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Legal Trends Regarding Disclosure Regulation in India

ADHITHYA SURESH[1], LIBIN DAS V.L.[2], ARYA SURESH[3] AND SEENATH P.S.[4]

ABSTRACT

For the safety of investors, disclosure is a crucial component of initial public offerings, or IPOs. In their prospectus, companies launching initial public offerings (IPOs) are required to disclose all relevant information, including their financial status, business model, risks, and other pertinent details. Investors can use this information to make well-informed decisions about whether or not to invest in the firm. Regulations have been developed by regulatory organisations like SEBI to guarantee that businesses follow disclosure obligations and safeguard investors' interests. Before making an IPO investment, investors should carefully consider the facts in the prospectus and perform their due diligence. For transparency and confidence in the capital markets, information disclosed in initial public offerings (IPOs) is essential.

Keywords*: SAT : Securities Appellate Tribunal ; SEBI : SECURITIES AND EXCHANGE BOARD OF INDIA ; IPO : initial public offering.*

I. INTRODUCTION

In India, the term "corporate disclosure regulation" refers to the set of laws and regulations that businesses must abide by when providing different stakeholders with information about their financial and operational performance. To ensure that stakeholders and investors can make knowledgeable judgements about the company, disclosure of this kind is necessary to uphold accountability and openness in the corporate sector. The regulatory environment for corporate disclosure in India has changed over time as a result of numerous judicial decisions and legislative advancements. The emphasis on disclosing meaningful information that is, information that could have a substantial impact on a company's share price or investment decisions has been one notable trend. The emphasis on corporate governance and the directors' responsibility for guaranteeing transparency obligations are two other trends. Directors have been held liable by courts for omitting important information from their disclosures or for deceiving investors with partial or inaccurate information. The necessity for corporate

[1] Author is a Practising Advocate at Changanacherry Court, Kerala, India.
[2] Author is a Practising Advocate at Trivandrum Court, Kerala, India.
[3] Author is a Practising Advocate at Kottayam Court, Kerala, India.
[4] Author is a LL.M. student at CSI College For Legal Studies, Kottayam, India.

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disclosures to take environmental, social, and governance (ESG) factors into account has also gained more attention in recent years. Courts are taking more and more into account how a business's operations affect society and the environment, as well as the requirement that businesses reveal information about their ESG practices. Transparency, accountability, and environmental, social, and governance (ESG) factors are becoming increasingly important in the corporate sector, as evidenced by the judicial trends in India's corporate disclosure regulation. Businesses that disregard disclosure laws run the danger of facing legal action and harm to their reputation, which emphasises how crucial sound disclosure procedures are to preserving investor trust and promoting long-term business strategies. Through litigation, the judiciary may also be involved in upholding financial disclosure laws. Investors and shareholders in India are entitled to bring legal action against businesses that do not give accurate and transparent financial information. Then, if businesses don't follow these rules, the courts have the power to hold them responsible. Furthermore, the Indian judiciary has contributed to the interpretation of the country's financial disclosure laws. For instance, the Indian Supreme Court decided in 2018 that the Reserve Bank of India (RBI) was not permitted to use the Right to Information Act to conceal information regarding banks. The decision made it clear that firms and other public organisations have to give the public open and honest information about their financial operations. To sum up, the Indian judiciary is essential to making sure businesses follow the rules on financial transparency. The judiciary supports corporate financial reporting accountability and transparency by upholding rules and regulations, interpreting the legal system, and bringing legal action against corporations that violate it.

II. ROLE OF JUDICIARY IN DEVELOPMENT OF CORPORATE DISCLOSURES

Over the years, a number of legislative and regulatory changes have influenced the development of the corporate disclosure concept in India. There were no legal requirements requiring corporations to disclose financial information before the corporations Act of 1956 was passed. Nonetheless, in the early 20th century, Indian courts acknowledged the notion of corporate disclosure. One of the earliest cases that recognized the importance of corporate disclosure was the case of In Re T.S. Krishnamurthy Aiyar[5], in which the Madras High Court held that shareholders had a right to access the financial records of the company. The court emphasized that the shareholders' right to access financial information was essential for them to make informed decisions about their investments. The firms Act of 1956, which required firms to

[5] AIR 1954 SC 406

disclose specific financial information to the public, further popularised the idea of corporate disclosure. The Securities and Exchange Board of India (SEBI) was given additional authority under the Act to oversee the securities markets and make sure businesses abide by disclosure laws. In the following years, various case laws further strengthened the concept of corporate disclosure in India. For example, in the case of *Tata Engineering Locomotive Co. Ltd. v. Securities and Exchange Board of India*[6], the Securities Appellate Tribunal (SAT) held that company must provide accurate and timely disclosure of material information to their shareholders. In *TELCO*[7]585 case, the Bombay High Court held that companies must disclose material information that is likely to affect the decision-making of their shareholders. The court emphasized the need for companies to provide accurate and timely information to their shareholders and investors. *In Re: McLeod Russel & Co. Ltd*[8]., the Securities and Exchange Board of India (SEBI) directed McLeod Russel & Co. Ltd. to make public its agreement with a foreign company. The case highlighted the need for greater disclosure in corporate reporting to protect the interests of investors. In *Shri Ram Mutual Fund v. SEBI*[9], the Securities Appellate Tribunal (SAT) held that companies must disclose all material information to their shareholders and investors. The tribunal emphasized the importance of transparency in corporate reporting to maintain investor confidence and promote the growth of the securities market. *ITC Limited v. Securities and Exchange Board of India*[10], the SAT upheld SEBI's decision to impose a fine on ITC Limited for failing to disclose material information to its shareholders. The judiciary in India has played a significant role in shaping the development of corporate disclosures. Through landmark judgments, the courts have interpreted and applied various provisions of corporate law and securities regulations, thereby influencing the disclosure practices of companies operating in India.

III. IPO AND DISCLOSURE

Companies in India that choose to go public are obliged to adhere to the disclosure guidelines provided by the Securities and Exchange Board of India (SEBI). The regulatory agency that keeps an eye on the Indian securities market and makes sure businesses follow the guidelines for initial public offerings (IPOs) is called SEBI. Some of the disclosure guidelines that businesses have to abide by when they do an initial public offering (IPO) are as follows:

a) Company Information: Companies must provide detailed information about their

[6] 2008 7 SC 619
[7] Tata Engineering and Locomotive Co. Ltd. v. Securities and Exchange Board of India - (2000) 6 SCC 11
[8] In Re McLeod Russell India Ltd. & Ors.;(2020) 3 CompLJ 343 (NCLT-Kol)
[9] (2019) 150 SCL 475 (Del)
[10] (2010) 100 SCL 335 (SAT)

business, operations, and financials, including the company's history, management structure, product or service offerings, financial statements, and future plans.

b) Risk Factors: Companies must disclose any potential risks that may affect their business and financial performance, including legal and regulatory risks, competition, market trends, and other factors that may affect the company's growth and profitability.

c) Use of Proceeds: Companies must disclose how they plan to use the funds raised through the IPO, including the amount allocated to different business segments or projects, and the expected timeline for utilizing the funds.

d) Promoters and Related Party Transactions: Companies must disclose any related party transactions, such as transactions with their promoters, directors, or key management personnel, and the terms of such transactions.

e) Litigation: Companies must disclose any ongoing or pending legal proceedings, including any disputes with regulators, customers, or other stakeholders.

f) Valuation: Companies must disclose their valuation methodology, including the assumptions used to determine their market capitalization, and the rationale for the IPO price.

g) Corporate Governance: Companies must disclose their corporate governance policies, including board composition, audit committee, and other key governance structures.

h) Underwriter and Brokerage Fees: Companies must disclose the fees paid to underwriters, brokers, and other intermediaries involved in the IPO process.

Companies must adhere to these disclosure rules in order to safeguard investors' interests and maintain fairness and openness throughout the initial public offering (IPO) process. Penalties and legal repercussions for the business and its management could arise from noncompliance with these rules. A prospectus is a legal document that gives information about a company's securities and is meant to entice public investment, according to the Companies Act of 2013. Provisions of the Act mandate that businesses include all relevant information in their prospectuses; failing to do so may result in fines and legal ramifications. All relevant information that is required for investors to make educated judgements must be disclosed by companies. The corporation and its directors may face legal action if important information is withheld. Prospectus misrepresentations are a severe violation, and businesses may be held accountable for any inaccurate or deceptive claims included in the guide. The Securities and Exchange Board of India (SEBI) oversees the disclosure obligations for businesses that issue

securities in addition to the Companies Act of 2013. Companies must make sure that their prospectus is accurate, truthful, and not misleading in order to comply with SEBI rules. The Securities and Exchange Board of India (SEBI) discovered in 2011 that the two businesses had distributed prospectuses to investors that contained inaccurate and misleading material. The businesses were mandated to return investor funds plus interest. The business was mandated to return investor funds plus interest. The regulatory agency in India that oversees the issue of prospectuses is called SEBI, or the Securities and Exchange Board of India. SEBI has developed a number of regulations pertaining to companies' prospectus issuance. Among the important rules are:

a) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 - These regulations prescribe the requirements for the issue of securities, including the format and content of prospectus, disclosure requirements, and the procedures for obtaining SEBI 's approval.

b) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - These regulations prescribe the obligations of companies listed on stock exchanges, including the disclosure requirements for prospectus.

c) SEBI (Prohibition of Insider Trading) Regulations, 2015 - These regulations prohibit insider trading and prescribe the obligations of companies, directors, and other insiders with respect to the issue of prospectus.

d) SEBI (Issue and Listing of Debt Securities) Regulations, 2008 - These regulations prescribe the requirements for the issue and listing of debt securities, including the disclosure requirements for prospectus.

e) SEBI (Real Estate Investment Trusts) Regulations, 2014 - These regulations prescribe the requirements for the issue of units of real estate investment trusts (REITs), including the disclosure requirements for prospectus.

In order to safeguard investors' interests and guarantee the completeness and accuracy of the information included in the prospectus, companies producing them must abide by all applicable SEBI laws. Depending on the type and extent of the non-compliance, SEBI may take several penalties against a firm that violates its regulations for initial public offerings (IPOs). If the company doesn't comply, SEBI might fine it. The punishment could take the shape of a monetary fine or another kind of disciplinary action. SEBI has the right to refuse permission for the company's subsequent offerings until the non-compliance is fixed. Until the corporation complies with the regulation, SEBI has the authority to halt trading of its shares on stock

markets. SEBI has the authority to file criminal charges against the company and its management in situations of severe non-compliance. When IPO requirements are broken, SEBI takes serious offences and moves quickly to safeguard investor interests. Therefore, when a company launches an initial public offering (IPO), it is crucial that it complies with all SEBI laws.

IV. Disclosure through financial statements in India

Regulations issued by the Securities and Exchange Board of India (SEBI) and the Companies Act, 2013 govern disclosure through financial statements in India. Every year, Indian businesses must compile and publish their financial accounts in compliance with Indian Accounting Standards (IND-AS) or Generally Accepted Accounting Principles (GAAP). Usually, the financial statements include the following: The balance sheet gives details on the assets, liabilities, and equity of the business at a specific point in time. Income Statement: This displays the net income or loss for the company for the specified time period as well as its revenues and expenses. Cash Flow Statement: This document details the company's operating, finance, and investment operations as well as its cash inflows and outflows during a specific time period. The Financial Statements' Notes: This covers details and clarifications regarding the financial statements of the company, including related party activities, accounting policies, and contingencies. According to SEBI regulations, companies in India are also required to disclose certain other information in addition to these financial statements, such as the Management Discussion and Analysis (MD&A) and Corporate Governance Report. The Corporate Governance Report contains details about the company's governance procedures, whereas the MD&A gives a summary of the business's financial performance and prospects. In general, the goal of financial statement disclosure in India is to give information about the company's financial performance and situation to all relevant parties, including creditors, employees, investors, and the general public. In India, the firms Act, 2013 establishes a number of rules pertaining to firms' financial disclosure. Every company is required by Section 129 of the Companies Act, 2013 to prepare and present financial statements in compliance with Indian Generally Accepted Accounting Principles (GAAP) or Indian Accounting Standards (Ind AS) at the end of each fiscal year. These statements comprise the balance sheet, profit and loss account, cash flow statement, and statement of changes in equity. According to Section 136 of the Companies Act of 2013, all companies must submit their financial accounts to the Registrar of Companies no later than thirty days following their annual general meeting (AGM). The directors' report, the auditors' report, and any other legally needed documents must be submitted with the financial statements. By upholding the Companies Act of 2013's requirements on the

disclosure of financial information, Indian courts significantly contribute to the advancement of accountability and openness. The courts have taken strong action against corporations and their directors for failing to comply with the disclosure obligations, again highlighting the significance of financial openness and accountability in corporate governance. Courts has the authority to ensure adherence to financial reporting regulations. In the event of non-compliance, firms and their directors may face penalties and legal action. The courts have also been crucial in interpreting the financial reporting laws and offering advice on how to apply them.

(A) Disclosure by directors

A director's disclosure is essential to an organization's ability to remain accountable and transparent. Stakeholders including shareholders, clients, and staff can have confidence that the company is being open and honest about its finances, operations, and decision-making procedures when directors reveal pertinent information. Directors' disclosures discourage people from engaging in dishonest or unlawful behaviour, which helps to prevent fraud. Being transparent about their actions makes it simpler to spot possible fraud and take the necessary action. Information-sharing directors assist other stakeholders in making wise decisions. Directors are required by law to provide stakeholders with specific information, including financial reports and other important documents. If this isn't done, the business may face legal action and reputational harm. By demonstrating the honesty and reliability of the directors, disclosure contributes to the preservation of the organization's reputation. As a result, it may be possible to draw in new clients and investors while holding onto current ones. For an organisation to continue to be transparent and accountable, disclosure by directors is necessary. Building trust, preventing fraud, improving decision-making, adhering to regulatory obligations, and upholding the company's reputation are all aided by it.

(B) Disclosure in annual general meetings

Annual general meetings (AGMs) are an important forum for shareholders to learn about the company and its operations and to make choices. Companies' disclosures at AGMs encourage transparency, which is essential for gaining the trust of investors. Businesses that are open and honest about their financial and operational dealings have a higher chance of drawing in new investors and keeping hold of their current ones. Certain disclosures, including financial statements, auditor's reports, and director's reports, must be made by companies in AGMs by law. If these standards are not met, there may be fines and legal repercussions. AGMs give shareholders a chance to evaluate the management and performance of the firm. AGM disclosures assist shareholders in evaluating the company's potential for profit and in making

well-informed decisions regarding its future. AGM disclosures contribute to a company's accountability to its shareholders. Companies can show that they are operating in the best interests of their shareholders by disclosing information about their activities. AGM disclosures are governed by a number of provisions outlined in the Companies Act of 2013. Companies are required by Section 129(2) of the Companies Act, 2013 to present their financial statements, which include the cash flow statement, profit and loss account, balance sheet, and any other information as specified, to the AGM. According to Section 129(2), "At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year," companies are required by Section 134(3) of the Companies Act, 2013 to prepare a directors' report that includes information on the state of the company's affairs, financial and operational performance, and any other information.

V. SEBI ON FINANCIAL DISCLOSURE IN INDIA

In India, financial disclosure refers to the practice of informing stakeholders, such as lenders, shareholders, and regulatory bodies, about a company's financial situation, performance, and cash flows. A number of legislations, including the Income Tax Act, the Companies Act, and the Securities and Exchange Board of India (SEBI) regulations, mandate the disclosure of financial information. In India, financial transparency has a big impact. Through the timely and correct provision of financial information, businesses can enhance their credibility and foster confidence among stakeholders. A company's ability to obtain cash can be enhanced by attracting investors and lenders with accurate financial disclosures. Businesses can use this to finance expansion and generate value for stakeholders. Financial disclosures assist businesses in meeting legal obligations, such as those imposed by the Income Tax Department or SEBI. By doing this, the possibility of fines or legal action for noncompliance may be decreased. Financial disclosures give investors a common set of facts to compare and assess companies equally, which can help level the playing field for businesses. In India, financial transparency is required by law and has a major positive impact on both the corporate sector and the economy. Businesses can expedite capital creation, increase corporate governance, improve transparency, adhere to legal requirements, and foster fair competition by giving accurate and timely financial information. Investors can learn about a company's financial performance, assets, liabilities, and prospects by reading its financial disclosure. Investors can use this information to assess the risks and rewards of purchasing a specific security. For instance, investors might be reluctant to invest in a company that reports bad financial performance, which could lead to a decrease in the stock's value. For Indian companies wishing to list on stock exchanges, financial disclosure is now required by the Securities and Exchange Board of India (SEBI). In their

annual reports and other filings with SEBI, companies are expected to provide information on their financial performance, management, risks, and other significant information. In order to maintain market transparency, it has legislated a number of financial disclosures that businesses must publish.

VI. Participation of judiciary in the development of disclosure as a merit based regulation substitute in India

In India, the emergence of disclosure as an alternative to merit-based regulation is greatly aided by the judiciary. The enforcement of transparency and accountability in corporate governance by the Indian judiciary has played a pivotal role in the establishment of disclosure requirements in the country. The regulatory agency in charge of overseeing and controlling the Indian securities market is the Securities and Exchange Board of India (SEBI). Nonetheless, the Indian judiciary has taken a proactive stance in guaranteeing that SEBI fulfils its obligations and liabilities concerning the securities industry regulation. In addition to being proactive in interpreting the laws and rules pertaining to corporate governance and the securities market, the Indian court has also created precedents through significant rulings that have aided in the country's development of disclosure guidelines. For example, the Sahara case established a precedent for openness and disclosure in the stocks market when the Indian Supreme Court ordered the Sahara Group to reveal the identity of every investor and return any funds obtained through illicit means. A number of corporate law cases demonstrate the transition from restrictions based on merit to those based on disclosure. In *Bacha F. Guzdar v. Commissioner of Income Tax*[11], the Bombay High Court held that the public has a right to know the affairs of a company, and the company must make proper disclosures to its shareholders. The court held that the duty to disclose information rests on the company, and failure to disclose information can result in legal action against the company.

VII. Conclusion

The promotion of transparency laws in India has been greatly aided by the Indian judiciary. Due to the judiciary's active interpretation and enforcement of disclosure duties over the past few decades, a strong regulatory framework for corporate transparency has been developed. The judiciary has emphasised the significance of accountability and transparency in corporate governance in a number of precedent-setting decisions. It has also taken a strong stand against inadequate, misleading, and non-disclosure information. The judiciary has been instrumental in

[11] 1955 AIR 74, 1955 SCR (1) 876

developing new disclosure standards and obligations in addition to interpreting and upholding disclosure regulations. Significant judicial precedents established by the Indian judiciary have influenced the development of the corporate disclosure regulations. The courts have rendered a number of important rulings that have assisted in establishing the norms for corporate disclosure and governance in India.

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