

Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1994

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Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1994

In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) the Board hereby, with the previous approval of the Central Government makes the following regulations, namely :-

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

- (1) These regulations shall be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994.
- (2) These regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions :-

- (1) In these regulations, unless the context otherwise requires :-
 - (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992):
 - (b) "acquirer" means any person who acquires or agrees to acquire shares in a company either by himself or with any person acting in concert with the acquirer.
 - (c) "investigating officer" means any officer of the Board, or any

other person. having experience in dealing with the problems relating to the securities market, and such person is authorised by the Board under Chapter V of these regulations:

(d) "person acting in concert" comprises persons who, pursuant to an agreement or understanding acquires or agrees to acquire shares in a company for a common objective or purpose of substantial acquisition of shares and includes :

(i) a company, its holding company, or subsidiaries of such companies or companies under the same management either individually or all with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company:

(iii) directors of companies, referred to in clause (i) and his associates; and

(iv) mutual fund, financial institution, merchant banker, portfolio manager and any investment company in which any person has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company.

Explanation.-For the purposes of this clause "associate" means :-

(a) Any relative of that person within the meaning of Section 6 of the Companies Act, 1956 (1 of 1956):

(b) the director or his relative whether individually or in aggregate holding more than 2% of the paid-up equity capital of such company.

(e) "public financial institution" means a public financial institution as defined in Section 4A of the Companies Act, 1956 ;

(f) "sick industrial company" shall have the same meaning assigned to it in clause (o) of sub-section (1) of S.3 of the Sick Industrial Companies (Special Provisions) Act, 1985:

(g) "state level financial institution" means a State financial corporation established under S.3 of the State Financial Institution Act, 1951 and includes industrial development corporation established as a company by a State Government with the object of development of industries or agricultural activities in the state;

(h) "stock exchange" means a stock exchange which has been

granted recognition under S.4 of the Securities Contracts (Regulation) Act, 1956:

(i) "shares" means share in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights.

(2) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Companies Act, 1956, or the Securities Contract (Regulation) Act, 1956, as the case may be.

3. Applicability of the Regulation :-

Nothing contained in Chapter III of these regulations shall apply to acquisition of shares :

(a) by allotment in pursuance of an application made under a public issue:

(b) in pursuance of any underwriting arrangement:

(c) in the ordinary course of business by a registered stockbroker of a stock exchange on behalf of clients:

(d) in companies whose shares are not listed on any stock exchange;

(e) pursuant to a scheme of arrangement or amalgamation under Sections 391 and Section 394 of the Companies Act, 1956 ;

(f) pursuant to a scheme framed under S.18 of the Sick Industrial Companies (Special Provisions) Act, 1985.

4. Power of the Board of grant exemption :-

The Board may after considering all the relevant factors such as family arrangements amongst promoters or re-organisation of the company when more than 10 per cent of the voting rights of shares are acquired by the existing shareholders of that company or any of its holding company or of a company under the same management, may pass any order of exemption from the provisions of Chapter III after recording the reasons in writing for grant of such exemption.

CHAPTER 2

DISCLOSURES OF SHAREHOLDING

5. Transitional provision :-

(1) Any person, who holds more than five per cent shares in any

company, shall within two months of notification of these regulations disclose his aggregate shareholding in that company,

(a) to all the stock exchanges on which the shares of the said company are listed, and

(b) to the aforesaid company.

(2) Every company whose shares are held by the persons referred to in sub-regulation (1) shall disclose to the stock exchange within two months from the date of notification of these regulations the aggregate number of shareholdings of each of the acquirer referred above.

6. Acquisition of 5% and more shares of a company :-

(1) Any acquirer, who holds five per cent or less than five per cent shares in a company and acquires more than five per cent shares:-

(a) in pursuance of a public issue, or

(b) by one or more transactions, or

(c) in any other manner not covered by ((a) and (b) above shall disclose the aggregate of his shareholding in that company to the company and to all the stock exchanges where the shares are listed.

(2) The disclosures mentioned in sub-regulation (1) shall be made within four working days of-

(a) the receipt of intimation of allotment of shares in respect of shares acquired under clause (a) of sub-regulation (1) or:

(b) the acquisition of shares, as the case may be.

(3) Every company, whose shares are acquired as referred to in sub-regulation (1), shall disclose to all the stock exchanges, where the shares are listed the aggregate shareholdings of that company of all such persons within seven days of receipt of information under sub- regulation (1).

7. Disclosures to the Board :-

The stock exchange shall furnish to the Board reports of the disclosures made under Regulation 5 and Regulation 6 as and when required by the Board.

8. Continual disclosures :-

(1) Every acquirer, including a person covered under Regulation 5 who holds more than ten per cent shares in any company, shall make half- yearly disclosures to the stock exchanges, on which the shares are listed in respect of his holdings as on 31st March and 30th September each year.

(2) The obligation to make disclosures under sub-regulation (1) shall continue till such time the shareholdings in the company is either reduced to ten per cent or increased up to seventy-five per cent of the voting rights of the company.

CHAPTER 3 TAKEOVERS

9. Acquisition of 10 per cent or more of the shares of any company through negotiation :-

(1) Any acquirer who holds shares carrying ten per cent or less of voting rights in the capital of the company shall not through negotiations acquire any further shares, which, when taken together with his existing shareholdings would carry more than ten per cent of the voting rights, unless, the acquirer makes a public announcement to acquire shares at a minimum offer price from the other shareholders of the company in accordance with these regulations, or

(2) Any acquirer who on the date of commencement of these regulations, holds shares in a company which carry more than ten per cent of the voting rights in the capital of the company, shall not acquire any further shares through negotiations unless, the acquirer makes a public announcement to acquire shares at a minimum offer price from the other shareholders of the company in accordance with these regulations.

(3) Where an acquirer acquires securities which would entitle him more than ten per cent of the voting rights together with voting rights on shares already held by him, then, such person shall make a public announcement referred to in sub-regulation (1) at the time immediately before his entitlement to obtain voting rights on such securities.

(4) Nothing in sub-regulation (2) shall apply to any person, who on the date of coming into force of these regulations holds shares carrying more than ten per cent of the voting rights in the capital of a company, if he has already complied with the provisions of

Clause 40-A and Clause 40-B of the listing agreement of any stock exchange.

10. Acquisition of 10 per cent or more of the shares of any company through open market purchases :-

(1) An acquirer, who holds shares carrying ten per cent or less of voting rights in the capital of the company shall not acquire any further shares in the company from the open market which when taken together with his existing shareholdings, would carry more than ten per cent of the voting rights, unless such acquirer makes a public announcement of intention to acquire shares in the open market in accordance with these regulations.

(2) In acquirer who on the date of commencement of these regulations holds shares which carry more than ten per cent of the voting rights in the capital of the company, shall not acquire any further shares in the company from the open market unless such acquirer makes a public announcement of intention to acquire shares in the open market in accordance with the regulations.

11. Who should make the Public Announcement of Offer :-

(1) Before making any public announcement of offer referred to in Regulation 9 or Regulation 10, the acquirer shall appoint a merchant banker holding a certificate of registration given by the Board.

12. Public Announcement of Offer :-

A public announcement to be made under Regulation 9 or Regulation 10 shall be made in at least one national English daily and one vernacular newspaper of that place, where the shares of the company are listed and most frequently traded.

13. Timing of the Public Announcement of offer under Regulation 9 :-

The public announcement referred to in Regulation 9 shall be made not later than four days of either the finalisation of the negotiation, or entering into an agreement or memorandum of understanding to acquire shares, whichever is earlier.

14. Timing of the Public Announcement of Intention under Regulation 10 :-

A public announcement of intention to acquire shares referred to in Regulation 10 shall be made either immediately before the

acquisition of any shares, which would increase the existing share holdings of the person making the announcement beyond ten per cent or in case his existing shareholding is already beyond ten per cent. any time before the person seeks to acquire any shares in order to increase his existing shareholding.

15. Contents of the Public Announcement of Offer :-

A public announcement referred to in Regulation 9 or Regulation 10 shall contain the following particulars, namely :-

(i) the object and terms of offer including the price at which the shares are being sought to be acquired:

(ii) the identity of the ultimate person seeking to acquire shares:

(iii) details of the existing holdings of the person acquiring shares together with those of persons acting in concert with him;

(iv) details of shareholdings in respect of which the person acquiring shares has entered into an agreement or memorandum of understanding to acquire the shares:

(v) intention of acquisition of shares:

(vi) the record date and the date by which individual letter of offers would be posted to the shareholder and the manner and the date by which the acceptance or otherwise of offer should be communicated,

(vii) the time and manner of payment of consideration for acquisition of shares;

(viii) all conditions subject to which the offer is made including the following conditions, namely:-

(a) the total number of shares to be acquired from the public, subject to a minimum as specified in Regulation 21:

(b) the statutory approvals under the Companies Act, 1956 (1 of 1956), Monopolies Restrictive Trade Practices Act, 1969 (54 of 1969) and Foreign Exchange Regulation Act, 1973 (46 of 1973), required to be obtained for the purpose of acquiring the shares; and

(c) approvals to be obtained from shareholders of the company of which the shares are being acquired;

(ix) such other information in the investors interest having a

bearing on the sub-substantial acquisition of shares.

16. Brochures, advertising material etc :-

(1) The public announcement of offer or any other advertisement, circular, brochure or publicity material issued in relation to the acquisition of the shares shall contain information essential for the shareholder to make an informed decision on the offer made.

(2) Copies of any advertisement, brochure or document issued to the public under sub-regulation (1) shall be submitted to the Board at least twenty-four hours before its issuance.

17. Letter of offer :-

(1) Within fourteen days of the public announcement made under Regulations 9 or Regulation 10, the acquirer shall through a merchant banker submit the draft of a letter of offer to the Board for its approval.

(2) The acquirer shall along with the letter of offer referred to in sub-regulation (1) make payment of a fee to the Board of a sum of Rs 25,000 payable either by cheque or bank draft in favour of the Securities and Exchange Board of India at Bombay.

(3) The merchant banker shall submit a due diligence certificate to the Board stating that the statements made in any document, advertisement or brochure issued to the public contains statements, which are true to the best of his or its knowledge.

18. Record date :-

(1) The letter of offer shall be sent to all the shareholders of the company whose shares are sought to be acquired and whose names appear on the books of the company as on the record date.

(2) The record date shall not be more than the sixtieth day from the date of the first public announcement.

19. Minimum offer price :-

(1) An offer to acquire share?) under Regulation 9 or Regulation 10 shall be made at a minimum offer price which shall be :-

(a) payable in cash; or

(b) by exchange of shares if the person seeking to acquire the shares is a body corporate; or

(c) a combination of (a) and (h) : Provided that where the agreement or any memorandum of understanding stipulates payment in cash to any class of shareholders, whose shares are being acquired the remaining shareholders shall also be paid in cash for the shares offered by them for sale of their shares.

(2) For the purposes of sub-regulation (1). the minimum offer price shall be :-

(a) in case of acquisition of shares under Regulation 9 the negotiated price or the average of the weekly high and low of the closing prices of the shares as quoted on the stock exchange during the last six months preceding the date of announcement, whichever is higher, provided there has been a market for such shares during that period in that stock exchange;

(b) in case of acquisition of shares under Regulation 10, the highest price paid by the acquirer in the open market or the average of the weekly high and low of the closing prices of the shares as quoted on the stock exchange during the last six months preceding the date of announcement, whichever is higher, provided there has been a market for such shares during that period in that stock exchange;

(c) where there has been no continuous market in the stock exchange for the share to be acquired, such average shall be calculated on the basis of weighted average prices quoted in at least one other stock exchange to be determined on the basis of the daily trading volume of such shares in that exchange or in any other reasonable manner with The prior approval of the Board;

(d) in case where the shares of the company are offered in lieu of cash payment, the value of such shares shall be determined in the same manner as mentioned in clause (a) and (b) as the case may be.

20. General Obligations :-

(1) The announcement of public offer to acquire shares shall be made only when the acquirer has every reason to believe that he shall be able to implement the offer.

(2) Within fourteen days of the public announcement of offer, the acquirer must also submit a letter of offer to the Board of Directors of the Company, whose shares are being acquired.

(3) The acquirer shall state the period for which the offer to acquire shares from the other shareholders shall remain open : Provided that every such offer shall be kept open for a period of not less than four weeks from the date of the offer.

(4) The directors of the company of which the shares are being acquired shall not sell or enter into an agreement for sale of assets not being sale or disposal of assets, in the ordinary course of business, of the company or its subsidiaries or issue any authorised but unissued securities carrying voting rights during the period, when the offer is open for acceptance unless the approval of the general body of shareholders is obtained.

(5) Every document issued to shareholders or any advertisement published in connection with the offer must state that the directors in case the acquiring, is a company, accept the responsibility for the information contained in the document or advertisement : Provided that if any of the directors desire to exempt himself from the responsibility of the information in such document or. as the case may be, the advertisement the document or advertisement as the case may be, shall contain a statement to that effect together with reasons thereof.

(6) The company whose shares are being acquired shall furnish to the acquirer, within seven days of the request of the acquirer, a list of names of shareholders and of those persons whose applications for transfer of registration is considered valid and accepted by the company.

(7) The company, whose shares are being acquired, shall also inform the persons whose application for transfer are considered valid within sixty days and also inform about such transfers to the transferor and transferee so that they have an opportunity to accept the offer

(8) The letter of offer shall be sent to all the shareholders so as to reach them within ten days from the record date.

(9) Any acquirer who has made any acquisition of shares either by negotiation or through open market purchases shall not make any further public announcement for acquisition of shares in the succeeding six months.

21. Minimum number of shares to be acquired :-

(1) Subject to sub-regulation (2) the offer shall be made to acquire shares from such of the shareholders such number of shares, which shall not be less than the minimum marketable lot as determined by the Stock Exchange in which these shares are listed, or the entire holding if it is less than the marketable lot.

(2) The public offer shall be made to the remaining shareholders of the company, to acquire from them an aggregate minimum of 20 per cent of the total shares of that company.

(3) Where an acquirer holds more than ten per cent shares at the time of commencement of these regulations and was not required to comply with the provisions of Clause 40-A and Clause 40-B of the Listing Agreement, the public offer referred to in, sub-regulation (2) shall be to acquire minimum of such percentage as would increase his shareholding to at least thirty percent of the total shares of that company.

(4) The offer referred to above shall not result in the public shareholding being reduced to less than 20 percent of the voting capital of the company.

(5) Where a person seeking to make acquisition of shares by reason of holding securities, which may carry voting rights at a later point of time, the percentage referred to in the sub-regulation (2) and (3), shall be computed with reference to voting capital of the company including the securities which would carry voting rights.

(6) Where number of shares offered for sale by the shareholders are more than the shares agreed to be acquired by the person making the offer, such person shall subject to sub-regulation (1) accept the offers received from the shareholders on a proportional basis.

22. Completion of the Offer :-

The acquirer shall within a period of four weeks from the date of the closure of the offer complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer.

23. Competitive Acquisition :-

(1) Any person other than the acquirer making a public announcement may within two weeks of such announcement make a competitive bid for acquisition.

(2) The provisions of this chapter shall mutatis-mutandis apply to the competitive bid made under sub-regulation (1) : Provided that the period of offer in the public announcement shall not in any case extend beyond that of the first offer mentioned in sub-regulation (3) of Regulation 20.

24. Revised Offer :-

No change in the conditions of offer or any amendment to a public offer shall be made unless the person acquiring shares-

- (a) obtains the prior approval of the Board,
- (b) makes a public announcement in respect of such amendments in the same manner as specified in Regulation 12: and
- (c) sends a communication to each of the shareholders.

25. Withdrawal of Offer :-

(1) No public offer once made shall be withdrawn except on the happening of an event making it impossible for the person acquiring shares for reasons beyond his control to carry out his offer.

(2) No offer once made shall be withdrawn without the previous approval of the Board.

(3) Without prejudice to sub-regulation (1) a public offer shall be deemed to have been withdrawn if any of the following events occur :-

- (i) the death of the acquirer if he is a natural person:
- (ii) the acquirer is adjudged insolvent or is subject to insolvency proceedings;
- (iii) in case of acquirer, being a natural person, he has either become insane or incapable on account of physical disability or otherwise has become incapable of managing his affairs;
- (iv) the acquirer being a company or a body corporate has either received notice or is subject to commencement of winding up proceedings,

(4) In the event of withdrawal of the offer under any of the conditions, the acquirer shall make a public announcement in the same newspapers in which the announcement of offer was published, indicating reasons for withdrawal of the offer.

(5) Where an offer is withdrawn under sub-regulation (1) the acquirer shall not make any offer for acquisition of shares in the same company for a period of 6 months from the date, the offer is withdrawn.

CHAPTER 4

BAIL OUT TAKEOVERS

26. Bail out takeovers :-

(1) The provisions of this Chapter shall apply to a substantial acquisition of shares in financially weak company not being a sick industrial company, in pursuance to a scheme of rehabilitation approved by a public financial institution or a scheduled bank; (hereinafter referred to as lead institution).

(2) The lead institution shall be responsible for ensuring compliance with the provisions of this Chapter.

(3) The lead institution shall appraise the financially weak company taking into account the financial viability, and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency.

(4) The rehabilitation scheme shall also specifically provide the details of any change in management.

(5) The scheme may provide for acquisition of shares in the financially weak company in any of the following manner :

(a) outright purchase of shares, or

(b) exchange of shares, or

(c) a combination of both : Provided that the scheme as far as possible may ensure that after the proposed acquisition the erstwhile promoters do not own any share in case such acquisition is made by the new promoters pursuant to such scheme.

Explanation- For the purpose of this Chapter, the expression "financially weak company" means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than 50 per cent but less than 100 per cent of its net worth, that is to say, of the sum total of the paid-up capital and free reserves.

27. Manner of acquisition of shares :-

(1) Before giving effect to any scheme of rehabilitation the lead institution shall invite offers for acquisition of shares from at least three parties.

(2) After receipt of the offers under sub-regulation (1), the lead institution shall select one of the parties having regard to the managerial competence, adequacy of financial resources and technical capability of the person acquiring shares to rehabilitate the financially weak company.

(3) The lead institution shall provide necessary information to any person intending to make an offer to acquire shares about the financially weak company and particularly in relation to its present management, technology, range of products manufactured, shareholding pattern, financial holding and performance and assets and liabilities of such company for a period covering five years from the date of the offer as also the minimum financial and other commitments expected of from the person acquiring shares for such rehabilitation.

28. Manner of evaluation of bids :-

(1) The lead institution shall evaluate the bids received with respect to the purchase price or exchange of shares, track record, financial resources, reputation of the management of the person acquiring shares and ensure fairness and transparency in the process.

(2) After making evaluation as provided in sub-regulation (1), the offers received shall be listed in order of preference and after consultation with the persons in the affairs of the management of the financially weak company accept one of the bids.

29. Person acquiring shares to make an offer :-

The person acquiring shares who has been identified by the lead institution under Regulation 27, shall on receipt of a communication in this behalf from the lead institution make a formal offer to acquire the shares from the promoters or persons in charge of the affairs of the management of the financially weak company, financial institutions and also other shareholders at a price determined by mutual negotiation between the person acquiring shares and the lead institution.

Explanation.-Nothing in this regulation shall prohibit the lead institution offering the shareholdings held by it to financially weak company as part of the scheme of rehabilitation.

30. Person acquiring shares to make public announcement in certain cases :-

(1) Where an offer is made to the shareholders other than the persons in charge of the management of the affairs of the financially weak company, the person acquiring shares shall make a public announcement of his intention for acquisition of shares.

(2) Such public announcement shall contain relevant details about the offer including the information about identity and background of the person acquiring shares, offer price, the plan for revival of the unit and the period for which the offer shall be kept open.

(3) The terms of offer shall be forwarded to each of the shareholders in the financially weak company indicating therein a specific mention of the record date and also the acquisition date of the offer.

(4) Notwithstanding anything contained in the foregoing regulations, the financially weak company or, as the case may be, the lead institution shall ensure that at no point of time shareholding held by the public is reduced to less than twenty per cent of the paid up share capital of such company.

(5) While accepting the offer from the other shareholders, the person acquiring shares shall offer to acquire from the individual shareholder his entire holdings if such holding is up to hundred shares of the face value of rupees ten each or ten shares of the face value of rupees hundred each.

31. Exemption from the operations of Chapter III :-

(1) Every offer which has been made in pursuance of Regulation 30 shall be accompanied with an application to the Board for exempting such acquisitions from the provisions of Chapter III of these regulations.

(2) For considering such request the Board may call for such information from the company as also from the lead institution, in relation to The manner of vetting the offers. evaluation of such offers and similar other matters.

32. Acquisition of shares by a state level public Financial institution :-

Where proposals for acquisition of shares in respect of a financially weak company is made by a state level public financial institution, the provisions of these regulations in so far as they relate to scheme of rehabilitation prepared by a public financial institution, shall apply except that in such a case the Industrial Development Bank of India, a corporation established under the Industrial Development Bank of India Act, 1964 shall be the agency for ensuring the compliance of these regulations for acquisition of shares in the financially weak company.

CHAPTER 5 INVESTIGATION

33. Boards right to investigate :-

(1) Where it appears to the Board so to do, it may appoint one or more persons as investigating authority to investigate and under take inspection of the books of accounts, other records and documents of any person who may have acquired or sold securities to any person for any of the purposes specified in sub- regulation (2).

(2) The purposes referred to in sub-regulation (1) may be as follows :

(a) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of substantial acquisition of shares and takeovers; and

(b) to investigate suo motu upon its own knowledge or information in the interest of securities business or investors interests, for any breach of the regulations.

34. Procedure for investigation :-

(1) Before undertaking any investigation under Regulation 33 the Board shall give a reasonable notice to the person concerned for that purpose.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors or in public interest no such notice should be given, it may by an order in writing direct that the investigation be taken up without

such notice.

(3) On being empowered by the Board, the investigating authority shall undertake the investigation and the person against whom an investigation is being carried out shall be bound to discharge his obligations as provided under Regulation 35.

35. Obligations of investigation by the Board :-

(1) It shall be the duty of every person who is being investigated (hereinafter referred to as the "person concerned") to produce to the investigating authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said investigating authority may require.

(2) The person concerned shall allow the investigating authority to have reasonable access to the premises occupied by such person or by any other person on his behalf and also extend reasonable facility for examining books, records, documents and computer data in the possession of the stockbroker or any other person and also provide copies of documents or other materials which, in the opinion of the investigating authority are relevant and useful for the purposes of making investigations under this Chapter.

(3) The investigating authority, in the course of investigation, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the person concerned.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the person concerned to give to the investigating authority all assistance in connection with the investigation, which the person concerned may be reasonably expected to give.

36. Submission of Report to the Board :-

The investigating authority shall, as soon as may be possible submit an investigation report to the Board.

37. Communication of Findings etc :-

(1) The Board shall after consideration of the investigation report communicate the findings to the person concerned to give him an opportunity of being heard before any action is taken by the Board on the findings of the investigating authority.

(2) On receipt of the explanation, if any, from the person concerned, the Board may call upon the person concerned to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act, rules and regulations.

38. Appointment of Auditor :-

Notwithstanding anything contained in the preceding regulation of this Chapter, the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the persons concerned : Provided that the auditor so appointed shall have the same powers of the investigating authority as stated in Regulation 33 and the obligations of the person concerned in Regulation 35 shall be applicable to the investigation under this Regulation.

39. Directions by the Board :-

On receipt of the report under Regulation 36, the Board may without prejudice to its right to initiate criminal prosecution under Section 24 of the Act give such directions as it deems fit for all or any of the purposes, namely,

- (a) directing the person concerned not to further deal in securities;
- (b) prohibiting the person concerned from disposing of any of the securities acquired in violation of these regulations;
- (c) directing the person concerned to sell the shares acquired in violation of the provisions of these regulations.
- (d) taking action against the person concerned who is an intermediary holding a certification of registration under Section 12 of the Act.

40. Appeal to the Central Government :-

Any person aggrieved by an order of the Board under these regulations may prefer an appeal to the Central Government.