

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Securities and Investment Law
Semester- VII (Batch: 2019-24)

End Semester Examination: November 2022

Date: 11th Nov, 2022

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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.

Part A

Marks

(Answer all questions)

- Q.1 CrudePlus Ltd. was a listed company carrying on the business of crude oil in Acegikmoq. It was holding 27% equity stake in another listed company (OilPlus Ltd.) which was engaged in the business of oil refining in Acegikmoq. It acquired another 15% equity stake early this year and thereby triggered the Takeover Code which imposed obligation to make open offer. However, around the same time, Russia undertook a 'special military operation' in Ukraine which continued for an unexpectedly long period of time. As a result, the US, and European Nations imposed various kinds of sanctions on Russia. Russia too retaliated by imposing sanctions over such nations in return. All this had unprecedented consequences for the global peace and economy. Under the prevailing circumstances, oil and gas supply was deeply impacted around the world leading to consistently falling prices of shares of OilPlus Ltd. Finance department of CrudePlus Ltd. recommended to its Board of Directors (BoD) that mandatory offer is not sustainable under the then prevailing set of circumstances. BoD of CrudePlus Ltd. sent the recommendation of the Finance Department to its legal department. Legal department opined that the company will need approval of the Securities and Exchange Board of Acegikmoq (SEBA) in order to withdraw the open offer. BoD of CrudePlus Ltd. passed an unanimous resolution to approach SEBA and seek its permission to withdraw the open offer. Accordingly, CEO sought permission of the SEBA to withdraw the open offer. SEBA refused to grant the permission. CrudePlus Ltd. appealed before Securities and Exchange Appellate Tribunal (SEAT) against the order of SEBA. SEAT allowed the appeal appreciating the genuine difficulty faced by CrudePlus Ltd. SEBA appealed before Supreme Court of Acegikmoq. Decide. (10)
- (Note: Laws of Acegikmoq are pari materia with the laws of India)*
- Q.2 A 11 member team of researchers comprising ten virologists and one chiropterologist visited a remote island for their research work. They stayed there for two weeks and completed their research work. On their return back to their country (Zaybxera), they were tested for corona as part of the routine protocol. One member was tested positive (10)

for corona with a new variant which was highly transmissible as well as infectious showing high fatality. Within a week it spread to all parts of the world.

Ms Grace is an Independent Director working in a leading ed-tech listed company (VirtualEdu Ltd.). It was engaged in the business of providing services for 'enhancing teacher-led learning in classrooms and improving students' education outcomes'. She was returning to her home through flight after attending the Annual International Conference of Independent Directors. Two high ranking officials of the Government of Zaybxra were sitting next to her in the flight. They were discussing with each other, in a very low tone, about the probability of another lock down. She overheard the discussion.

In the evening, while she was walking after dinner in the common area of her apartment she was reminded of the discussion between her co-passengers in the aircraft. She immediately wrote on a small slip of paper as follows – 'another lock down probable'. She did so in order to not miss discussing this new development with her friends the next day. However, the slip of paper fell down from her purse in the common area while she was entering in her Flat. Next day morning, her husband Mr. Wisdom too returned from a foreign trip. The couple had a strained relationship and were not on talking terms with each other. They were living in separate but adjoining flats in the same residential building. He picked up that slip of paper and read the same. Regarding it as trash, he disposed of the same in the dustbin of his house. After a couple of hours, the maid read the same while cleaning the dustbin. In the evening on the same day, her daughter (Ms Fortunate) who worked in the stock market, bought 10,000 shares of VirtualEdu Ltd. Within a couple of days, the Government of Zaybxra announced the lock down in the morning leading to closure of schools. Accordingly, schools adopted the online mode of education. She sold 5000 shares of VirtualEdu Ltd. by evening of the same day and earned huge profits. The Securities and Exchange Board of Zaybxra (SEBZ) penalised all of them for insider trading and imposed a penalty of Rs one lakh on each of them.

All of them appealed to the Securities and Exchange Appellate Tribunal (SEAT) against the decision. SEAT dismissed their appeal. Aggrieved against the said order, they filed an appeal before the Supreme Court of Zaybxra. Decide the Appeal.

(Note; Laws of Zaybxra are pari materia with the laws of India)

Part B

(Answer any three of the following questions)

- Q.3 "SEBI is implementing the judgement of the Hon'ble Supreme Court dated August 31, 2012 which inter-alia upheld directions issued by SEBI to SIRECL and SHICL (collectively referred to hereinafter as the "Saharas") to forthwith refund the amounts collected from the investors under Red Herring Prospectus (RHPs) issued by the Saharas with 15 per cent interest from the date of receipt of money till the date of payment. (10)

In accordance with the directions contained in the said judgment of the Hon'ble Supreme Court, the actions of SEBI are overseen by Justice (Retd.) B. N. Agarwal appointed by the Hon'ble Supreme Court in the said matter and details are provided in the status report filed before the Hon'ble Supreme Court from time to time. As on

March 31, 2021, SEBI filed 22 status reports before the Hon'ble Supreme Court in this matter.

Pursuant to the various orders passed by the Hon'ble Supreme Court and the attachment orders dated February 13, 2013 passed by SEBI, an aggregate amount of ₹ 15,473 crore has been recovered by SEBI as on March 31, 2021. These amounts along with interest earned on them after providing for making refunds to the bondholders have been deposited in various Nationalized Banks in terms of the judgment dated August 31, 2012 of the Supreme Court. As on March 31, 2021, the total amount deposited in these banks is ₹ 23,191 crore.

As on March 31, 2021, SEBI received 19,616 applications involving 53,549 accounts and issued refunds with respect to 16,909 applications involving 45,451 accounts for an aggregate amount of ₹ 129 crore including the interest amount of ₹ 62 crore. 483 applications involving 1,797 accounts were referred back to the applicants for addressing the discrepancies. Seven applications involving eight accounts fall under the disputed category.” (Securities and Exchange Board of India, Annual Report, 2020-2021, p 221)

Analyse the challenges faced by the Supreme Court of India till date in protecting the interest of the investors in the securities market. How far do you agree with the approach of SEBI?

- Q.4 Securities Markets are intrinsically complex by their very nature. Frauds are not unknown to the securities market. In fact, securities markets have been sites of frauds of the worst possible kinds. They have ruined lives of people and destroyed families leading them to commit suicides. Therefore, regulators need to be always vigilant and need to modify laws from futuristic perspectives. (10)

Critically analyse the above-mentioned observation in the light of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

- Q.5 “MIIs are systemically important institutions in any economy. In India, this can be observed from the phenomenal growth of these institutions in terms of market capitalization of listed companies, amount of capital raised and number of investor accounts with brokers and depositories and value of assets held in the depositories’ account. Market capitalization of listed companies in the securities market has grown many folds as compared to growth in non-food bank credit (which is taken as an indicator of economic growth) in last decade. MIIs constitute the nucleus of capital allocation system and are indispensable for economic growth. They are therefore, ‘vital economic infrastructure’. The recent financial crisis has shown the importance of financial institutions to economic stability. Unlike typical financial institutions, the number of stock exchanges / depositories / clearing corporations in an economy is limited due to the nature of its business, although catering to the entire marketplace. Any failure of such an MII could lead to even bigger cataclysmic collapses that may result in an overall economic downfall that could potentially extend beyond the boundaries of the securities market/country. Therefore, such MIIs are considered systemically important (10)

institutions.” (*Report of the Committee on 'Review of Ownership and Governance of Market Infrastructure Institutions' 2010*)

Being systemically important institutions, their adherence to the standards of corporate governance is not negotiable. Analyse the challenges faced by the regulatory framework for stock exchanges in India in the light of recent developments in the country.

- Q.6 First generation of treaties namely Friendship, Commerce and Navigation Treaties (FCNs) lead to the second generation of treaties in the form of Bilateral Investment Treaties (BITs). BITs set forth actionable standards of conduct that applied to governments in their treatment of investors from other nations. The regulatory framework created through BITs has proved to be very contentious giving rise to very complex issues and serious consequences not only for the foreign investors but also the nations as a whole. (10)

Critically evaluate the above-mentioned observation in the context of experience in India.
