

2024 Vol. 4  
May 14, 2024  
PART 3  
Report 337-480  
Journal 1-36

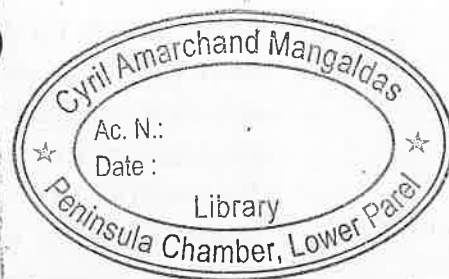
#### IN THIS ISSUE

- Appellate jurisdiction under Section 37(2) of the Arbitration Act—A hard look **J-13**
- Directions issued for mandatory mentioning of certain facts/information as to previous/pending bail applications in all bail applications **432**
- Law clarified on arbitrariness in arbitration agreement with State/State entity and pre-deposit clause in such agreement **341**
- Power of Court to grant of interim compensation in cheque dishonour cases and relevant consideration while exercising such discretion **419**

And more, see inside  
for details

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**Mode of Citation**  
**(2024) 4 SCC**

**ISSN 0039-5951**

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EBC, 34, Lalbagh, Lucknow - 226 001

Tel.: +91-522-4033601 (30 lines)/4033666 (30 lines) Fax: +91-522-4033633

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## SEBI's CONSENT MECHANISM: MAKING IT THE NORM, RATHER THAN THE EXCEPTION

by

Namita Shetty<sup>†</sup> and Ilina Peehu<sup>††</sup>

### INTRODUCTION

Sometimes “half a pound of flesh” is better than Shylock’s whole “pound of flesh” which is practically impossible to get! Had better sense prevailed, Shylock would have entered into a compromise with Antonio. He would have settled their lis for three times the loan amount offered by Bassanio, than pursuing his day in court. An analogous situation of settlement of securities default is envisaged under the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (“the 2018 Regulation”). The 2018 Regulations provide a framework to settle administrative and civil proceedings initiated and/or pending before the Securities and Exchange Board of India (“SEBI”) or any other forum, for violation of specified securities laws.<sup>1</sup> In terms of the 2018 Regulations, SEBI is also empowered to settle cases involving securities violations/defaults in respect of proceedings which have not yet been initiated but may be initiated by it.

Violation of securities law can be remedied by the settling party by way of payment of mutually agreed settlement amount and compliance with other non-monetary terms of settlement, if any. The non-monetary terms of settlement includes a range of self-agreed measures such as:

- (i) suspension or cessation of business activities for a specified period,
- (ii) exit from management,
- (iii) lock-in of securities,
- (iv) disgorgement of ill-gotten gains,
- (v) restraint in accessing securities market and/or from buying or selling/dealing with securities for a specified period,
- (vi) engaging independent consultant to review internal policies, processes and procedures,

<sup>†</sup> Namita Shetty, FCI Arb. Namita Shetty is a Fellow of the Chartered Institute of Arbitrators (CI Arb) and is a Partner in the dispute resolution team at Cyril Amarchand Mangaldas. Author can be reached at [namita.shetty@cyrilshroff.com](mailto:namita.shetty@cyrilshroff.com).

<sup>††</sup> Ilina Peehu is an Associate at Cyril Amarchand Mangaldas. Author can be reached at [ilina.peehu@cyrilshroff.com](mailto:ilina.peehu@cyrilshroff.com).

<sup>1</sup> Securities and Exchange Board of India Act, 1992, S. 15-JB; Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 2(1)(e), “securities laws” means the SEBI Act, 1992, the Securities Contract (Regulations) Act, 1956, the Depositories Act, 1996, the relevant provisions of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder.

(vii) refrain from being a partner/director/officer of listed company/intermediary for a specified period, etc.<sup>2</sup>

The major benefit of any settlement proposal is to quickly settle issues outside of court without admitting or denying the violation alleged.<sup>3</sup> Settlement not only helps SEBI in reducing regulatory costs by saving time and effort in pursuing enforcement action, but also benefits the applicant/settling party from resorting to protracted litigation before SEBI/tribunal/courts.<sup>4</sup>

The settlement makes all terms, conditions and disclosures final, and the matter may not be pursued any further by the SEBI or the settling party. Exceptions to this include if the party is not transparent in disclosures, is fraudulent, or committed other violations, in which case the settlement order shall be revoked and withdrawn.<sup>5</sup> Such a settlement, may or may not include a determination that a violation has occurred.<sup>6</sup>

This article attempts to delve into the core aspects of SEBI's consent mechanism. It analyses the trend of settlement filings, acceptance, and disposal over the last 9 years. For the purpose of this article, we have reviewed a data set of 130 settlement orders passed by SEBI from 1-1-2022 to 31-12-2023 (as published on SEBI website), and have analysed the (i) distribution of settlement orders across various regulations; and (ii) compared the monetary and non-monetary settlement terms; and (iii) the quantum of monetary settlement terms.

## HISTORY AND BACKGROUND

The concept of settlement by consent for securities violations was introduced for the first time in 2007, vide SEBI Circular dated 20-4-2007 ("the 2007 Circular"). The 2007 Circular empowered SEBI to pass consent orders and to consider requests for composition of offences, basis detailed guidelines. Since its introduction, SEBI has passed several consent orders.

The first consent order was passed in the matter of Luminant Investments Ltd. ("LIL") for a settlement amount of INR 25,00,000.<sup>7</sup> The matter pertained to LIL's failure in furnishing information in relation to an ongoing investigation into suspected fraudulent and unfair trade practices in the scrip of DSQ Biotech Ltd ("DSQ"). In respect of this contravention, the adjudicating officer imposed a penalty of INR 1 crore upon LIL vide the order dated 22-11-2005. Soon thereafter, LIL filed a settlement application and SEBI eventually agreed to settle the dispute for a settlement amount of INR 25,00,000.

2 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 9(2).

3 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Sch. I, Part C (Undertaking and Waivers).

4 *Binny Ltd. v. SEBI*, 2023 SCC OnLine Bom 2881.

5 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 28.

6 SEBI FAQ on Consent Orders & Compounding of Offences (20-4-2007).

7 *Luminant Investments (P) Ltd. v. SEBI*, 2007 SCC OnLine SAT 90.

From time to time the settlement procedures have been streamlined by SEBI. The 2007 Circular was modified in 2012 (“the 2012 Circular”) and finally codified in 2014 by way of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (“the 2014 Regulations”). It was only in 22-8-2014, that the Parliament recognised SEBI’s power to pass settlement orders with introduction of Section 15-JB to the Securities and Exchange Board of India Act, 1992 (“the SEBI Act, 1992”), with retrospective effect from 20-4-2007. By way of the 2012 Circular, certain serious defaults such as: (i) insider trading, (ii) serious fraudulent and unfair trade practices, (iii) front running, (iv) failure to make open offer, (v) failure to redress investor grievance, and (vi) failure to respond to summons issued by SEBI were excluded from the consent process.<sup>8</sup> This modification was introduced to make the consent mechanism transparent, and yet it ended up limiting the scope of settlement to minor technical violations which had no impact upon the investors. The 2012 Circular also provided for a detailed quantifiable mechanism for formulating and arriving at settlement terms. The 2014 Regulations which came into effect from 20-5-2007 was also constricted in its approach which consequently hampered the effective implementation. Moreover, the 2014 Regulations continued to place restriction on certain serious defaults which could not be settled via consent mechanism.

In order to iron out the existing creases in the regulatory framework and provide a more efficacious settlement mechanism, SEBI constituted a High-Level Committee led by Mr Justice Anil R. Dave (Retd). Pursuant to the Justice Dave Committee’s recommendations, SEBI revamped the 2014 settlement mechanism and replaced it with the 2018 Regulations. The 2018 Regulations expanded the ambit of settlement mechanism and permitted SEBI to settle even serious defaults. However, SEBI may not entertain settlement pleas for alleged defaults having (a) wide market impact, (b) loss to a large number of investors, (c) those impacting integrity of the markets,<sup>9</sup> and (d) settlement pleas involving a wilful defaulter, a fugitive economic offender and those having defaulted in payment of fees or penalty imposed under securities laws.

To further harmonise the 2018 Regulations, SEBI by way of the (Settlement Proceedings) (Amendment) Regulations, 2022<sup>10</sup> provided for reduced timeline of 60 days for making the settlement application, and any delay beyond the 60 days’ window could not be condoned. This was done to dissuade delayed filing of settlement applications and avoid forum shopping by parties. Slew of other measures were also introduced by way of the 2022 Amendment such as:

<sup>8</sup> Securities and Exchange Board, “Amendment to the Consent Circular dated 20-4-2007”, CIR/ EFD/1/2012 (issued on 25-2-2012).

<sup>9</sup> Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 5.

<sup>10</sup> Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022.

(i) rationalisation of time for settlement by fixing 15 days as the time taken for revised settlement terms post the date of Internal Committee ("IC"), and

(ii) for remittance of settlement amount was to be carried in strict 30 days after the notice of demand was issued.

This was done with intent to encourage speedy resolution of disputes through consent mechanism.

### **SALIENT FEATURES OF SETTLEMENT PROCESS**

#### **Who can file the settlement application?**

An application for settlement can be filed by the applicant against whom specified proceedings have been initiated or may be initiated by SEBI in respect of violation of securities laws. Such an application can be filed, (i) admitting the finding of fact and conclusions of law, or (ii) without admitting or denying the finding of facts and conclusions of law.<sup>11</sup>

#### **Undertaking and waivers to be given along with the application**

The application must be accompanied with non-refundable application fee, undertakings, and written waivers. Waiver of rights by the settling party includes, inter alia, waiver of: (i) all post hearing procedures, appeal/review before tribunal/courts; (ii) plea of bias or pre-judgment by SEBI, the High-Powered Advisory Committee ("HPAC") in respect of the settlement proceedings; and (iii) plea of limitation or laches for initiating or resorting of proceedings if the settling party violates settlement order.

The application fee differs for individuals and body corporates — Rs 15,000 for individuals and Rs 25,000 for body corporates.<sup>12</sup> Notably, for the same cause of action there should be single settlement application.

#### **Timeline for filing of the application**

A settlement application must be submitted within 60 days from the date of receiving a show-cause notice or a supplementary show-cause notice, whichever is later.<sup>13</sup> This is a mandatory timeline and SEBI's power to condone delays has been done away with by the 2022 Amendment Regulation.<sup>10</sup>

11 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Part C, Cl. 10 (Undertaking and Waivers).

12 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 3 and Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Sch. I.

13 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 4.

10 Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022.



**Types of violation of securities law for which settlement application can be preferred**

The existing settlement regime extends the scope of consent mechanism to not merely violations under the SEBI Act, 1992; Securities Contracts (Regulation) Act, 1956 (“SCRA 1956”); Depositories Act, 1996, but also to the relevant provisions of other laws administered by SEBI along with the corresponding rules and regulations.<sup>14</sup>

**When settlement application will not be considered?**

A settlement plea will not be considered if an: (i) audit or investigation inspection or inquiry is pending (with the exception of settlement applications involving confidentiality); (ii) an earlier application involving the same alleged default has been rejected; and (iii) in cases involving outstanding funds for recovery under securities law.<sup>9</sup>

**Settlement procedure**

A settlement application undergoes a comprehensive three-tier evaluation involving the IC, the HPAC and the panel of Whole Time Members (“the WTM Panel”). The settlement application is referred to the IC at the first stage. The IC has been given the authority to: (i) request for information, documents, or the applicant’s appearance (either in person) or through an authorised representative of the applicant, and (ii) mandate compliance by the settling party with the specified conditions within the time-frame. The applicant shall be afforded with an opportunity of personal hearing or meeting only before the IC. Accordingly, IC may allow the applicant to submit revised settlement terms within 15 working days. The IC thereafter puts up the recommendations to HPAC. The second stage involves proceedings before HPAC, where proposed settlement terms are reviewed along with applicant’s undertakings, and other relevant factors. The HPAC can seek revisions and refer the application back to the IC. If HPAC agrees with the consent terms or agrees with the modification, then the same is presented to the WTM Panel for their consideration. The final stage involves the consideration of HPAC’s recommendations by the WTM Panel. The WTM Panel can either accept or refuse to consider the application depending on the facts and circumstances of the case and gravity of charges. If accepted, the applicant shall be issued a notice of demand within 7 working days of the decision of the WTM Panel and the applicant shall remit the settlement amount within 30 days and provide a written undertaking.<sup>15</sup> If rejected, the application is returned for re-examination by the IC and HPAC.

The final decision to settle the specified proceedings vests with the WTM Panel, which has the authority to reject HPAC’s recommendation.<sup>15</sup> This holds

14 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 2(1)(e);  
Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 2(1)(f).

9 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 5.

15 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 15.

true even when HPAC is composed of one retired Judge of the Supreme Court or High Court Judge and three other external experts having expertise in securities market.<sup>16</sup> SEBI's final decision to settle, however, should be based on objective criteria which is set out in the 2018 Regulations.<sup>15</sup>

The data published on SEBI's website and annual reports, does not throw any light on the percentage of cases in which IC recommends acceptance and rejection, and in how many of those, HPAC takes a different view.<sup>17</sup> However, as per the data submitted by SEBI to the Expert Committee, constituted by the Hon'ble Supreme Court of India vide the order dated 2-3-2023, there has not been a single case where SEBI has differed with HPAC for the years 2019-20, 2020-21 and 2021-22.<sup>17</sup>

### **Settlement with confidentiality**

Settlement with confidentiality was introduced for the first time in 1-1-2019 by way of the 2018 Regulations to fast track cases. Similar to the confidential settlement mechanism of Financial Conduct Authority in United Kingdom and the Securities Exchange Commission in the United States, the 2018 Regulations provides for confidential settlement in return for cooperation by the settling party with SEBI's investigations (prior to or pending investigation), inspection, inquiry or audit.<sup>18</sup> Settlement with confidentiality encourages active self-policing, self-reporting, and remediating potential securities law violations by rewarding meaningful cooperation.

Settlement can be made confidentially only if the applicant:

- (i) makes all relevant disclosures,
- (ii) ceases to participate in the violations of securities law from the time of disclosure, and
- (iii) does not tamper the relevant documents such that it contributes to violation.

Orders passed in pursuance of such settlement applications are required to be published on the SEBI website without disclosing the identity of the applicant.<sup>19</sup> However, from the data set of 130 orders sighted on the SEBI website, we have seen any such confidential settlement order.

### **Summary settlement**

The 2018 Regulations also makes a provision for summary settlement, whereunder, SEBI is empowered to issue a summary settlement notice, with

16 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 11.

15 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 15.

17 Report of the Expert Committee constituted by the Hon'ble Supreme Court of India vide order dated 2-3-2023 (6-5-2023), p. 158.

18 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 19.

19 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 25.

prima facie observations on violation of securities laws by the notifying party with the opportunity to file for consent. In terms of the notice, SEBI shall also specify the probable proceedings which shall be initiated against the notifying party for the said violations. The notified party can also seek rectification of calculation of the settlement amount as communicated in the notice of settlement. Such a notice of settlement shall not confer any right upon the notifying party to seek settlement or avoid enforcement action. Moreover, the final decision to settle vests with SEBI and it can refuse to settle where the notifying party has failed to make full and true disclosure of facts or failed to cooperate as required.

Summary settlement can be invoked for the following defaults:

- (i) delay in filing of annual returns, reports, documents, etc.,
- (ii) non-disclosure in relation to companies,
- (iii) failure to make disclosures in specified format,
- (iv) delay in compliance of any requirement of law or directions issued by the Board, and
- (v) other defaults as determined by SEBI.

The notified party choosing to file consent application shall within 30 days (which can be extended by SEBI for further period of 15 days) of the receipt of the notice: (i) file a settlement application which can be extended by SEBI by a further period of 15 days, (ii) remit the settlement amount, (iii) or undertake to comply with other non-monetary terms, specified in the notice. The settlement amount payable for summary settlement applications or settlement with confidentiality or applications filed before issuance of show-cause notice is lesser than the settlement amount payable in respect of an application filed at later stages (i.e. after orders of the tribunal/courts).

### **Rejection of settlement application**

A settlement application can be rejected on the grounds of:

- (i) applicant's refusal to receive or respond to communication sent by Board;
- (ii) delay or non-submission;
- (iii) non-submission or delay in submission of information document as called by the Board;
- (iv) non-appearance of the applicant before the IC on more than one occasion;
- (v) violation of undertaking and waivers given by the applicant;
- (vi) non-remittance of the settlement amount within the period specified; and



(vii) failure to comply with the condition precedent for settlement within the required time.<sup>20</sup>

In terms of Section 15-JB(4) of the SEBI Act 1992, SEBI's order rejecting the settlement application is non-appealable.<sup>21</sup> This position of law has been affirmed by the Securities Appellate Tribunal ("the Tribunal") in *Reliance Industries Ltd. v. SEBI*<sup>22</sup>, wherein the Tribunal considered the maintainability of an appeal against an order rejecting a settlement plea. The issue herein, arose in view of SEBI framing the 2014 Regulations retrospectively, in exercise of its powers conferred by Section 15-JB (inserted to the SEBI Act, 1992 retrospectively). Section 15-JB(4) barred appeals against any order passed by SEBI, and hence, the Tribunal in view of such retrospective amendment held that appeal cannot be made against an order rejecting the settlement plea.

#### **Withdrawal of settlement application**

The applicant is also permitted to withdraw the settlement plea any time prior to the communication of the decision of the WTM Panel. However, an applicant who withdraws an application shall not thereafter, be permitted to make another application in respect of the same default.<sup>23</sup> The applicant may be allowed (as per HPAC's recommendation) to make another application in respect of the same alleged default if agreed settlement amount is subject to an increase of at least 50%.

#### **Effect of pending application on specified proceedings**

Filing a settlement plea does not affect the continuance of the proceedings pending before SEBI or any other forum in respect of the alleged securities default. However, the passing of the final order in such pending proceedings that is kept in abeyance until the settlement plea is disposed of.<sup>24</sup> If a suo motu settlement application is made then no proceedings shall be initiated till the application is rejected or withdrawn. However, proceedings can be initiated irrespective of a suo motu settlement application only for issuing administrative, or civil directions for protection of investors and integrity of securities market.<sup>25</sup>

20 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 6.

21 Securities and Exchange Board of India Act, 1992, S. 15-JB(4).

22 2014 SCC OnLine SAT 116.

23 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 7.

24 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 8.

25 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 8(2).

**ANALYSIS OF SEBI SETTLEMENT ORDERS****SEBI settlement applications filing trend\***

<i>Year</i>	<i>Pending at the beginning of period</i>	<i>No. of consent application received</i>	<i>No. of applications disposed of by passing order</i>	<i>No. of applications rejected (% of total)</i>	<i>Settlement Amount (in INR)</i>
2014-15	112	108	41	59 [55]	3,57,95,389
2015-16	120	177	34	82 [46]	4,42,26,748
2016-17	187	171	103	23 [13]	13,50,83,822
2017-18	232	241	200	79 [33]	30,86,70,566
2018-19	194	419	137	164 [39]	46,11,30,881
2019-20	312	249	100	143 [57]	51,81,03,523
2020-21	318	239	216	187 [78]	68,23,82,499
2021-22	150	345	107	167 [48]	59,18,74,251
2022-23	221	386	185	285 [74]	1,25,55,66,982

\* SEBI Annual Report for Financial Year 2014-15, SEBI Annual Report for Financial Year 2015-16, SEBI Annual Report for Financial Year 2016-17, SEBI Annual Report for Financial Year 2018-19, SEBI Annual Report for Financial Year 2019-20, SEBI Annual Report for Financial Year 2020-21, SEBI Annual Report for Financial Year 2021-22 and SEBI Annual Report for Financial Year 2022-23”.

The Above Table illustrates the trend in settlement filings, acceptance, and disposal of such pleas over the past 9 years. The above data is compiled from SEBI’s Annual Reports for Financial Years (“FYs”) 2014-15, 2015-16, 2016-17, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. The data of consent applications disposed of in a year includes the consent applications which were pending across the previous years. This does not clearly indicate the percentage of consent applications that are disposed of in respect of fresh filings made in every financial year. It does, however, reveal the number of such applications that remain pending across multiple years.

While SEBI’s slew of initiatives from 2014 to 2022, gave an impetus to settlement filings to increase. However, due to lack of conducive and transparent settlement mechanism, the percentage of settlement proposals accepted, has crashed to around 4.79% in FY 2020-21 from around 42.52% in FY 2019-20.

This is fortified by the statistics of enforcement actions initiated by SEBI, which has increased from the period from 2014 to 2022 in contrast to the settlement applications disposed of in the respective financial year. Contrastingly, SEBI’s American counterpart, the Securities and Exchange Commission (“SEC”) settles over 90% of the cases by settlement.<sup>26</sup>

26 Commissioner Luis A. Aguilar, “A Stronger Enforcement Program to Enhance Investor Protection” (20th Annual Securities and Regulatory Enforcement Seminar, 25-10-2013), available at <<https://www.sec.gov/news/speech/2013-spch102513laa>>.

The existing consent mechanism is opaque and lacks transparency as settlement applications rejected by SEBI are neither published on the SEBI's website nor is it appealable before the Tribunal.<sup>27</sup> Further, the above statistics evidences the need for SEBI's intervention to make existing consent mechanism more transparent and robust. This sentiment is also echoed by the Expert Committee, constituted by the Hon'ble Supreme Court of India in its Report dated 6-5-2023 ("the Report"), which highlighted the reluctance of the parties to settle potential proceedings arising from identified causes of action.<sup>17</sup> The Report emphasised the need for a more coherent and transparent settlement policy.

**Distribution of settlement orders passed by SEBI from 1-1-2022 to 31-12-2023 across various regulations**

Most settlement orders passed by SEBI in the data-set of 130 orders reviewed multiple violations of SEBI regulations. For this reason, in the data-set, we retain the references to all the rules and regulations referred to in the orders. For instance, in one order in which it alleges violations under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("the PIT Regulations") as well as the Mutual Fund Regulations, 1996 the case would be counted as an instance of violations under both i.e. two instances. This gives us a total of 174 violations in the subset of 130 settlement orders.

<i>Regulation</i>	<i>Number of Settlement Orders</i>	<i>(% of total)</i>
The PIT Regulations	39	22
SAST Regulations	36	21
LODR Regulations	26	15
The PFUTP Regulations	25	14
SCRA 1956	19	11
Foreign Portfolio Investors Regulations, 2019	5	3
Alternative Investment Funds Regulations	3	2
<b>Miscellaneous</b>	<b>21</b>	<b>12</b>
• Registrars to an Issue and Share Transfer Agents Regulations, 1993	2	
• Mutual Fund Regulations, 1996	4	
• Issue of Capital and Disclosure Requirements Regulations, 2018	8	
• Stock Brokers Regulations 1992	3	
• Investment Advisers Regulations, 2013	1	
• DIP Guidelines, 2000	2	
• Research Analysts Regulations, 2014	1	
<b>Grand total</b>	<b>174</b>	

<sup>27</sup> Securities and Exchange Board of India Act, 1992, Ss. 15-JB(4) and 30-A.

<sup>17</sup> Report of the Expert Committee constituted by the Hon'ble Supreme Court of India vide order dated 2-3-2023 (6-5-2023), p. 158.

From the above statistics, it is evident that settlement applications accepted under the PIT Regulations account for 22% of the total references in our data set i.e. highest amongst all. After all, penalty for insider trading is not less than INR ten lakhs but extendable to INR twenty-five crores or three times the amount of profit made out of insider trading, whichever is higher.<sup>28</sup>

Settlement applications accepted for SAST violations account for second highest number of settlement orders which again, tend to have high stakes for the involved parties/entities. Hence, settlement is a viable alternative to resolve the matter rather than being embroiled in long-drawn investigations and ending up paying higher penalties which may be imposed in adjudication proceedings and other enforcement action which can be initiated in respect of such securities default.

#### **Settlement Terms: Non-Monetary and Monetary Settlement Terms**

Settlement terms includes settlement amount and/or non-monetary terms, as explained above.

##### *Non-Monetary Settlement Terms*

Regulation 9(2) of the Settlement Regulations, 2018, provides an inclusive list of non-monetary terms but it is not exhaustive. A review of the 130 settlement orders from our data set shows that non-monetary settlement terms were imposed in addition to a settlement amount only in 5 of these orders.

These non-monetary settlement terms directed the applicants:

- (i) to take up and pass specific and appropriate training courses (as specified by SEBI), at their own cost, within 6 months from date of settlement order<sup>29</sup>,
- (ii) to commit to pro bono community service of at least 14 days for the cause of investor education and awareness<sup>29</sup>, and
- (iii) to restrain the applicant from obtaining any other registration with SEBI for a period of 3 years from the date of the settlement order.<sup>30</sup>

Other non-monetary settlement terms required the applicant to give a voluntary undertaking:

- (i) to refrain from accessing the securities markets for a period of 24 months from the date of the settlement order<sup>31</sup>,

<sup>28</sup> Securities and Exchange Board of India Act, 1992, S. 15-G.

<sup>29</sup> Settlement order in the matter of failure of systems of NSE and NCL upon occurrence of glitch on 24-2-2021, Settlement Order No. SO/AB/EFD2/2023-24/6580 (20-6-2023), available at <[https://www.sebi.gov.in/enforcement/orders/jun-2023/settlement-order-in-the-matter-of-failure-of-systems-of-nse-and-ncl-upon-occurrence-of-glitch-on-february-24-2021\\_72858.html](https://www.sebi.gov.in/enforcement/orders/jun-2023/settlement-order-in-the-matter-of-failure-of-systems-of-nse-and-ncl-upon-occurrence-of-glitch-on-february-24-2021_72858.html)>.

<sup>30</sup> *Amit Mohan Jeswani, In re*, 2022 SCC OnLine SEBI 1008.

<sup>31</sup> Settlement Order in respect of 7 applicants in *Sahu Jain Ltd., In re*, Settlement Order No. SO/EFD-2/SD/418/SEPTEMBER/2022 (7-9-2022),

(ii) to refrain from accessing the capital markets for a period of 24 months from date of settlement order<sup>32</sup>,

(iii) to extend the exit offer for a period of three months from the date of the Settlement Order<sup>33</sup>, and

(iv) to provide an undertaking that the exit price offered by the company to the public shareholders is subject to any enhancement as directed by the Hon'ble Delhi High Court.<sup>33</sup>

### *Monetary Settlement Terms*

The settlement amount comprises the indicative amount ("IA") which is calculated on the basis of the guidelines and factors provided in Regulation 10 of the Settlement Regulations 2018.<sup>34</sup> IA should not be less than INR 3 lakhs for first-time applicants or INR 7 lakhs for others as applicable.<sup>35</sup>

IC or HPAC or Panel of WTM for the purpose of computation may take into account a number of relevant factors such as:

- (i) applicant's involvement in the alleged default,
- (ii) their proactive cooperation,
- (iii) acceptance of responsibility,
- (iv) timely compliance with reporting requirements,
- (iv) voluntary acts of compensation, disgorgement to investors, etc.<sup>36</sup>

This is in parity with the international standards, as the SEC in the United States also regularly calculates the "profits earned" and "loss avoided" and "loss caused to investors" in order to impose higher penalties, fines in addition to disgorgement of profit.<sup>37</sup>

However, the penalties (as well as settlement amounts) imposed by SEC is much higher than the settlement amounts arrived at by SEBI. This is because the judicial system of USA interprets the number of violations alone, which provides the leeway to seek higher penalties/settlements without amending legislation on a regular basis, for raising the quantum of penalties.<sup>38</sup>

available at <[https://www.sebi.gov.in/enforcement/orders/sep-2022/settlement-order-in-respect-of-7-applicants-in-the-matter-of-sahu-jain-limited\\_62844.html](https://www.sebi.gov.in/enforcement/orders/sep-2022/settlement-order-in-respect-of-7-applicants-in-the-matter-of-sahu-jain-limited_62844.html)>; *Ashoka Viniyoga Ltd., In re*, 2022 SCC OnLine SEBI 1779.

32 Settlement Order in respect of 7 applicants in *Sahu Jain Ltd., In re*, Settlement Order No. SO/EFD-2/SD/418/SEPTEMBER/2022 (7-9-2022), available at <[https://www.sebi.gov.in/enforcement/orders/sep-2022/settlement-order-in-respect-of-7-applicants-in-the-matter-of-sahu-jain-limited\\_62844.html](https://www.sebi.gov.in/enforcement/orders/sep-2022/settlement-order-in-respect-of-7-applicants-in-the-matter-of-sahu-jain-limited_62844.html)>.

33 *Ashoka Viniyoga Ltd., In re*, 2022 SCC OnLine SEBI 1779.

34 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Reg. 10.

35 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Ch. I, Sch. II.

36 Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, Ch. V, Sch. II.

37 Report on Settlement Mechanism by Justice A.R. Dave (Retd.) (10-8-2018) p. 28.

38 *Id.*, p. 25.

From the review of the data set of 130 settlement orders, it is clear that a settlement amount has been imposed upon the applicants in all these consent orders. The non-monetary settlement terms has been directed to be complied with only in 5 of these settlement orders, as explained above.

The statistics given below shows that the median size of the settlement amount ordered is in the range of INR 20,00,000 to INR 30,00,000. The mean is larger than the median which is indicative of the fact that there are only few instances wherein large settlement amounts have been agreed upon by the particular entity, but the quantum of these amounts is very large. Moreover, there is a great variation in the settlement amount across these orders. The perusal of these reviewed settlement orders show that the value of settlement amount ranges from INR 1 crore to INR 5 crores.

No. of consent orders passed from January 2022 to December 2023	130
Mean	INR 1,29,85,957
Median	INR 28,92,500

Till date, the highest settlement amount ordered by SEBI is in the case of INR 72.64 crores *in the matter of NSE and NCL for alleged failure of systems of NSE India and NCL*<sup>29</sup>. This is far in excess of INR 59 crores collected by SEBI from various settlement orders passed in FY 2021-22. The matter pertained to failure of systems of National Stock Exchange ("NSE") and NSE Clearing Limited ("NCL") when NSE India decided to halt trading for a certain duration during trading hours. The show-cause notice was issued to NSE, NCL and the crisis management team of NSE ("CMT"), where it was alleged that it was:

(i) a failure on the part of CMT as they failed to move operations to a disaster recovery site when a glitch occurred in the systems of NSE and NCL,

(ii) failure of NSE and NCL to ensure orderly execution of trades, online/real time risk management of trades and market integrity, and

(iii) failure of NSE and NCL IT infrastructure capacity planning and management.

The applicants eventually filed the settlement applications. SEBI settled the matter for a cumulative settlement amount of INR 72.64 crores in addition to other non-monetary settlement terms.

29 Settlement order in the matter of failure of systems of NSE and NCL upon occurrence of glitch on 24-2-2021, Settlement Order No. SO/AB/EFD2/2023-24/6580 (20-6-2023), available at <[https://www.sebi.gov.in/enforcement/orders/jun-2023/settlement-order-in-the-matter-of-failure-of-systems-of-nse-and-ncl-upon-occurrence-of-glitch-on-february-24-2021\\_72858.html](https://www.sebi.gov.in/enforcement/orders/jun-2023/settlement-order-in-the-matter-of-failure-of-systems-of-nse-and-ncl-upon-occurrence-of-glitch-on-february-24-2021_72858.html)>.



The highest settlement amount ordered by SEBI in respect of matters pertaining to violation of:

**The PFUTP Regulations: INR 50 crores in the matter of dealing in the shares of Reliance Communications Limited<sup>39</sup>**

The matter pertained to violations of the provisions of the SEBI Act, 1992 and the PFUTP Regulations. The investigations revealed that two Reliance entities viz. M/s Reliance Infrastructure Limited and M/s Reliance Natural Resources Limited were prima facie responsible for misrepresenting the nature of investments made by these entities in certain securities. The same was evidenced in their profit and loss statements and annual reports from March 2007 to March 2009. SEBI eventually settled the matter for INR 50 crores, and in addition thereto, restrained Reliance Infrastructure Limited and M/s Reliance Natural Resources Limited from making investments in listed securities in secondary market for a specified period.

**The PIT Regulations: INR 37 crores in *Aptech Ltd., In re*<sup>40</sup>**

The matter pertained to violation by late Mr Rakesh Jhunjunwala and others regarding dealings in the scrip of Aptech Ltd. with alleged Unpublished Price Sensitive Information. SEBI eventually settled the matter for INR 37 crores.

**CONCLUSION**

Settlement is an alternative mechanism that inflicts upon the applicant a financial injury that is proportional to the alleged violation. It serves the dual purpose of acting as both a sanction and a deterrent. It is in the best interests of the securities market and its stakeholders to embrace settlement as a norm rather than an exception. Settlement mechanism aids SEBI in reducing regulatory costs associated with passing an enforcement order, and saves the already exhausted judicial resources. However, the settlement process comes with drawbacks that include:

- (i) the waiver of certain rights (like right to appeal/review before the Tribunal or admitting the findings of facts and conclusion of law), or
- (ii) public disclosure of alleged violations, and
- (iii) imposition of settlement terms which hampers the individual's business (for instance, restraining the individual from accessing the securities market for a certain time).

These factors must be weighed carefully when considering a settlement application.

Over the course of these years as the settlement regime has developed, the number of settlement applications have been steadily increasing, as was discussed above. However, this increase in settlement applications is not

<sup>39</sup> Dealing in Shares of Reliance Communications Ltd., In re, 2011 SCC OnLine SEBI 163  
<sup>40</sup> *Aptech Ltd., In re*, 2021 SCC OnLine SEBI 1114.

exponential to increase in SEBI's enforcement actions, indicating a lingering reluctance among many to utilise this mechanism. It is crucial to make the settlement mechanism more transparent, robust and efficient in order to address this reluctance effectively.