NATIONAL JOURNAL OF ARTS, COMMERCE & SCIENTIFIC RESEARCH REVIEW

CRITICALLY ANALYSE THE IMPACT OF SECURITIES AND EXCHANGE BOARD OF INDIA IN CAPITAL MARKET REFORMATION - A STUDY

CHIDANANDA GADDEPPA TARALABENCHI*[1]

Dr. M.S. NIGAM*[2]

[1]RESEARCH SCHOLAR , [2]SUPERVISOR

ABSTRACT

Capital Market is one of the significant aspect of every financial market. Hence it is necessary to study its correct meaning. Broadly speaking the capital market is a market for financial assets which have a long or indefinite maturity. Unlike money market instruments the capital market intruments become mature for the period above one year. It is an institutional arrangement to borrow and lend money for a longer period of time. It consists of financial institutions like IDBI,

ICICI, UTI, LIC, etc. These institutions play the role of lenders in the capital market. Business units and corporate are the borrowers in the capital market.

INTRODUCTION

Capital market involves various instruments which can be used for financial transactions. Capital market provides long term debt and equity finance for the government and the corporate sector. Capital market can be classified into primary and secondary markets. The primary market is a market for new shares, where as in the secondary market the existing securities are traded. Capital market institutions provide rupee loans, foreign exchange loans, consultancy services and underwriting. The economic development of any country depends upon the existence of a well organised financial system. It is the financial system which supplies the necessary financial inputs for the production of goods and services which in turn promote the well being and standard of living of the people of a country. Thus, the 'financial system' is a broad term which brings under its fold the financial markets and the financial institutions which support the system. The major assets traded in the financial system are money and monetary assets. The responsibility of the financial system is to mobilize the savings in the form of money and monetary assets and invest them to productive ventures. An efficient functioning of the financial system facilitates the free flow of funds to more productive activities and thus promotes investment. Thus, the financial system provides the intermediation between savers and investors and promotes faster economic development.

FINANCIAL MARKETS: Generally speaking, there is no specific place or location to indicate a financial market. Wherever a financial transaction takes place, it is deemed to have taken place in the financial market. Hence financial markets are pervasive in nature since financial transactions are themselves very pervasive throughout the economic system. For instance, issue of equity shares, granting of loan by term lending institutions, deposit of money into a bank, purchase of debentures, sale of shares and so on.

However, financial markets can be referred to as those centers and arrangements which facilitate buying and selling of financial assets, claims and services. Sometimes, we do find the existence of a specific place or location for a financial market as in the case of stock exchange.

CLASSIFICATION OF FINANCIAL MARKETS: Financial markets may be classified as under.

Unorganised Markets: In these markets there are a number of money lenders, indigenous bankers, and traders etc., who lend money to the public. Indigenous bankers also collect deposits from the public. There are also private finance companies, chit funds, etc. whose activities are not controlled by the RBI. Recently the RBI has taken steps to bring private finance companies and chit funds under its strict control by issuing Non-banking Financial Companies (Reserve Bank) Directions, 1998. The RBI has already taken some steps to bring the unorganised sector under the organised fold. They have not been successful. The regulations concerning their financial dealings are still inadequate and their financial instruments have not been standardised.

Organised Markets: In the organised market, there are standardised rules and regulations governing their financial dealings. There is also a high degree of institutonalisaton and instrumentalisation. These markets are subject to strict supervision and control by the RBI or other regulatory bodies.

These organised markets can be further classified into two. They are

1. Money Market 2. Capital Market

Money Market is a place for trading in money and short term financial assets that are as liquid as money. It provides a platform for short-term surplus funds of lenders or investors and short-term requirements of borrowers. The instrument can be traded at low cost and are highly liquid.

Where capital market deals in financial assets excluding coin and currency. The financial assets comprise of banking accounts, pension funds, provident funds, mutual funds, insurance policies, shares, debentures and other securities. Capital market can also be defined as a market which provides long term capital to the industrial sector for various items of fixed capital expenditure under various heads such as land, building, Plant & Machinery etc. which are permanent in nature and are used for production **" IN OUR COUNTRY CAPITAL MARKET ARE GENERALY KNOWN AS SECURITY OR STOCK MARKET"**

Thus capital market a medium for mobilizing the finance out of the savings of the community and making it available to the users i.e. to the industry, trade, commerce for meeting their funds requirement while money market deals with short term and highly liquid financial instruments.

''Capital market is the barometer of the economy ''. This statement truly brings out the importance of the Capital market in the macro economic affair of the country. There is an age old saying that, ''the Capital market discount the future.'' The state of capital market does not reflect of the past or present but it is a reflection of the future of the economy of the any country. In the long run it is a true measure of the health of any economy. In the recent years worldwide the countries are moving towards capitalization. In fact the core socialist communist countries like Russia and China have embraced capitalization. In any capital list economy on breaking up of the shackles of protectionism and with the liberalization and globalization of economies, the world is becoming a global village and the role of capital market is assuming grater importance. However larger the role of capital market, greater the responsibilities on the regulators, participants, investors for the smooth functioning of the capital markets.[1]

In this scenario regulation over only on market intermediaries or regulation related to primary market functioning is not just enough. The retail investors interest is effected by market intermediaries, primary market functioning as well as some more power like big investors, (mutual fund, foreign intuitional investors) take-over, insider trading, stock lending, etc. the interest of investors also effected by the modern concept of trading by electronic form which called web trading or internet trading.

So this is compulsory to regulate these players or function for the achieving the objective of regulator (SEBI), to protect the interest of the investors in securities, to promote the development of securities, and to regulate the securities market. Hence we discussed these players here.

TAKEOVER: The term 'takeover' implies the acquisition of control of shares in one company by another company or persons or group of related companies or persons. A company is said to be taken over when the acquiring company or the person is able to nominate the majority of members on the Board of Directors of the company being acquired, on account of the voting power they command at the shareholders meeting.

If shares total of 51 per cent of the total value of capital are held by the acquirer and his associates, the takeover is complete and the acquirer gets the status similar to that of a holding company. However, in most corporate takeovers, it is not necessary to acquire 51 per cent of the shareholding. There exists a concept called 'controlling interest'. A controlling interest is that proportion of the total shareholding which results in control of the administration of the company through a majority in the Board of Directors. This could be as low as 5 per cent or as high as 51 per cent of the total number of shares. .

Methods of Takeover: There are two ways in which controlling proportion can be attained:

Friendly Takeovers: Firstly a person or a company intending to takeover another corporation can approach the existing controlling interest of that corporation, for across the Board negotiation and purchase. This form of purchase of shares is generally referred to as consent takeovers or friendly takeovers.

Hostile Takeovers: The second way is that of a person seeking control over a company, purchases the required number of shares from non-controlling shareholders in the open market. This method normally involves purchasing of small holdings of small shareholders over a period of time various places. As a strategy the purchaser keeps his identity a secret. This kind of takeovers usually referred to as hostile or violent takeovers.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Terms of Reference

- 'Control' shall include the right to:
    - appoint majority of the directors or
    - control the management or
    - policy decisions
- Control shall be exercisable by a person or persons acting :
    - individually or in concert
    - directly or indirectly
- Control shall be exercisable in any of the following ways:
    - Shareholding
    - Management rights
    - Shareholders agreements
    - Voting agreements
    - in any other manner

If two or more persons are in control over the target company, the Cesar of any one of such persons shall not be deemed to be change in control of management

Any transfer from joint-control to sole control is exempted from the applicability of takeover regulations

Persons Acting in Concert: Comprises persons directly or indirectly, formally or informally co-operate for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company.

The following persons will be deemed to be persons acting in concert unless in the contrary is established:

- a company, its holding company or its subsidiary company or a company in the same management either individually or together with each other
- a company with any of its directors
- a company with any person entrusted with the management of the funds of the company
- directors of companies and their associates
- Mutual fund with sponsor, trustee, asset management company
- Flls with sub-accounts
- Merchant Bankers with their clients
- Portfolio managers with their clients
- Venture capital funds with their sponsors
- Banks with financial advisors, stock brokers of the acquirer
- Any investment company with any person who has an interest as Director, Fund Manager, Trustee or as a shareholder having not less than 2 per cent of the paid up capital of that company.

An associate means a relative with in meaning of section 6 of Companies Act, 1956, family trusts and Hindu Undivided Families.

Promoter' means

➢ the person or persons who are in control of the company, directly or indirectly whether as a shareholder, director or otherwise; or

- person or persons named as promoters in any document of offer of securities to the public or existing shareholders, Promoter shall include :

(a) Where the promoter is an individual:

- the relatives of the promoters
- any firm or company in which 50 per cent share is directly or indirectly controlled by the promoter or a relative of the promoter or firm or HUF in which the promoter or his relative is a partner or a caparcener or a combination thereof;

(b)Where the promoter is a body corporate:

- a subsidiary or holding company of that body corporate; or
- any firm or company directly or indirectly controlled by the promoter of that body corporate or his relative or a firm or HUF in which the promoter or his relative is a partner or coparcener or a combination thereof.

Applicability of Regulations: The following cases are exempted from applicability of Regulations 10, 11 and 12;

- Allotment made in pursuance of an application made in public issue.
- Firm allotment made in public issue, by making full disclosure of facts in prospectus, about identity of the acquirer, purpose of acquisition, consequential changes in voting rights, shareholding pattern of the Board of Directors of the company, etc. Such acquisition need not result in change in control over the company.
- Allotment made pursuant to an application made by a shareholder for rights issue, to the extent of his entitlement.

- Allotment made to underwriters pursuant to an underwriting agreement.
- Inter se transfer of shares amongst:
  - 'Group' within the definition given in MRTP Act, 1969.
  - 'Relatives' within the definition given in the companies Act, 1956.
  - Indian promoters and foreign collaborators who are shareholders who have been holding shares in the target company for a period of at least 3 years prior to the proposed acquisition.
  - Amongst promoters who have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.
  - The acquirer and persons acting in concert with him, where such transfer of shares takes place 3 years after the date of closure of the public offer made by them under these regulations.
- Any acquisition of shares in the ordinary course of business by :
  - Stock broker on behalf of his clients.
  - Market Maker in respect of shares for which he is the market maker and during the course of market making.
  - Public Financial Institutions on their own account.
  - Banks and Financial Institutions as pledgees.
  - International Finance Corporation, Asian Development Bank, International Bank for Reconstruction and Development, Commonwealth Development Corporation and other International Financial Institutions.
  - A Merchant banker or promoter of the target company pursuant to a scheme of 'Safety net' under SEBI (Disclosure and Investor Protection) Guidelines, 2000, in excess of limit specified in Regulation 11.

- Acquisition of shares by a person in exchange of shares received under a public offer made under these regulations.
- Acquisition of shares by way of transmission on succession or inheritance.
- Acquisition of shares by Government companies and statutory corporations. This exemption shall not be applicable if a government company, in a bidding process of the Central Government or State Government, acquires shares or voting rights or control of a listed public sector undertaking.
- Transfer of shares from state level financial institutions, including their subsidiaries to co-promoters pursuant on an agreement with such co-promoters. This includes transfer to successors or assignees of such co-promoters.
- Transfer of shares from venture capital funds to promoters pursuant to an agreement.
- Acquisition of shares pursuant to a scheme framed under section 18 of Sick Industrial Companies. (Special Provisions) Act, 1985.
- Acquisition of shares pursuant to a scheme of arrangement or reconstruction, including amalgamation or merger or demerger under any law or regulation, Indian or foreign.
- Acquisition of shares in unlisted companies. This exemption is not available if by virtue of acquisition or change of control of any unlisted company whether in India or abroad, the acquirer acquires shares or voting rights or control over a listed company.
- It shall not apply to DGRs/ADRs so long as they are not converted into shares carrying voting rights.

Takeover Panel

- SEBI shall form a takeover panel which shall constitute a panel of majority of independent persons.

- The acquirer shall submit his report to SEBI, Mumbai along with a fee of Rs. 10,000 by a banker's cheque or demand draft.
- The acquirer who is seeking exemption under Regulation 3 shall file an application with SEBI, supported by a duly sworn affidavit and fee of Rs. 25,000.
- SEBI shall forward the application to Takeover Panel within 5 days of receipt of application.
- The takeover panel shall make a recommendation to SEBI within 15 days of making references of application.
- SEBI shall pass an order within 30 days from receipt of recommendation from takeover panel.
- SEBI shall give reasonable opportunity to the concerned parties before making any order on the application.
- SEBI shall have the power to issue directions through guidance notes or circulars interpretation or application of any provision of these regulations.

CONCLUSION

Indian capital market has registered a phenomenal growth since 1980’s. The term Capital market is used here in the wider sense as to include both the new issues market and the stock market. In the sense, both primary and secondary markets are covered here. The tone of the capital market depends on the available savings and investment in the economy, on the one hand and the performance of the industry and the economy in general on the other.

In Indian Capital Market the small investor’s protection continues to be cause of concern. He is the ultimate object of the capital market, if he is not properly and adequately protected, capital market cannot win over the investors confidence which is the basic ground on which the foundation of the Capital Market. Investor’s protection is a wide term encompassing various measures designed to protect the investors from malpractices of companies, brokers, merchant bankers, issue managers and other intermediaries.

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