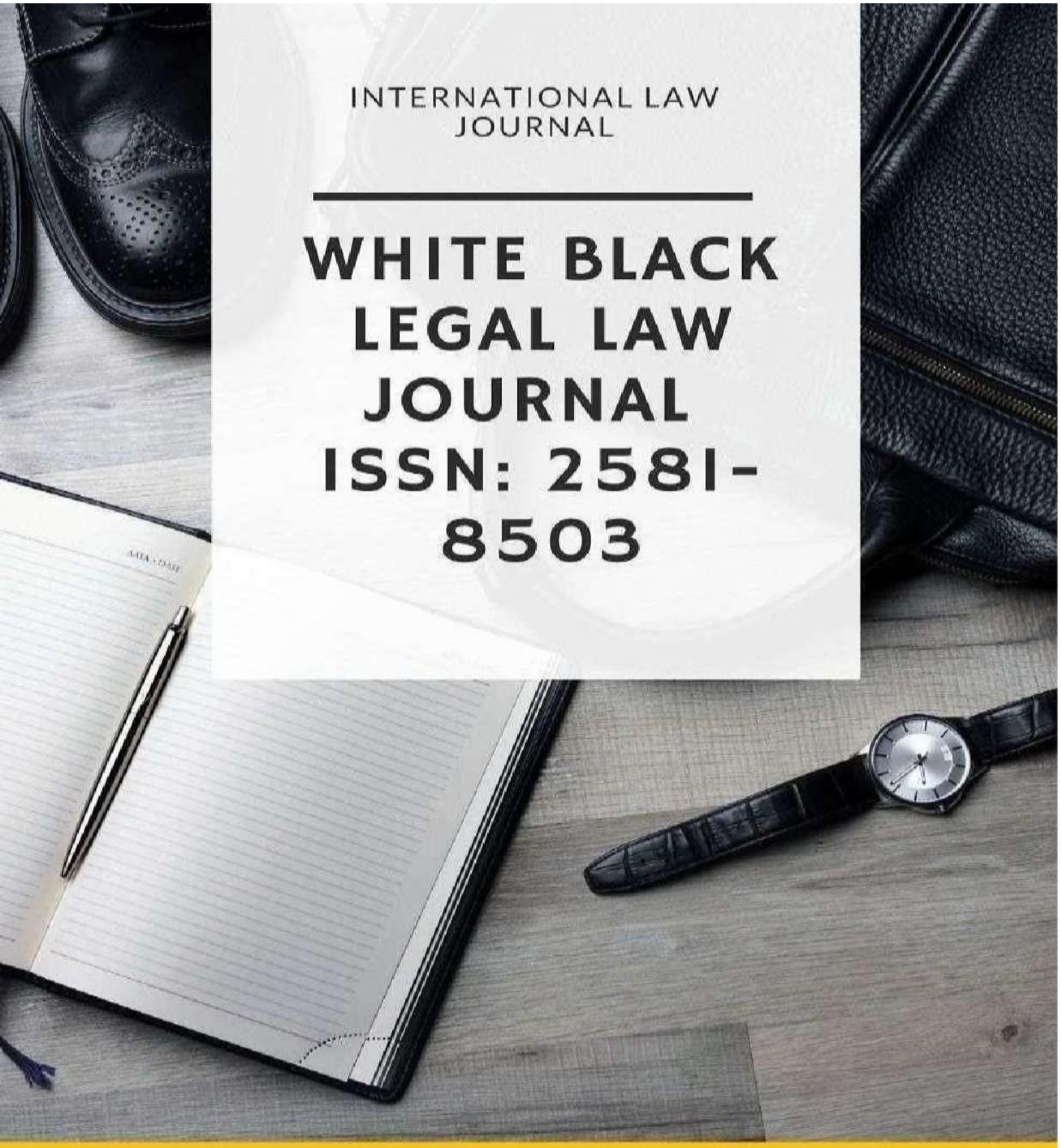

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POWERS OF SEBI TO PASS AN EX-PARTE AD-INTERIM ORDER[Φ]

AUTHORED BY - KHUSH PADAMSI*

I. INTRODUCTION

The Securities and Exchange Board of India (**SEBI/Board**) is the Regulator for the Capital Market which was established with a view *to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market*[1]. SEBI is popularly known as the Capital Market Watchdog, and has wide powers *inter-alia*, quasi-legislative, quasi-executive and quasi-judicial which means SEBI drafts its Regulations, conduct inquiries & inspection etc. to ensure its implementation, and passes orders with directions such as imposing penalties, disgorgement, debarment, etc. in case of identified violation.

Chapter IV of the SEBI Act, 1992, enlists the powers and functions of SEBI, wherein SEBI has been empowered to take *various measures*[2] in order to fulfil its duties. Such measures can be in the form of circulars, guidelines, schemes, press release, etc. SEBI has also been empowered to take *preventive as well as punitive measures* so as to protect the interest of the investors, and in this regard, SEBI exercises its powers to pass orders through multiple mechanisms.

SEBI initiates an investigation upon receiving a complaint or a reference from stock exchanges, other regulators, the government, or its departments, such as the Income Tax Authority and GST Department. Investigations may also be triggered by SEBI's own inspections, surveillance findings, or even media reports, etc.

After the preliminary findings if it warrants, SEBI conducts a thorough investigation into the

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[Φ] This article reflects the position of law as on April 2025

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[1] *Preamble of SEBI Act, 1992*

[2] *Section 11 (1) of SEBI Act, 1992*

alleged misconduct to determine whether any market irregularities have occurred. Following the investigation, SEBI summons the parties connected to the transactions to provide information and collect evidence.

At the end of the investigation SEBI may initiate proceedings either by way of issuance of:

i. an administrative warning, or;
ii. Show Cause Notice (**SCN**) or;
iii. an *ex-parte ad-interim order*.

The Show Cause Notice can be issued by the Adjudicating Officer (**AO**), a Whole Time Member (**WTM**), or a delegated authority.

If SEBIs in its investigation concludes that the violation is of continuing nature or requires immediate intervention, then SEBI issues a SCN in the form of an *ex – parte ad interim order*, inter-alia imposing interim directions such as disgorgement of unlawful gains, restriction from accessing the capital market, or prohibition from associating with any listed company, etc. The *ex – parte interim order* is then followed by a Confirmatory Order, and thereafter the Final Order is passed by SEBI.

Thereafter, the Noticee(s) respond to the SCN or Interim Order either through a personal hearing or by filing a written reply, or both, thereby explaining why directions should not be imposed upon them and the SCN or the directions in the interim order be dropped. After considering the submissions, SEBI passes the Final Order, wherein the Noticees are exonerated or levied with penalties or other directions. It must be noted that if the Noticee(s) fails to respond to SEBI's SCN or do not submit a reply, SEBI is empowered to pass an *ex-parte order* under the chapter IV of the Act[3].

However, Noticee(s) still have a right in such cases, by approaching the Hon'ble Securities Appellate Tribunal (**SAT/Tribunal**), challenging the order. Though if the satisfactory justifications are not placed on record before Hon'ble SAT for not responding to SEBI within the specified period, the Tribunal may quash and set aside the prayers challenging such *ex – parte order*. Some of such justifications includes; non-receipt of SCN, or any other situation beyond the control of Noticee(s).

[3] *Section 11 (1), Section 11(4) read with Section 11B and Section 11D of the SEBI Act, 1992*

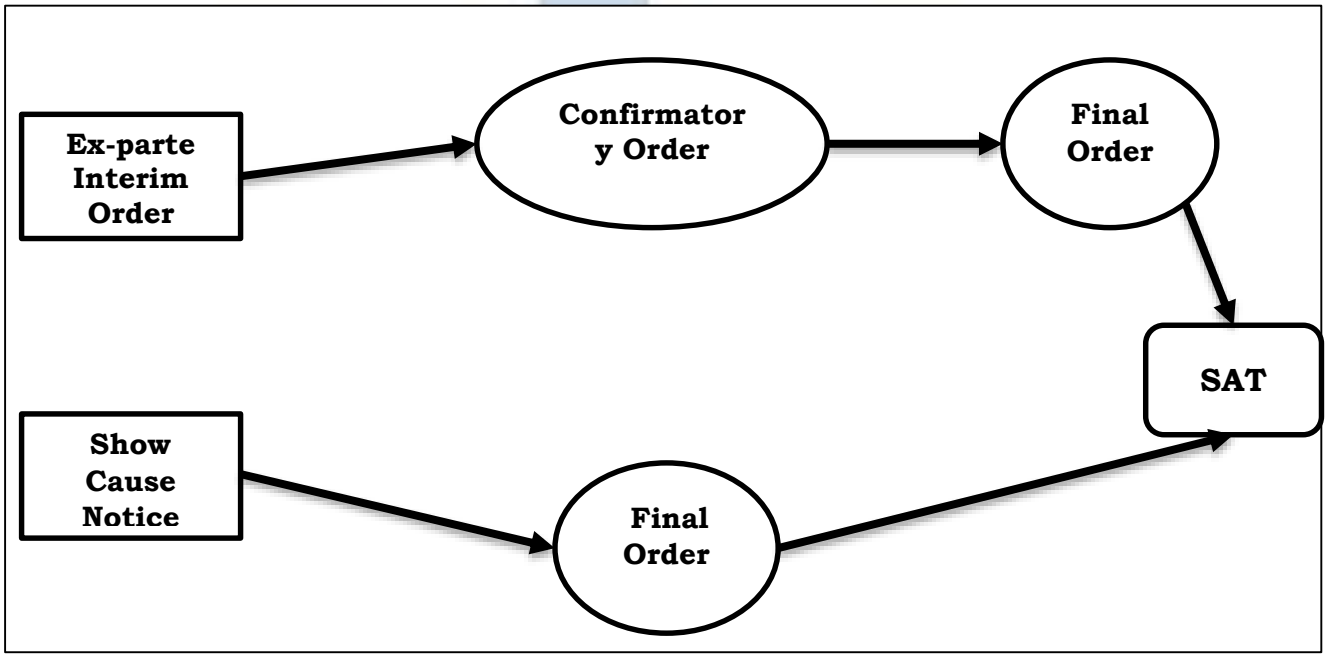
The AO imposes penalties if violations are established. However, the WTM or the Chairman holds broader powers under Section 11 (4) inter-alia to suspend trading, restrict market access, impound proceeds, and attach assets in cases of violations of the SEBI Act and related Regulations.

Upon issuance of the Final Order by the board, the Noticee(s) must either comply with the directions; such as paying the monetary penalty or adhering to the restrictions, or if being aggrieved, challenge such order before the Hon'ble SAT within a period of 45 days from the date of receipt of the order.

After hearing the Appellants/Noticees and Respondent (SEBI), SAT passes an order as per the facts and circumstances of the case. If any party is aggrieved by the SAT's decision, then such party may further appeal to the Hon'ble Supreme Court (**SC**), but only on limited grounds concerning questions of law within a period of 60 days.

Any delay in filing of appeal within the said period, the Appellant needs to provide justification of such delay by way of filing a M.A for Condonation of delay.

Summary Diagram denoting issuance of orders by SEBI



In a recent significant case concerning **Mishtann Foods Ltd**[4], wherein SEBI passed an *ex-parte ad interim order* against 24 Noticees containing directions inter-alia, restraining them from accessing the securities market and debarring them from associating with any listed company, etc. Whereby, the Hon'ble SAT **set aside** the directions qua 2 Appellants as a reason of being harsh which was imposed on them.

Similarly, in a high-profile case concerning Front running by **Rohit Salgaocar, Ketan Parekh and 20 others**[5], wherein SEBI also passed an *ex-parte ad interim order* against 22 Noticees containing directions inter-alia, restraining them from accessing the securities market and debarring them from associating with any listed company, etc. Whereby the Hon'ble SAT **upheld** the directions passed by SEBI due to the veracity of the situation qua Appellants.

This Article examines powers of SEBI to pass an *ex-parte ad interim order* under the SEBI Act, while analysing key judgments and comparing two significant recent cases with distinct outcomes.

II. Ex-Parte Ad-Interim Orders: Understanding the Concept

Before delving into the facts and the merits of the case, it is important to understand **what exactly is an *ex-parte ad-interim order* and under what circumstances can SEBI pass such orders?**

An *ex-parte ad-interim order* simply means a temporary order passed without giving an opportunity to the Noticees, which in the interest of the market and investors in order to maintain status quo, prevent unjust enrichment & further possible mischief of tampering with the securities market or where giving notice would cause damage to innocent persons because of the delay in taking action, etc. Although, this may appear to be directly violative to Principal of Natural Justice and the legal maxim "*Audi alteram pattern*" (i.e. hear the other side prior to passing an order), an *ex-parte ad-interim order* serves as an exception to this principle.

In such cases, SEBI, acting as the regulator & quasi-judicial authority, may determine that it is necessary to issue an order on an urgent basis as a remedial measure to restrain Noticees from taking further actions that could cause irreparable harm to the securities market and investors.

[4] *Interim Order in the matter of Mishtann Foods Limited - WTM/AB/CFID/CFID-SEC3/31030/2024-25*
[5] *Interim Order in the Matter of Extended Front Running by Rohit Salgaocar, Ketan Parekh and Others [WTM/KV/ISD/ISD-SEC-7/31103/2024-25]*

III. Circumstances Under Which Sebi Can Pass an Ex-Parte Ad-Interim Order : From the perspective of SEBI Act

The SEBI derives its power to pass an *ex-parte ad-interim order* from Chapter IV, Section 11 (1), Section 11(4) read with Section 11B and Section 11D of the SEBI Act, 1992 *as a* remedial action to fulfil the underlying objective of the SEBI Act. These provisions under Section 11 are meant to arm SEBI with the authority so as to be able to effectively exercise power and achieve the declared objectives of the Act.

Section 11 has been described as "*Heart and soul*" of the SEBI Act, 1992.[6] Section 11 is the most crucial provision of this Act. It provides for legislative, quasi-judicial, administrative, inquiry and enforcement measures by the board. It enables SEBI to regulate the securities market in accordance with the mandate of the board and enforce the same. When issuing directions, by way of an orders or otherwise, it is usual for the board to issues directions under Section 11.

Section 11 (1) of SEBI Act, 1992 where the preamble states that:

> "*It is the duty of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit."*

Therefore, these *powers* can be exercised under Sub-section (4) of Section 11, either at the end of any enquiry or investigation or even during its pendency, against any:

(i) intermediary;
(ii) person associated with the securities market or
(iii) company in contravention of the provisions of the SEBI Act.

SEBI's *directions* under Section 11 (4), may include, *inter alia*:

a. Suspending the trading of securities on recognized stock exchanges;
b. Restraining individuals or entities from accessing the securities market and prohibiting them from buying, selling, or dealing in securities;
c. Impounding and retaining proceeds or securities from transactions under investigation, and;

[6] *Karvy Stock Broking Ltd. vs Sebi, Appeal No. 92/2006, Date of Decision: 08.01.2007*

d. Attaching bank accounts or other property, if a person is found violating the SEBI Act or rules, regulations, guidelines, or circulars thereunder.

While Section 11 deals with the functions of the Board, Section 11B is on the powers of the Board. Section 11B empowers SEBI to issue such directions to any person as referred to in Section 12 (Registration of stock brokers, sub-brokers, share transfer agents, etc) or persons who are associated with the securities market, or to any company in respect of matters under Section 11A (regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities) as may be appropriate in the interest of investors in securities and the securities market.

SEBI, if it is satisfied that it is necessary, after making an enquiry, to use this power:

a) in the interest of investors, or orderly development of securities market; or

b) to prevent the affairs of any intermediary or others from being conducted in a manner detrimental to interest of investors *or* securities market; or

c) to secure the proper management of any such intermediary or person.

Section 11B is in a sense a functional tool in the hands of the Board. In effect Section 11B is one of the executive measures available to the SEBI to enforce its prime duty of investor protection.[7] Sections 11 and 11B are interconnected and co-extensive as both these Sections are mainly focussed on investor protection.

IV. *Understanding Ex-Parte Ad Interim Orders through the Eyes of the Judiciary*

SEBI has time and again, invoked such powers to pass an *ex-parte ad interim order* against individuals and entities that have been *prima-facie* found to be engaged in various activities pertaining to market manipulations. The Hon'ble SAT in a plethora of judgments, has established a simple test requiring urgency for such order and a clear proximity between the alleged events and the role of the concerned parties in those events for the issuance of *ex-parte ad-interim order*.

[7] *Integrated Amusement Ltd. V. SEBI [2000] 27 SCL 458 (SAT)[08-09-2000]*

Hon'ble SAT in *Karvy Stock Broking Ltd*[8] has held, an order to restrain persons from accessing the securities market and to prohibit any person associated with securities market to deal in securities can be issued at the interim stage also by the board dealing upon the nature and gravity of the wrongdoing where immediate preventive action is felt to be essential.

Furthermore, Hon'ble SAT in *North End Foods Marketing Pvt. Ltd*[9] has held that If during a preliminary enquiry, it is found prima-facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an *interim order* or for that matter an *ex-parte interim order* in order to safeguard the interests of the investors and to maintain the integrity of the market.

Though, it does not mean that in every case, an *ex-parte interim order* should be passed on the pretext that it was imminent to pass such order to protect the interest of the investor or the securities market. However, such an order may be passed only when there is an urgency.

Following this principle, the test laid down by the Hon'ble Tribunal in plethora of judgements, requires that:

1) The noticee must be an **immediate threat** to the market; and
2) There must be **proximity** between the alleged violation and the issuance of the interim order

The Hon'ble SAT in *Punit Goenka Vs SEBI*[10] opined that the Whole Time Member's reasoning for issuing an urgent interim order during an ongoing investigation to be flawed. The WTM in its order had held that the urgency should not be assessed based on the transaction itself, but rather on the blatant nature of the transaction, which allegedly showed a complete disregard for the Managing Director's accountability. However, the Hon'ble SAT disagreed, stating that this approach was incorrect, untenable, and an unreasonable attempt to justify an unsustainable *ex-parte interim order*.

The SAT further noted that if such reasoning were accepted, it would effectively grant SEBI unchecked authority to issue urgent *ex-parte interim orders* based solely on the alleged "blatant

[8] *Karvy Stock Broking Ltd. vs Sebi, Appeal No. 92/2006, Date of Decision: 08.01.2007*
[9] *North End Foods Marketing Pvt. Ltd Vs. SEBI, Appeal No. 80 of 2019, Date of decision: 12.03.2019*
[10] *Punit Goenka Vs SEBI, Appeal No. 714 of 2023, Date of Decision: 30.10.2023*

nature of transactions", without proper justification.

Furthermore, the Hon'ble Supreme Court in *Liberty Oil Mills & Ors. vs. Union of India & Ors.*[11], held that the urgency must be infused by a host of circumstances and further held that the regulatory agency must move quickly in order to curb further mischief and take action immediately in order to instil and restore confidence in the capital market.

Thus, there is no doubt that only under emergent circumstances and spelling out a case of urgency that an *ex-parte ad interim order* can be passed. Such exercise of regulatory measures in the form of *ex-parte ad interim orders* can only be done upon the existence of circumstances warranting such a drastic measure.

V. Remedial vs. Punitive Action: Key Distinctions

Under the SEBI Act, a *remedial action* is aimed at preventing an ongoing mischief in the securities market, which can be done by issuing interim directions such as suspension of trading, restraining access to the securities market, impounding proceeds, and provisional attachment of property as provided under Section 11 and Section 11B of the Act. These measures are preventive and can be exercised before the final order to stop any mischief affecting market integrity.

On the other hand, *punitive action* is penal in nature, imposed after the final order to punish violations through monetary penalties, debarment and enforcement actions which are provided under Section 15A to 15HB.

Unlike remedial measures, which focuses on stopping the harm, punitive actions serve as deterrents for future violations. The underlying idea and purpose behind remedial measure is that no person should be permitted the opportunity to profit from his wrongdoing. Therefore, even before any punishment or penalty is levied, it is quintessential to deprive a wrongdoer of the fruits of his misconduct or wrongdoing.

In *Price Waterhouse & Co (PWC) Vs. SEBI*[12], the Hon'ble SAT distinguished SEBI's punitive powers under Section 15(HA) from its remedial powers under Sections 11 and 11B. The

[11] *Liberty Oil Mills & Ors. vs. Union of India & Ors. AIR (1984) SC 1271*
[12] *Price Waterhouse & Co (PWC) Vs. SEBI, Appeal No. 6 of 2018, Date of Decision: 09.09.2019*

Tribunal held that remedial actions are meant to prevent and protect against alleged violations, whereas punitive actions serve to penalize. It was emphasized that if a person has not traded in securities, the question of debarment from the market does not arise, as directions under Sections 11 and 11B must be remedial, not punitive. Thus, the Tribunal categorically stated that debarment is punitive in nature and not remedial.

VI. Analysis of SAT's Observations on SEBI's Ex-Parte order in the matter Mishtann Foods & Front Running by Rohit Salgaocar with Ketan Parekh.

SEBI, in the recent matter of **(i) Mishtann Foods Ltd (MFL)** and **(ii) Rohit Salgaocar, Ketan Parekh and 20 others** has passed an *ex-parte ad interim order* which was challenged by few Noticees in both the matters before the Hon'ble SAT. Following table provides a brief outline of the facts & comparative analysis of the respective cases along with the distinctive observation by Hon'ble SAT in each case.

Mishtann Foods	**Rohit Salgaocar, Ketan Parekh and 20 others**
Brief facts of the case	
In the recent matter of **Mistahnn Foods ltd (MFL)**, the SEBI passed an *ex-parte ad-interim order* against 24 entities restraining them from buying, selling or dealing in securities, or accessing the capital market either directly or indirectly, in any manner and further, restraining them from associating themselves with any listed public company until the final order is passed. Out of the 24 Noticees, 2 erstwhile directors, viz. **Ravikumar Patel**[13] and **Jatinbhai Patel**[14]	SEBI, in another well-known case passed an *ex-parte ad interim order* against **Rohit Salgaocar, Ketan Parekh and 20 others**, restraining them from buying, selling or dealing in securities, or accessing the capital market either directly or indirectly, in any manner and further, restraining them from associating themselves with any SEBI registered intermediary until the final order is passed. Out of 22 Noticees, 5 Noticees viz. **Salasar Stock Broking Limited**[15],

[13] *Ravikumar Gaurishankar Patel Vs. SEBI Appeal No. 38 of 2025, Date of Decision: 31st January, 2025*
[14] *Jatinbhai Ramanbhai Patel Vs. SEBI, Appeal No. 37 of 2025, Date of Decision: 31st January, 2025*
[15] *Salasar Stock Broking Limited & Ors Vs. SEBI, Appeal No. 7 of 2025, Date of Decision: 29th January, 2025*

approached the Hon'ble Gujrat HC challenging such harsh and unreasonable order which then got remanded to Hon'ble SAT for consideration.	Ashok Poddar, Kiran Sonthalia, Shyam Saraogi & Pradeep Saraogi (Who are directors/related to the directors of Salasar Broking) (**Appellants**) challenged the Order before the Hon'ble SAT.
The SEBI, in its order alleged that MFL entered into a large-scale purchases/sale with its own related parties which were fictitious and thereby committed a large-scale GST fraud, including circular/dummy turnover, stock manipulation, excessive electricity expenses, income tax fraud, bank fraud, and large-scale financial irregularities.	SEBI, conducted an investigation between 2021 and 2023, allegedly revealing a modus operandi where Non-Public Information (**NPI**) about the "Big Client's" impending transactions was allegedly leaked by Rohit Salgaocar to Ketan Parekh, who then provided trading instructions to several "Front Runners" (including the Appellants) to profit from these movements. The evidence collected during the investigation revealed that the Appellants and other noticees, in addition to traditional front-running methods, had used complex trading strategies to take advantage of the prior knowledge of impending trades of the Big Client and thereby made wrongful gains.
As per SEBIs noting's, Mr. Ravikumar and Mr. Jatin, who ceased to be with company as a director since the FY 2018, received Rs. 8.99 Cr and Rs. 0.79 Cr respectively out of Rs. 87.35 Cr, which were alleged to be diverted/ mis-utilised/ misappropriated by the Company through circular transactions, within its related parties.	It was found that NPI based trades were executed in the proprietary trading account of Salasar Stock Broking Limited by the Appellants on the instructions of Ketan Parekh. These instructions were allegedly communicated through the WhatsApp group named "Jack-Saro".
Furthermore, both Appellants resigned as directors in 2018, had no managerial	The Front-runners either directly or indirectly, used to build positions in the

involvement in the company thereafter, and stepped down as promoters in 2021, with no shareholding. However, SEBI's investigation covered the period from FY 2017 - 2018 to FY 2023 - 2024, during which the Appellants had no dealings with the company for the majority of the period.	same scrips ahead of the impending order of the big client based on the trading instructions received from Ketan Parekh. As and when the substantial impending orders of the big client were placed in the market, the Front-runners took counter-positions upon instructions from Ketan Parekh to match with the position of the big client. This would lead to squaring off their initial positions taken in the scrip or creating excess long or short position in the scrip, which they would eventually square off during the day and thus generated huge illegal gains in a short span of time.
The main contention of the Appellants was that such *ex-parte ad interim order* passed by SEBI automatically bars the Appellants to submit a resolution plan, under the Clause (f) of Section 29A of the IBC[16], which reads as follows: *"A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person- is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets."* Both these Appellants where successful resolution applicants and were provided with letter of intent to revive the companies under	The main contentions of the Appellants was, that the trades in question have taken place in 2022 and 2023 therefore, it is unjust and unfair to freeze the bank accounts and demat accounts of the Appellants. Moreover, SEBI has arrived at an incorrect conclusion that Stock Broking company has made an illegal gain of Rs. 12 crores. Furthermore, it was contented that the directions to deposit Rs. 12.45 Crores as estimated wrongful profit is harsh and puts Appellants into hardship.

[16] *Inserted under the Insolvency & Bankruptcy Code, 2016 by Act 8 of 2018, s. 5 (w.e.f. 23-11-2017).*

the IBC. Such an order passed by SEBI debars them from acting as a resolution applicants, thus causing severe damage & irreparable harm not only to the Appellants but also to the Corporate Debtors under the IBC which cannot be compensated in terms of money.	
Justification by SEBI to pass an ex-parte order	
The necessity for SEBI's interim order arose from alleged widespread financial misrepresentation by MFL. The company inflated its sales and purchase figures through fictitious transactions with shell entities linked to its promoters. Over 90% of bank transactions among these entities were circular. MFL's alleged continuous misrepresentation over several years threatened market integrity. The company's exponential rise in public shareholders from 516 in FY18 to 4.23 lakh in FY24, further highlighted potential investor exploitation. Additionally, alleged governance failures, including complicit auditors and an ineffective audit committee, underscored systemic issues. Given the scale of alleged fraud and the imminent risk to investors, SEBI determined that immediate intervention was necessary.	SEBI's order was necessitated by strong prima facie evidence of alleged market manipulation and unfair trade practices by the Appellants & other noticees, including Ketan Parekh, a repeat offender with a history of securities fraud. The investigation revealed an intricate scheme where confidential trade information was misused to generate unlawful profits. Given the alleged magnitude of the manipulation, the sustained period over which it occurred, and the use of technology to conceal activities, SEBI determined that immediate intervention was required to protect investors and maintain market integrity. Without such action, there was a significant risk that illicit gains could be siphoned off beyond regulatory reach. Past regulatory actions against Ketan Parekh, including a 14-year ban and prosecution proceedings, further underscored the need for urgent measures.

Hon'ble SAT's observation in the matter:	
The Impugned Order states that almost all sale and purchase transactions of MFL since FY 2019 - 2020 were prima facie deemed fictitious and that Noticee No. 2, Hiteshkumar Patel, was the sole promoter of the company.	It is in public knowledge that Ketan Parekh has been implicated in several matters of fraud and manipulation of securities market and was debarred for an unprecedented period of 14 years.
The Hon'ble SAT was of the view that the ***interim directions, pending inquiry are harsh and unsustainable qua the Appellants*** since the Appellant had no role as a director from the 2018. Thus, Hon'ble SAT particularly set aside 2 impugned directions of the order, viz. restraining themselves from accessing the securities market and associating themselves with any listed company, expect for MFL itself.	The Hon'ble SAT was of the view that ***interim prayer of the Appellants ought to be rejected and is devoid of any merits*** due to the facts and circumstances that Appellants knowingly and admittedly preferred to join hands with Ketan Parekh who has been previously debarred from the capital markets in the alleged front-running transactions.
As both these Appellants ceased to be directors of the company in 2018, did not hold any shares since 2021, and had not sold their shares on the exchange, the action taken against them, i.e. *restraining them from accessing the capital market and associating themselves with any listed company*, does not appear to be a remedial measure under Section 11 of the SEBI Act.	As it was an admitted position from evidence brought on record by SEBI by way of a WhatsApp Screenshot that Rs. 50 lakhs were transferred from one of the Appellants bank account to Ketan Parekh.

It can be emphasized from the above facts, that if an individual has neither traded nor sold a single share, and the order does not allege any trading activity, the order debarring Noticee(s) from accessing the capital market should not arise, as established by the Hon'ble Tribunal in

various judgments. Moreover, such directions can only be issued to person(s) associated with the securities market, and if the person(s) is/are not engaged in securities dealings, imposing preventive directions is unwarranted.

In the matter of *Punit Goenka Vs SEBI*[17], despite allegations against the MD involving in round-tripping funds worth ₹200 crore, SEBI's *ex-parte ad-interim order* merely restrained him from holding the position of Managing Director or Key Managerial Personnel (KMP) in any listed company or its subsidiaries, without imposing any debarment from the securities market.

Further, in the matter of *Shirpur Gold Refinery*[18], SEBI alleged a ₹800 crore defalcation, yet no direction was issued disassociating the individual from the company. The only restriction imposed was a prohibition on selling shares of the company.

Thus, a remedial action is intended to correct a wrong or defect, while a preventive measure is warranted in cases of unfair trade practices or proven fraud.

However, in the present case of ***Mishtann Foods ltd****, the direction to debar the Appellants from associating with any listed company or accessing the capital market did not appear to be remedial in nature, as per the Hon'ble SAT's findings.*

In contrast, the Hon'ble SAT upheld SEBI's directions against the Appellants in ***Rohit Salgaocar, Ketan Parekh & Ors****., citing the connection of the Appellants with Ketan Parekh and a well-established fact that Ketan Parekh is a repeat offender with a history of market manipulation, including his role in the 2001 stock market crash. It could be inferred that* the balance of convenience was not in the favour of the Appellants, and *granting the interim relief prayed for by the Appellants might have led to continued harm to investors and further threatened the integrity of the securities market.*

VII. CONCLUSION

There is no doubt that Market Watchdog; SEBI's power to issue *ex-parte ad-interim orders* plays a crucial role in maintaining market integrity and ensuring timely intervention. However, when these powers are exercised without proper application of mind or without adhering to the test laid down by the SAT, they risk creating irreversible consequences, which could be detrimental to market participants.

[17] *Punit Goenka Vs SEBI, Appeal No. 714 of 2023, Date of Decision: 30.10.2023*
[18] *Interim Order in the matter of Shirpur Gold Refinery ltd - WTM/AB/CFID/CFID_4/25884/2023–24*

SEBI is entrusted with the duty to protect the public, and such protection inherently requires the exercise of discretionary powers. The question of the appropriate remedy is, therefore, a matter of administrative competence. *Ex-parte interim orders* should be issued only in cases of extreme urgency and should not become a routine practice. Before passing an *interim order*, the quasi-judicial member must examine whether there is a *prima-facie* basis for affording immediate protection to the integrity of the securities market or the investors which would otherwise be seriously impaired or injured and whether there is a *prima-facie* basis to maintain and preserve the *status quo* of the subject matter existing at the time of initiating proceedings.

The SAT's differing observations in the mater of ***Mishtann Foods*** and ***Rohit Salgaocar, Ketan Parekh & Ors.*** (for few Noticees) highlights the contextual nature of such discretion. In *Mishtann Foods*, the SAT found that SEBI's directions lacked the urgency and remedial character necessary for an *ex-parte order* qua Appellants, whereas in *Rohit Salgaocar, Ketan Parekh & Ors qua Appellants*, the tribunal upheld SEBI's action (for few Noticees) due to Ketan Parekh's history as a habitual offender and the potential for continued harm to the market along with the facts and circumstances of the case. These contrasting outcomes underline that each case must be assessed on its own facts, with careful attention to the immediacy and severity of risk posed.

The powers conferred under Sections 11(1) and 11(4) of the SEBI Act are broadly framed and largely discretionary; the provisions merely state that the Board shall regulate the securities market and may take such measures as it deems necessary in the interest of the market. While such wide discretionary powers are essential to curb market misconduct and prevent further damage, its arbitrary or excessive exercise must remain open to judicial review to ensure accountability and adherence to the rule of law. As emphasized by the Hon'ble SAT in multiple judgments, SEBI's actions must align with established legal principles to ensure fairness and reasonableness.

As **CJI D.Y. Chandrachud** aptly put it, the tribunal is like a referee, ensuring that all stakeholders play by the rules in the "**dog-eat-dog**" world of finance. *"Just like any good referee, the SAT has successfully kept pace with the evolving game."*[19]

[19] https://www.cnbctv18.com/india/cji-chandrachud-says-sat-a-referee-in-dog-eat-dog-markets-hints-at-more-benches-of-tribunal-19438275.htm