

# VEDANAM

*A monthly newsletter by Mehta & Mehta*



**MEHTA & MEHTA**  
Legal and Advisory Services

*Look Out*

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## EXPERT VIEWS ON SATURDAYS

*Visit our website for details of Webinars on Company Law, Insolvency Bankruptcy Code, Securities & Exchange Board of India and other legal laws.*

*Hear from our prominent Promoter Partner - Ms. Dipti Mehta and other experts at the webinars and enhance your knowledge.*

<http://mehta-mehtaadvisory.com/>



# AMENDMENTS

## SECURITIES EXCHANGE BOARD OF INDIA

**SEBI introduced Sixth Amendment in Listing Obligations and Disclosure Requirements that introduced major changes in Related Party and its Transactions.**

[https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021\\_53851.html](https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021_53851.html)

Here Related Party Transaction have been given major amendments. Find out the analysis on sixth amendment on our website  
<http://mehta-mehtaadvisory.com/>

**SEBI mandates disclosure of Complaints against the Stock Exchange(s) and the Clearing Corporation**

Here all the Stock Exchanges and the Clearing Corporations shall disclose on their websites, the data on complaints received against them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at Annexure - 'A' in the circular

[https://www.sebi.gov.in/legal/circulars/oct-2021/disclosure-of-complaints-against-the-stock-exchanges-and-the-clearing-corporations\\_53112.html](https://www.sebi.gov.in/legal/circulars/oct-2021/disclosure-of-complaints-against-the-stock-exchanges-and-the-clearing-corporations_53112.html)

**SEBI revised Formats for Limited Review/ Audit Report for issuers of non-convertible securities**

The format contains details of quarterly & Annual standalone financial results.

[https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-limited-review-audit-report-for-issuers-of-non-convertible-securities\\_53279.html](https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-limited-review-audit-report-for-issuers-of-non-convertible-securities_53279.html)

**SEBI introduced Disclosure obligations of listed entities in relation to Related Party Transactions (RPT)**

Here Information to be reviewed by the Audit Committee and shareholders for approval of RPTs are to be disclosed in the prescribed formats.

[https://www.sebi.gov.in/sebi\\_data/commndocs/nov-2021/Annexure%20-%20I%20-%20Circular-%20Disclosure%20obligations%20of%20listed%20entities%20in%20relation%20to%20RPTs\\_p.PDF](https://www.sebi.gov.in/sebi_data/commndocs/nov-2021/Annexure%20-%20I%20-%20Circular-%20Disclosure%20obligations%20of%20listed%20entities%20in%20relation%20to%20RPTs_p.PDF)

**SEBI introduced norms for Silver Exchange Traded Funds (Silver ETFs) and Gold Exchange Traded Funds (Gold ETFs)**

**SEBI specified guidelines for trading through Silver ETFs and Gold ETFs.**

[https://www.sebi.gov.in/legal/circulars/nov-2021/norms-for-silver-exchange-traded-funds-silver-etfs-and-gold-exchange-traded-funds-gold-etfs-\\_54166.html](https://www.sebi.gov.in/legal/circulars/nov-2021/norms-for-silver-exchange-traded-funds-silver-etfs-and-gold-exchange-traded-funds-gold-etfs-_54166.html)

### DO YOU KNOW?

MINISTRY OF CORPORATE AFFAIRS HAS ALLOWED COMPANIES TO HOLD GENERAL MEETINGS THROUGH VIDEO CALLING/OTHER AUDIO VIDEO MEANS TO BE HELD IN 2021 OR FOR THE FINANCIAL YEAR ENDING 31.03.2022 ON OR BEFORE 30TH JUNE, 2022.

# AMENDMENTS

## RESERVE BANK OF INDIA GOODS AND SERVICES TAX

RBI has allowed FPIs to invest in debt securities issued by InvITs and REITs.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12188&Mode=0>

RBI issued a Master Circular on Guarantees and Co-acceptances which consolidates the instructions issued by the Reserve Bank of India relating to the conduct of guarantee business by banks.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12189&Mode=0>

RBI directed NBFCs registered with RBI to appoint Internal Ombudsman

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12195&Mode=0>



**RESERVE BANK OF INDIA**

The Central Government mandates Aadhaar authentication for registered person

<https://www.gst.gov.in/newsandupdates/read/514>

## DO YOU KNOW?

MINISTRY OF CORPORATE AFFAIRS HAS ALLOWED FILING OF E-FORMS AOC-4 AND MGT-7 BY 15.02.2022 AND 28.02.2022 RESPECTIVELY WITHOUT PAYING ADDITIONAL FEES.

## MEHTA & MEHTA COMPANY SECRETARIES

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49A, Dr. Annie Besant Road,  
Above Corporation Bank, Worli,  
Mumbai – 400 018 |

B: +91 (22) 6611 9696 | D: +91  
(22) 6611 9604 | M: +91  
9820292415



# AMENDMENTS

## INSOLVENCY & BANKRUPTCY CODE

### Clarification regarding requirement of seeking No Objection Certificate or No Dues Certificate from the Income Tax Department during Voluntary Liquidation Process under the Insolvency and Bankruptcy Code, 2016 (Code)

The process of applying and obtaining of NOC/NDC from the Income Tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code.

Therefore, it is hereby clarified that as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department.

For more details  
<https://ibbi.gov.in/uploads/legalframework/cc881169aad7ee239aea7954505a76ab.pdf>

### Filing of list of creditors under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The insolvency professional (IP) to file list of creditors on the electronic platform of the Board or dissemination on its website. In the said format, the particular "Identification No." for seeking identification details of creditors is mentioned. It has come to notice that in few instances, details such as Aadhaar, PAN card, etc., are being filled there in Such information being sensitive personal information is prone to misuse and hence is not to be revealed on public platforms.

To address this concern, the column of "Identification No." is remove from the particulars format stipulated therein.

For more details

<https://ibbi.gov.in/uploads/legalframework/3b47d76baab766da0d800edb4b2199e6.pdf>

### Filing of list of stakeholders under clause (d) of sub-regulation (5) of regulation 31 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator files a list of stakeholders on the electronic platform of the Board for dissemination on its website. In the said format, the particular / column "Identification No." for seeking identification details of stakeholders is mentioned. It has come to notice that in a few instances, the details such as Aadhaar, PAN card, etc., are being filled therein. Such information being sensitive personal information is prone to misuse and not to be revealed on public platforms.

To address this concern, the column of "Identification No." is removed from the particular format stipulated therein.

For more details

<https://ibbi.gov.in/uploads/legalframework/3ab0d547d310b77cb5716f57f45f1e9d.pdf>

# ARTICLES

## SECRETARIAL AUDIT

### INTRODUCTION

Secretarial Audit is a process of corroboration of records and documents to certify compliance with the provisions of various laws and rules/procedures, maintenance of books, records etc. It is done by an independent expert who helps in ensuring that the company has complied with the legal and procedural requirements.

Secretarial Audit is a conformity with the applicable laws. It is a part of absolute compliance management in an organization. It is an efficient tool for compliance management. It helps in detecting non-compliance and take corrective measures.

Secretarial Audit covers non-fiscal facets of the business. Basically, Secretarial Audit is an autonomous verification of the records, books, papers, and documents by a Company Secretary. It helps in checking the compliance position of the company and also to ensure the compliance of legal and procedural obligations and processes followed by the company.

### OBJECTIVES :

Ensure compliance of various legislations and regulations

Helps detect non-compliance and facilitates taking corrective measures to avoid future risks

Assures the stakeholders of the Company that the compliances are being adhered to

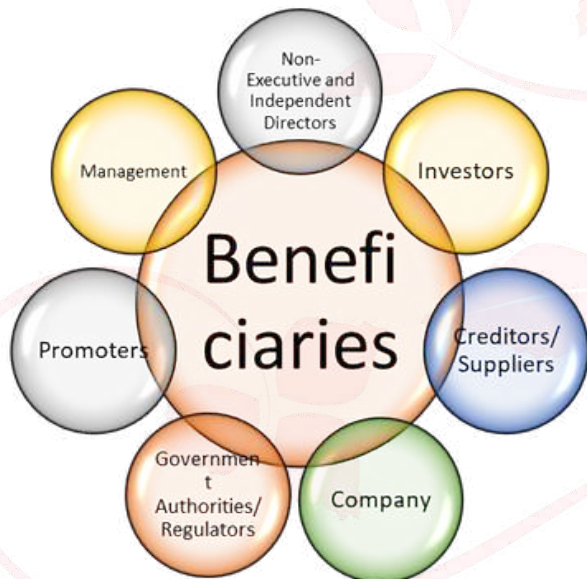
To ensure that the companies have an effective compliance management program so they have a lesser chance of receiving penalties



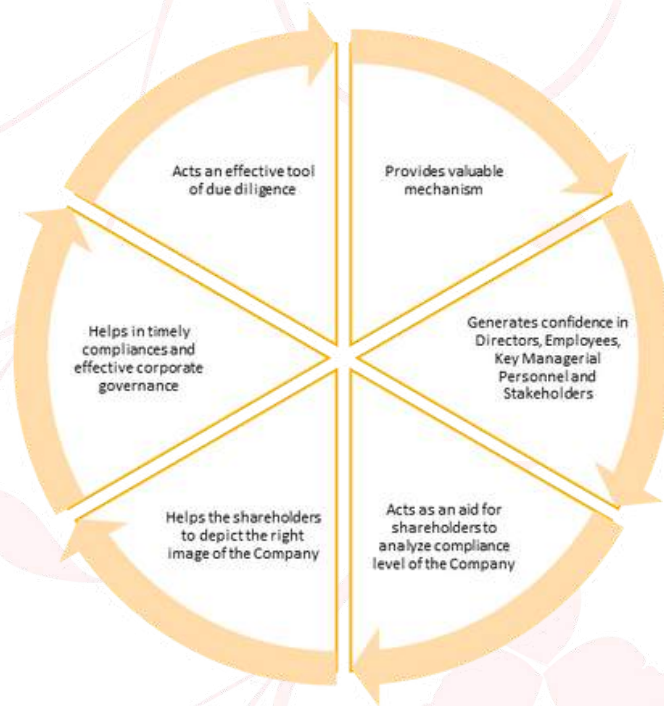
# ARTICLES

## SECRETARIAL AUDIT

### BENEFICIARIES OF SECRETARIAL AUDIT



### WHY SECRETARIAL AUDIT?



### PURPOSE OF SECRETARIAL AUDIT

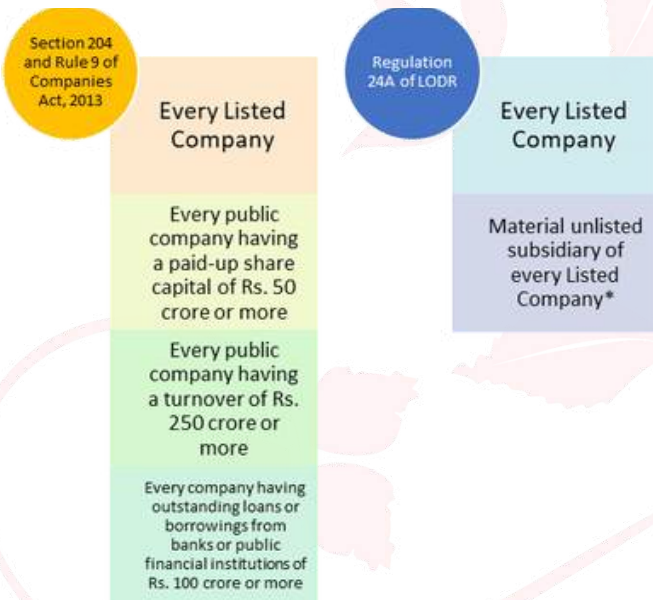
Secretarial Audit simplifies supervising compliances through a formal compliance management programme which can produce positive results to the stakeholders of a company. Companies that are over-compliant lay the foundation for great governance. Companies that have their compliance management programme in place, have minor chance of having penalties, both regulatory and by way of imprisonment. Companies that absorb business and personal ethics alongwith an effective compliance management programme in their work culture habitually enjoy employee and customer allegiance and public respect for their label, which helps in translating better market capitalization and investor returns.



# ARTICLES

## SECRETARIAL AUDIT

### APPLICABILITY



### PROCEDURE



### MANNER OF REPORTING QUALIFICATION IN THE SECRETARIAL AUDIT REPORT

While Writing a Secretarial Audit report, the Secretarial Auditor shall at the relevant places mark a qualification or adverse remarks, if any in his report. The same shall be reported in Bold type or Italics. Nevertheless, if the auditor is not capable of expressing an opinion on any matter, then he/she should specify that he/she is not able to express a view on that particular matter stating the reasons, therefore.

If the requisite work required to be performed is constricted on account of restrictions imposed by the company or on account of circumstantial limitations, the Report should highlight such limitations. If such limitations are so perceptible that the Auditor is unable to express any opinion, he/she should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to the restricted areas by the Company.

Further, the BOD of the company in its Board's report shall explain in full qualification or observation or other remarks made by the PCS in the Secretarial Audit Report.



# ARTICLES

## SECRETARIAL AUDIT

### SECTION 204 OF COMPANIES ACT 2013 : RESPONSIBILITIES & PENAL PROVISION

COMPANY

Give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company

BOARD OF DIRECTORS

Disclose in Board Report any qualification or observation or other remarks made by the company secretary in practice in his report.

## *DID YOU KNOW?*

*“India is the first country in the world to make non-financial audit compulsory for companies belonging to certain classes”*

Default by  
Company



Default by  
Officer of  
the  
Company



Default by  
Company  
Secretary  
in practice



Penalty of  
Rs. 2 lakhs





# CASE LAWS



## INSOLVENCY & BANKRUPTCY CODE

**'Security Deposit' and the interest thereon would fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8)(f) of the Code.- NCLAT**

CASE TITLE : Sach Marketing Pvt. Ltd. Vs. RP of Mount Shivalik Industries Ltd.

Date of Order: 7.10.2021

Brief Facts of the Case:

The Corporate Debtor was in the business of manufacturing and distributing beer in India. An Agreement dated 01.04.2014 was executed between the 'Corporate Debtor' and the Appellant appointing the Appellant as sales promoter for promotion of beer for 12 months and another Agreement was executed, with similar terms and conditions except for one modification in Clause 10 with respect to Security Deposit. The Appellant filed its financial claim in the CIRP of Corporate Debtor which included the security deposit. The RP considered the financial debt as Operational debt. Aggrieved by the decision of the RP, the Appellant preferred interim application seeking a direction to quash the unlawful classification and for admitting the claim as Financial Debt. The Adjudicating Authority in the Impugned Order dated 18.01.2021 observed that the RP has rightly considered the claim as Operational debt. An Appeal was preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the Impugned Order dated 18.01.2021 passed by the National Company Law Tribunal, Jaipur Bench. The major question which arose in the Appeal was whether the Security Deposit and the interest thereon would fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8)(f) of the Code.



# CASE LAWS

## INSOLVENCY & BANKRUPTCY CODE

'Decision:

Hon'ble Court allowed the appeal with following observations:

"22. The 'Corporate Debtor' had accepted the 'Security Deposit' from the Appellant and credited the interest for some time against such amounts for the period 2014-15, and bearing in mind the payment of interest on the amounts borrowed by the 'Corporate Debtor' is nothing but a consideration for the time value of money and the interest is being paid to the Appellant for using the money belonging to the Appellant over a period of time and hence we arrive at the conclusion that the status of Appellant is that of a Financial Creditor vis-à-vis the amount of 'Security Deposit' as per Section 5(7) read with Section 5(8) of the Code. ...and the 'debt' in question is a 'Financial Debt'.

24. For all the aforementioned reasons, this Appeal is allowed and the Impugned Order is set aside. the said amount of debt herein is to be treated as a 'Financial Debt'"

**The existing 'Insolvency Framework' in India provides no scope for effecting further modification or withdrawal of Committee of Creditors approved Resolution Plans, at the behest of the Successful Resolution Applicant, once Plan has been -submitted to the Adjudicating Authority.**

Case Title - Committee of Creditors of Educomp Solutions Limited Through State Bank of India Versus Mr. Mahender Kumar Khandelwal, Resolution Professional of Educomp Solutions Ltd.

Date of order - 12.11.2021

Brief Facts of the Case:

An Appeal was filed by the Committee of Creditors of M/s. Educomp Solutions Limited, aggrieved by the Impugned Order dated 03.01.2020 passed by the



# CASE LAWS

## INSOLVENCY & BANKRUPTCY CODE

Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016. The Committee of Creditors/Appellants challenged the withdrawal Order in Company Appeal (AT) Insolvency No. 203 of 2020 and the Tribunal vide Judgement dated 29.07.2020 allowed the Appeal and set aside the withdrawal Order passed by the Learned Adjudicating Authority.

Decision:

Hon'ble Court relied upon the judgement in the matter of 'Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr and allowed the appeal with following observations:

The Hon'ble Supreme Court has observed that the existing 'Insolvency Framework' in India provides no scope for effecting further modification or withdrawal of Committee of Creditors approved Resolution Plans, at the behest of the Successful Resolution Applicant, once Plan has been submitted to the Adjudicating Authority.

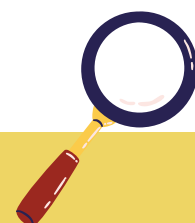
Resolution Applicant is bound by the Plan. The Learned Adjudicating Authority shall proceed in accordance with law and decide the Application under Section 30(6) as expeditiously as practicable having regard to the timelines observed by the Hon'ble Supreme Court in the very same Appeal.

For all the aforementioned reasons, this Appeal is allowed and the Impugned Order is set aside.

**Application of Dewan Housing Finance Corporation Limited moved under Section 32A of the Insolvency and Bankruptcy Code, 2016 in Criminal Complaint was granted by Bombay High Court**

CASE TITLE: M/s. Dewan Housing Finance Corporation Limited V/s. Union of India & anr.

Date of order : 16.11.2021



# CASE LAWS

## INSOLVENCY & BANKRUPTCY CODE

### Brief Facts of the Case:

A writ petition under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, was filed to challenge order dated 20th August, by which the learned Special Judge, CBI, Greater Bombay in exercise of jurisdiction under Section 32A of the Insolvency and Bankruptcy Code, 2016, declined to discharge Dewan Housing Finance Corporation Limited-Corporate Debtor, from the CBI Special Case No. 830 of 2021 and permitted prosecution of the, Corporate Debtor through its erstwhile Directors (accused nos. 2 and 3) in CBI Special Case. Broad issue raised in the petition was "Whether Section 32(1)(a) of IBC lays down a direction that, Corporate Debtor, would be absolved of all criminal offences committed prior to commencement of CIRP, from the date of approval of Resolution Plan, although, appeals against Section 31 order of the IBC were pending before the NCLAT

### Decision:

Hon'ble High Court disposed of the writ petition with following observations:

"20. For these reasons, the petitioner-DHFL, stands discharged from the CBI Special Case No.830 of 2021 pending before the CBI Cases Sessions Court, Mumbai

23. Be that as it may, although Section 32 provides for appeal against an order approving the Resolution Plan, yet, mere filing of appeal would by itself not operate as a stay, until a specific prayer in this regard is made and orders thereon are passed, as held in the case of Madan Kumar Singh V/s. District Magistrate

25. For the reasons stated above, the impugned order is quashed and set aside. The application of Dewan Housing Finance Corporation Limited moved under Section 32A of the Insolvency and Bankruptcy Code, 2016 in Criminal Complaint No.355/PW/2002 corresponding Sessions Case No. 830 of 2021 is granted."

# CASE LAWS

## INSOLVENCY & BANKRUPTCY CODE

**Since the CD, has not been performing any Governmental Functions or the Functions of State, it cannot be immune from the IBC proceedings merely on the basis of being a Government Company & Arbitration clause in the agreements executed between the parties does not bar on initiation of CIRP.**

CASE TITLE: M/s. ATE Projects Pvt. Ltd. v. M/s. Rajasthan Drugs and Pharmaceuticals Ltd and Ors.

DATE OF ORDER: 11.11.2021

Brief Facts of the case:



An application was filed under Section 9 against M/s. Rajasthan Drugs and Pharmaceuticals Ltd. 51% of the equity shares of the Corporate Debtor were held by Government of India and the remaining 49% equity shares are held by Government of Rajasthan through RIICO Ltd. It was stated by the CD that the present Application filed under Section 9 would not be maintainable in view of the existence of the Arbitration clause in all the Agreements executed between the parties.

Decision:

NCLT, Jaipur held that the application under Section 9 was maintainable. It iterated that, "it is observed that a "Government Company" as defined under Section 2(45) of the Companies Act, 2013 is covered under the definition of a "Company" as defined under Section 2(20) of Companies Act 2013. Since the Corporate Debtor, has not been performing any Governmental Functions or the Functions of State, the Corporate Debtor cannot be immune from the IBC proceedings merely on the basis of being a Government Company.

# CASE LAWS

## INSOLVENCY & BANKRUPTCY CODE

Therefore, the present Application is maintainable and worth considering on merits. That the objection taken by the Corporate Debtor that the present Application is not maintainable in view of the Arbitration clause in the Agreements between the Parties and Section 5 Arbitration and Conciliation Act 1996 bars this Adjudicating Authority from hearing this Application, does not merit consideration since Section 238 of IBC, 2016 is having overriding effect over the Arbitration and Conciliation Act, 1996."

## SECURITIES & EXCHANGE BOARD OF INDIA

### Case : Golden Trees Plantation Ltd v. Securities & Exchange Board of India

Petitioner : Jaimin R. Dave and Hirva R. Dave  
Respondent : Dharmishta Raval



**Facts:** Golden Trees Plantation Ltd. ("Company") offered investment scheme to the investors. It said that the Company would plant teak tree with the investors fund and would sell the timber after 15 years so that the investor would get 100 times more than the investment in return. The initial investment was Rs 550 and Rs 80,000 in return after 15 years.

One of the Investors filed a complaint against managing director and chairman of golden trees plantation as he received cheque of Rs 1100 towards his investment. Several other investors lodged a complaint against this and the case was further handed over to the market regulator SEBI, which noted that the scheme fell within the definition of a "Collective Investment Scheme" as defined under section 11AA of the SEBI Act.

# CASE LAWS

## SECURITIES & EXCHANGE BOARD OF INDIA

**Provision:** Section 11AA of Securities and Exchange Board of India Act, act talks about Collective investment scheme which include the following points :-

1. Any scheme or arrangement which include the contributions, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
2. the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
3. the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
4. the investors donot have day-to-day control over the management and operation of the scheme or arrangement.
5. providing for any scheme, pension scheme or the insurance scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952
6. under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 620A of the Companies Act, 1956 (1 of 1956);
7. falling within the meaning of chit business as defined in clause (e) of section 2 of the Chit Funds Act, 1982 ,
8. under which contributions made are in the nature of subscription to a mutual fund, shall not be collective investment scheme.

# CASE LAWS

## SECURITIES & EXCHANGE BOARD OF INDIA

### Analysis:

SEBI noted that the scheme fell within the definition of a “Collective Investment Scheme” as defined under section 11AA of the SEBI Act and several complaints had been made by investors to effect that company was not redressing grievances of investors with regard to return of dues. Accordingly, an order was passed by SEBI directing applicant company to wind up its existing scheme and refund money collected under scheme. However, said order did not say anything or explain as to how figure was to be arrived at. Thus, order did not fix any particular liability to be discharged by writ-applicants. If upon such order, recovery was sought to be undertaken of an amount of Rs. 1068 crores, then it was expected of concerned authority to at least issue a notice to writ-applicants and give an opportunity of hearing before arriving at a particular figure.



### Judgement:

High court held that as SEBI issued an order requiring the applicant business to stop its current plan and repay money received under the scheme. However, the directive included no mention of or explanation for how the amount was to be calculated. As a result, the ruling did not specify any specific responsibility that writ-applicants must discharge.

If upon such order, recovery was sought to be undertaken of an amount of Rs. 1068 crores, then it was expected of concerned authority to at least issue a notice to writ-applicants and give an opportunity of hearing before arriving at a particular figure Hence, court impugned recovery notice was to be quashed and set aside and matter was to be remanded back for adjudication afresh.