

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Securities and Investment Law

Semester-VII (Batch: 2017-22)

End Semester Online Examination: December 2020Date: 26th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- Answer all the questions.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- *Answers must be comprehensive and precise.*
- *Answers must be substantiated by relevant provisions, precedents, statistics, reports etc.*

- Q.1 DEF Ltd. is an investment company and is listed on a leading Stock Exchange in India. It holds 90% of its assets as investment in associated or group companies. As on 31 June 2020, it was holding 1,80,000 shares of MNO Ltd. (engaged in the business of diamond mining) comprising 15% of its total paid up equity capital.

Marks
(10)

Due to prevailing COVID 19 pandemic, businesses across the world have been facing unprecedented challenges and DEF Ltd. is no exception. Being in severe competitive pressure, expectations were that there will be losses in the company. Accordingly, Board of Directors (BOD) of DEF Ltd. was exploring various options as a strategy to stay globally competitive despite COVID 19. In such circumstances, BOD of DEF Ltd. convened its meeting on 20 July 2020 at 11:00 am and placed all such options for its consideration. Accordingly, many crucial decisions were taken by the BOD in the meeting. It decided to acquire diamond mining leases in a country in African continent through a special purpose vehicle that was registered in the concerned country. It was a joint venture of DEF Ltd. and MNO Ltd. The acquisition and development of mines would cost around Rs 95 million. Accordingly, DEF Ltd. needed funds for this purpose. Its BOD considered various options to raise the needed funds and eventually decided to divest a portion of its investment in MNO Ltd. Consequently, it decided to sell shares at appropriate time and further decided to park the funds raised thereby in short term avenues, if so needed. Further, contrary to the general expectations, CEO of DEF Ltd. informed the BOD that financial results indicate that the company has actually managed to earn good profits. The meeting was attended by all the Directors including Ms. Duzmpa who was a Non-Executive Director in the company.

The meeting continued for 3 hours. After nearly 30 minutes of the conclusion of the meeting, Ms. Duzmpa called Ms. Lcfti which lasted for 10 minutes. Being friends since childhood, they used to talk frequently. Ms. Lcfti and her husband Mr. Stnxu were both Psychiatrists by profession having flourishing professional practice which kept them thoroughly engaged day and night. Securities Market fascinated Mr. Stnxu since

childhood. However, due to his deep passion for treating people with mental illness, he could never get much knowledge about securities market and was more or less a novice in the market. He used to trade only infrequently and that too not with the motive of making any profit thereby but generally out of curiosity accompanied with interest.

Investigation revealed that Mr. Stnxu bought and sold shares of nearly 10 companies on 20 July 2020 during 3:00 pm to 3:25 pm which included buying 10,000 shares of DEF Ltd.

After fulfilling internal procedures, DEF Ltd. made the decisions public on 21 July 2020 at 11:00 am through a press release and also conveyed the same to the concerned stock exchange. However, the decision about divesting a portion of its investment in MNO Ltd. did not find mention therein. The price of shares of DEF Ltd. shot up from Rs. 1000 per share on 20 July 2020 to Rs. 2000 per share on 21 July 2020.

Mr. Stnxu bought and sold shares of 9 companies on 21 July 2020 during 2:00 to 2:30 pm. It included selling 10,000 shares of DEF Ltd. He ended making profits out of his dealings in shares of DEF Ltd.

The Securities and Exchange Board of India (SEBI) held Ms. Duzmpa, Ms. Lcfti and Mr. Stnxu guilty of violation of SEBI Act 1992 and SEBI (Prohibition of Insider Trading) Regulations 2015 and imposed penalty of Rs3,00,000, Rs2,00,000, and Rs 5,00,000 respectively on each of them.

They filed appeal challenging the decision of SEBI. Decide the appeal.

- Q.2 The Government of India has acted on its bitter experience vis-a-vis foreign investors regarding its Bilateral Investment Treaties (BITs). Accordingly, it published the draft text of a Model BIT in March 2015. After public consultation, it eventually adopted the Model BIT in 2016. While Indian Government seems convinced, concerns have been raised regarding various aspects of the Model Indian BIT. (10)

Nearly three years later, world finds itself grappling with COVID 19 pandemic of unprecedented proportions. It is having wide ranging impact on all aspects of human life and Investment law is no exception. António Guterres (Secretary-General of the United Nations) has expressed the concerns in the following words:

'Global flows of foreign direct investment (FDI) will be under severe pressure this year as a result of the COVID-19 pandemic. These vital resources are expected to fall sharply from 2019 levels of \$1.5 trillion, dropping well below the trough reached during the global financial crisis and undoing the already lacklustre growth in international investment over the past decade. Flows to developing countries will be hit especially hard, as export-oriented and commodity-linked investments are among the most seriously affected. The consequences could last well beyond the immediate impact on investment flows. Indeed, the crisis could be a catalyst for a process of structural

transformation of international production this decade, and an opportunity for increased sustainability, but this will depend on the ability to take advantage of the new industrial revolution and to overcome growing economic nationalism. Cooperation will be crucial; sustainable development depends on a global policy climate that remains conducive to cross-border investment.' (Preface to World Investment Report 2020)

World Investment Report (WIR) 2020 has further encapsulated the emerging situation in the following words:

'The pandemic will slow down the pace of treaty-making. To date, a number of negotiating rounds for bilateral investment treaties (BITs) and treaties with investment provisions (TIPs) have been cancelled or postponed due to the pandemic. This is in addition to the postponement of a number of high-level bilateral summits that typically address trade and investment agreements. It is likely that 2020 will register the lowest number of IIAs concluded since 1985... The pandemic and its mitigation measures are also likely to result in a reassessment by countries of the role of IIAs in national development. Indeed, IIAs can come into play in relation to the policy responses undertaken by governments to address the economic fallout of the pandemic as these measures also affect the operations of foreign investors. Although these measures are implemented for the protection of the public interest and to mitigate the negative impact of the pandemic on the economy, some of them could, depending on the way they are implemented, expose governments to arbitration proceedings initiated by foreign investors under IIAs and/or investor-State contracts... This highlights the need to safeguard sufficient regulatory space in IIAs to protect public health and to minimize the risk of investor-State dispute settlement (ISDS) proceedings, while protecting and promoting international investment for development.

On 6 May 2020, the Columbia Center on Sustainable Investment published a call signed by a number of leaders on human rights and sustainable development for an immediate and complete moratorium on all investor-State arbitration claims by foreign investors against governments using IIAs until the end of the pandemic, as well as a permanent restriction on all arbitration claims related to government measures targeting health, economic and social dimensions of the pandemic and its effects. The signatories also called on governments to agree on principles to ensure that future arbitration cases do not hinder countries' good faith recovery efforts and that any damages awarded in ISDS cases respect the dire financial situation facing governments following the pandemic.' (page 94-95 of WIR 2020)

(United Nations Conference on Trade and Development comes out with World Investment Report (WIR). WIR focuses on trends in foreign direct investment worldwide, at the regional and country levels and emerging measures to improve its contribution to development.)

As a student of Securities and Investment Law, specifically analyse the concerns regarding viability of Model Indian BIT 2016.

Further, on the basis of your analysis, opine (substantiated with clear reasons) if time has come for the Indian Government to revisit the Model Indian BIT 2016. If yes, what specific changes do you suggest? If no, state the reasons.

- Q.3 ABC Ltd. is engaged in the business of manufacturing mobile sets with paid up share capital of 50,00,00,000 equity shares of Rs. 1/- each. XYZ Ltd. is engaged in the business of manufacturing mobile spare parts with the paid-up equity share capital of Rs. 3,00,000 equity shares of Re. 1/- each. Both are profit making companies. (10)

SEBI conducted an investigation wherein it was noticed that Ms. Ntftee (CEO of ABC Ltd.) told a journalist from a leading national newspaper during the course of an interview published on 4 April 2020 that she is interested in taking over XYZ Ltd. Investigation also revealed the following particulars regarding shares of XYZ Ltd.

Date	Open price	High Price	Low Price	Close Price	Traded Quantity
31 March 2020	750	865	750	850	250000
1 April 2020	850	950	846	920	200000
2 April 2020	1040	1045	1037	1020	144644
6 April 2020	1035	1220	1030	1215	474050

During further investigation, Ms. Ntftee clarified that it was mere expression of her desire since it could lead to expansion and resultant growth of business of her company.

Since both companies were listed on a leading stock exchange in India, the latter sought explanation regarding the statement mentioned above. In response, ABC Ltd. clarified that it does not hold any shares in XYZ Ltd. and the statement was a mere expression of desire. Whereas XYZ Ltd. responded by stating that the news item is false and baseless and its promoters do not intend their stake dilution within it by selling their stake. The Stock Exchange placed the clarification of both the companies on its website in the morning on 6 April 2020 for general public dissemination. Investigation further revealed that statement of Ms. Ntftee was not made with approval of Board of Directors of ABC Ltd.

On the basis of the investigation, SEBI imposed penalty on Ms. Ntftee of Rs1 Lakh for violations of SEBI Act 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003.

Ms. Ntftee filed appeal challenging the decision of SEBI. Decide the appeal.

- Q.4 SEBI was established on 12 April 1992 in accordance with the provisions of the Securities and Exchange Board of India Act 1992. Having regard to the backdrop of establishing SEBI, legislative mandate was clearly mentioned in the Preamble thereof in the following words: (10)

'An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.'

Sahara group has been engaged in a long-drawn legal and regulatory battle with SEBI. In fact, the dispute (as it has unfolded both inside and outside the courtroom) has given rise to a lot of concerns regarding the conduct of various stakeholders involved in the dispute.

In the beginning of this year, Sahara group's chief Subrata Roy has declared that all problems will be resolved in 2020. He assured investors that they 'would get their invested amount with full interest and an additional interest would be paid even for a day's delay.' According to him "group always kept intact its tradition of timely payments and excellence in services but there has been delay in payments during the last seven years at certain places due to 'some undesirable circumstances'".

As a student of Securities and Investment Law, critically evaluate the conduct of relevant stakeholders involved in the dispute having regard to the context mentioned above.

Q.5 EFG Ltd. is engaged in the business of sale and purchase of agricultural land and development thereof and was running various schemes for this purpose. Its paid up capital is Rs. 90 Lakhs. On receipt of complaint by one investor of EFG Ltd., SEBI ordered investigation into its affairs. Investigations revealed the following – (10)

- EFG Ltd. identifies and procures agricultural land and transfers title of land in units of 1500 square feet or multiples thereof by executing sale deeds
- EFG Ltd. charged customers a total of Rs. 5000 (Rs. 2000 towards the cost of land and Rs. 3000 towards the development and maintenance thereof).
- Duration of the schemes ranged from 6 to 12 years.
- Schemes assured higher returns for customers if they invest for longer period.
- EFG Ltd. canvassed in its schemes that the value of land is increasing every year which will enhance value of units in the hands of the unit-holders.
- As per the Agreement with customers, latter had the option to develop land on their own. If they decided not to exercise this option, EFG Ltd. will do the maintenance and development of land. However, no customer exercised this option.
- As per the Agreement with customers, latter had the option to seek cancellation in case EFG Ltd. committed any breach of the terms of the agreement.
- Sale deeds were found to be dubious since land could not be clearly identified through them.
- 35% of the money collected was spent on promotional/business expenses.
- EFG Ltd. has opened offices in various locations in the country and appointed hundreds of agents for collecting money from people living particularly in the rural and semi-urban areas under the schemes run by it.

- Land was found to be located in different states of the country – Kerala, Punjab, Jharkhand, Bihar, Uttar Pradesh, Madhya Pradesh, Maharashtra, Haryana, Tripura, Nagaland and Tamil Nadu. Similarly, investors were also from different parts of the country.
- EFG Ltd. collected Rs. 200 crores through large number of customers under the schemes run by it.
- No registration was found to be done under relevant SEBI regulations.

On the basis of the investigation mentioned above, SEBI conducted proceedings and held EFG Ltd. guilty of violation of SEBI Act 1992 and SEBI (Collective Investment Scheme) Regulations, 1999. Accordingly, it passed order against EFG Ltd. directing it to wind up its schemes and return the money collected till date to the investors within next 15 days.

EFG Ltd. filed appeal challenging the decision of SEBI. Decide the Appeal.
