEBI (Foreign Portfolio Investors) Regulations, 2019 and the SEBI (Foreign Venture Capital Investors) Regulations, 2000. The amendments include: In the SEBI (Foreign Portfolio Investors) Regulations, 2019, in Part A of the Second Schedule, clause 1, the fee for application and registration has been changed from "US $3000 and US $300" to "US $2500 and US $250". In Part C of the Second Schedule, clause 1, the fee for registration has been changed from "US $1000" to "US $800". In the SEBI (Foreign Venture Capital Investors) Regulations, 2000, in the Second Schedule, Part A has been replaced with "The application fee is (US$) 2,100 and the registration fee is (US$) 8,500".

13. SEBI (Foreign Venture Capital Investor) (Amendment) Regulations, 2022

The Securities and Exchange Board of India (SEBI) has amended the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000, which came into effect on November 1, 2022. The amendment changes the application and registration fee in the Second Schedule of the Regulation, Part A. The amendment was made through the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2022, and replaces the previous application fee of (US$) 2,500 and registration fee of (US$) 10,000 with new fees of (US$) 2,100 for the application fee and (US$) 8,500 for the registration fee.

14. SEBI (Procedure for Board Meetings) (Amendment) Regulations, 2022

The Securities and Exchange Board of India (SEBI) has amended regulations to allow for members to participate in board meetings through audio-visual means, including video conferencing. A new Schedule-I has been added to the regulations, which lays out the procedure for members who wish to participate in this way. The amendments state that these members must communicate their intent to do so in advance to the Chairperson or Secretary of the Board, and their attendance will be recorded as "Participated through video conferencing" in the attendance register. This is deemed to have been signed by the member. These amendments make board meetings more accessible for eligible participants and facilitate participation through various audio-visual means. The SEBI is also required to make necessary arrangements for these meetings upon receipt of an intimation from the member.

15. SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022

The amendment provides that shareholder approval is required for the appointment of a person to the board of directors or as a manager, either at the next general meeting or within three months of the appointment. A person who has been previously rejected by shareholders for appointment or reappointment can only be appointed or reappointed with prior shareholder approval. Justification for the appointment must be provided by the nomination and remuneration committee and the board of directors. A report on the use of proceeds from a public or rights issue must be presented to the audit committee on a quarterly basis by a monitoring agency. Issuing duplicate or new certificates in cases of lost or worn-out certificates in dematerialized form is allowed to improve the ease and safety of transactions for investors. Securities transfers will only be processed if the securities are held in dematerialized form with a depository, and transmission or transposition of securities must be done in dematerialized form.

16. SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022

SEBI, through this notification, has removed regulation 17(1B), which required the separation of the role of the Chairperson and MD/CEO for listed entities. This provision will no longer be mandatory and will be optional for companies to follow.

17. SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022

Vide this amendment, SEBI has made certain changes to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The changes align the framework and terminology related to "Security Cover" by replacing the term "Asset Cover" with "Security Cover" in regulation 54 of the regulations. Additionally, it is specified that maintaining "Security Cover" is sufficient to pay off both the principal and interest on it in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

18. SEBI (Listing Obligations And Disclosure Requirements) (Fourth Amendment) Regulations, 2022

The Securities and Exchange Board of India (SEBI) has issued an amendment to its regulations regarding the transfer and transmission of securities. The amendment includes the addition of transmission of securities to Schedule VII, which previously dealt solely with the transfer of securities.

The documentation requirements for the transmission of securities held in a single name without nomination have also been specified.In cases where the value of securities is up to rupees five lakhs per listed entity in physical mode or up to rupees fifteen lakhs per beneficial owner in dematerialized mode, legal heirs/claimants are required to submit certain specified documents. These changes aim to provide a clear and comprehensive framework for the transfer and transmission of securities.

19. SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022

These amendments establish a framework for a social stock exchange, which mainly sets the criteria for organizations to raise funds and the criteria for entities to be classified as "Not-for-Profit Organizations" and "For-Profit Social Enterprises." Additionally, it establishes the ways in which social enterprises can raise funds.

20. SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022

Pursuant to the notification dated November 15, 2022, the Securities and Exchange Board of India (SEBI) has amended the Alternative Investment Funds Regulations to include a new provision in Article 25(2A) for the appointment, re-appointment or removal of an independent director of a listed entity, subject to the approval of shareholders by way of a special resolution. Additionally, through this amendment, Regulation 52(4) has been added, requiring listed entities to disclose certain financial ratios, such as the debt-equity ratio, debt service coverage ratio, and interest service coverage ratio, along with their quarterly and annual financial results.

21. SEBI (Listing Obligations And Disclosure Requirements) (Seventh Amendment) Regulations, 2022

In the Chapter XII of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations an amendment has been made to the power to relax strict enforcement of the regulations. Section 102 (1) states that the Board may relax strict enforcement in the interest of investors and securities market, provided certain requirements are met.

The amendment adds a new sub-regulation that allows the Board to relax the strict enforcement of any of the requirements of these regulations, if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity. The application must be accompanied by a non-refundable fee of rupees one lakh, payable by way of direct credit in the bank account through NEFT/RTGS/IMPS, or by demand draft in favor of the Board, payable in Mumbai.

23. SEBI (Alternative Investment Funds) Regulations, 2012, Amendment Regulations 2022

Vide the notification dated 24th January 2022, SEBI has amended the Alternative Investment Funds) Regulations 2012, among other things, establishes a framework for Special Situation Funds ("SSFs") as a new subcategory of Category I AI. SSFs will only invest in "special situation assets" (stressed assets, loans, and NPAs). Primarily the act eliminates the requirement to file a placement memorandum through a merchant banker for large value files with accredited investors. The Special Situation Assets now include stressed loans available for acquisition under RBI guidelines, security receipts issued by ARCs, securities of investee companies, and any other asset as prescribed by SEBI from time to time. Furthermore, there are conditions associated with SFFs. The amendment, which allows for an alternative mode of investment in stressed companies in addition to the traditional ARC route, appears to be a consistent effort by regulators to address the issue of persistently stressed loans plaguing the banking system.

24. SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2022

This notification amends clause (d) of regulation 15(1) regarding general investment conditions. It now states that: 'Category III Alternative Investment Funds shall not invest more than ten percent of their investable funds

in an Investee Company, either directly or through investment in units of other Alternative Investment Funds. However, large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty percent of their investable funds in an Investee Company, either directly or through investment in units of other Alternative Investment Funds. However, large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty percent of their investable funds in an Investee he scheme, subject to the conditions specified by the Board from time to time.'

25. Securities and Exchange Board of India (Alternative Investment Funds) Third Amendment) Regulations, 2022

SEBI inserts a definition of Social Impact Fund through this amendment. A Social Impact Fund is defined as an Alternative Investment Fund that primarily invests in securities, units, or partnership interests of social ventures or securities of social enterprises and which satisfies the social performance norms laid down by the fund.

26. Securities and Exchange Board of India (Alternative Investment Funds) (Fourth Amendment) Regulations, 2022

Vide circular dated November 15, 2022, the SEBI notified (Alternative Investment Funds) (Fourth Amendment) Regulations 2022 has mandated the manager/board/partners of Alternative Investment Funds to ensure that the assets and liabilities of each scheme of AIFs are segregated and ring-fenced from other schemes of the AIFs. The purpose of the amendment is to protect the investors in one AIF scheme from getting affected by the possibility of losses in another AIF scheme. Thus, the amendment seeks to promote the confidence of limited partners in investing AIFs without having a fear of their investment being wiped out due to the loss suffered by private equity or venture capital fund in another scheme.

27. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022

The amendment inter alia provides that the issuer place a copy of the certificate of a practising company secretary before the shareholder's general meeting certifying that the issue is made per SEBI (ICDR) Regulations, 2018.

The issuer is to ensure that the amount for general corporate purposes and such objects for which acquisition or investment target is not identified does not exceed 35% of the amount being raised by the issuer. Additional conditions for an offer for sale for issues under regulation 6(2) were also inserted through the amendment. The amendment provides for Crediting Rating Agencies (CRAs) registered with SEBI to act as monitoring agencies in place of Scheduled Commercial Banks (SCBs) and Public Financial Institutions (PFI). It continues monitoring till 100% utilization of the issue proceeds instead of the earlier 95%. The amendment is an attempt to balance the interests of the issuer and investor.

28. SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022

Pursuant to this notification, it is provided that the amendments relating to regulations 32(3A), 49, 129, 145, clause (10) and clause (15) of Part A of Schedule XIII and Schedule XIV carried out by the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 shall come into force in the following manner: (a) for public issues of a size less than Rs. 10,000 crores and opening on or after April 1, 2022 (b) for public issues of a size equal to or more than Rs. 10,000 crores and opening on or after April 1, 2022.

29. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022

Pursuant to this amendment, a specific chapter, Chapter X-A, has been inserted specifically regarding 'Social Stock Exchange.' The provisions of this Chapter X-A are applicable to: (a) a Not-for-Profit Organization seeking to only be registered with a Social Stock Exchange; (b) a Not-for-Profit Organization seeking to be registered and raise funds through a Social Stock Exchange; (c) a For-Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

30. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2022

The amendments inserted Chapter II- A in the regulations facilitating public companies to file their draft offer document on a confidential basis where before making an initial public offer, the issuer may file three copies of the draft offer document with the Securities and Exchange Board of India along with fees as specified through the lead manager(s) and with the stock exchange(s) proposing the specified securities to be listed along with specified documents. The pre-filed document shall not be available in the public domain. The amendments will provide increased transparency to the investors by mandating disclosure of key performance indicators and filing of offer documents with SEBI head office and help companies keep their offer documents private until they firm up their initial public offer plan. The company will then have to file an updated public document of a draft red herring prospectus.

31. Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Amendment Regulations 2022

The Securities and Exchange Board of India (SEBI) amended the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 on August 12th, 2022. The amendment includes changes to Regulation 22F, which deals with dispute resolution mechanisms and the constitution of the governing board of a recognized limited-purpose clearing corporation under Regulation 22C. Additionally, a new regulation, 22G, has been added to address general provisions. In cases where there are different compliance requirements specified by these regulations and the Reserve Bank of India's directions, the compliance requirements will be made applicable to the limited-purpose clearing corporation after consultation with the Reserve Bank of India. The amendment also requires clearing corporations to develop and maintain a framework for the orderly winding down of their essential operations and services in both voluntary and involuntary instances, as per Regulation 44A.

32. SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022

On November 25, 2022, the Securities and Exchange Board of India (SEBI) issued a circular to amend the Prohibition of Insider Trading (Amendment) Regulations, 2015. The amendment brings mutual funds under the purview of insider trading rules by introducing Chapter IIA. As per the amendment, no insider is allowed to communicate, provide, or allow access to any unpublished price-sensitive information to any person, including other insiders, unless it is for legitimate purposes, the performance of duties, or the discharge of legal obligations. Mutual funds are also required to maintain a structured database containing the nature of the unpublished price-sensitive information and the names of those who have shared it and with whom it was shared. Additionally, all provisions under Chapters IIIA and V will also apply to units of mutual funds. This amendment aims to provide clarity on the requirement of intent in cases of insider trading activities in mutual funds and is a positive change as it settles the existing debatable position.

1.The US SEC's successful action against LBRY

The Securities and Exchange Commission (SEC) took action against LBRY Inc. for selling unregistered securities, which is a violation of securities law. LBRY Inc. created a decentralized file-sharing and payment network using blockchain and BitTorrent technology called LBRY. The company also maintains a cryptocurrency called "LBRY credits" or "LBC." Creators on the LBRY platform can earn LBC by charging fees or receiving tips from viewers for their content. The SEC believed that LBRY violated Section 5 of the Securities Act of 1993, which requires the registration of all securities that are issued and sold. The SEC requested injunctive relief, disgorgement, and civil penalties as part of the enforcement action. While LBRY admitted to not being registered, it argued that it was not a security and therefore did not need to be registered. However, the US District Court applied the Howey Test, which states that any investment made with the intention of profiting from the promoter's efforts and under a common enterprise is considered a security. The court ruled that LBRY offered and sold LBC as a security and allowed the enforcement action to proceed. This case is an example of the increasing regulation of cryptocurrencies to ensure compliance with the law."

2.Canada and Cryptocurrency

In an effort to improve the stability and security of the financial industry, Canada is conducting a legislative review of the financial sector to examine the digitalization of money, including the use of cryptocurrencies such as Bitcoin. Bitcoin allows for online payments to be made directly from one party to another without going through a financial institution, which can create vulnerabilities in the financial system. The Trudeau government has therefore taken a cautious approach to Bitcoin and other cryptocurrencies. In February 2022, the Emergency Economic Measures Order extended Canada's anti-money laundering and anti-terrorist financing rules to include crowdfunding platforms and the payment processors they use. The order also directed Canadian banks, property and casualty insurance companies, and other financial service providers to temporarily stop providing financial services if they suspect that an account is being used to support illegal blockades.

In addition, the Canadian Securities Administrators umbrella group recently announced that it will take a stricter approach to pre-registration undertakings for crypto asset trading platforms operating in Canada without proper registration. The CSA is also continuing to monitor and assess the role of stablecoins in Canadian capital markets and has stated that stablecoins or stablecoin arrangements may be considered securities and/or derivatives.

3. The Adani Takeover and SEBI

The Securities and Exchange Board of India (SEBI) played a significant role in the Adani Group's takeover of NDTV. In 2019, SEBI barred NDTV promoters Prannoy Roy and Radhika Roy from accessing the securities market for two years due to insider trading, which is the act of trading company securities while possessing inside knowledge of company information. In November 2022, SEBI approved the Adani Group's open offer to acquire an additional 26% of shares in NDTV. An open offer is an invitation from the acquirer to the target company's shareholders to tender their shares at a specific price. According to SEBI, an open offer can only be made if the prospective buyer already holds more than 25% of the company's stock. As the Adani Group already holds more than 25% of NDTV's stock, it was able to proceed with the acquisition, potentially giving it complete control of NDTV. The Adani Group had pledged in a letter to SEBI to proceed with the open offer regardless of any share transfers among the remaining shareholders. As a result of SEBI's approval, the Adani Group now has almost total control over NDTV, despite already being its largest stakeholder. SEBI took nearly a month to review the validity of the open offer before approving it.

In November, the Adani Group took over NDTV, and the promoters Prannoy Roy and Radhika Roy resigned, marking a new chapter in the company's history.

4. Elon Musk's Twitter Buyout

In October 2022, Elon Musk completed the takeover of Twitter in a $44 billion deal. Mr. Musk, who considers himself a "free speech absolutist," had criticized Twitter's leadership and moderation practices. Since the buyout, Musk has conducted significant layoffs to remove what he sees as unnecessary staff and implement his vision for radical changes to the company's operations and management. To finance the transaction, Musk promised to contribute $46.5 billion in stock and debt financing, which covered the $44 billion purchase price and related closing costs. He secured $13 billion in loans from banks and a $33.5 billion equity commitment, including his $4 billion 9.6% stake in Twitter and $7.1 billion from investors such as Oracle co-founder Larry Ellison and Saudi Prince Alwaleed bin Talal. Thus, Musk completed one of the largest deals in recent history through a combination of commitments, his own funds, and his previous purchases of Twitter shares. While the sale has caused other issues, including employee layoffs and lawsuits, Musk has so far demonstrated a willingness to confront these challenges as he has with other problems.

5. IOSCO's Crypto-Asset Roadmap for 2022-23

The International Organization of Securities Commissions published its Crypto Asset Roadmap for the year 2022-23 on 7th July, 2022 prescribing regulatory policy agenda and work program for the sector over the next 12 to 24 months. IOSCO's Broad level Fintech Taskforce has been given the task of developing, overseeing, delivering and implementing IOSCO's regulatory agenda for Fintech and crypto-assets. Two workstreams on Crypto and Digital Assets and Decentralized Finance (DeFi) has been established by the FTF to compile a report with policy recommendations by the end of 2023. The roadmap aims to introduce policies that would help regulators to address the considerable risks which are a consequence of the flourishing, complex crypto-asset ecosystem without compromising benefits of innovation.

6. Revival of Bonds after the Drawdown

The current bond yields have been pushed back towards cycle-neutral forecasts due to higher inflation and contentious central banks. According to the 2023 Long-Term Capital Market Assumptions published by J.P. Morgan Asset Management, bonds are expected to regain their stability as a good hedge during times of market stress since they are providing income once again. Credit is becoming popular again as investors benefit from the normalization of underlying yields and spreads that compensate for risks fairly.

7. Foreign Investment Controls in the Post Covid Era

At the 37th International Financial Law Conference in Venice, 2022, the Banking Law Committee and the Securities Law Committee held a joint session to discuss two fundamental areas that may influence deal flows and their financing due to the increasing tendency towards national government intervention for national security purposes: (i) sanction policies when the protection of national security is based on a legitimate concern, such as sanctions against states that engage in or support terrorism or war, and (ii) the growth of investment controls in Europe. It was concluded that reviewing agencies now have greater discretionary power in reviewing transactions, which has renewed protectionism in state procurement policies. Obstacles in the export market may result in greater capital investment requirements to overcome restrictions, and therefore it is necessary to periodically reexamine the regulatory framework to achieve re-liberalization."

8. Gamification of Investor Behaviour

On November 17, 2022, the Ontario Securities Commission (OSC) published a report titled "Digital Engagement Practices in

Retail Investing: Gamification and Other Behavioural Techniques," which discusses the effects of "gamification" and other techniques used by digital investment platforms on investor behavior. The OSC surveyed techniques such as leaderboards, gamification, rewards, feedback, and social interaction, and found that while they may have positive potential, they could also lead to habit-forming behavior and increased risk-taking by investors. The report suggests that regulators consider the consequences of these techniques and possible responses in the future.

9. SEC vs Thor

The Securities and Exchange Commission (SEC) has taken on Thor Technologies, Inc. and its creators over the sale of unregistered securities through an initial coin offering (ICO). Thor Technologies has been offering and selling Thor crypto coins since 2018 to raise funds and improve the company's market position. Without the necessary SEC licenses and authorizations, 1,600 investors contributed $2.6 million in cryptocurrencies and cash to the company. The SEC has accused Thor Technologies of conducting an unregistered ICO in 2018 and illegally raising funds. The agency has filed a case in the US District Court in San Francisco seeking an injunction against the company and the return of all funds raised through this illegal activity. The co-founder of Thor Technologies, Matthew Moravec, is reportedly agreeing to these terms. This is the latest action taken by the SEC against illegal crypto operators. Such unregistered and illegal operators often prey on investors looking for reliable investments, making huge profits in the process. The SEC is working to stop this unlawful activity.

10. Key Publications and Resources in Support of Market Transparency and Development

The Eighth Annual General Meeting of the International Capital Market Association (ICMA) "Principles" saw the publication of additional guidance to support market transparency and development, including key announcements related to green securitization, sustainability-linked bonds, and climate transition finance. A new Climate Transition Finance (CTF) Methodologies registry was also established, consisting of tools to help issuers, investors, or financial intermediaries substantiate their emission reduction trajectories as based on science.

In addition, revised guidelines for external reviews were issued in accordance with the existing Climate Transition Finance Handbook.These are expected to shape future practices for the sustainable bond market. The ICMA Principles include the Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines, and Sustainability-Linked Bond Principles.

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