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"Securities Trading and Regulatory Mechanism with Special Reference to Working of SEBI"

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Introduction

Right from beginning of British Rule, British Government decided to. introduce their legal system in India. Our present system is wholly based on, British legal system. British Government directly took over Indian Government in 1857. Some of the old Acts are: Code of Civil Procedure, in 1859 (presently 1908 code in force); Indian Penal Code 1860; Indian Companies Act, 1866 (presently 1956 Act is in force; Contract Act, 1872; Negotiable, Instruments Act, 1801; Transfer of Property Act, 1882; Code of Criminal Procedure, 1898 (now replaced by new Code in 1973); Indian Partnership Act, 1932, etc. It is obvious that these Acts were introduced to (a) maintain law and order (b) control various business transactions[1].

Objectives of the Study

The objectives of the present study are to know the functioning and regulation of the stock exchanges in India as the stock exchanges play a very important role in the economical, financial and corporate sectors in India. Stock Exchanges are index of the country's economic condition; Stock Exchanges play a very dominant role in mobilizing the savings and channelling the same into productive lines. The objective of the present study is to know how the functioning of the stock exchanges can be made more smooth and effective what type of rules and regulation to be adopted to maintain smoothness in working and protect the interest of different of markets players

In this way the main objectives of the present research work are as follow:

To understand the organisational structure, management and membership of stock exchanges in India.

(i) To find out the essential and important conditions for listing of securities.
(ii) To analyse the role of stock exchanges in India in listing and delisting of securities.
(iii) To over view the various provisions for protection of investor
(iv) To find out the monitoring mechanism of stock exchanges in India regarding shares and stocks.
(v) To examine the role of corporate governance in the effective management of companies.
(vi) To analyse the concept of corporate social responsibility in the present scenario
(vii) To understand the phenomenon of Insider Trading.
(viii) To analyse the legislative policies relating to prevention and control of Insider Trading.
(ix) To critically examine the role of regulators of Stock Exchanges in India.

[1] V.S. Datey, "Business and Corporate Laws" (2005) p. 1.

Research Methodology

This research is doctrinal and analytical based on the study of books, reports, journal, statutes and judicial decisions etc. Useful data has been supplied whenever required to make the study more practicable and realistic.

Corporate and Commercial Legislations and the Indian Constitution

In the basic scheme of constitution, broadly aspects of law and order, agriculture, public health etc. are looked after by State Governments. Article 246 of our constitution indicates bifurcation of power to make laws, between Union Government and State Governments. Parliament has exclusive powers. to make laws in respect of matters given in list I of the Seventh Schedule to the Constitution (called union list). List II (State List) contains items under jurisdiction of states. List III (Concurrent List) contains items where both Union and.State Governments can exercise power.[2]

Union List - List I called "Union List' contains items like defence of India, Foreign Affairs, war and peace, Banking etc.

Entry 43 -Incorporation, regulation and winding up oftrading corporations, including banking, insurance and financial corporations but not including cooperative societies.

Entry 48 - Stock exchange and future markets.[3]

Union List - List I called "Union List' contains items like defence of India, Foreign Affairs, war and peace, Banking etc.

Origin of Company Law in India

Indian Companies Act, 1882 was the first Act in India providing for registration of companies. The Act was later replaced by Indian Companies Act, 1913, which was later replaced by Companies Act, 1956. The Act came into force on 1st April, 1956. Companies Act, 1956 has been amended from time to time. Besides, certain other Acts like SEBI Act, 1992; Depositories Act, 1996; Foreign Exchange Regulation Act, 1973; Securities Contracts (Regulation) Act, 1956 etc. have direct bearing on the provisions of the Companies Act. In fact, the Companies Act can not be studied in isolation without reference to these Acts and the term 'company law' should indeed cover not only Companies Act, but other relevant provisions from these Acts also.[4]

Constituents of Indian Capital Market

The Indian capital market is composed of the following: _

a) The gilt-edged market

[2] Id, at 4
[3] Ibid
[4] Id, at 5.

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b) The industrial securities market

a) Gilt-edged Market

'Gilt-edged Market' also known as 'Government Securities Market', is the market for government and semi-government securities. An important feature ofthe securities traded in this market that they are stable in value and are much sought after by banks (as bank are obligated under the Banking Regulations Act to maintain a proportion of total deposits in Government securities as part of SLR requirements). Some ofthe special features ofthe gilt-edged market are as follows[5]

i) Guaranteed return on investment
ii) No speculation in securities .
iii) Institutional based investors which are compelled by law to invest a portion oftheir funds in these securities.
iv) Predominated by such institutions as LIC, GlC, the provident funds . and the commercial banks.
v) Heavy volume of transactions necessitating negotiation of each transaction

Industrial Securities Market

The market for industrial securities is know as 'Industrial Securities Market'. It offers ah ideal market for corporate securities such as bonds and equities. Industrial securities market comprises of the following segments:

(i) Primary Market
(ii) Secondary Market

Meaning of Primary Market

Primary market also known as New Issues Market (NIM) is a market for raising fresh capital in the form of shares and debentures. Corporate enterprises, which are desirous of raising capital funds through the issue of securities, approach the primary market. Issues exchange financial securities for long-term funds. The primary market allows for the formation of capital in the country and the accelerated industrial and economic development.[6]

Modes of Raising Capital

Following are the popular ways by which capital funds are raised in the primary market:

Public Issue Where the securities are issued to the members of the general public, it takes the form of 'public issue'. It is the most popular method of raising long-term funds.

[5] Ibid
[6] Ibid

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b) Right Issue - Where the issue of equity shares of a body corporate is made to the existing shareholders as a pre-emptive right, it takes the form of ‘right issue’. Under this method, additional securities are offered for subscription to the existing shareholders.

c) Private Placement: - Where the shares of a body corporate are sold to a group of small investors, it takes the form of ‘private placement

Secondary Market

Meaning of Secondary Market: A market, which deals in securities that have been already issued by companies, is known as ‘the secondary market’. It is also called the stock exchange or the share market The market provides a platform for buying and selling of securities.[7]

Importance of Secondary Market

The importance of the secondary market springs from the fact that it is the base upon which rests the edifice of the primary market. In other words, for the efficient growth of the primary market, a sound secondary market is an essential requirement. This is because the secondary market offers the important facility of trading of securities.

Meaning and Definition of Stock Exchange

The activities of buying and selling of securities in a secondary market. are carried out through the mechanism of stock exchanges. Stock exchanges form an integral part of the secondary market in India. There are at present 23 stock exchanges in India recognized by the government. They are located at Mumbai, Calcutta, Delhi, Chennai, Ahmedabad, Bangalore, Hyderabad, Indore, Pune, Kanpur, Cochin, Ludhiana, Mangalore, Patna, Guwahati, Bhuwaneshwar, Rajkot and Meerut, and OTC Exchange of India and NSE at Mumbai[8].

In addition, there is also a ringless and automated stock market operating at the national level known as ‘over-the-Counter Exchange of India (OTCEI) which . was established, to give a major fillip to the capital market. The exchange operates through a number of electronically linked counters at different locations giving rise to a national trading system. It aims at helping small and start-up companies to overcome the problem ofraising capital through a public issue at exorbitant cost. It also helps investors to overcome the problems of illiquidity, inaccessibility, delayed settlement and transfers that are abound with the traditional stock exchanges[9]

Definition of Stock Exchange

i) According to Hastings, “Stock exchange or securities market comprises all the places where buyers and sellers of stocks and bonds or their representatives undertake transactions involving the sale of securities.”[10]

[7] Ibid
[8] Ibid
[9] Ibid
[10] S. Gurusamy, “Essential of Financial Services” (2008) p. 106.

ii) According to Derek Boneygold, "Stock exchange can be described as the place where a marriage of convenience is enacted between those who wish to raise capital, such as companies, governments and local authorities, and those who wish to invest-largely households through the medium of institutions acting upon their behalf'.

iii) Under section 2(J) of the Securities Contract (Regulation) Act, 1956, "Stock Exchange" means- (a) anybody of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under section 4A and 4B, or (b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.[11]

In Rajkumari Agarwal v. Jaipur Stock Exchange & Others,[12] the CIC was examining the issue whether the Stock Exchange was a public authority under section 2(h) of the RTI Act. The Commission also considered the • concept of public, authority under the Act in juxtaposition to the definition of 'State" under Art. 12 of the constitution of India. The CIC has held that since the concept of public Authority under the RTI Act covers a broader area than the 'State' under Art. 12 of the constitution, therefore, every institution covered under the definition of 'State' can be called a public authority under the RTI Act. In this way stock exchange is public authority.

History of Stock Exchange

The advent of the institution of stock exchange can be traced with the,. origin of joint stock companies form the organisation which brought to the fore, the concept of negotiability of capital instruments coupled with the perpetual existence of the artificial personal identity of the organisation. / Records reveal that there existed a market for "dealing in stock of Amsterdam as far back as 1885[13]

In England the business of dealings in stocks and shares starts from the . 17th Century, when around 1674 British internal and overseas trade expanded rapidly and merchants came together to form joint stock companies. It was on; 14th July, 1773 that a meeting of stock-brokers was held in London and the word "Stock Exchange" was inscribed outside a hired building. The New York . Stock Exchange was founded in 1792 and the stock exchange in France and other European countries having stock exchange much later. The stock exchange of today is the result of a slow process of evolution. It has almost the same embryonic history in India as it has in the west.

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[11] Substituted by the Securities Laws (Amendment) Act, 2004, w.e.f, 12/10/2004. Prior to its substitution clause (J) of 2 section 2 read as under: 'Stock Exchange' means anybody of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

[12] Appeal no. CIC/AT/A/200600684 & CIC/AT/A/2007/00106

[13] Wincott Horold, "The Stock Exchange" p. 2.

The early records of the security trading in India are meager and obscure. It was under the 'neem' tree in Dalhousie square in Kolkata that the stock-brokers used to meet together and do business. But the records show that the transactions in government securities and loan securities of the East India Company took place in Kolkata way back during the end of the 18th Century.

Origin, Growth and Development of Stock Exchanges in India Organization and institutions, whether they are economic, social or political, are products of historical events and exigencies. They continually replace and/or reform the existing organizations, so as to make them relevant and operational in contemporary situations. The origin and history of stock exchanges in India can be summarized as under:[14]

Development During 1800-1865 The East India Company and few commercial banks floated shares sporadically, through recognized brokers the year 1850 marked a watershed. A wave of company floatation's took over the market the number of brokers spurted to 60. The backbone of industrial growth and the resulting boom in share marked the general personality of the financial world.[15]

The entire market was gripped by what is known as "share fever". The American civil war created cotton famine. Indian cotton manufacturers exploited this situation and exported large quantities of cotton. The resulting increase in export earnings opened opportunities for share investments. New Companies started to come up. Excessive speculation and reckless buying became the order. This mania lasted up to 1865. It marks end of the first phase in Indian stock exchange history. With the cession of the civil war, demand for Indian Cotton slumped abruptly. Shares became worthless of paper.

Development During: 1866-1900 It was in those hard days between 1868 and 1875 that the brokers realised the effect of public dealings and formed an informal association for protecting dealings and formed an informal, association for protecting the character, status and interest of native share and stock brokers. Finally, on 3rd December, 1887, they formally formed a society in the name of 'Native Shares and Stock Brokers Association'. The word native provides that no other person except natives of India shall be admitted as member of the said association. The association is now also known alternatively as 'The Stock Exchange'.[16]

Development During: 1901-1913: - The beginning of 20th century witnessed the birth of Swadeshi movement and emergence of native industrial enterprise in India. There was a rapid development in transport, means of communications with the building up of a network of railways, roads and telegraphs. The joint stock form of organization's were popularized in the plantation i.e. tea, coffee and indigo estates, jute industry in Bengal, mining and miscellaneous industries such as coal, manganese, gold, mica, rice mills, oil mills etc. The Swadeshi

[14] Sudhindra Bhat, "Security Analysis and Portfolio Management" (2008) p. 25.
[15] Ibid
[16] Bal Krishan & S.S. Narta, "Security Markets in India" (1997) p. 261.

movement installed industrial enthusiasm in the country and provided further impetus to industrialisation with the inauguration of the Tata Iron and Steel Co. Ltd. in 1907.

On 15th June, 1908, an association was formed by leading brokers, under the name of the Calcutta Stock Exchange Association. At that time there was no suitable. Place where members could transact business, they conducted the business under the neem trees in open. The exchange started with 150 members and 27 of them gave dominations to raise Rs. 3500 to meet the preliminary expenses and hired a ground floor in 2, New China Bazar Street. The first committee of the exchange had nine members-five Europeans and four Indians.[17]

Development During: 1914-1939 (The First World War Boom)

On " ~ the eve of the First World War, there were only three organization stock exchanges i.e., Bombay, Ahmedabad and Calcutta. The stock exchanges had not recovered because of bank failure. A panic and pessimism prevailed in the business circles. When the First World War broke out, the hostilities developed and Europe concentrated in production of war equipment. Consequently, the import of manufactured articles into India ceased. This gave impetus to the domestic industry and all industrial enterprises i.e. mills, factories, workshops worked round the clock. All enterprises earned fabulous profits and declared high dividends. The stock exchanges soon became the attraction for all. The share prices stepped up and again there was a share mania. In Bombay and Ahmedabad rival stock exchanges were incorporated in the names of Bombay Stock Exchange Ltd., in 1917 and Gujarat Share and Stock Exchange in 1920 respectively because of war boom. The boom produced certain good permanent results like broadening the base of joint -. stock companies, widening public interest in shares, and expanding the liquid capital market.

The boom was over by October 1921 and depression started. There was deflation of currency. The domestic industries had to face a tough competition from the foreign goods. Consequently, a large number of companies were liquidated and share prices declined. In the New Bombay Stock Exchange, for some time no business was transacted and it was practically a dead institution. An attempt was made to revive it in 1922 but failed. After the passing of Bombay Securities Contract Act, 1925, again an effort was made to Obtain official recognition under the act, but government refused. Thereafter, it went into liquidation and wound up its affairs. A new stock exchange was also established in Madras on April 6, 1920 under the name and style of the Madras Stock Exchange. It had 100 members and transacted, mainly in mill shares. After the boom, it could not withstand the effect of depression. The number of members declined to three from 100. By 1923, it went out of existence.

The Atlay Committee

After 1918, there was a spate of comers and crisis on the Bombay Stock Exchange, as large number of companies were liquidated leading to a huge waste of public money. The government of Bombay proposed the formation of a committee of Appeal (Control) consisting

[17] Ibid

of member from both the exchanges and other outside representatives, to supervise the management of the exchange.

Present Position of Stock Exchanges in India

The network of Indian stock exchanges is spread throughout the width of the country. In addition to recognised stock exchanges, there are 36 collection centres. At there centres, licensed dealers are authorized, to transact business in securities., Bombay, Delhi, Ahmedabad, Calcutta and Madras are linked by the PTI stocks can service. Now at present there are 23 recognised stock exchanges in India.

CONCLUSION

The advent of the institution of stock exchange can be traced with the origin of joint stock companies form the organisation which brought to the fore, the concept of negotiability of capital instruments coupled with the perpetual existence of the artificial personal identity of the organisation. Records reveal that there existed a market for "dealing in stock of Amsterdam as far back as 1885".

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