

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **“A STUDY ON SEBI'S LIMITED AUTHORITY TO DISTRIBUTE DISGORGED FUNDS TO AFFECTED INVESTORS”**

AUTHORED BY - SHINY JENNITA. S

B.C.A.LL.B (Hons), LL.M

Tamil Nadu National Law University

## **ABSTRACT:**

The Securities and Exchange Board of India (SEBI) has a crucial role to play in the regulation of the securities market as well as in investor protection. Disgorgement of illegal gains from offenders is one of the enforcement tools of SEBI, acting through it as both a deterrent and as a tool to restore equitability to the market. SEBI's power to distribute disgorged funds to investors harmed by the offenders is still restricted under extant legal regimes. This research analyzes the extent and limitations of SEBI's authority in redistributing disgorged funds to aggrieved investors, comparing pertinent statutory provisions, judicial decisions, and global practices. The study identifies the difficulties arising from the lack of a formal restitution mechanism and discusses possible reforms that can bring SEBI's powers in line with international best practices. By analyzing comparative studies and case studies, in this paper it is contended that legislative changes and procedural improvements are necessary to enable SEBI to efficiently redistribute disgorged funds to injured investors, thus strengthening faith in India's capital markets.

**(Keywords:** Disgorgement, SEBI's power, Limited authority, affected investors)

**LIST OF ABBREVIATIONS**

SEBI	Securities and Exchange Board of India
SAT	Securities Appellate Tribunal
SEC	Securities and Exchange Commission (USA)
FCA	Financial Conduct Authority (UK)
IPEF	Investor Protection and Education Fund
US	United States
UK	United Kingdom
UPSI	Unpublished Price Sensitive Information
IPO	Initial Public Offering
PoA	Power of Attorney
NSE	National Stock Exchange
BSE	Bombay Stock Exchange
NSDL	National Securities Depository Limited
FSMA	Financial Services and Markets Act (UK)
SOX Act	Sarbanes-Oxley Act (USA)

## CHAPTER 1

### INTRODUCTION TO THE STUDY

#### 1.1. INTRODUCTION

"By stripping away illicit profits, disgorgement acts as both a deterrent and a corrective measure, reinforcing the integrity of financial markets."<sup>1</sup>

*-Joel Seligman*

Disgorgement is an important tool in Indian securities law, letting SEBI recover illegal profits from companies breaking the rules, which reverses unfair gains and rights in the situation. SEBI faces practical challenges in exercising its wide-ranging authority to order disgorgement, an authority derived from legislation such as the 2014 amended SEBI Act (explicitly including disgorgement) and the Securities Contract Regulation Act. The 2018 Finance Act stresses severe penalties, igniting worries regarding the application of this authority. Disgorged monies sent to the Investor Protection and Education Fund funded investor restitution and education.

In India, disgorgement has become an increasingly important foundation of the enforcement strategy embraced by the Securities and Exchange Board of India (SEBI). Over the years, SEBI has issued many disgorgement orders to penalize insider trading, market manipulation, and other forms of financial misconduct. Despite its importance, SEBI lacks extensive ability to transfer disgorged monies directly to affected investors.

This gap raises serious questions regarding the effectiveness of Sebi's enforcement operations in obtaining fair results. While disgorgement ensures that wrongdoers do not profit from their illicit conduct, the lack of a strong mechanism for returning these funds to victims undermines the overall goal of investor protection. Instead, disgorged funds are frequently placed into the merged Fund of India, leaving harmed investors with no remedy. The disparity between punitive measures and compensating justice has caused debate among policymakers, legal experts, and stakeholders about the need for reform.

Certain countries internationally have implemented structures that allow regulatory bodies to distribute disgorged funds to affected investors. For example, the United States Securities and Exchange Commission (SEC) runs a Fair Fund program that permits disgorged funds to be

---

<sup>1</sup> Joel Seligman, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (1982), Houghton Mifflin, 3rd Edition

restored to victims through court-approved distribution arrangements. Such models highlight the significance of including reparation in enforcement measures to increase public trust in financial markets. In contrast, India's current system shows an institutional void that requires immediate repair.

The research undertaken aims to address this issue by performing a thorough investigation of SEBI's authority to distribute disgorged funds. The study begins by looking at the statutory framework governing disgorgement in Indian law, which includes the SEBI Act, the Securities Contracts (Regulation) Act, and various ancillary rules. It then dives into landmark judicial cases that have affected the understanding of SEBI's powers. The article provides a comparative analysis of international practices, taking lessons from jurisdictions where regulatory bodies may compensate victims using disgorged revenues.

## **1.2. LITERATURE REVIEW:**

### **1. Sumit Agrawal & Robin Joseph Baby, A Legal Commentary on Securities & Exchange Board of India Act, 1992, Taxmann Publication Pvt. Ltd, 2011.**

In A Legal Commentary on Securities & Exchange Board of India Act, 1992 (2011), Sumit Agrawal and Robin Joseph Baby provide a detailed examination of various enforcement mechanisms under the SEBI Act, including the concept of disgorgement. The commentary also contextualizes SEBI's role within India's broader financial and corporate governance landscape, making it relevant for comparative legal studies. Besides, its discussion about the interplay of SEBI with other laws, such as the Companies Act, of 1956, which is later replaced by the Companies Act, of 2013, and the Securities Contracts (Regulation) Act, of 1956, provides a complete view of securities regulation in India.

### **2. Vidhi Shah, Determining Disgorgement in Securities Law, 10 LAW REVIEW (2019).**

Vidhi Shah's article, Determining Disgorgement in Securities Law, published in the 10th edition of Law Review, Government Law College (2019), critically discusses the legal framework governing disgorgement in securities law. The paper further elaborates on why disgorgement is sought, and how it is applied in India as well as other jurisdictions, along with the challenges posed. The author evaluates how disgorgement serves as a remedial measure rather than a punitive sanction, emphasizing its role in restoring market integrity and investor confidence.

**3. Theresa A. Gabaldon, Equity, Punishment, and the Company You Keep: Discerning a Disgorgement Remedy under the Federal Securities Laws, 105 CORNELL LAW REVIEW 1611 (September 2020).**

Theresa A. Gabaldon's article provides an in-depth examination of disgorgement as a remedial tool in U.S. federal securities law. The article critically assesses the equitable foundations of disgorgement, its evolving judicial interpretations, and its intersection with punitive sanctions. Gabaldon traces the origins of disgorgement in equity jurisprudence, explaining that its primary function under securities laws is restorative rather than punitive. She examines its legal basis within the Securities Exchange Act of 1934, particularly how the Securities and Exchange Commission (SEC) has used disgorgement as an enforcement mechanism against securities fraud, insider trading, and market manipulation.

**4. Harshit Singh & Jay Shah, Time to Rethink SEBI's Disgorgement: An Empirical Analysis of Its Effectiveness, RGNUL FIN. & MERCANTILE LAW REVIEW (2024)**

This Article expounds on whether disgorgement is an 'effective, equitable remedy' or is just a mere facade of equity. To gauge its effectiveness, the Article seeks to answer two pertinent questions through empirical data- Whether the disgorged amounts credited to the SEBI Investor Protection and Education Fund are being utilized for compensating the harmed investors through restitution, and whether through disgorgement, SEBI reverts the wrongdoer to the status quo and not a worse off position. Thus, this Article has analyzed the effectiveness of disgorgement as an 'equitable' remedy by attempting to answer the above questions and has further suggested policy recommendations for utilizing disgorged amounts to compensate the harmed investors.

### **1.3. METHODOLOGY:**

This study takes a closer look at how the Securities and Exchange Board of India (SEBI) handles the distribution of disgorged funds to investors who have been affected. This study employs a qualitative research approach, focusing on the existing laws, regulations, and court rulings that shape SEBI's role in these situations. The primary sources are SEBI regulations, the Securities and Exchange Board of India Act from 1992, and relevant cases from Indian courts to understand just how much authority SEBI has when it comes to compensating investors and involving secondary sources such as academic articles, legal reviews, and reports

from regulatory bodies. Also, comparing SEBI's framework with similar ones in other places, like the U.S. Securities and Exchange Commission (SEC), to spot potential reforms that could strengthen SEBI's power.

#### **1.4. STATEMENT OF THE PROBLEM:**

While the Securities and Exchange Board of India (SEBI) has the authority to impose disgorgement as a penalty for securities violations, there is no clear legal or procedural framework enabling the regulator to redistribute these funds to affected investors. This gap creates significant challenges in achieving equitable outcomes for aggrieved parties. The absence of a restitution mechanism limits SEBI's ability to provide direct relief to victims and raises questions about the practical feasibility of implementing such a system within the existing legal structure. This research seeks to explore whether these challenges can be addressed through targeted legislative amendments or administrative reforms, without necessitating a complete overhaul of the regulatory architecture.

#### **1.5. RESEARCH OBJECTIVES:**

- ✓ Examine the existing legal provisions under the SEBI Act and related regulations to determine the limits on SEBI's jurisdiction to disperse disgorged funds.
- ✓ to evaluate significant court decisions that influenced how SEBI's disgorgement and restitution powers are interpreted.
- ✓ To investigate frameworks used by other jurisdictions (for example, the SEC Fair Fund program in the United States) to better understand how disgorged funds are distributed to affected investors.

#### **1.6. RESEARCH QUESTION:**

1. What is the current legal framework for regulatory disgorgement under SEBI's jurisdiction?
2. Does SEBI have the explicit statutory authority to compensate investors who suffered due to security violations?
3. Is disgorgement under SEBI primarily viewed as a restitutive measure (to compensate victims) or a punitive one (to deter wrongdoing)?
4. How do other jurisdictions, such as the US and UK, grant their regulators explicit authority to compensate investors using disgorged funds?

### 1.7. HYPOTHESIS:

Giving SEBI specific statutory authority and implementing a structured process to redistribute disgorged funds to the affected investors will improve investor protection, restore public trust in the securities market, and bring India's regulatory framework in line with global standards. Aligning India's regulatory processes with international models, such as the US Securities and Exchange Commission's Fair Fund initiative, will strengthen the whole regulatory system, encourage investor involvement, and improve market integrity.

## CHAPTER 2

### DISGORGEMENT IN SECURITIES LAW

#### 2.1. CONCEPT OF DISGORGEMENT

According to James D. Cox, “disgorgement is described as a mechanism to prevent unjust enrichment by requiring wrongdoers to return ill-gotten gains.”<sup>2</sup>

Disgorgement is a legal remedy used by regulatory authorities to deprive wrongdoers of the profits they have unlawfully obtained through fraudulent, manipulative, or illegal activities. It serves as both a deterrent and a means to restore fairness in financial markets by ensuring that violators do not benefit from their misconduct. Unlike compensatory damages, disgorgement is primarily a remedial measure aimed at preventing unjust enrichment rather than directly compensating victims.<sup>3</sup> In securities, agencies like the Securities and Exchange Board of India (SEBI) use disgorgement to take back the profits from those who break the rules. Usually, the amount that gets disgorged goes into government funds, but in some places, they might return it to the investors who got hurt as part of restitution efforts. This is different from other remedies of restitution. The specific nature of this remedy becomes clearer when contrasted with other remedies in private law. For example, 'restitution' refers to the return of a property to its rightful owner or “status quo”. The justification for this remedy is straightforward and is based on a principle that is traced back to Roman law that ‘no one ought to be unjustly enriched at the expense of another’.<sup>4</sup>

#### 2.2. EVOLUTION OF DISGORGEMENT IN INDIA

Six years after the enactment of the Securities and Exchange Board of India Act, 1992 (SEBI Act), SEBI made its first unsuccessful attempt to direct disgorgement in the matter of

<sup>2</sup> James D. Cox et al., *Securities Regulation: Cases and Materials* 543 (10th ed. 2020).

<sup>3</sup> P.R. Sundararajan, *Law Relating to Capital Markets* 235 (LexisNexis, 2nd ed. 2018).

<sup>4</sup> Peter Jaffey, *Restitutionary Damages and Disgorgement*, 3 RLR 30–48, 30 (1995).

Hindustan Lever Limited v. SEBI<sup>5</sup>. when it intended to impose disgorgement as a remedy against Hindustan Lever Limited (HLL) for alleged insider trading offenses. However, the Bombay High Court concluded that SEBI lacked express statutory authority to seek disgorgement since the SEBI Act of 1992 did not include specific provisions for the regulatory body to recover illegal income from securities law violations.

This decision recognized the necessity for a strong disgorgement mechanism, the Securities Laws (Amendment) Act of 2014 legally empowered SEBI to order disgorgement under Section 11B of the SEBI Act. Despite these developments, concerns persist over SEBI's jurisdiction to pay disgorged funds directly to affected investors, as the lack of a well-defined system frequently leads to such funds being moved to the Consolidated Fund of India rather than compensating those affected. Another unsuccessful attempt in this direction was made in Rakesh Agarwal v. SEBI<sup>6</sup> in another case of insider trading where it argued that "the power to direct disgorgement of alleged profits, to aggrieved investors is an equitable power which vests in SEBI, and that such a direction of disgorgement is compensatory in nature." The contention was rejected by SAT on the ground that equitable powers are exercised only by courts and cannot be exercised by quasi-judicial tribunals/ bodies. It also held that SEBI cannot pursue disgorgement of claimed earnings under Section 11B since it is a deterrent measure rather than a compensatory one<sup>7</sup>.

SEBI made another attempt to test its power of disgorgement in the IPO scam also referred to as the "Roopalben Panchal scam" in 2006 describing disgorgement as a useful equitable remedy because it strips the perpetrator of the fruits of his unlawful activity and returns him to the position, he was in, before he broke the law. This scam, which involves capturing retail category shares in some initial public offerings, is known by standard market terminology. It differs in that it is described as a "useful compensatory remedy"<sup>8</sup>. SEBI ordered disgorgement, which was upheld by the Securities Appellate Tribunal (SAT) in multiple cases.

---

<sup>5</sup> Hindustan Lever Ltd. v. SEBI [1998] 18 SCL 311 (AA)

<sup>6</sup> [2004] 49 SCL 351

<sup>7</sup> SEBI v. Rakesh Agarwal, Civil Appeal No. 02/2004 Supreme Court Order dated 23.01.2008, available at <http://www.sebi.gov.in/consentorders/rakeshconsent.pdf>

<sup>8</sup> SEBI Order No. WTM/GA/101/ISD/11/06, In the matter of investigations into initial public offerings, dated 21.11.2006.

## CHAPTER 3

### LEGAL FRAMEWORK GOVERNING DISGORGEMENT IN INDIA

#### **3.1. SEBI's ROLE IN ENFORCING DISGORGEMENT ORDERS**

In 2014, Section 11B of the SEBI Act was amended to make disgorgement an explicit power of SEBI. Section 11B explains the statutory sanction for disgorgement, which is as follows:

“For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made a profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention”.<sup>9</sup>

Sections 12A of the Securities Contract Regulation Act, 1956 (SCRA)<sup>10</sup> and section 19 of the Depositories Act, 1996 are similar to Section 11B of the SEBI Act. The Securities Law Amendment Act revised sections 12A and section 19 to establish a definition and legislative sanction for disgorgement. Therefore, in Indian securities law, the power of SEBI to order disgorgement now stems from statutory provisions embedded in the SEBI Act, the SCRA, 1956, and the Depositories Act, 1996. The amount that was disgorged was previously credited to the Consolidated Fund of India. It is now credited to the Investor Protection and Education Fund and used under the SEBI (Investor Protection and Education Fund) Regulations, 2009 to provide restitution to eligible investors who have suffered losses due to securities law violations. The funds and interest are then used for investor welfare and education. However, the Act does not clarify whether disgorged funds can be returned to impacted investors. Another significant case is *SEBI v. Sahara India Real Estate Corporation Ltd.* (2012)<sup>11</sup>, where the Supreme Court of India upheld SEBI's authority to direct disgorgement of funds raised through illegal means. The court ruled that SEBI's powers under Section 11B are broad and encompass the ability to take remedial actions, including disgorgement, to address violations of securities laws. SEBI extensively uses this jurisdiction to order disgorgement in cases of securities law violations.

#### **3.2. SEBI's ABSENCE OF EXPLICIT AUTHORITY IN COMPENSATING INVESTORS THROUGH DISGORGED FUNDS**

The SEBI Act of 1992 fails to provide clear criteria for distributing disgorged funds to impacted investors. This lack of clarity has resulted in variances in SEBI's approach, which led to legal

<sup>9</sup> Inserted by the Securities Law (Amendment) Act, 2014 w.r.e.f. 18.07.2013.

<sup>10</sup> Securities Contracts (Regulation) Act, 1956

conflicts. There is no specific provision under the Companies Act, of 1956 for disgorgement. However, Clause 33 of the proposed Companies Bill, 2009 which corresponds to existing Section 68A of the Companies Act, proposes disgorgement as a penalty for certain offenses. Individuals convicted of making false applications or fraudulently appealing corporations to allot shares would be subject to disgorgement of any gains, as well as the seizure and disposal of such securities. Under the proposed provision, the amount received through disgorgement or disposal of securities is to be credited to the Investor Education and Protection Fund. However, under this Act, since disgorgement has evolved as a principle-based remedy it could be used in a variety of circumstances and not be limited to cases of a certain specified category.<sup>11</sup>

Determining losses and demanding disgorgement is an adjudicatory role that requires statutory authority. Civil courts often undertake such functions by awarding damages under the Indian Contract Act of 1872, tort law, or paying compensation under the Consumer Protection Act of 1986 (currently 2019). SEBI's function, on the other hand, is confined to issuing directives, administering penalties, and implementing policies that benefit all investors.

SEBI's powers are administrative and regulatory and do not include judicial functions such as compensating individual investors. Expanding SEBI's authority to incorporate such responsibilities may jeopardize the jurisdiction of civil courts, which are specifically authorized to resolve disputes and issue compensation.

The absence of a structured procedure for returning disgorged funds to impacted investors reveals a serious deficiency in India's regulatory framework. Disgorged funds are frequently transferred to the Consolidated Fund of India or the IEPF rather than being refunded to victims. This causes an imbalance between the punitive and compensatory parts of disgorgement, reducing its effectiveness as a corrective remedy. For example, while SEBI has the jurisdiction to compel disgorgement under Section 11B of the SEBI Act, it lacks a specific mandate to compensate investors directly. This limitation limits SEBI's capacity to achieve its principal goal of investor protection, as stated in the preamble to the SEBI Act.

---

<sup>11</sup> 2012 (10) SCC 603

### 3.3 DOES DISGORGEMENT PROTECT INVESTORS?

The preamble of the SEBI Act, 1992 entrusts SEBI with the primary responsibility of protecting the interests of the investors. Wrongdoers in the securities market, through their conduct, acquire ill-gotten gains, which harms the investor's interests. SEBI's regulations aim to support the healthy and orderly development of the securities market while also increasing 'confidence in investors.'<sup>12</sup> An effective enforcement mechanism that produces deterrence in the securities market is vital so that it "holds individuals and corporations accountable and deters misconduct, promotes public trust in financial services, and creates an environment in which fair and efficient markets can thrive."<sup>13</sup>

Section 15JA of the SEBI Act provides that sums realized by way of penalties must be credited to the consolidated fund of India, which can be utilized in the manner prescribed by the government. However, the SEBI IPEF Regulations require that disgorged funds be credited to the SEBI IPEF Fund. This shows the legislature's goal that the Fund provide both investor protection and investor education. This indicates a regulatory gap in the existing operation of the IPEF Fund, which is used for investor education but not investor protection. In *Ram Kishori Gupta v. SEBI*<sup>14</sup>, the SAT has aptly held that "the basic idea behind disgorgement is restitution. As an investor protection measure, the appellants need to be compensated since disgorgement without restitution does not serve any purpose". The Supreme Court of India has held that "The Supreme Court of India has also stated that courts must interpret statute provisions in light of their purpose. If the object of the law will be defeated by noncompliance with it, it has to be regarded as mandatory"<sup>15</sup>

Regulation 5(3) of the SEBI IPEF Regulations allows for the disgorged funds to potentially be returned to identifiable victims as restitution, at SEBI's discretion. This gives SEBI a great deal of discretion in determining whether or not to return the disgorged funds, which offers a lot of space for interpretation.

Whilst there is no explanation provided for the creation of the IPEF Fund by SEBI, underlying intent could be imported from Section 308(a) of the Sarbanes-Oxley Act, 2002 ("SOX Act")<sup>16</sup>, which provides for the creation of a Fair Fund and authorizes the "SEC to inter alia, utilize the disgorgement funds for the benefit of victims of securities law violation". Further, SAT has

---

<sup>12</sup> N. Narayanan v. Adjudicating Officer; SEBI, (2013) 12 SCC 152.

<sup>13</sup> International Organization of Securities Commissions, *Objective and Principles of Securities Regulation* (2003).

<sup>14</sup> *Ram Kishori Gupta v. SEBI*, 2019 SCC OnLine SAT 149

<sup>15</sup> *Sharif-ud-Din v. Abdul Gani Lone*, (1980) 1 SCC 403.

<sup>16</sup> Sarbanes-Oxley Act of 2002

held in the case of Ram Kishori Gupta v. SEBI that the "basic idea behind disgorgement is restitution".

An examination of several disgorgement orders and their recent increase reveals that SEBI is using disgorgement of "ill-gotten gains" more frequently when it is possible to quantify them. The sum obtained by disgorgement has grown rapidly in recent years<sup>17</sup>. A question regarding the power of SEBI to award compensation had arisen before SAT in G.M. Bosu & Co. v. SEBI and Others<sup>18</sup>, but the matter was disposed of without discussion on the competence of SEBI to award compensation. It may be useful to note that the Joint Parliamentary Committee in its report, based on which amendments were made in 2002, though had noted its concern on areas relating to the award of compensation to aggrieved investors but the report on actions taken under such report of the Committee noted categorically that "specific right under SEBI Act to investors to claim damages, compensation and interest" has not been given by SEBI (Amendment) Act, 2002. Therefore, in the absence of statutory amendment, SEBI may not have the power to award compensation. Compensation and disgorgement are two essential concepts in judicial settlements that function as measures to correct injustices and restore balance. While compensation seeks to make the aggrieved party whole by compensating for losses or damages, disgorgement seeks to prevent unjust enrichment by ordering the offending party to return any gains obtained through illicit conduct.

## CHAPTER 4

### COMPARATIVE ANALYSIS OF DISGORGEMENT LAWS – INDIA, US, & UK

#### 4.1. EVOLUTION OF DISGORGEMENT IN UNITED STATES

Initially, the Securities Exchange Act of 1934 in the United States did not have a separate provision for disgorgement. The objective and scope of disgorgement have evolved due to various case laws. Understanding the development of disgorgement jurisprudence in the USA is important for understanding its equitable nature and assessing how the law is applied in practice<sup>19</sup>. Disgorgement was first used in 1968 in SEC v. Texas Gulf<sup>20</sup>, Disgorgement was used in this case to "restitution of ill-gotten gains." The court ordered restitution of profits reaped by insiders to prevent unfair enrichment.

---

<sup>17</sup> Dr. S.N Ghosh, 'Protection of Harmed Investors: The Missing Link in the Disgorgement Orders of the SEBI', (2020)

<sup>18</sup> Appeal No.183/2010, SAT Order dated 15.02.2011

<sup>19</sup> Ellsworth, J.D., Disgorgement in Securities Fraud Actions Brought by the SEC, (1977) Duke LJ 641.

<sup>20</sup> SEC v. Texas Gulf 401 F.2d 833 (2d Cir. 1968)

As a result, the concept of disgorgement evolved into a punitive measure, i.e., a penalty, because insiders preserving profit would be in breach of the law, even though it was intended to serve as an equitable remedy. In *SEC v. Drexel Burnham Lambert Inc (1989)*<sup>21</sup>, defendants were forced to disgorge compensation earned as corporate directors through share parking, which violated a standstill agreement. The court aimed to prevent misbehavior rather than to provide an equitable remedy. Although acknowledging the need to return illicit profits, the court lacked a precise calculation method, approximating based on reason. Profits should have been returned to the company, but ownership transfers favored the new holding company. The court proposed paying minority shareholders but did not implement it, instead prioritizing compensation for investors who suffered losses.

In *SEC v. Manor Nursing Centres, Inc*<sup>22</sup>, the court refused to extend the disgorgement order to include additional income from the original ill-gotten gains. It was determined that the unlawful activity and the final earnings must have a distinct cause-and-effect relationship and proximate nexus. The SEC established a distinction and pertinence to distinguish between legal gains and those that are not in *SEC v. First City Financial Corp*<sup>23</sup>. Although disgorgement is not intended to reward investors, it is sometimes classified as a penalty or restitution. In this case, the rise in scrip prices was caused by three factors other than insider's disclosure of material information. Profit estimates ranged from zero to eight hundred thousand dollars. Disgorgement was ordered due to a violation of the law. Analysts even contended that the insider was not liable for disgorgement. Thus, disgorgement was ordered as "the line between restitution and penalty is unfortunately blurred"

In *SEC v. Worldcom*<sup>24</sup>, the SEC provided a distribution plan for disgorgement due to financial fraud committed by the corporation. In *Liu v. SEC*<sup>25</sup>, the court determined that disgorgement is a remedial measure, regardless of the actual victims of the offense, and can be reimbursed due to the difficulty of identifying the true victims and loss. Thus, the court has ruled that disgorgement should be limited to net profit or the ill-gotten gains of the accused

---

<sup>21</sup> *SEC v. Drexel Burnham Lambert Inc.*, 837 F. Supp. 587 (S.D.N.Y. 1993)

<sup>22</sup> *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1972).

<sup>23</sup> *SEC v. First City Financial Corporation*, 890 F.2d 1215 (D.C. Cir. 1989)

<sup>24</sup> *SEC v. WorldCom, Inc.*, 273 F. Supp. 2d 431 (S.D.N.Y. 2003).

<sup>25</sup> *Liu v. SEC*, 140 S. Ct. 1936

## 4.2. EVOLUTION OF DISGORGEMENT IN THE UNITED KINGDOM

In the United Kingdom, the concept of disgorgement has evolved through a combination of common law concepts, regulatory reforms, and legislative laws aimed at avoiding unjust enrichment resulting from financial misconduct. In contrast to the United States, where the Securities and Exchange Commission (SEC) has long had the jurisdiction to impose disgorgement, the United Kingdom has developed disgorgement primarily through financial regulatory organizations and legal precedents. Historically, English common law has acknowledged the idea that unjust enrichment must be addressed. Even though disgorgement is not regulated in financial regulations, courts have awarded restitution damages in circumstances where a party wrongly profited from illegal or unethical behavior.

Disgorgement as a regulatory instrument gained prominence with the development of the UK's current financial regulatory system. The Financial Services and Markets Act of 2000 (FSMA) authorized the Financial Services Authority (FSA), which was before the Financial Conduct Authority (FCA), to levy fines and take enforcement action against companies that engage in market abuse, insider trading, and other financial misconduct. However, initial enforcement focused on fines rather than disgorgement<sup>26</sup>.

The FCA was given more authority to levy financial penalties, including the disgorgement of illegal earnings. The FCA has since actively used disgorgement to deprive wrongdoers of gains earned through misconduct, particularly in situations of insider trading, market manipulation, and false financial statements. UK courts have also helped to create disgorgement remedies. While courts have traditionally focused on compensatory damages, they have increasingly acknowledged disgorgement as an important tool for deterring financial misconduct. In circumstances of a breach of fiduciary responsibility, courts have ordered disgorgement to prevent undue enrichment<sup>27</sup>. Today, disgorgement is an integral part of the FCA's enforcement strategy, ensuring that firms and individuals do not benefit from financial misconduct. However, challenges remain regarding the distribution of disgorged funds to affected investors, similar to the situation in India.

---

<sup>26</sup> James J. Fishman, Enforcement of Securities Laws Violations in the United Kingdom, 9 INT'L TAX & BUS. LAW. 131

<sup>27</sup> Kharisma, Dona Budi, and Afilya Hunaifa. "Comparative study of disgorgement and disgorgement fund regulations in Indonesia, the USA and the UK." Journal of Financial Crime 30, (2023): 635-649.

### **4.3. COMPARATIVE ANALYSIS OF DISGORGEMENT WITH INTERNATIONAL JURISDICTION:**

Unlike India, where disgorgement is not a measure expressly provided for, though as previously noted, is capable of being brought within the words of the statute, the Securities Exchange Act, 1934 under Sections 21B (e) and 21C(e) specifically empowers the SEC to enter an order requiring accounting and disgorgement, including reasonable interest. To determine when and how much to disgorge, the SEC's Rules of Practice require the SEC to specify each violation that forms the basis of a disgorgement order, the dates on which each violation occurred, the amount to be disgorged for each violation, and the total amount to be disgorged. It appears that India's approach to disgorgement, without explicit reference to US cases, is evolving on similar lines as the US.

The FCA operates under the Financial Services and Markets Act of 2000 and has clear enforcement jurisdiction to impose disgorgement and assure investor compensation, making it more organized than India but slightly less extensive than the SEC's powers in the United States. Unlike in the United States and the United Kingdom, SEBI's disgorgement scheme does not include a direct distribution mechanism. The cash obtained through disgorgement is put in the Investor Protection and Education Fund (IPEF) rather than refunded to the harmed investors.

The SOX Act has given a more progressive dimension to the investor protection regime. The collection of damages for the injured investors was never considered an important function of the SEC. Section 308 (popularly called 'Fair Fund provision') of the SOX Act envisages a prominent role for the SEC in compensating the harmed investors. The SOX Act now empowers the SEC in certain circumstances to levy “civil penalties shall be added to and become part of the disgorgement fund for the benefit of the victims of such violation”. In other words, it means that the disgorgement monies of ill-gotten gains collected from the wrongdoers shall be utilized for the benefit of the victims of the violations. The SEC selects Fund Administrators to manage distribution while maintaining efficiency and transparency. This organized method offers greater investment protection than India's system. The FCA maintains a Redress Scheme, which ensures that disgorged funds are restored to affected investors whenever possible. The FCA pressures investor remuneration over regulatory fines, making its strategy more investor-friendly than India's but less structured than the SEC's Fair Fund scheme.

In India, judicial interpretations of disgorgement emphasize that it should be remedial rather than punitive. This limits SEBI's ability to restore money to investors, as Indian courts have frequently ordered those disgorged funds be put in regulatory accounts rather than used for compensation. The US Supreme Court's decision in *Liu v. SEC* (2020) established that disgorgement must serve an investor-centric purpose, reinforcing the SEC's authority to return money to impacted investors. However, it limited excessive punitive disgorgement by requiring disgorged funds to be limited to actual investor harm. Courts in the United Kingdom generally approve disgorgement as part of regulatory enforcement, and the FCA's Redress Scheme fits judicial expectations.

## CHAPTER 5

### DISGORGEMENT AND OTHER FORM OF REMEDIES

#### 5.1. UNJUST ENRICHMENT

The doctrine of unjust enrichment 'permits the recovery in certain instances where a person has received from another a benefit, the retention of which would be unjust under some legal principle, a situation which equity has established or recognized'.<sup>28</sup>

The concept of unjust enrichment originated in English law, based on the principle of *assumpsit*, which means 'had and got'. Judicial interpretation led to reforms that emphasized the idea of restitution. In India, the principle of unjust enrichment is founded on restitution and has a broader application than in England. Unjust enrichment also recognized as a gain-based remedy, is now characterized in India to be either 'restitution' or 'disgorgement'.<sup>29</sup>

Unjust enrichment has been defined as the act or condition wherein one person benefits at the expense of another in a situation deemed by law to be unjust. Usually, unjust enrichment describes benefits received by accident or error, but that has, in fact, never been earned and thus should never ethically be retained.<sup>30</sup> Until the Disgorgement Order, gain-based remedies under securities law in India were only recognized through restitution. SEBI's Disgorgement Order expanded the scope of equitable remedies by introducing a new remedy, 'disgorgement'.

---

<sup>28</sup> Decateur Reed, 'Restitution as a Contract Remedy' United States Jurisprudence, available at <http://www.unitedstatesjurisprudence.com/uploads/Restitution/>

<sup>29</sup> RB Grantham and E.F. Rickett, 'Disgorgement For Unjust Enrichment?' 2003 The Cambridge Law Journals, available at <http://journals.cambridge.org/>

<sup>30</sup> S. Smith, Justifying the Law of Unjust Enrichment, (2001) 79 Texas L.R.

## 5.2. IS DISGORGEMENT AN EQUITABLE REMEDY OR A PENAL MEASURE?

To delve into the question at hand, it becomes imperative to explore the U.S. stance regarding securities law, as the US capital markets heavily influence SEBI. In the jurisdictions of the United States and India, disgorgement was neither a punitive remedy nor did it address the losses suffered by the victims of unjust enrichment. It was seen as a monetarily equitable remedy. A penalty is inherently retributive because it seeks to impose punishment. On the other hand, the goal of disgorgement is to force the offender to give up their earnings. This was the usual position, but new tendencies in the judicial approach, combined with revisions, suggest a shift like disgorgement.

The shift was clear in *Kokesh v. SEC*<sup>31</sup>, The Court determined that disgorgement was ordered for breaking laws against the State rather than damaging the rights of an aggrieved person. In India, similarly, there was a move from equitable to punitive disgorgement. The Finance Act of 2018 made explicit legislative revisions to the SEBI Act, facilitating the transfer. The marginal note for Section 11B has been modified from 'Power to issue directions' to 'Power to issue directions and penalties'. Before the modification, section 15HB of the SEBI Act granted the authority to impose fines in cases of contravention where no specific penalty was imposed.

## 5.3. DISGORGEMENT AND RESTITUTION

The traditional view of disgorgement is remedial in nature, similar to restitution. Restitution involves returning wealth to the victim as a result of the misconduct of the defendant. Restitution seeks to avoid unjust enrichment at the expense of the claimant. Restitution is based on the theory that one party's benefit equals another's loss. Although “disgorgement without restitution does not serve any purpose”, there are still thin-line differences between disgorgement and restitution.<sup>32</sup>

Restitution and disgorgement both have an underlying aim which is compensation. Restitution in the form of compensation generally arises in the form of contractual remedy wherein the amount awarded to the plaintiff would provide him status quo or the position has he not entered the contract. This inherent quality gives disgorgement its unique character. First, if losses are prevented, disgorgement may also be applied. Therefore, disgorgement could work to make

---

<sup>31</sup> *Kokesh v. SEC*, 137S. Ct. 1635, 1641 (2017),

<sup>32</sup> Buckberg, E. and Dunbar, F.C., *Disgorgement: Punitive demands and remedial offers* (2008) 63 (2) *Bus. Law. Rev*

someone worse off and cause losses, whereas restitution would stop unjust enrichment. The jurisprudence assumes that there is no distinction between restitution and disgorgement, but fails to consider how a capital market differs from a contract due to its anonymity.<sup>33</sup> Restitution restores the status quo for the plaintiff, whereas disgorgement restores the status quo for the defendant. This is the main distinction between the two. SEBI has a larger scope for disgorgement due to its focus on ill-gotten earnings rather than investor harm. SEBI can order disgorgement even when the damaged person cannot be identified. Disgorgement and restitution are distinct remedies with unique causes and operations.<sup>34</sup>

#### 5.4. DISGORGEMENT AND PENALTY

As far as we know, the state imposes penalties for any behavior that violates the law. Disgorgement is frequently classified as a penalty for two reasons: first, it is a wrong against the public because victims are generally untraceable, and second, it serves as a deterrent. Disgorgement is frequently imposed for violations of public laws and has an inherent punitive component. The absence of a statutory obligation to transfer confiscated funds to designated victims can be considered a penalty. The nature of punishment is punitive and retributive, but that of disgorgement is to limit unlawful enrichment; this distinguishes the two. The distinction emerges from the assumption that, in theory, disgorgement should not exceed profit.<sup>35</sup> Courts have gone to some lengths to assess net profit after subtracting transaction costs as well.

Disgorgement aims to bring the perpetrator back to the status quo. The statute sets the penalty, although the adjudicator can impose a penalty within the given limitations. However, disgorgement operates differently and does not provide a similar discretion to adjudicatory authority in the presence of a systematically developed binding methodology for calculating the disgorged amount.

Furthermore, disgorgement cannot be used if there is no profit or loss aversion, but punishment may be applied for merely breaking the law. Therefore, in an ideal theoretical application, the penalty would be more severe than the disgorgement imposed by SEBI and serve as a stronger deterrent than disgorgement alone.

---

<sup>33</sup> P. Loughlan, *No Right to the Remedy? An Analysis of Judicial Discretion in the Imposition of Equitable Remedies*, (1989)

<sup>34</sup> P. Birks, *Unjust Enrichment and Wrongful Enrichment*, (2001) 79 *Texas. L.R*

<sup>35</sup> *Bell v Wolfish* [1979] USSC 441 U.S. 520-539.

## CHAPTER 6

### NOTABLE CASES INVOLVING DISGORGEMENT

#### **A. Hindustan Lever Limited (HLL) vs. Securities and Exchange Board of India**

##### **Facts of the case**

On March 25, 1996, Hindustan Lever Ltd. (HLL) bought 800,000 shares of Brooke Bond India Ltd. (BBIL) from the Unit Trust of India (UTI) for ₹350.35 per share, around two weeks before the merger announcement. On April 19, 1996, HLL announced the merger, causing BBIL's stock price to rise by ₹50 per share. SEBI ruled that HLL and BBLIL, both subsidiaries of London-based Unilever and effectively controlled together, were aware of the merger before it occurred. As a result, HLL and its directors were identified as insiders.<sup>36</sup>

##### **SEBI's Action**

SEBI also discovered that HLL possessed unpublished price-sensitive information (UPSI) as specified under Section 2(k) of the 1992 Regulations, which includes any non-public information connected to mergers that, if released, might significantly affect the company's stock prices. After 15 months of inquiry, SEBI suspected insider trading and issued a show cause notice to HLL's Chairman, all executive directors, and the Company Secretary in August 1997, charging them with insider trading. This amount represented the difference in market price of BBLIL shares before and after the merger announcement, effectively disgorgement of HLL's gains from the acquisition<sup>37</sup>. On March 11, 1998, SEBI ordered HLL to compensate UTI for about ₹3.04 crore. This amount represented the difference in market price of BBLIL shares before and after the merger announcement, effectively disgorgement of HLL's profits from the transaction. HLL contested SEBI's ruling, and the Securities Appellate Tribunal (SAT) later overturned the disgorgement direction.

##### **The outcome of the case**

The SAT's decision was based on the view that, at the time, SEBI lacked specific statutory authority to require such compensation. This case highlighted the importance of explicit legal provisions authorizing SEBI to compel disgorgement. In response, legislative amendments were adopted in 2014 that granted SEBI the right to direct disgorgement, thereby strengthening its enforcement capabilities against securities law violations.

<sup>36</sup> [https://www.sebi.gov.in/media/press-releases/mar-1998/action-against-hindustan-lever-limited\\_18764](https://www.sebi.gov.in/media/press-releases/mar-1998/action-against-hindustan-lever-limited_18764)

<sup>37</sup> <https://www.barandbench.com/columns/the-science-and-art-of-disgorgement-under-securities-law?>

**B. Rakesh Agarwal vs. Securities and Exchange Board of India (SEBI)<sup>38</sup>****Facts of the case**

Rakesh Agrawal, Managing Director of ABS Industries Ltd., was involved in negotiations to sell a large part of his company to Bayer A.G. During these discussions, Agrawal arranged for the purchase of ABS shares through his brother-in-law, Mr. I.P. Kedia, before the public announcement of the merger. SEBI said that Agrawal, who possessed unpublished price-sensitive information (UPSI), engaged in insider trading by arranging the share transactions.

**SEBI's Action**

On June 10, 2001, SEBI found Agrawal in violation of Regulation 3(i) of the SEBI (Insider Trading) Regulations of 1992. SEBI ordered Agrawal to deposit ₹34,00,000 into the Investor Protection Funds of the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). Agrawal appealed SEBI's decision to the Securities Appellate Tribunal (SAT). The SAT, in its deliberation, set aside SEBI's disgorgement order, where it argued that "the power to direct disgorgement of alleged profits, to aggrieved investors is an equitable power which vests in SEBI, and that such a direction of disgorgement is compensatory in nature."

**The outcome of the case**

The contention was rejected by SAT on the ground that equitable powers are exercised only by courts and cannot be exercised by quasi-judicial tribunals/ bodies. It also observed that disgorgement of alleged profits is always directed as a measure of deterrence and not compensation and therefore is penal, which measure cannot be undertaken by SEBI under Section 11B.<sup>39</sup> Further, the jurisdiction of the civil courts in such matters is not barred and aggrieved investors can always approach civil court to seek disgorgement of any alleged profits.

**C. Karvy Stock Broking Ltd. v. SEBI<sup>40</sup>****Facts of the case**

The Karvy Stock Broking Limited (KSBL) case involves major financial misconduct, specifically the exploitation of customer securities. In June 2019, the Securities and Exchange

---

<sup>38</sup> [2004] 49 SCL 351 (SAT).

<sup>39</sup> SEBI v. Rakesh Agarwal, Civil Appeal No. 02/2004 Supreme Court Order dated 23.01.2008, available at <http://www.sebi.gov.in/consentorders/rakeshconsent.pdf>

<sup>40</sup> Karvy Stock Broking Ltd. v. SEBI [2007] 73 SCL 261 (SAT).

Board of India (SEBI) issued a guideline forbidding stockbrokers from pledging client securities for personal loans and requiring the separation of customer cash and securities by September 2019. KSBL failed to follow these guidelines, prompting an investigation by the National Stock Exchange (NSE). The investigation found that KSBL illegally pledged securities from roughly 95,000 clients, generating around ₹2,300 crores through loans from multiple institutions, including ICICI Bank, HDFC Bank, and Axis Bank. This improper pledge was aided by the abuse of Power of Attorney (PoA) agreements, which clients had entrusted to KSBL to oversee trade settlements. Instead, KSBL exploited these PoAs to transfer customer securities into its demat accounts without necessary authorization, then pledged them as collateral for personal debts<sup>41</sup>.

### **SEBI's Action**

SEBI issued an interim order on November 22, 2019, prohibiting KSBL from onboarding new clients and instructing the National Securities Depository Limited (NSDL) to return pledged securities to the appropriate clients. KSBL was expelled from NSE and BSE memberships in November 2020 and fined ₹21 crore in April 2023.

### **Outcome of the case**

The SAT stated that disgorgement is an equitable remedy to keep wrongdoers from unjustly benefitting themselves through criminal conduct. It highlighted that disgorgement is not punitive or intended to compensate victims, but rather to prevent violators from profiting from their misconduct. The panel further stated that only those who profited from their illegal conduct should be entitled to disgorgement and that the sum should not exceed the entire profits made from the unlawful activity.<sup>42</sup>

## **D. Kokesh v. Securities and Exchange Commission<sup>43</sup>**

### **Facts of the case**

The case *Kokesh v. SEC* focused on whether the SEC's disgorgement is considered a penalty under 28 U.S.C. Section 2462, triggering a five-year statute of limitations. Charles Kokesh, the owner of two financial advising firms, was found guilty of misappropriating \$34.9 million from

---

<sup>41</sup> Dr. S. N. Ghosh, PROTECTION OF HARMED INVESTORS: THE MISSING LINK IN THE DISGORGEMENT ORDERS OF THE SEBI

<sup>42</sup> Renuka Sane and Vivek: Reconsidering SEBI Disgorgement (June 2022)

<sup>43</sup> *Kokesh v. SEC*, 137S. Ct. 1635, 1641 (2017)

investors between 1995 and 2006.

### **SEC's Action**

In 2009, the SEC filed a civil enforcement action against him, and the U.S. District Court for the District of New Mexico ordered a \$2.4 million civil monetary penalty and disgorgement of the entire diverted money, plus interest. Kokesh claimed that disgorgement should follow the same five-year limitation period as penalties and forfeitures under Section 2462. However, both the district court and the 10th Circuit Court of Appeals rejected this argument, stating that disgorgement is remedial, not punitive because it seeks to restore wrongdoers to their pre-violation status rather than penalize them.<sup>44</sup>

### **The outcome of the case**

The 10th Circuit further distinguished between disgorgement and confiscation, noting that forfeiture relates to property engaged in a crime, whereas disgorgement is an in-person action against a wrongdoer. This view contradicted the 11th Circuit's finding in *SEC v. Graham*, which determined that disgorgement is a forfeiture under Section 2462. When the case reached the U.S. Supreme Court in 2017, it unanimously overturned the 10th Circuit's decision, declaring that disgorgement constitutes a penalty because its primary aim is deterrent rather than compensation.

## **E. Liu v. Securities and Exchange Commission<sup>45</sup>**

### **Facts of the case**

Background: The Liu v. SEC lawsuit started because of claims that Xin Wang and Charles Liu embezzled around \$27 million from foreign investors made under the EB-5 Immigrant Investor Program through their business. Instead of using the money for its claimed purpose—building a cancer treatment centre. The U.S. Securities and Exchange Commission (SEC) accused them of misappropriating investor funds for their personal use.

### **SEC's Action**

In 2017, the District Court ordered Liu and Wang to disgorge the whole \$26.7 million they had raised, arguing that disgorgement was an appropriate penalty for depriving wrongdoers of their

---

<sup>44</sup> Daniel B. Listwa & Charles Seidell, Penalties in Equity: Disgorgement after *Kokesh v. SEC*, 35 YALE J. REG. 667

<sup>45</sup> Liu v. SEC, 140 S. Ct. 1936

ill-gotten earnings. The defendants appealed, claiming that the SEC lacked legislative authority to impose disgorgement and that the remedy was outside the scope of equity jurisdiction.

US Supreme Court reviewed whether disgorgement is an equitable remedy under 15 U.S.C. Section 78u(d)(5), which allows the SEC to seek "equitable relief." Additionally, the Court considered whether disgorgement orders should be restricted to the defendant's total revenue after subtracting legitimate business expenses.<sup>46</sup>

### **The outcome of the case**

The US Supreme Court ruled unanimously in June 2020 that disgorgement is an equitable remedy under section 78u(d)(5). However, the Court set significant limits. Disgorgement must be limited to the defendant's net income (gross profits minus legitimate expenses). Disgorged funds should be restored to the victims of the violation wherever possible, by the remedial nature of the remedy. Joint and several liability for disgorgement should be enforced only in circumstances of concerted wrongdoing.

## **CHAPTER 7**

### **CONCLUSION & RECOMMENDATIONS**

This research paper examined the Securities and Exchange Board of India's (SEBI) limited authority to distribute disgorged funds to affected investors. This research study looked at the Securities and Exchange Board of India's (SEBI) restricted jurisdiction to disperse disgorged cash to impacted investors. The study's findings confirm this hypothesis, indicating significant gaps in SEBI's present capabilities. While SEBI has the jurisdiction to seek disgorgement under Section 11B of the SEBI Act, there is currently no clear legal procedure for directly compensating such investors. The study shows that disgorged assets are often sent to the Consolidated Fund of India or the Investor Protection and Education Fund rather than being refunded to victims, resulting in a discrepancy between punitive and compensating justice. Comparative analysis with places such as the United States, where the SEC's Fair Fund program promotes victim compensation through court-approved distribution arrangements, demonstrates the need for reform in India's system.

In conclusion, the study suggests that legal adjustments and procedural improvements are

---

<sup>46</sup> Jennifer J. Schulp, *Liu v. SEC: Limiting Disgorgement, but by How Much?* 2019 CATO SUP. CT. REV. 203 (2019-2020).

required for SEBI to efficiently disperse disgorged funds to harmed investors. Implementing a formal restitution mechanism comparable to foreign models will enhance confidence in India's capital markets and align the regulatory environment with global best practices.

### **RECOMMENDATIONS**

- Implement a Fair Fund-like system under the SEBI Act or the Investor Protection and Education Fund (IPEF) Regulations. This would allow disgorged funds to be transferred to recognized victims using court-approved distribution methods.
- Appoint independent Fund Administrators, as the SEC does, to ensure that the redistribution process is transparent, efficient, and fair.
- Use modern technologies to track and trace impacted investments, ensuring that restitution reaches the intended beneficiaries.
- Amend Section 11B of the SEBI Act to specifically include compensatory powers with disgorgement. This will allow SEBI to direct disgorged funds to affected investors without depending only on judicial interpretations.

## **CHAPTER 8**

### **REFERENCE**

#### **BIBLIOGRAPHY:**

- Sumit Agrawal & Robin Joseph Baby, A Legal Commentary on Securities & Exchange Board of India Act, 1992, Taxmann Publication Pvt. Ltd, 2011.
- Cox, James D. Securities Regulations: Cases and Materials. Aspen Publishers, 2020.
- Joel Seligman, The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance (1982), Houghton Mifflin, 3rd Edition

#### **ARTICLES AND JOURNALS:**

- Dr. S.N Ghosh, 'Protection of Harmed Investors: The Missing Link in the Disgorgement Orders of the SEBI', (2020)
- Ellsworth, J.D., Disgorgement in Securities Fraud Actions Brought by the SEC, (1977) Duke LJ 641.
- Vidhi Shah, Determining Disgorgement in Securities Law, 10 LAW REVIEW (2019).
- James J. Fishman, Enforcement of Securities Laws Violations in the United Kingdom,

9 INT'L TAX & BUS. LAW. 131

- Kharisma, Dona Budi, and Afilya Hunaifa. "Comparative study of disgorgement and disgorgement fund regulations in Indonesia, the USA and the UK." *Journal of Financial Crime* 30(2023): 635-649.
- RB Grantham and E.F. Rickett, 'Disgorgement for Unjust Enrichment?' 2003 *The Cambridge Law Journals*, available at <http://journals.cambridge.org/>
- S. Smith, *Justifying the Law of Unjust Enrichment*, (2001) 79 *Texas L.R.*

#### WEBLIOGRAPHY:

- <https://www.sebi.gov.in/>
- <https://indiankanoon.org/>
- <https://www.barandbench.com/columns/the-science-and-art-of-disgorgement-under-securities-law>
- <https://indiacorplaw.in/2020/08/disgorgement-in-india-takeaways-from-a-recent-us-supreme-court-ruling>
- <https://www.sconline.com/>

