

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 6 | Issue 3

2024

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Merchant Banking Compliance: SEBI's Regulatory Landscape

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ABSTRACT

Merchant banking, a crucial facet of India's financial landscape, encompasses a spectrum of specialised services vital for the efficient functioning of capital markets. At its core, merchant banking involves facilitating the issuance of securities, offering advisory services to corporations, and managing corporate finance activities. In India, the Securities and Exchange Board of India (SEBI) serves as the primary regulatory authority overseeing merchant banking activities, aiming to ensure transparency, integrity, and investor protection.

By examining the evolution of merchant banking regulations, the paper seeks to provide insights into the dynamic nature of India's financial regulatory framework and its implications for market participants. Additionally, it explores the impact of technological advancements and global best practices on merchant banking regulations, underscoring the importance of adapting regulatory frameworks to meet evolving industry trends.

Keywords: *Merchant banking, SEBI regulations, regulatory framework, registration requirements, underwriting obligations, financial market.*

I. INTRODUCTION

In India, a merchant banker refers to a corporate entity involved in issue management. This includes tasks such as preparing the prospectus and other pertinent information associated with the issuance of securities. Merchant banks in India are restricted from conducting any business other than that related to the securities market. The primary activity of merchant bankers in India is issue management, which includes tasks such as preparing prospectuses and other relevant documents. Merchant banks additionally offer capital to companies through share ownership rather than loans, and they provide advisory services on corporate matters to the firms they invest in. In the United Kingdom, the term “merchant bank” historically equates to “investment bank.” More concisely, merchant banking refers to financial institutions that offer specialised services such as corporate finance, portfolio management, accepting bills of

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exchange, and other management services.³

Key functions of merchant bankers are as follows:

- **Issue Management:** This involves preparing the prospectus and managing the process of issuing securities.
- **Capital Provision:** Merchant banks provide capital to companies through share ownership.
- **Advisory Services:** They offer advisory services on corporate matters to the companies in which they invest.
- **Specialist Services:** According to Coax, merchant banks provide specialist services such as acceptance of bills of exchange, corporate finance, and portfolio management.

The services provided by merchant bankers, as laid down in the *SEBI vs. Saatal Katha and Chemicals Ltd.*⁴ case, encompass a range of financial and advisory functions.

- **Corporate Counselling:** Corporate counselling involves providing advice and guidance to companies on various aspects of their corporate strategy, structure, and operations. Merchant bankers may assist companies in making informed decisions regarding mergers, acquisitions, restructuring, and overall corporate development. This service is essential for companies looking to optimise their corporate structure and enhance overall efficiency.
- **Project Counselling:** Project counselling refers to providing guidance and support to companies in the planning and execution of specific projects. Merchant bankers can play a crucial role in advising companies on project feasibility, financing options, risk assessment, and overall project management. This service is particularly relevant for companies undertaking large-scale projects that require financial and strategic planning.
- **Credit Syndication:** Credit syndication involves arranging and facilitating loans from multiple lenders for a borrower. Merchant bankers can assist companies in obtaining funds by coordinating with various financial institutions and lenders. This service is valuable for companies seeking diverse sources of financing and negotiating favourable terms for loans.
- **Project Finance:** Project finance involves structuring financial arrangements for specific projects, often requiring long-term funding. Merchant bankers can help companies secure funding for projects by structuring financial deals that align with the project's cash flow and risk profile. This service is essential for businesses involved in capital-intensive projects.

³ James S Ang, "On Merchant Banking", Journal of Financial Services Research 3(1):33-53 (1989).

⁴ MANU/SB/0117/2002.

- **Issue Management and Underwriting:** Issue management involves preparing and managing the process of issuing securities to the public. Underwriting involves the commitment to purchase any unsold securities in the event of an issue not being fully subscribed. Merchant bankers assist companies in the entire process of issuing securities to the public. They underwrite the securities, providing assurance to the issuing company. This service is critical for companies seeking to raise capital through public offerings.
- **Underwriting of Public Issues:** Underwriting of public issues involves committing to purchase a certain number of shares in a public offering if the public does not fully subscribe to them. Merchant bankers, through underwriting, assume the risk of unsold securities, providing financial support to the issuer. This service instills confidence in investors and ensures the success of the public issue.
- **Bankers to the Issue:** Bankers to the issue are financial institutions responsible for various banking services related to the public issue, including collecting application forms, handling the application money, and processing refunds. Merchant bankers, as bankers to the issue, play a crucial role in managing the financial transactions associated with the public issue. They facilitate a smooth and efficient process for investors to subscribe to the securities.
- **Portfolio Management:** Portfolio management involves managing investment portfolios on behalf of clients, aiming to achieve specific financial goals. Merchant bankers can offer portfolio management services, assisting clients in making investment decisions, diversifying their portfolios, and optimising returns. This service is valuable for individuals and institutions looking to maximise the performance of their investments.

(A) Research Question:

1. How merchant banking activities, including issue management, advisory services, and capital provision, contribute to the functioning of India's financial markets?
2. What are the key regulatory measures established by SEBI to govern merchant bankers in India, and how do these regulations impact their operations and conduct?
3. How do merchant bankers fulfil their underwriting obligations, and what are the implications of these obligations for ensuring market stability and investor protection?
4. How do merchant bankers navigate the complexities of M&A transactions, and what role do they play in safeguarding the interests of stakeholders?

(B) Research Objective

1. Analyse the role of merchant banking in India's financial ecosystem.
2. Examine the regulatory framework established by SEBI for governing merchant bankers.
3. Investigate the categorisation of merchant bankers and the scope of permissible activities for each category.
4. Evaluate the implications of underwriting obligations and other regulatory requirements on market stability and investor protection.

(C) Research Methodology

Descriptive research, aimed at describing the existing situation of an identified variable. The paper seeks to provide systematic information on a phenomenon, primarily relying on case laws and legislative actions for analysis. Rather than embarking on an empirical study, the researcher utilises existing legal cases and legislative developments to examine the current state of affairs. This approach allows for a thorough exploration and description of the subject matter within the context of merchant banking practices and regulatory frameworks in India.

II. ROLE OF MERCHANT BANKERS IN M&A TRANSACTIONS

M&A involves the consolidation of companies through various means, such as mergers or acquisitions. Investment bankers play a crucial role in orchestrating M&A transactions, bringing together separate companies to create larger entities. Corporate finance deals often involve restructuring strategies, including spin-offs, carve-outs, or tracking stocks⁵. Restructuring aims to enhance corporate efficiency, focus on core businesses, and create value for shareholders. Mergers are seen as a means for companies to achieve growth targets, especially when faced with intense competition. By combining resources, companies can enhance their competitive position and prosper collectively. Mergers and acquisitions can be either friendly, with the consent of both parties, or hostile, occurring without the agreement of the target company. In the case of hostile takeovers, companies may employ anti-takeover strategies to counter the perceived threat.

Merchant bankers act as intermediaries in M&A transactions, facilitating negotiations between corporations. They specialise in negotiating deals that involve hiring divisions or companies that are not aligned with the long-term business strategy. Merchant bankers assist corporations interested in non-organic growth by acquiring companies or business units. This could be for

⁵ **Patricia L Anslinger, Steven J Klepper & Somu Subramaniam**, "Breaking up is good to do: restructuring through spin offs, equity carve-outs, and tracking stocks can create shareholder value", *The McKinsey Quarterly* 16 (1999),

strategic reasons, aligning with the company's long-term goals, or for non-strategic reasons, diversifying the business portfolio. Merchant bankers, as professional experts, play a pivotal role in safeguarding the interests of shareholders in both the acquiring and target companies. They ensure that the terms of the deal are fair and favourable for their clients, considering both short-term and long-term implications. Merchant bankers bring financial expertise to the table, helping companies navigate complex financial structures and ensuring that the deal is financially sound.

M&A, when strategically aligned, can lead to synergies that benefit both merging entities. Merchant bankers play a critical role in ensuring that the strategic goals of the companies involved are well-matched. They assist companies in adhering to legal and regulatory requirements, securing necessary approvals from authorities such as the Securities and Exchange Board of India (SEBI) or the Reserve Bank of India (RBI). Merchant bankers contribute to risk mitigation by conducting thorough financial and legal assessments, minimising potential pitfalls in the M&A process. The competitive landscape often drives M&A activities, with companies seeking mergers as a strategic response to competition and a means of achieving sustainable growth. The expertise of merchant bankers helps in striking a balance between the interests of shareholders in both the acquiring and target companies, fostering a fair and equitable deal.

Merchant Bankers can assist a transaction in one of two roles:

- 1. Seller/Target Representation:** In this role, the merchant banker represents the company that plans to sell its business. The selling company seeks the assistance of the merchant banker in facilitating the sale, ensuring that it is done with the appropriate consideration. They work to identify potential buyers who align with the strategic goals of the selling company. Seller representation is crucial for companies looking to divest or exit certain businesses. The merchant banker brings expertise in valuation, market analysis, and negotiation to ensure that the selling company gets an appropriate consideration for its assets. The merchant banker may also assist the selling company in devising a strategy to maximise the value of the business being sold. This role requires a deep understanding of the seller's business, industry dynamics, and market conditions.
- 2. Buyer/Acquirer Representation:** In this role, the merchant banker represents the company that wants to purchase another company. The acquiring company seeks the assistance of the merchant banker not only in acquiring the target company but sometimes also in securing financing for the acquisition. The merchant banker acts as a middleman,

facilitating the acquisition process. This includes identifying potential target companies that fit the buyer's strategic goals. They assist the acquiring company in obtaining necessary approvals from regulatory bodies such as the government or the Reserve Bank of India (RBI). The merchant banker helps in determining the right price for the transaction through valuation and negotiation. Financing assistance may involve sourcing funds, negotiating terms with lenders, and ensuring the financial feasibility of the acquisition. The merchant banker helps the acquiring company navigate the complexities of the M&A process, including due diligence, legal compliance, and integration planning⁶.

(A) Rules for M&A transactions:

The acquirer is mandated to appoint a merchant banker holding a certificate of registration as per SEBI (Securities and Exchange Board of India) regulations. The merchant banker plays a pivotal role in guiding the acquirer through the complex process of mergers and acquisitions. They bring financial expertise, knowledge of regulatory frameworks, and the ability to navigate legal formalities. Legal formalities involve compliance with various regulations, including SEBI norms, listing obligations of stock exchanges, and provisions of the Companies Act. The merchant banker is responsible for completing all legal formalities related to the merger or acquisition. They interpret and apply SEBI norms, listing requirements, and other relevant regulations to ensure compliance. The merger process requires approval from the court, which has extensive powers in overseeing and sanctioning the merger. Court approval is a crucial step to validate the legality and fairness of the merger. Court approval adds an additional layer of scrutiny to the merger process, ensuring fairness and protection of stakeholders' interests. The merchant banker aids in presenting a comprehensive case for court approval, addressing legal intricacies. When a merger and acquisition happen concurrently, a merchant banker is appointed to finalise the details in compliance with SEBI guidelines. Simultaneous transactions may involve additional complexities that require careful management. The merchant banker takes on the responsibility of coordinating and streamlining the dual process of merger and acquisition. They ensure that the details comply with SEBI guidelines, facilitating a smooth and compliant transaction. Following the completion of the merger or acquisition, the merging or takeover company is obligated to inform SEBI and the stock exchange⁷.

III. SEBI REGULATIONS ON MERCHANT BANKERS

⁶ T. Sanjeev Kumar, "Merchant banking India: Recent development in merchant banking" (2016), ISSN-2455-6602.

⁷ Dr. Jyoti Lahoti, "Recent development in merchant banking and challenges ahead in India", (2016), E-ISSN: 2455-295X.

SEBI initiated regulatory measures for merchant bankers in 1992 with the primary objective of disciplining their operations in India. These measures are designed to usher in an era of regulated financial markets, emphasising transparency, integrity, and investor protection. SEBI seeks to streamline the growth of the capital market in India by implementing effective regulatory measures. These measures are designed to create a conducive environment for the capital market to thrive while safeguarding the interests of investors. Subsequent revisions and amendments were made in 1997, reflecting a dynamic regulatory approach to address evolving market needs and challenges.

An individual or entity seeking to operate as a merchant banker must submit an application to SEBI using Form A. The application specifies the category under which the merchant banker intends to operate.

1. **Category I Merchant Bankers** are authorised to conduct issue management activities, which encompass tasks such as preparing prospectuses, structuring financial arrangements, securing financiers, and overseeing the final allotment and refund of subscriptions. Additionally, they are permitted to serve as advisers, consultants, managers, underwriters, and portfolio managers.
2. **Category II Merchant Bankers** are authorised to serve as advisers, consultants, co-managers, underwriters, and portfolio managers.
3. **Category III Merchant Bankers** are allowed to serve as underwriters, advisers, or consultants to an issue.
4. **Category IV Merchant Bankers** are permitted to act solely as advisers or consultants to an issue.

It is also important to note that from December 9, 1997, an application can only be made for carrying out activities mentioned in Category I, if an applicant wishes to operate as an underwriter or portfolio manager, they must obtain separate certificates of registration under the relevant SEBI regulations. An applicant can engage in underwriting activities only if they possess a separate certificate of registration under the provisions of SEBI (Underwriters) Regulations, 1993. Similarly, for portfolio management activities, a separate certificate of registration under the provisions of SEBI (Portfolio Manager) Regulations, 1993, is required.

(B) Application Process:

The process of considering an application for a merchant banker certificate by the Securities and Exchange Board of India (SEBI) involves a thorough evaluation of various criteria to

ensure the suitability and reliability of the applicant. First, the applicant must be a body corporate, excluding non-banking financial companies under the Reserve Bank of India Act, 1934. Moreover, if the merchant banker has obtained registration from the Reserve Bank of India for Primary or Satellite Dealer activities, they can continue operating on the condition that they do not accept or hold public deposits. The applicant's infrastructure, including office space, equipment, and manpower, must be sufficient for effective operations. A minimum of two individuals with experience in merchant banking is a prerequisite for employment. The applicant, its associates, subsidiaries, or group companies should not have any previous registration denials from SEBI. Capital adequacy, adherence to ethical standards, absence of litigation involving securities markets, and the absence of any convictions for moral or economic offences are crucial considerations⁸. Furthermore, applicants are required to possess professional qualifications in finance, law, or business management from a recognised institution. The applicant must also be considered a fit and proper person, and the issuance of a certificate must be deemed to be in the interest of investors.

This multifaceted evaluation ensures that only entities meeting stringent criteria contribute to a well-regulated and investor-friendly financial market⁹.

(C) Restriction on Business:

According to **Regulation 13A**¹⁰ of the Merchant Banking Regulations, merchant bankers who obtained their registration after June 30, 1988, are generally restricted from engaging in any business activities other than those related to the securities market. Notably, banks and public financial institutions are exceptions to this rule. Unlike independent merchant bankers, banks and public financial institutions are allowed to carry on businesses beyond the securities market. A key provision allows merchant bankers, who had entered into contracts for business activities beyond the securities market prior to the enactment of the Merchant Banking Regulation in 1997, to fulfil their obligations under such contracts. This clause recognises the practicality of existing contractual commitments made by merchant bankers before the introduction of more restrictive regulations. It provides flexibility for merchant bankers to honour their pre-existing business obligations even if they fall outside the securities market domain. By limiting merchant bankers' activities to the securities market, the regulation encourages a focused approach to their core responsibilities, which involve managing and

⁸ *SEBI v. Shriram Mutual Funds*, AIR 2006 SC 2287.

⁹ **Sumathi. J & Meera. K**, "A study on recent developments towards merchant banking in India, (2019) XI(IX), *The International journal of analytical and experimental modal analysis*". ISSN NO: 0886-9367.

¹⁰ § 13A, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

advising on issues related to securities and financial instruments.

(D) Record Keeping and Reporting Obligations:

Regulation 14¹¹ of the Merchant Banking Regulations outlines crucial requirements related to record-keeping and reporting obligations for merchant bankers. Merchant bankers are mandated to maintain copies of the balance sheet at the end of each accounting year, along with the corresponding profit and loss account. This requirement ensures that the financial position and performance of the merchant banker are well-documented and can be accessed for regulatory scrutiny. The inclusion of an auditor's report adds an additional layer of assurance regarding the accuracy and transparency of the financial statements. Merchant bankers are obligated to inform the Board about the specific location where the aforementioned pertinent documents are maintained. This ensures transparency and facilitates regulatory oversight by providing authorities with access to essential financial records. At the conclusion of each accounting period, merchant bankers are obligated to provide copies of the balance sheet, profit and loss account, and other pertinent documents to the Board. The regulation enhances transparency by mandating the maintenance of key financial documents and due diligence records, promoting accountability in the merchant banking sector. This periodic reporting mechanism ensures that the Board stays informed about the financial health and compliance status of merchant bankers. **Regulation 16¹²** also requires the merchant banker to furnish documents from preceding five accounting years when requested by the Board. This historical data submission aids the Board in conducting a thorough and longitudinal analysis of the merchant banker's financial performance. Regulation 14 strengthens the regulatory infrastructure by ensuring that merchant bankers maintain a robust record-keeping system, facilitating efficient oversight and risk management.

(E) Responsibilities of Merchant Bankers:

According to **Regulation 20¹³**, a lead merchant banker cannot agree to manage or be associated with any issue unless the responsibilities are explicitly determined. The Board is responsible for furnishing a statement specifying the lead manager's responsibilities at least one month prior to the issue for subscription. In cases where there are more than one lead merchant banker, their respective responsibilities should be clearly demarcated in statements provided by the

¹¹ § 14, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

¹² § 16, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

¹³ § 20, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI

Board. This ensures a clear understanding of the roles and responsibilities of each lead manager, avoiding confusion and promoting effective coordination. If the issue is made by another corporate entity, and that entity is an associate of the lead merchant banker, the lead manager shall refrain from agreeing to manage the issue. This provision prevents potential conflicts of interest and ensures that lead merchant bankers maintain objectivity and impartiality in managing issues. In continuance of this, **Regulation 21**¹⁴ stipulates that lead merchant bankers should not be associated with other merchant bankers involved in the issue unless they hold a certificate. Regulation 21 adds a layer of quality assurance by requiring lead merchant bankers to hold a certificate before associating with other merchant bankers. This requirement emphasises the importance of certification as a prerequisite for association, ensuring that only qualified and certified professionals are involved in managing the issue. The requirement for determining and specifying responsibilities in advance ensures clarity and transparency in the roles of lead merchant bankers¹⁵. Clear demarcation is particularly crucial in cases where multiple lead managers are involved to avoid overlapping functions and miscommunication. The prohibition on managing issues of an associate body corporate aims to prevent conflicts of interest. It ensures that lead merchant bankers maintain independence and do not compromise the integrity of the issue management process.

(F) Underwriting Obligations:

Regulation 22¹⁶ stipulates that the lead merchant banker must undertake a minimum underwriting obligation of 5% of the total commitment or INR 25 Lacs, whichever is lower. This quantitative requirement ensures that the lead merchant banker holds a financial stake in the success of the issue, thereby aligning their interests with the offering's success. The proviso to Regulation 22 addresses scenarios where the lead merchant banker is unable to meet the minimum underwriting obligation. In such instances, the lead merchant banker is obliged to ensure that the merchant banker associated with the issue undertakes underwriting to the minimum extent required and must inform the Board about this arrangement. Regulation 22 also establishes that in any issue governed by the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the lead merchant banker, either individually or jointly with other merchant bankers connected with the issue, must underwrite at least 15% of the issue size. This requirement ensures a significant commitment from the merchant bankers involved

¹⁴ § 21, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI

¹⁵ *supra* note 4.

¹⁶ § 22, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

in the issue, fostering confidence among investors. The proviso provides flexibility by allowing the lead merchant banker to involve other associated merchant bankers to meet the minimum underwriting obligation when they are unable to do so individually. Requiring the lead merchant banker, and connected merchant bankers, to collectively underwrite at least 15% of the issue size under SEBI (ICDR) Regulations, 2009, enhances investor confidence. This collective underwriting demonstrates a shared responsibility among merchant bankers for the success of the issue.

(G) Transaction Reports by Merchant Bankers:

Regulation 27¹⁷ of the Merchant Banking Regulations imposes reporting obligations on merchant bankers regarding transactions related to the acquisition of securities. Merchant bankers are required to submit a report containing particulars of any transaction for the acquisition of securities within 15 days from the date of entering into such a transaction. Complete particulars of transactions for the acquisition of securities made in pursuance of underwriting or market-making obligations, as per Chapter XA of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, should be submitted quarterly. This periodic reporting ensures a comprehensive overview of underwriting and market-making activities, facilitating regulatory assessment. **Regulation 28¹⁸** governs the disclosures that merchant bankers are required to make to the Board. Merchant bankers must disclose details of their responsibilities concerning the management of an issue. In case there are changes in particulars that were previously furnished and these changes have a bearing on the certificate granted to the merchant banker, such changes must be disclosed. Merchant bankers are obligated to disclose the names of body corporates whose issues they manage or with whom they are related or associated. If there are any particulars relating to the breach of the capital adequacy requirement, the merchant banker must disclose this information to the Board. Merchant bankers are required to disclose information related to their activities as managers, underwriters, consultants, or advisers to an issue.

(H) Inspection by SEBI:

Every employee of the merchant banker must produce relevant books, accounts, and other documents during inspections conducted by the inspecting officer. This requirement ensures that the inspecting officer has access to essential documents, promoting transparency and

¹⁷ § 27, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

¹⁸ § 28, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

enabling a thorough examination of the merchant banker's financial and operational activities. Employees must provide statements and information related to their activities as a merchant banker at the time required by the inspecting officer. The merchant banker must provide reasonable access to premises occupied by them or on their behalf, allowing inspecting officers to examine books, records, and computer data. Granting access to premises and computer systems facilitates a thorough inspection, enabling the inspecting officer to assess compliance, risk management, and the overall operational soundness of the merchant banker. Merchant bankers are required to provide copies of documents requested by the inspecting officer for the purpose of investigation and they are obligated to provide reasonable assistance to the inspecting officer during the investigation.

Regulation 34¹⁹ outlines that in the event of a merchant banker contravening any provision of the regulations, rules, or acts, they shall face one or more actions as prescribed in SEBI (Intermediaries) Regulations, 2008, Chapter V.

(I) SEBI v. M/s. Corporate Capital Ventures Pvt. Ltd²⁰

In this particular case a show cause notice (SCN) issued by the Securities and Exchange Board of India (SEBI) to M/s. Corporate Capital Ventures Pvt. Ltd. (the Noticee) on November 18, 2020. The SCN alleges violations of provisions outlined in Clauses 1, 3, 4, 6 & 7 of the Code of Conduct specified under Schedule III, in conjunction with Regulation 13 of SEBI (Merchant Banker) Regulations, 1992, and Regulation 106P(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (since rescinded), read with Regulation 301(2) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Before the issuance of the SCN, SEBI had previously passed an ex-parte interim order on July 05, 2019, against the Noticee, restricting them from taking new assignments in merchant banking activities. This order was related to the alleged non-compliance with the provisions of ICDR, 2009, in connection with the SME IPO of ICL Multitrading India Ltd. Following this, a confirmatory order was issued by the Whole Time Member of SEBI on January 16, 2020, maintaining the interim directions and also initiating an investigation into the events surrounding the SME-IPO of ICL and the allegations made by the Noticee against ICL.

The investigation focused on several key findings:

1. The Noticee's alleged failure to fulfil its underwriting obligation related to the SME IPO

¹⁹ § 34, SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, No. LE/11112/92, SEBI.

²⁰ SCC ONLINE SEBI 19.

of ICL Multitrading India Ltd., which resulted in the interim order.

2. Concerns about the time taken for due diligence in the IPO process and alleged irregularities found by the Noticee after the original closure date of the IPO.
3. Allegations by the Noticee against ICL's management, including issues related to cash discounts, payments to a market maker, and concerns about the independence of certain individuals associated with ICL.
4. The Noticee's claim of terminating the Underwriting Agreement before the closure of the IPO, which was disputed by ICL.
5. The Noticee's failure to officially communicate alleged wrongdoings by ICL to SEBI or NSE until after the interim order was passed, raising questions about the timing and motivation behind the disclosure.

Based on these findings, the SCN alleges that the Noticee violated the Code of Conduct under SEBI (Merchant Bankers) Regulations, 1992, and failed to fulfil its underwriting obligations, thus violating the provisions of ICDR Regulations. The noticee produced the arguments herein mentioned:

1. **Suppressed Information:** The Noticee claims it came across alarming information during the IPO promotion, which ICL actively suppressed. This information includes details about Mr. Pramod Kumar Saxena's role, the lack of independence of the statutory auditor, the non-independence of an independent director, and cash discounts offered by ICL.
2. **Violation of SEBI Provisions:** The Noticee argues that the suppressed information would constitute a gross violation of SEBI provisions, justifying its attempt to confront ICL and eventually terminate the Underwriting Agreement.
3. **Protecting Investor Interests:** The Noticee asserts it acted in the best interest of the securities market and investors by proactively taking measures to prevent misleading investors and protect market integrity.
4. **Contractual Rights:** The Noticee defends the termination of the Underwriting Agreement, citing Clause 17.4, which allows termination if material information is suppressed. It claims ICL breached multiple clauses in the Issue Agreement, justifying its actions.
5. **Commercial Activity and Investor Protection:** The Noticee argues that withdrawal of the IPO was necessary to protect investors in case the issue was progressing based on deceit and fraud. It contests SEBI's stand on unilateral withdrawal of underwriting obligations.
6. **Timing of Withdrawal:** The Noticee disputes SEBI's claim that the withdrawal occurred

after the closure of the IPO, asserting that it informed NSE before the closure and that ICL later admitted to handing over the Withdrawal Letter under duress.

7. **Due Diligence:** The Noticee contests SEBI's allegation of inadequate due diligence, stating it conducted due diligence over eight months and promptly informed NSE of irregularities observed with ICL.
8. **Debarment and Benefit of Doubt:** The Noticee requests the disposal of the proceedings without further adverse directions, considering the debarment already undergone and the recovering economy post-pandemic.

The Noticee claimed it obtained the withdrawal letter on 29/11/2018 under pressure, but SEBI finds it more probable that the letter was obtained earlier. The Noticee failed to provide evidence of the meeting with ICL's management on 29/11/2018. The Noticee insisted on withdrawal at the verge of the issue closing date, hinting at avoiding underwriting obligation. SEBI concluded that the Noticee was in possession of the withdrawal letter before 29/11/2018, aiming to evade underwriting obligations. SEBI found the Noticee's claim of acting in investors' interest unconvincing, as it did not raise concerns earlier and insisted on withdrawal only when underwriting obligation loomed. SEBI rejected the Noticee's allegations of ICL's malpractices due to lack of evidence. The Noticee was found to have violated Clauses 1, 3, 4, and 6 of the Code of Conduct under Schedule III to Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992. SEBI revoked the directions issued against the Noticee, considering the restraint already undergone since the interim order dated July 5, 2019. No further directions or penalties was imposed on the Noticee in the current proceedings.

IV. CONCLUSION

As India's financial landscape continues to evolve, the research paper concludes by emphasising the dynamic nature of merchant banking regulations. The regulatory framework must adapt to emerging trends, technological advancements, and global best practices to ensure the stability and growth of the financial markets. Additionally, ongoing efforts to streamline and simplify regulatory processes will play a pivotal role in fostering a conducive environment for merchant banking activities in India. Overall, the paper underscores the pivotal role of robust regulations in fostering investor confidence, market stability, and sustainable financial growth. One crucial aspect highlighted in the research paper is the necessity for regulatory frameworks to align with technological advancements. The financial industry is witnessing rapid technological changes, including the advent of fintech and digital banking. The regulatory framework must be agile enough to incorporate these changes while ensuring the integrity and

security of financial transactions. Striking a balance between innovation and risk management is vital to foster a financial environment that encourages growth and efficiency. The reference to global best practices indicates the importance of benchmarking India's regulatory standards against international norms. Adopting global best practices enhances the credibility of the financial system, attracts foreign investments, and aligns the country with international standards. This not only strengthens India's position in the global financial community but also fosters a competitive and robust domestic financial market.
