

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Securities and Investment Law
Semester-VII (Batch: 2016-21)

End Semester Examination: October-2019

Date: 22nd October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Attempt any five questions

Marks

- Q.1 Ms. Pacific is a director in three companies, namely – ‘Excellent’, ‘Translucent’ and ‘Transparent’. ‘Excellent’ placed 25 different buy orders for the purchase of 10 lakh shares of ‘SRK Bank Ltd.’ at Rs. 70/- on October 01, 2019 on the National Stock Exchange (NSE). The orders are placed within a span of less than 10 minutes. ‘MNOP’ (a broker), sold the shares to ‘Excellent’ from its propriety account on ‘T+2’ basis. Within less than five minutes of above-mentioned buy orders, ‘Transparent’ came out with sell orders for 10.5 lakh shares of ‘SRK Bank Ltd.’ through a cross deal to ‘MNOP’ in its propriety account at Rs. 69/- as a spot deal. ‘MNOP’ in the process made a profit of Re. 1/- per share within a few minutes. (10)

During the course of investigation, Securities and Exchange Board of India (SEBI) found the transaction mentioned above was not a solitary instance. Instead, a very large number of transactions were executed in a similar fashion not only between ‘Excellent’ and ‘Transparent’ but also between the other entities of Ms. Pacific on both NSE and Bombay Stock Exchange (BSE).

Accordingly, SEBI issued show cause notice to them. ‘Excellent’, ‘Translucent’ and ‘Transparent’ filed identical replies. They sought extension of time since the details of the above-mentioned transactions were in the knowledge of Ms. Pacific who was not available to give details (being in judicial custody in some other case). All these replies were signed by Ms. Pacific. ‘Excellent’, ‘Translucent’ and ‘Transparent’ had different registered offices but same corporate office.

SEBI determined these above-mentioned transactions to be fraudulent and consequently debarred Ms. Pacific from accessing Securities Market for a period of fifteen years. Ms. Pacific has filed appeal against SEBI order in Securities Appellate Tribunal (SAT). Frame the relevant issues and accordingly decide the appeal.

- Q.2 Ms. Aznpla is a renowned social worker. Mr. Zxoshu (her husband) is an Astronaut with a leading company. Both of them are passionate about their work and have hectic work schedules. Ms. Pidia is the Managing Director of Tranquillity Ltd. (company engaged in the business of developing genetically modified crops). Ms. Aznpla is family friend of (10)

Ms. Pidia. Ms. Pidia formed a company Serenity Ltd. (engaged in the trading of securities) and requested both Ms. Aznpla and Mr. Zxoshu to become its directors. They agreed on the condition that they will not take any remuneration for their positions. Peace Ltd. was a wholly owned subsidiary of Tranquillity Ltd. Ms. Aznpla came to learn about the loss of ₹ 80 crore in Peace Ltd. for the year ending March 2019. She along with Serenity Ltd. sold 10 Lakh shares of Tranquillity Ltd. at the price of ₹ 400. On 30 April 2019, financial result of Peace Ltd. were published. As a result, price of shares of Tranquillity Ltd. came down to ₹ 250.

SEBI initiated investigation and as part thereof, recorded following statements in response to the questions posed on 10 June 2019 –

“Q. Have you placed any orders? If yes, how were the orders placed?”

A. Yes. I have placed orders for purchase and sale of shares of Tranquillity Ltd. The orders were placed over telephone.

Q. Did any other person, ever, placed orders? If yes, please give the name of the persons?”

A. As far as I remember no other person except I gave any order for the transaction.

Q. Who was looking after the day-to-day management and operations of Tranquillity Ltd.?”

A. Tranquillity Ltd. till date had only dealt with share transactions. As far as placing of orders is concerned, I was the one who looks into it. There were no other operations apart from share transactions in this company.

Q. Who was authorized to sign cheques, documents, consent letters for placement of orders with brokers, acknowledgements for contract notes, vouchers in banks, consent letters given to brokers for placement for orders?”

A. The authorized signatories for the accounts of Tranquillity Ltd. in banks were myself and Mr. Zxoshu, the other director. Majority of the cheques were signed by me.

Q. Who was looking after the deliveries to be received or given for share transactions of Tranquillity Ltd.?”

A. As far as I remember, I used to sign the delivery instruction form blank and keep it with the accountant, who used to fill and forward it to the broker when asked for.

Q. Whether the concerned transaction was done on any stock exchange or it was an off-market deal?”

A. As far as I remember, the transaction was not done on any stock exchange. It was an off-market transaction.

Q. How do you decide to purchase or sale certain share? What are the parameters used by you in selecting scrips? What analysis is done before making any purchase or sell decision for any scrip?”

A. There are plenty of reading material, plenty of material in the news items like CNBC, Moneymatters, plenty of magazines, plenty of research reports carried out by big finance firms like Morgan Stanley, CSFB etc of very good repute supplemented by tips circulating in the market on a day-to-day basis and information from friends. Analysing all this helps one to conclude a decision of sell or purchase in a particular share whether right or wrong.”

After completing the investigation, SEBI imposed the penalty on Ms. Aznpla for insider trading. She challenged the order of SEBI in SAT. She contended –

- She never believed in market economy and has always regarded Market as a greatest evil for the social welfare in the society.
- She is a passionate and busy social worker committed to the social cause. She has no time to access securities market.

- She does not have even the elementary understanding of the Securities Market and accordingly does not understand the complexities of securities market.

Frame the relevant issues and decide the appeal.

Q.3 "OFCDs issued by Saharas undoubtedly were unsecured debentures by name and nature (10)

... Section 2(h) of the SCR Act gives emphasis to the words 'other marketable securities of a like nature', which gives a clear indication of the marketability of the securities and gives an expansive meaning to the word securities. Any security which is capable of being freely transferrable is marketable ... OFCDs issued have the characteristics of shares and debentures and fall within the definition of Section 2(h) of SCR Act, which continue to remain debentures till they are converted ... Even if OFCDs are hybrid securities, as defined in Section 2(19A) of the Companies Act, they shall remain within the purview of the definition of 'securities' in Section 2(h) of SCR Act ... Further, it may be noted that Saharas have treated OFCDs only as debentures in the IM, RHP, Application forms and also in their balance sheet ... The terms 'Securities' defined in the Companies Act has the same meaning as defined in the SCR Act, which would also cover the species of 'hybrid' defined under Section 2(19A) of the Companies Act. Since the definition of 'securities' under Section 2(45AA) of the Companies Act includes 'hybrids', SEBI has jurisdiction over hybrids like OFCDs issued by Saharas, since the expression 'securities' has been specifically dealt with under Section 55A of the Companies Act ... SEBI was justified in directing refund of the amount with interest.' *(Extracted from the judgement of Supreme Court in the Sahara case)*

'Thereafter, what followed represent a long struggle for protection of investors. In this sense, Sahara case has tested core segments of Indian judicial system in the context of various provisions of Securities Law. The paramount objective of Securities Law being the protection of investor, the struggle continues.'

Analyse the above-mentioned observation as a student of securities law.

Q.4 'In the field of International Investment Law, multilateralism has not gone too far, (5+5=10)

leaving the space wide open for bilateralism. In the last few decades, our contemporary world has seen emergence of Bilateral Investment Treaties (BITs) as the 'single most important innovation in the domain of International Law for the governance of foreign investment'. BITs have proliferated across the world. Although the objective of BITs is to protect and promote foreign investment, the extent to which BITs have succeeded in achieving this objective is highly contentious. In spite of the two sharply divergent viewpoints in this regard, the legal regimes created by BITs are reality of our contemporary world. Nations continue to rely on them. Not only they rely, but they review them in order to minimise the adverse consequences that they have to face in the form of International investment arbitral awards.'

In the light of the above observation, discuss the following with precision –

- White industries case
- Salient features of Model Indian BIT'

Q.5 Answer the following: (2+5+3=10)

- State the essential conditions to determine whether a scheme is a Collective investment Schemes (CIS).
- Analyse the judicial approach in interpreting a scheme as CIS.
- State the stipulations relating to 'Trading Plan' under Regulation 5(2) SEBI (Prohibition of Insider Trading) Regulations, 2015.

Q.6 Explain the following terms:

(5x2=
10)

- (a) Circular trading
- (b) Front running
- (c) Most Favoured Nation (MFN) under International Investment Law
- (d) 'Unpublished Price Sensitive Information' under SEBI (Prohibition of Insider Trading) Regulations, 2015
- (e) Foreign Institutional Investors (FIIs)
