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**STANDING COMMITTEE ON FINANCE**

**(2009-10)**

**FIFTEENTH LOK SABHA**

**Ministry of Finance (Department of Economic Affairs)**

**The Securities and Exchange Board of India (Amendment)  
Bill, 2009**

**TENTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

April, 2010/Chaitra, 1932 (Saka)

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**(FIFTEENTH LOK SABHA)**

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**The Securities and Exchange Board of India (Amendment) Bill, 2009**

*Presented to Lok Sabha on 19 April, 2010  
Laid in Rajya Sabha on 19 April, 2010*



**LOK SABHA SECRETARIAT  
NEW DELHI**

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## **COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2009-2010**

**Dr. Murli Manohar Joshi - Chairman**

### **MEMBERS**

#### **LOK SABHA**

2. Dr. Baliram (Lalganj)
3. Shri Sudip Bandyopadhyay
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Gurudas Dasgupta
8. Shri Khagen Das
9. Shri Nishikant Dubey
10. Smt. Jayaprada
11. Shri Bhartruhari Mahtab
12. Shri Mangani Lal Mandal
13. Shri Rayapati Sambasiva Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Y.S. Jagan Mohan Reddy
16. Shri N. Dharam Singh
17. Shri Sarvey Sathyanarayana
18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Shri G.M. Siddeshwara\*

#### **RAJYA SABHA**

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao
24. Shri Vijay Jawaharlal Darda
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Shri S. Anbalagan
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

### **SECRETARIAT**

1. Shri A.K. Singh - Joint Secretary
2. Shri T.G. Chandrasekhar - Additional Director

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\* Nominated to this Committee w.e.f. 09.03.2010 vice Shri Gopinath Munde, MP

## INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Tenth Report on the Securities and Exchange Board of India (Amendment) Bill, 2009.

2. The Securities and Exchange Board of India (Amendment) Bill, 2009, introduced in Lok Sabha on 3 August, 2009 was referred to the Committee on 9 September, 2009 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Economic Affairs).

4. The Committee took evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) and the Securities and Exchange Board of India (SEBI) on 4 February, 2010.

5. The Committee considered and adopted this report at their sitting held on 15 April, 2010.

6. The Committee wish to express their thanks to the representatives of the Ministry of Finance (Department of Economic Affairs) and the representatives of SEBI for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

7. The Committee also wish to express thanks to the Securities Appellate Tribunal (SAT) for furnishing their written views on the Bill.

8. For facility of reference, observations/recommendations of the Committee have been printed in thick type in the body of the Report.

**New Delhi;**  
**15 April, 2010**  
**25 Chaitra 1932 (Saka)**

**DR. MURLI MANOHAR JOSHI,**  
**Chairman,**  
**Standing Committee on Finance.**

## Report

### I. Background

The Securities Appellate Tribunal (SAT) was set up under Section 15K of the Securities and Exchange Board of India (SEBI) Act, 1992 to adjudicate upon appeals against decisions of the Securities and Exchange Board of India (SEBI). The Presiding Officer and Members of the Tribunal hold office for a term of five years and are eligible for re-appointment. The upper age limit for the Presiding Officer and Members of the Tribunal is sixty-eight years and sixty-two years respectively.

2. The SEBI Act 1992 inter-alia specifies the tenure of office of the Presiding Officer (PO) and other Members of the SAT. Section 15 N of the Act, stipulates that:-

“The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years.”

3. The Securities and Exchange Board of India (Amendment) Bill, 2009 was introduced in Lok Sabha on 3.8.2009 to amend Section 15 N of the Act so as to enhance upper age limit of the Members of SAT from Sixty-two to Sixty-five years. The Bill was referred to the Standing committee on Finance on 9 September, 2009 by the Speaker for examination and report thereon.

4. The intended purpose of seeking to increase the retirement age of Member of SAT as per the Statement of Objects and Reasons appended to the Bill is as follows:

“Normally, retiring or retired officers of the level of Additional Secretary or Secretary to the Government of India are the applicants for the post of Members to the Tribunal and they are on the verge of completing or have completed sixty years of age at the time of selection. Thus with the stipulated sixty-two years of age for Tribunal Members, a maximum of two years of service is available for such officers. In addition, the selection process too is time consuming and as a

consequence, on average a Tribunal Member holds office for about twelve to eighteen months only. As a result the work of Tribunal is suffering. It is therefore proposed to increase the upper age limit of the Members of Tribunal from sixty-two years to sixty-five years by amending Section 15 N of the Act.”

5. As per the information furnished to Committee by the Ministry of Finance (Department of Economic Affairs), a separate policy proposal move by the Ministry of Law seeking to increase the age limit of Members of all Tribunals, including the SAT is in the anvil. The information furnished by the Ministry in this regard states:

“The proposal to increase the age limit of Members of the Securities Appellate Tribunal along with Chairpersons and Members of other Tribunals and Statutory Authorities performing adjudicating and regulatory functions is covered in the policy document of the Ministry of Law which was discussed in a meeting convened by the Principal Secretary to the Hon’ble Prime Minister on 29<sup>th</sup> April, 2008 associating the Cabinet Secretary, Secretary (Personnel), and Law Secretary. On the basis of the meeting, the Ministry of Law is separately moving a Bill namely “The Tribunals, Statutory and Other Authorities (Conditions of Service) Amendment Bill 2008”. The Bill however, seeks to amend a number of other provisions also relating to 45 Acts of all Tribunals/Statutory Authorities performing adjudicating and regulatory functions in the country. As such it is expected that the Bill may take some time before becoming law, necessitating repeated selections for Members of SAT and keeping SAT positions vacant most of the time. It is accordingly proposed to amend Section 15 N of the SEBI Act 1992 relating to the raising of age limit of Members of SAT only.”

6. The Committee invited memoranda from various stock exchanges, Appellate Tribunals, SEBI as well as SAT on the Securities and Exchange Board of India (Amendment) Bill, 2009. While these bodies have expressed agreement with the amendment proposal of the Bill seeking to increase the retirement age of Members, the Securities Appellate Tribunal proposed an additional suggestion pertaining to the necessity of overcoming the existing procedural hurdles in the conduct of inquiry proceedings as per the provisions of the SEBI Act, 1992.

7. In examining the Securities and Exchange Board of India (Amendment) Bill, 2009, the Committee also took cognizance of the information furnished earlier by the Ministry of Finance (Department of Economic Affairs) in the course of the examination of the Demands for Grants (2009-10) of the Ministry that as proposed by SEBI comprehensive amendments to the SEBI Act 1992 as well as the other Acts pertaining to the Securities market [The Securities contracts (Regulation) Act, 1956 and the Depositories Act, 1996] were in the

anvil. The comprehensive amendments proposed, as informed by the Ministry, inter-alia include:-

- “1. Reorganizing SEBI Board delineating its powers and functions.
2. Strengthening provisions relating to insider trading, prohibition of manipulative and deceptive devices, substantial acquisition of securities or control.
3. Dispense with the requirement of sub-brokers with SEBI.
4. Empowering SEBI to specify different combinations of intermediation services that an intermediary may be allowed to undertake or to allow such combinations with such terms as it may consider appropriate.
5. To extend the power to regulate certain intermediaries who though do not buy/sell or deal in securities but may assume importance as an intermediary and to specify the combination of intermediation services which an intermediary can undertake.
6. To extend the power of SEBI to call information from any person including telecom operators in relation to an enquiry or investigation and to vest SEBI with the powers of the Civil Court in such matters.
7. To explicitly empower SEBI to direct any person to disgorge amount equivalent to disproportionate gain or unfair advantages or loss averted.
8. To expressly empower SEBI to cancel illegally allotted securities, to debar a person from serving in the securities market or in a listed company, to freeze voting powers on the shares acquired in violation of securities laws.”

8. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) and the SEBI in connection with the examination of the Bill.



9. While the intended purpose of seeking to increase the upper age limit of the Members of SAT from 62 years at present to 65 years is to enable the Members in performing their duties efficiently by ensuring a reasonable length of term in office and thereby address the problem of delays in disposal of cases presently faced, the Committee can not help noting that the proposal has been brought in an isolated and piece-meal manner. This is so because a separate Bill titled the 'The Tribunals, Statutory and other Authorities (Conditions of Service) Amendment Bill' which inter-alia seeks to increase the retirement age of Members of the Tribunals, Statutory Authorities etc. including the SAT as mooted by the Ministry of Law is in the anvil. More importantly, comprehensive amendments to the Securities and Exchange Board of India Act, 1992 aimed at strengthening the role of SEBI in capital market regulation, which include proposals for addressing procedural infirmities in the conduct of inquiry proceedings pertaining to SAT as well as re-organising the composition and functioning of SAT are also in the anvil since long. With these proposals being in the anvil, the necessity of seeking to increase the retirement age of Members of SAT with the Securities and Exchange Board of India (Amendment) Bill, 2009 is, in the opinion of the Committee not very appropriate.

10. Issues that emerged out of the Committee's examination of the Securities and Exchange Board of India (Amendment) Bill, 2009 are dealt with in the subsequent sections of this report.

## **II. Clause 2: Increasing the upper age limit of Members of SAT (Amendment of Section 15 N of the SEBI Act)**

11. Clause 2 of the Bill reads as under:

“In section 15 N of the Securities and Exchange Board of India Act, 1992, in the second proviso, for the word “sixty-two”, the word “sixty-five” shall be substituted.”

12. The rationale behind the proposal to increase the age limit of only Members, as furnished by the Ministry in their Background note, is stated as below:

“While the tenure of five years is long enough for effectively utilising the services of a Presiding Officer (PO) (who can hold office up to 68 years) and Members, the limit of 62 years as the upper age limit for Members is effectively restricting this objective. Given the fact that securities market is a specialised and technical subject, full utilisation of the skill of the Members selected need a reasonable time frame. As such, 62 years is felt to be on the lower side...

When retiring / retired officers at the level of Additional Secretary / Secretary to the Government of India are the applicants for the posts, they would have completed 60 years of age at the time of selection. In the stipulated age limit of 62 years only a maximum of two years of service will be available to the organisation while the selection process itself is a long one. This, coupled with the fact that the expertise in the specialised / technical area of securities market gained by these officials will not be available for a longer tenure, itself will be a limiting factor in the qualitative up-gradation of the SAT, which is highly needed in the context of SAT being proposed (in the Bills) also as the Appellate Authority for other financial sub-sectors such as insurance, pension and commodity futures markets.”

13. Elaborating on the rationale of the amendment proposal, the Finance Secretary, while tendering evidence before the Committee stated:-

“The average length of the service of the Members on the Tribunal has been about 1 and half years which, we feel, given the technical nature of the job, given the expertise which they should bring to bear at the level of the Tribunal and given the fact that there should be a reasonable length of service which should be available on the Bench that they sit on, is too short and that is why the proposal has been made to increase the upper age limit to 65 Years.”

14. In response to a question on the status of pending cases before SAT and the average time taken to settle the same vis-à-vis the time limit

stipulated in the SEBI Act,1992, the Ministry of Finance (Department of Economic Affairs) in a written reply stated as follows:

“Since inception of SAT **1803** appeals have been filed before it till date, of which **1619** appeals have been disposed off and **184** appeals are pending. Time stipulated for disposing off the appeal filed before SAT as specified in Section 15T (6) of SEBI Act, 1992 is that the SAT shall deal with the appeal cases as expeditiously as possible and endeavor to dispose off the appeals finally within 6 months of the date of receipt of the appeal. The average time taken for disposal of a case varies from case to case depending upon the nature of the appeal. However, efforts are always made to settle the cases as expeditiously as possible and within six months as provided under Section 15T (6) of SEBI Act, 1992.”

15. The reasons for occurrence of backlog of cases, as submitted by the Ministry, in a written reply is stated as below:-

“In January 2009 mere 98 appeals were pending before SAT. However, when one Member retired on 14.1.2009, SAT could not function for want of quorum and therefore, the backlog of cases shot up from 98 in January–2009 to 170 in June- 2009. Principal reason for delay in settlement of cases is attributed to delay in appointment of Members. One Member could be appointed in the month of June-2009 where after the Tribunal became functional.”

16. Section 15 L of SEBI Act, 1992 stipulates the composition of Securities Appellate Tribunal. It consists of a Presiding Officer and two Members. Details of the Members, their tenure, etc. as furnished to the Committee are shown in the table below:

Sl. No.	Name /Designation	Period	Cases disposed
1.	Shri C. Achuthan Presiding Officer	4.11.1997 to 3.11.2003	194
2.	Justice Kumar Rajarathnam Presiding Officer.	20.3.2004 to 20.12.2005	<b>1425 *</b>
3.	Shri B.Samal Member	4.11.2003 to 1.3.2005	
4.	Shri N.L.Lakhanpal Member	10.11.2003 to 15.2.2005	
5.	Shri Chandan Bhattacharya Member	30.5.2005 to 7.5.2007	
6.	Shri R.N.Bhardwaj Member	7.6.2005 to 12.1.2007	
7.	Justice. N.K.Sodhi. Presiding Officer.	21.12.2005 till date	

8.	Shri. Arun Bhargava Member	30.4.2007 to 15.10.2008	
9.	Shri. Utpal Bhattacharya Member	24.5.2007 to 15.01.2009	
10.	Shri Samar Ray Member	10.6.2009 till date	

\* Ever since the constitution of the multi member bench of SAT in 2002, disposal of appeals cannot be shown against any individual Presiding Officer/Member as the appeals are heard and disposed off by the bench consisting of PO and two Members.”

17. While taking evidence of the representatives of the Ministry of Finance (Department of Economic Affairs), the Committee inter-alia took cognizance of the observation made in the Department of Personnel and Training (DOPT) office memorandum dated 29 December, 2008, which states that ‘in many cases, vacancy notification for recruitment through open advertisement for senior level posts in different autonomous institutions/ statutory bodies/ societies was either not well publicised or if published, at times, sufficient time for inviting applications is not allowed’. Asked whether the Ministry initiates the recruitment process well in advance in anticipation of occurrence of a vacancy, the Finance Secretary, in reply stated:-

“On the issue whether any vacancy is likely to arise in the near future and whether we have taken the necessary action or not, I would submit that the earliest vacancy is in December, 2010. Generally, we start the process six months before that. The process to be initiated is not due as of today.”

18. The Ministry of Finance (Department of Economic Affairs) have informed in their post-evidence reply that the two posts of Member, SAT held by Shri Arun Bhargava and Shri Utpal Bhattacharya fell vacant w.e.f. 16.10.2008 and 16.1.2009 respectively. Pending selection of the new Members, the SAT could not function for want of quorum during the period 16.1.2009 to 9.6.2009. Regarding the pendency of cases, the Ministry have furnished the following details:

- (i) No of case filed.....1965
- (ii) No of cases disposed.....1821
- (iii) No of cases pending..... 144

19. The Ministry of Finance (Department of Economic Affairs) in the post evidence reply have also furnished inter-alia the process adopted for

appointment of Members, SAT for filling the vacancies that arose in 2009 as follows:

“The post of Members SAT fell vacant on 15.10.2008 and 15.1.2009. the selection process for filling up both the posts was initiated on 9.7.2009 .....

A circular, inviting applications was accordingly issued to the aforesaid on 18.9.2008.....

The Selection Committee met on 20.11.2008 and 19.12.2008 and based on short listing of the candidates and personal interaction with shortlisted candidates and their views on a case study and individual response sheets thereto, selected two candidates.

The names of the selected candidates for filling up two posts was sent to the Deptt of Personnel and Training (DOPT) for seeking approval of the ACC on 7.1.2009. The DOPT sought certain queries including whether Central Vigilance Commission (CVC) clearance was obtained in respect of the two candidates. The Ministry replies to the queries on 29.1.2009 and opined that since CVC clearance was time consuming and involved consultation with the CBI, it may not be necessary, as one of the candidates proposed had recently retired from a Secretary level post in the CBDT and the second was also holding a Secretary level post in the C&AG Office. The DOPT however, vide their letter dated 16.2.2009 insisted that CVC clearance may be obtained. CVC clearance was accordingly requested vide letter dated 18.2.2009 and received and communicated to the DOPT on 9.4.2009. In the said letter, the DOPT was also informed that one of the two candidates selected for the post, had joined as Insurance Ombudsman in the Office of the governing Body of the Insurance Council and as such the proposal now existed for filling up one post only. The DOPT conveyed the approval of the ACC for filling up one post of Member, SAT on 5.6.2009. The incumbent joined the post on 10.6.2009. One of the two posts of Member SAT has thus been filled up.

Circular inviting applications for the 2<sup>nd</sup> post was issued on 22.4.2009. the circular was posted on the website of the Ministry of Finance and the Deptt of Personnel and Training also. The last date for receipt of applications in the circular was 6.6.2009. In view of the fact that the DOPT had insisted on open advertisements for inviting applications for such posts, the post was advertised in the newspapers on 18.6.2009. In line with the closing date for receipt of applications as per the advertisement, the last mentioned in the circular for receipt of applications was also extended to 8.7.2009

46 applications were received. 8 candidates were shortlisted for calling for personal interaction on 22.9.2009. The search cum selection Committee met on 16.10.2009 for a personal talk with the candidates. A case study was also given to the shortlisted candidates for assessing their

competence. The file for approval of FM of the recommended candidate was put up on 18.10.2009 and approved on 15.12.2009. Proposal was sent to DOPT for approval of ACC on 5.1.2010.”

20. Questioned on the selection procedure and age criteria of Members of other Appellate Tribunals vis-à-vis SAT and reasons for delays if any, in the appointment, the Ministry, in a written reply informed as follows:-

“In the Central Administrative Tribunal (CAT) the upper age limit of the Chairman is 68 years and that of Members 65 years. In the case of Telecom Disputes Settlement and Appellate Tribunal (TDSAT) the upper age limit of Chairman is 70 years and that of Member is 65 years. These examples highlight that the age limit of the Chairman and other Members has been kept at high level taking into account the fact of their seniority and status for joining these positions. The qualifications prescribed for the posts of Members in other Tribunals are different as they may not require knowledge of securities markets, special knowledge of finance etc.

As regards the selection process of the Members of other Tribunals is concerned it may vary from case to case and even for each recruitment year in the same Tribunal, depending on availability of candidates. The process is generally long drawn one. As per the guidelines of the Department of Personnel and Training, applications need to be invited through open advertisement, setting up of Search cum Selection Committees and getting the recommendations of the Selection Committee approved by the Appointment Committee of the Cabinet.”

21. Questioned as to why preference was given only to retired people for appointment as Members of SAT, the Finance Secretary, while deposing before the Committee stated:-

“whether retired people are chosen or younger people are chosen, the idea is that they should have longer tenure. So, it is not as if only somebody from the service or Audit and Accounts or any particular service has to be chosen. Whoever is chosen, will stay up to the age of 65”.

22. Asked to express SEBI’s view on the proposed amendment seeking to raise the retirement age of Members of SAT from 62 to 65 years, the Chairman, SEBI while tendering evidence before the Committee stated as follows:

“from the SEBI’s perspective, more than 62 to 65, if the Members are given slightly longer duration, it would be helpful. What we have found is that the Members get

appointed for a period of one and half or two years because generally retired officers are appointed and since the retirement age is 60 and by the time the appointment process goes through, their age of 62 comes up very fast. We would support this if it results in greater continuity in the SAT bench...

we would prefer that there is continuity. If a younger person is recruited and given five year term, I think, that serves the purpose. We are not saying that only retired officers must be recruited. This being an appellate body, it is difficult for us to have too many opinions.”

23. When pointed out whether it would not be preferable to prescribe a fixed tenure of five years for the Members of SAT, the Chairman, SEBI expressed agreement with the suggestion.

24. In their written memorandum furnished to the Committee, the Securities Appellate Tribunal (SAT) sought to draw the attention of the Committee to the existing procedural hurdle under the SEBI Act, 1992, which allows parallel proceedings under same set of facts which results in increasing the number of cases before SAT and thus delay the disposal of cases. The views expressed by SAT reads as under:-

“The Securities and Exchange Board of India enables the Board to initiate parallel proceedings under same set of facts against the delinquent under the enquiry regulations framed by the Securities and Exchange Board of India u/s. 11B or u/s 11D as the case may be, on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other. Orders under the enquiry regulations, directions u/s 11B of an order u/s 11D are passed by the Board whereas the proceedings under Chapter VIA are conducted by an Adjudicating Officer who is a subordinate officer of the Board and it is he who passes the final order. Since the two sets of proceedings are independent of each other, the possibility of conflicting views on the same set of facts cannot be ruled out and that would not be in the public interest. If only one inquiry is held against the delinquent and on the basis of that enquiry the same body is given the power to impose penalties under both sets of proceedings, it would not only expedite matters but also avoid conflicting views and multiple proceedings.”

25. Questioned on the lacuna in the procedure, as pointed out by SAT, the Ministry of Finance (Department of Economic Affairs) in a written reply, submitted as follows:-

“... The government is aware of this issue and this, inter alia, will be addressed while moving another round of comprehensive amendments to the SEBI Act.”

26. On this issue, the Chairman, SEBI submitted as follows before the Committee:-

“Sir, I think, it has been correctly pointed out that the SEBI Act has these two parallel provisions – one for inquiry and one for adjudication. I would submit to the Committee that this is probably because the SEBI Act was amended at different points of time. What has happened is that under the inquiry proceedings, there is the power to suspend or cancel the registration of an intermediary whereas under the adjudication procedure, the power is only to impose the fine. I am entirely in agreement with the Committee’s view or the view that you read out just now that we should not have two parallel proceedings against any entity for the same set of facts...You are right that earlier there have been instances like that, but we are now not initiating two parallel proceedings against the same entity on the basis of same facts...in the amendments that we have proposed, this is one of the things that both adjudication and inquiry can be brought under one section whereby there will be the ability to decide as to what is the gravity of the offence committed and then accordingly either cancel or suspend registration or impose a fine. So, we would be entirely in agreement with this proposal.”

27. The Committee also desired to know the details of the composition of the High Powered Advisory Committee (HPAC) for finalizing the terms of consent orders. In this regard, SEBI, in a post evidence reply inter-alia submitted as follows:

“As per the circular dated April 20, 2007, all the consent and compounding matters are to be placed before a High Powered Advisory Committee (HPAC) for appropriate recommendations. In order to ensure transparency and objectivity into the consent and compounding process, the HPAC comprises with the following persons:

- a. Justice Mr. Hosbet Suresh, Retired Judge of the Bombay High Court. Justice Suresh was a part time Professor of Law at the Government Law College and designated Senior Advocate of Bombay High Court before his elevation to the Bench of Bombay High Court. Shri Suresh was also appointed as an administrator of M/s Arrow Global Agrotech Ltd., a Collective Investment Company by the Bombay High Court to administer the properties of the company/its subsidiaries/group companies etc., He has also been appointed as arbitration member in many arbitration cases.



- b. Mr. M. Balachandran, former Chairman & Managing Director of Bank of India, who has held various positions in the Public Sector Banks for the last three decades.
- c. Mr. Ketan Dalal, Leader, Tax Regulatory Services of Price Waterhouse Coopers (PWC), India. Shri Ketan Dalal is a fellow Member of the Institute of Chartered Accountants of India and has extensive experience on cross-border tax issues and investment structuring. He was a member of the working group on non-resident taxation formed by Ministry of Finance.

After the episode of Global Trust Bank, the Reserve Bank of India has instructed the Commercial Banks not to appoint PWC as auditors for the banks. The said instructions are further extended consequent to the involvement of the partners of PWC in Satyam case. In both the episodes the auditing firms under the umbrella of PWC were allegedly found involved. Shri Ketan Dalal is Leader of Tax Regulatory Services of PWC, India which is a different entity though under the umbrella of PWC. The firm which Shri Ketan Dalal represents is not involved in the auditing business. Further, wherever PWC is engaged with any of the applicant under the consent and compounding, Shri Ketan Dalal recuses himself from the case and the other two members of HPAC viz., Justice Hosbet Suresh and Shri M. Balachandran recommends the settlement terms.”

28. As per the additional information furnished by SEBI in this regard, the expert member, Shri Ketan Dalal had, during the period 8 September, 2007 to 17 March, 2010 recused himself from the proceedings of the HPAC in as many as 55 cases of applicants engaged with the firm to which he belongs.

29. The Committee agree with the need for ensuring a greater element of continuity in the functioning of SAT by enabling the Members to have a reasonable length of term in office. Nevertheless, as pointed out in the earlier section of this report, the modus operandi adopted to achieve this end with the amendment proposal of the Bill seeking to raise the retirement age of Members is questionable. Besides the short stint of tenure the Members of the Tribunal have owing to the retirement age being 62 years at present, certain other issues which impinge on the efficient functioning of SAT also came to light in the course of the Committee's examination of the Bill.

30. There have been instances where the Ministry of Finance (Department of Economic Affairs) took unjustifiably long time for selecting the Members of SAT, owing to which, the incumbents were left with a short term in office, which in turn adversely affected the disposal of cases by the Tribunal. For instance, during the period 16 January to 9 June, 2009 a piquant situation arose when SAT could not function for want of quorum, which was owing to the delay in the selection/appointment process. The Committee desire to be furnished with a detailed report on the reasons for the undue delay in the selection process which led to the stalling of functioning of the Tribunal. Such instances also add credence to the Department of Personnel and Training's circulars which, with reference to the selection process of Members of various Tribunals and Statutory bodies pointed out inter-alia that lack of wide publicity of the vacancies hinder and delay the selection process of the Members.

**31. From the Statement of Objects and Reasons appended to the Bill as well as the submission made by the Ministry of Finance it is seen that selection of Members of SAT is by and large restricted to or weighed towards selecting retired civil servants, or civil servants on the verge of retirement. Moulding the selection process of members of SAT to include and consider younger persons with requisite qualifications and experience from a wider arena of fields will enable greater continuity and efficiency in the functioning of SAT. The Committee thus are of the view that apart from the induction age of Members the question of timely completion of the selection process and widening the arena of choice for selecting the Members also need to be addressed in right earnest by the Government.**

**32. The Committee are of the view that the objective of ensuring a greater element of continuity in the functioning of SAT by amending Section 15N of the SEBI Act, 1992 could be better achieved by providing for a fixed tenure of five years instead of increasing the maximum age limit to 65 years and according preference to retired/retiring civil servants. The Committee would, however, reiterate here that it will be preferable to address this issue in 'The Tribunals, Statutory and other Authorities (conditions of Service) Amendment Bill' which is in the anvil since 2008, or/and alongwith the comprehensive amendments proposed to the SEBI Act, 1992, which include proposals for re-organising the composition and functioning of SAT.**

**33. The Committee also wish to point out in this regard that they find merit in the suggestion given by SAT and as also agreed to by both the Ministry of Finance (Department of Economic Affairs) and SEBI that the existing provisions of the SEBI Act, 1992 which provide for initiating**

parallel proceedings by the SEBI Board and the investigating officer concerned under the same set of facts needs to be rectified. The Committee expect that this issue would be addressed suitably by bringing in appropriate amendments.

34. The Committee also find the prevailing practice whereby an expert member of the High Powered Advisory Committee (HPAC) is to recuse himself in the consent proceedings involving applicants engaged with the firm he works for to be undesirable. The Committee would, therefore, expect that in such instances, an alternate member, who fulfills the requisite qualifications and experience be co-opted to the Advisory Committee in deciding on the terms of the consent orders. The Committee also recommend that the eligibility criteria as well as the process of selection of members of the HPAC be reviewed inter-alia with a view to streamlining the process and avoiding instances where the Committee has to finalise the terms of consent in the absence of an expert member.

New Delhi;  
15 April, 2010  
25 Chaitra, 1932 (Saka)

DR. MURLI MANOHAR JOSHI,  
Chairman,  
Standing Committee on Finance

**Minutes of the Thirteenth sitting of the Standing Committee on Finance**

The Committee sat on Thursday, the 4<sup>th</sup> February, 2010 from 1135 hrs. to 1400 hrs.

PRESENT

**Dr. Murli Manohar Joshi - Chairman**

**MEMBERS**

**LOK SABHA**

2. Dr. Baliram
3. Shri C.M. Chang
4. Shri Harishchandra Chavan
5. Shri Bhartruhari Mahtab
6. Shri Mangani Lal Mandal
7. Shri Rayapati Sambasiva Rao
8. Shri N. Dharam Singh
9. Shri Manicka Tagore
10. Dr. M. Thambidurai

**RAJYA SABHA**

11. Shri Raashid Alvi
12. Shri Vijay Jawaharlal Darda
13. Shri S.S. Ahluwalia
14. Shri Moinul Hassan
15. Shri Mahendra Mohan
16. Shri S. Anbalagan
17. Dr. Mahendra Prasad
18. Shri Rajeev Chandrasekhar

**SECRETARIAT**

- |                             |   |                      |
|-----------------------------|---|----------------------|
| 1. Shri R.C. Ahuja          | - | Additional Secretary |
| 2. Shri A.K. Singh          | - | Joint Secretary      |
| 3. Shri T.G. Chandrasekhar  | - | Additional Director  |
| 4. Shri R.K. Suryanarayanan | - | Deputy Secretary     |
| 5. Smt. B. Visala           | - | Deputy Secretary     |

**Part –I  
(1135 hrs. to 1245 hrs.)**

**WITNESSES**

**Ministry of Finance (Department of Economic Affairs)**

1. Shri Ashok Chawla, Finance Secretary
2. Dr. K.P. Krishnan, Joint Secretary
3. Shri C.K.G. Nair, Director

### **Ministry of Law (Legislative Department)**

1. Shri N.K. Nampoothiry, Joint Secretary & Legislative Counsel
2. Shri P.B. Singh, Joint Secretary & Legislative Counsel
3. Dr. G.N. Raju, Joint Secretary & Legislative Counsel
4. Shri K.V. Kumar, Deputy Legislative Counsel

### **Ministry of Law (Department of Legal Affairs)**

Shri M.K. Sharma, Joint Secretary & Legal Advisor

2. The Committee heard the representatives of the Ministry of Finance (Department of Economic Affairs) on the various provisions of the Securities and Exchange Board of India (Amendment) Bill, 2009. Major issues discussed included composition of Securities Appellate Tribunal (SAT), appointment of Members of SAT, length of their service, preference being given to retired bureaucrats in appointment as Members of SAT, existing lacunae in the appointment procedure, issue of appointment of younger people with desired experience etc. The Chairman asked the representatives to furnish written replies to the points raised by Members within a week.

The witnesses then withdrew.

**Part –II**  
**(1310 hrs. to 1400 hrs.)**

### **WITNESSES**

#### **Securities and Exchange Board of India (SEBI)**

1. Shri C.B. Bhave, Chairman
2. Shri J. Ranganayakulu, Executive Director

3. The Committee heard the representatives of the Securities and Exchange Board of India (SEBI) in connection with the examination of the Securities and Exchange Board of India (Amendment) Bill, 2009. The issues discussed mainly related to appointment of retired bureaucrats as Member of SAT, desirability of fixed tenure as against stipulation of maximum age for SAT Members, provisions enabling parallel proceedings under same set of facts, investor protection, tracking sources of unaccounted money entering into stock market, multi lingual publication of investor protection oriented literature, disposal of cases under 'consent terms' under the SEBI Act etc. The Chairman asked the representatives to furnish written replies to the points raised by Members within a week.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

## **Minutes of the Fourteenth sitting of the Standing Committee on Finance**

The Committee sat on Wednesday, the 10<sup>th</sup> March, 2010 from 1530 hrs. to 1600 hrs.

PRESENT

**Dr. Murli Manohar Joshi - Chairman**

### **MEMBERS**

#### **LOK SABHA**

2. Shri C.M. Chang
3. Shri Harischandra Chavan
4. Shri Bhakta Charan Das
5. Shri Khagen Das
6. Shri Bhartruhari Mahtab
7. Shri G.M. Siddeshwara
8. Shri M. Sreenivasulu Reddy
9. Shri Y.S. Jagan Mohan Reddy
10. Shri N. Dharam Singh

#### **RAJYA SABHA**

11. Shri Vijay Jawaharlal Darda
12. Shri S.S. Ahluwalia
13. Shri Moinul Hassan
14. Dr. Mahendra Prasad
15. Shri Y.P. Trivedi
16. Shri Rajeev Chandrasekhar

### **SECRETARIAT**

- |                             |   |                     |
|-----------------------------|---|---------------------|
| 1. Shri A.K. Singh          | - | Joint Secretary     |
| 2. Shri T.G. Chandrasekhar  | - | Additional Director |
| 3. Shri R.K. Suryanarayanan | - | Deputy Secretary    |
| 4. Smt. B. Visala           | - | Deputy Secretary    |

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3. X X X X X X X X

4. The Committee decided to defer consideration of the draft report on the Securities and Exchange Board of India (Amendment) Bill, 2009 because of non-receipt of the information desired by the Committee in connection with the examination of the Bill. The Committee also decided to take further oral evidence of the representatives of the Ministry of Finance and other institutions/Intelligence Agencies concerned in connection with the Action taken by the Government on the recommendations contained in 79<sup>th</sup> Report (14<sup>th</sup> Lok Sabha) on "Counterfeit Currency Notes in Circulation". .

The Committee adjourned at 1600 hours.