INVESTORS' PROTECTION IN INDIA

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The capital market of India has witnessed a sea-change especially during the last decade i.e. eighties. Though no proper estimate of the number of investors has been made so far, the country has been placed in the region of the investor population of 10 to 12 million, catapulting this nation to the position of being the third largest shareholding population nation in the world next only to the United States of America and Japan whcih have about 50 million and 25 million shareholders respectively.

An amount of about Rs. 10,000 crore is expected to be raised in 1991-92 from the new issues as against Rs. 90 crore raised in the seventies annually on an average and Rs. 6000 crore raised during 1989-90. The daily turnover on the Bombay Stock Exchange alone has shot up from about Rs. 10 crore in 1979-80 to about Rs. 125 crore in the current year. Market capitalisation has also shot up from about Rs. 3500 crore to about Rs. 60,000 crore during the last one decade, accounting for about 15 percent of the GNP now as against about 3 percent ten years ago. While there were less than ten recognised stock exchanges in the country at the beginning of the decade, there are today as many as 20 stock exchanges functioning in the country. With the increase in the number of stock exchanges, the number of active stock brokers has also increased to 3,000 all over the country as against about 1250 a decade ago. Increase in the number of listed companies as well as their paid up capital has also been sharp. There was a clear shift of investors' preferences towards equity instruments during eighties. The new issues for equity and debenture grew at an average annual growth rate of 59% and 56% respectively during this period.

The growth of the capital market during the last decade is a tribute both to the entrepreneurial clss availing of the funds provided by this market on the one hand and to the vast investing public supplying these funds on the other. But the other side of the picture is not that sound. The growth has brought out inadequacies of the system in terms of delay in despatch of refund orders, allotment letters and share certificates by companies, delay in registration of share transfer, shortage of floating stock, mismatching of volume of transactions, delay in payments from broker, etc. Further, 1985 boom led to severe erpsion of investors' confidence in the stock market. Persons who entered the market during this (boom) period were lured by the prospect of windfall gains and quickly disappeared once prices started their downward slide. Investors did not find stock markets an attractive and convenient avenue for investment in the normal course because they did not perceive the market as fair and felt that it was not sensitive to their rights, need and interests. To help genuine promoters to raise money from the public, it was necesssary to raise confidence of investors in the primary issue market. In this process, concern for investors' protection in India gained momentum each day.

In our country at present there exist a cluster of legislations like the Companies Act, 1956, Capital Issues (Control) Act, 1947 and Securities Contracts (Regulation) Act, 1956, affecting investors, corporate sector and stock exchanges. The Companies Act intends to weave an integrated pattern of relationships between promoters, investors and management. Some of the provisions of this Act which protect the rights of the investors are : every

application form should be accompained by a prospectus; prospectus should disclose the matters specified in Schedule II of the Act and should not misrepresent or conceal material facts; minimum subscription amount must be received before proceeding for first allotment; share/debenture certificates should be delivered within 3 months of allotment or 2 months of filing of application for transfer; declared dividend should be paid within 42 days and so on.

The second Act providing protection to the investing public is tne Capital Issues Control Act, 1947. The object of this Act is to regulate the flow of investment in such a way that the limited capital resoures are used for purposes which are in line with the Government's general economic policy; that companies have a capital structure which is sound and conducive to the public interest; and that there is no undue congestion of offers for public subscription during any part of the year. It aims at protecting the investors of new enterprises by exmining the terms of new issues. It regulates the capital structure of companies with a view to discouraging undesirable practiçes. it also scrutinises the various reorganisation plans including merger and amalgamations for the benefit of the shre-holders and the creditors of the companies.

The main object of the Security Contracts (Regulation) Act, 1956, is to have a healthy and strong investment market on which public may invest their savings with full confidence. It provides for a general apparatus of control with out detailed or meticulous regulatory provisions relating to any specific matter. Some of the important provisions of this act relate to granting of recognition to stock exchanges, listing of securities on the stock exchanges, disclosures to be made in the listing agreement, minimum period for keeping the subscription list open, share transfers and so on.

Existence of a cluster of legislation has led to confusion and delay in their proper implementation. Insider trading, kerb trding, manipulation of share prices, lack of transparency and liquidity, delay in allotments and transfers, etc. are some of the problems faced by the investors. So it became necessary to evolve a comprehensive securities law with a unified set of objectives, a development approach, a single administrative authority and an integrated framework to deal with all aspects of the securities markets, and Securities and Exchange Board of India was set up on April 12, 1988. Healthy and orderly development of the securities markets and providing adequate protection to investors is its basic objectives. The primary task of SEBI is to prepare Comprehensive Legislation for the development and regulation of the securities market. Besides this, it will also deal with all matters relating to the developmental and regulatory aspects and advise the government on these matters.

Though more than three years have passed since SEBi was set up, it has yet to be seen, whether it would come up to the expectations of people. The reason being, the pending of the bill of SEBI in the Parliament. But the question arises whether SEBI would be able to achieve its objectives if it is granted approval. General feeling is that SEBI would become a bureaucratic, regulatory body stifling growth and stifling initiative. To overcome this feeling, Mr. G.V. Ramkrishna, former Chairman of SEBI in a workshop organised by the Associated Chambers of Commerce and Industry of India on "Capital Markets in India : Prospects for the 1990's", made it clear that SEBI would not be a bureaucratic, regulatory body stifling growth and stifling initiative, despite having huge set of powers. He further pointed out that their

whole philosophy was going to be builtaround setting up and monitoring Self-Regultory Organisations (SROs) which is an efficient way, not calling for too much manpower and expertise and is thus far better way of regulation. His main emphasis was that self-regulation was the best remedy for errant behaviour among inidividuals and they would function as a coordinating body to set up those SROs, encourage them to function and make sure that they function. So, one can say that what we need is not regulation, but the constitution and proper monitoring of SROs.

No system in the world is perfect nor is the Indian securities market. It should, however, be our constant endeavour to reduce as far as possible the infirmities in the system so that the objective of having a dynamic and vibrant capital market providing constantly the long-term funds for the industry and trade on the one hand and of ensuring safety, liquidity, return and appreciation to the growing classes of investors on the other are achieved.

It is, therefore, suggested that the following measures should be taken, which if not remove, would definitely reduce the infirmities in the system to a great extent and thereby improve investor protection :

1. There is a clear need for and ample scope in India to strength disclosure standards and to improve the system for enforcing these standards through such measures placing responsibility on market intermediaties to authenticate the information so disclosed. If investor condidence is to be revived and due regard given to their rights it is hard to percieve how this can be achieved without strengthening and improving disclosure standards. It is important to introduce structural reforms that would induce the market to move largely on fundamentals. This would require that trading based on privileged information be discouraged in future and trading based upon investment analysis of fundamentals be encouraged.
2. A system of two stage disclosure should be introduced i.e. First, essential information in a condensed form may be disclosed in the prospectus which is compulsorily circulated to investors and second, informtion in greater detail my be discolsed in another statement, which should be available as a "public document for inspection and copy.
3. The transactions in the unofficil market prior to listing should not only be declared illegal but even the publication of their dispensation alone can detract the unscrupulous elements from using this market for their benefit to the detriment of the investing public.
4. To control the menace of manipulation of share prices at the time of further issues, drastic penal provision including institution of criminal proceedings in a court of law against the manipulators, be they members of stock exchanges or not, should be made.
5. To ensure liquidity in the market, atleast 25 percent of public offer for debentures should result in equity on allotment, of companies entering the capital market for the first time with an issue of convertible debentures, without the equity being listed.
6. Seprate securities houses should be established to attend the work of collection of application forms.
7. It hs been seen tht companies promoted by good management, whose shares are likely to be oversubscribed, are allowed to raise the full face value of shares on application. The whole of the money should not be allowed to be collected alongwith the application.

8. In the case of application for new issues, it should be provided that the cheques/drafts can be made payable in the name of the company instead of specified bank account. The banker's name before the company's name can be avoided altogether. This would mean that the investors in the metropolitan and big cities will be able to deposit the application alongwith cheque/draft at any of the authorised bank branches located conveniently.
9. The procedures and provisions relating to allotment may be simplified, strengthened and rationalised.
10. In view of the fact that these days thousands of crores of rupees are collected by a promising and prospective company by offering shares to the public for subscription, it is felt necessary to specify a time limit for allotment of shares in the Act and make non-compliance with the time limit of 45 days be stipulated for allotment of shares by public companies from the closing date of the subscription of shares should in all faimess be inserted in the Companies Act by suitable amendment thereof and any contravention of this time limit made punishable under the Act.
11. The refund orders and dividend warrants should be made payable at par by all the banks so that an investor does not lose to stand his precious money by way of loss of interest and commission charges.
12. The share transfer system should be rationalised so that shares become as liquid as cash and as freely transferable as funds flowing through the banks. A new system or procedure of transfers which would mitigate present delays or hardships needs to be evolved. Section 108 of the Companies Act, 1956 may be suitably amended. This would include widening the scope of the stock Holding Corporation of India and introducing the concept of depository trust receipts in lieu of the existing instruments.
13. Penal provisions for non-repayment of the borrowings (deposits) in time should be incorporated in sub-section 3 of section 58 A by inserting a provision which may read as follows :
"Provided that failure to make full repayment of the deposits, unless renewed in accordance with the rules made under sub-section (1) within seven days from the date on which such deposits fall due for repayment punishable with imprisonment which my extend to three years and also make them liable to pay a fine of not less than Rs. 50 for every day after the above seven days period until such time as full repayment is actually made to the depositors". The suggested provision can have more salutory effect and act as an effective deterrent to the companies from becoming defaulters in the matter of repayment of the deposits to the lending public.
14. To encourage investors in rural areas, fixed percentage of all new public issues should be reserved for allotment to investors from rural areas. If sufficient investment is not forthcoming, those shares can be allotted to other applicants.
15. The terms of conversion of debentures and the ratio of issue of rights or bonus shares should be such as not to create odd lots. Further, companies should them selves be permitted to purchse the odd lots of their own shares, preferably at the ruling price with the safeguard of prior approval of the General Body to prevent any misuse by the Board of Directors. These shares can be re-issued in marketable lots, if

need be. So provisions of Companies Act, 1956 should be suitably amended.

16. Securities Contract (Regulation) Act should be extended to the entire country and exemptions granted to spot trading should be withdrawn.
17. Suitable amendments should be made to the Securities Contracts (Regulation) Act, 1956 to make practice of kerb and insider trading punishable offences with fine or imprisonment or even both. The person concerned should not only pay the profits made by him/her by insider trading, but should also be asked to pay penalty for breach of public faith and confidence.
18. The stock exchanges should be strictly advised to tighten their surveillance over the dealings of their member brokers through effective monitoring of market operations to check kerb trading, and to debar the brokers indulging in kerb deals from the membership.
19. To control kerb trading, the trading time should be facilitated by using network computer facilities like in western countries at least in major stock exchanges, and the number of holidays should be in line with those allowed under the Negotiable Instruments Act.
20. To curb insider trading, it should be made mandatory under the law on the part of all the close associates of a company to make complete disclosure of their share holdings and dealings in the securities particularly shares of the company to which they are closely associated, as frequently as possible to the stock exchanges where the company is listed.
21. The definition of 'close associates of a company' needs to be enlrged so as to include any third party in the event of insider trading by such party whose close connection with the close associates can be established like relatives and friends of close associates.
22. It is lso necessary to incorporate in the law an exhibit showing the illustrative list of secret price-sensitive information to caution the close associates about the misuse of such information for the pecuniary advantages by resorting to insider trading and also to prevent them from putting forth the plea that they did not know what is meant by secret price-sensitive infomtion.
23. Takeovers should be subjected to the direct scrutiny of investors and a regulatory frame-work should be evolved. Sections 394 and 395 of the Companies Act should be amended with a view to provide consultation by High Court and other concerned authorities with the Board before sanctioning any scheme of merger or takeover and also on matters pertaining to grant of cash option to the dissenting/minority shareholders.
24. It is hightime that the existing framework for takeover is suitably modified to plug all these loopholes so that the interest of non-management shareholders are duly taken care of. Along with ensuring equity considerations for all shareholders, good disclosure requirements may be stipulated and a mechanism for objective and professional scrutiny of the entire takeover process may be established. Following strategy may be adopted :—
    (a) Any further purchase of interest involving rights of firm, by any person, alongwith related persons above 5% should be defined as substantial acquisition of shares.

(b) Any further purchase of interest in voting rights of firm by any person together with related persons, above a defined trigger-point (higher than the limit for substantial acquisition of shares), should be deemed as a take-over offer.
(c) Any takeover offer should be conducted only as a 'tender offer'.
(d) Take-over offer should not be allowed to deal in the target securities in any other capacity (e.g. transactions in the target securities by a person related to the offeror, ostensibly for pure investment purpose, during the period of offer should not be allowed).

The above requirements need to be enforced through a clear set of regulations which must not hinder the process of offer, if genuine and if backed by adequate resources. The latter aspects are always difficult judgements for any regulatory body and hence needed to be subjected to evaluation by other such agencies, which are willing to take responsibility for their honour to their advices as a business proposition. It is unfortunte, howeer that India has hardly any such a role. In fact the regulatory evalution in regard to take-over offers would remain incomplete without development of intermediaries. There in lies the real task and challenges for the newly constituted SEBI.

SEBI has already started functioning and has issued certain guidelines and instructions to mutual funds and merchant bankers in the context of providing better protection to investors. But it needs to be clothed with the legal authority so as to enforce its directions and perform its functions more efficiently. It has also been announced in the recent budget that SEBI would be given statutory powers very soon. The kind of the role evisaged for SEBI is to act as a user-friendly organisation which will provide a level and fair playing ground. Provided the Board can function objectively without political interference, the investors can look forward to safer, less manipultive environment and the brokers/dealers who have been indulging in unscrupulous practices at present would better change their modus operandi before it is too late. The success of SEBI, very much lies on its modus operandi. Its success will go a long way in protecting the rights and interests of the investors.

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