CHAPTER – 12

INVESTOR PROTECTION THROUGH OMBUDSMAN

1. INTRODUCTION

Approximately forty years ago word of the Ombudsman began to spread around the world. Today, it is so popular that everyone knows that an Ombudsman has long proven to be a most effective means of bringing back the people’s faith in democratic government.

Ombudsman is “ahm’ bedz’ man which means a public official appointed to investigate citizens’ complaints government agencies or officials that may be infringing on the rights of individuals.

The concept of Ombudsman traces its root to the branch of Administrative Law. It is a measure of imposing checks and balances on the functioning of (public) authorities. In terms of Oxford Dictionary, Ombudsman means, ‘Official appointed to investigate individual's complaints against public authorities’. In other words Ombudsman means ‘an attorney or representative who investigates a complaint against the administration’. Thus, the role of an Ombudsman can be understood as a watchdog on the administration.

2. OMBUDSMAN IN U.K. - AN IDEAL OMBUDSMAN IN THE WORLD

In United Kingdom, the Financial Services and Markets Act (“FSMA”) which the received Royal Assent on 14 June, 2000, establishes a new, single regime for the statutory regulation of financial services in the United Kingdom and establishes the Financial Services Authority (“the FSA”) as the statutory regulator. According to the Act, an FSA to establish a new, single ombudsman scheme to resolve disputes between consumers and financial services firms quickly and with a minimum of formality. This new scheme will be known as the Financial Ombudsman Service ("the FOS").
This new ombudsman scheme will replace eight existing dispute resolution schemes currently operating in the financial services sector including the Investment Ombudsman schemes set up by the Investment Management Regulatory Organisation (“the IMRO scheme”) and the Securities and Futures Authority Complaints Bureau and Arbitration Service (“the SFA scheme”).

The primary objective of the aforesaid scheme is to ensure that consumers and firms alike are able to benefit as soon as possible from the replacement of these former schemes with a single service operating across the financial services sector, it is proposed that these existing schemes shall cease to operate from the date on which the new arrangements under FSMA come into effect. It does not deal with the complaints schemes operated by bodies which are Recognised Professional Bodies (“RPBs”) under the Financial Services Act 1986, which will be considered in the context of arrangements relating to the RPBs more generally.

To conclude, unlike in India, there exists only one ombudsman scheme to settle the disputes between the consumers and financial services firms quickly with minimum formality375.

3. Need of SEBI Ombudsman
The SEBI received /receiving complaints from the investors against listed companies for non-receipt of refund orders, non-receipt of share certificates, unit certificates, non-receipt of dividend and many more matters. They are even claiming damages or compensation or interest etc. from such listed companies. Towards investor protection, SEBI has taken two courses of action, i.e., advising the companies or the intermediaries to redress the same and/or prosecution or imposition of monetary penalty on the erring companies. However, the available action against intermediaries is the suspension and cancellation of registration or imposition of monetary penalty. The above does not redress the grievance of investors to give any compensation to the investors. Considering the above injustice to the investors, SEBI issued an alternative redressal mechanism which is cheap,

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fast, informal and efficient which has been engaging the attention of SEBI. SEBI is exploring the avenue such as scheme of Ombudsman.

Further, the Joint Parliamentary Committee on Stock Market Scam and matters relating thereto in its report recommended that the concept of Ombudsman, which is already being used in the Banking and Insurance Sectors, should also be extended to the capital market.

4. SEBI OMBUDSMAN IN INDIA

With a view to realize its twin objectives of regulating the capital markets and safeguarding the interests of the investors, the Securities and Exchange Board of India (SEBI) has recently set up a new institution called the ‘Ombudsman’ for regulating the capital markets.

The SEBI to achieve its object “to protect the interest of investors in securities” has established the Office of Ombudsman to redress the grievances of investors. Therefore, in exercise of the powers conferred by section 30, read with sub-section (1) of section 11, of the Board hereby makes regulations called Securities and Exchange Board of India (Ombudsman) Regulations 2003, to provide for the establishment of the office of Ombudsman to redress the grievance of the investors in securities.

4.1 Establishment and Appointment of Ombudsman and office

The Board has power to establish an office of Ombudsman for the purposes to redress investors grievances. The Board may, on recommendation of a Selection Committee, appoint one or more Ombudsman for such territorial jurisdiction as may be specified from time to time by an order. At the request of the Board, the Selection Committee may also prepare a panel of persons out of which a person may be appointed as Stipendiary Ombudsman. The panel shall remain in force for a maximum period of two years. The Selection Committee shall consist of the following members, namely:—

(i) an expert in the area relating to financial market operations to be nominated by the Chairman;

(ii) a person having special knowledge and experience of law, finance or economics, to be nominated by the Chairman;

376 Regulation 3 of SEBI (Ombudsman) Regulations, 2003
(iii) a representative of the Board not below the rank of Executive Director who shall be Secretary of the Selection Committee, to be nominated by the Chairman.

4.2 Location of Office and sitting - The Office of the Ombudsman shall be located at the Head Office of the Board. If more than one Ombudsman are appointed then the office of any such Ombudsman may be located at any other office of the Board or any other place as may be specified by the Board from time to time. The Stipendiary Ombudsman when appointed for any specific complaint or complaints shall be located at such place as may be specified. In order to expedite disposal of complaints, the Ombudsman or Stipendiary Ombudsman, as the case may be, may hold sittings at such places within his area of jurisdiction as may be considered necessary and proper by him.

4.3 Qualification of Ombudsman - In order to be appointed as an Ombudsman a person shall be—

(i) a citizen of India;

(ii) of high moral integrity;

(iii) not below the age of forty five years of age; and

(iv) either

(a) a retired District Judge or qualified to be appointed a District Judge,

or

(b) having at least ten years experience of service in any regulatory body, or

(c) having special knowledge and experience in law, finance, corporate matters, economics, management or administration for a period not less than ten years, or

(d) an office bearer of investors’ association recognised by the Board having experience in dealing with matters relating to investor protection for a period not less than 10 years.

377 Regulation 4 of the SEBI (Ombudsman) Regulations, 2003
378 Regulation 5 of SEBI (Ombudsman) Regulations, 2003
4.4 Disqualification: A person shall not be qualified to hold the office of the Ombudsman if he—

(i) is an undischarged insolvent;
(ii) has been convicted of an offence involving moral turpitude;
(iii) has been found to be of unsound mind and stands so declared by a competent court;
(iv) has been charge sheeted for any offence including economic offences; or
(v) has been a whole-time director in the office of an intermediary or a listed company and a period of at least 3 years has not elapsed. However, this disqualification shall not be applicable in case of a person who has been the whole-time director of a public sector bank or a public sector undertaking.

4.5 Tenure & Remuneration - A person appointed as an Ombudsman shall hold office for a term of three years and shall be eligible for reappointment for another period of two years. The person shall not hold the office of Ombudsman after attaining the age of sixty-five years. The Board, at any time, before the expiry of the period may terminate the services of the Ombudsman by giving him notice of not less than three months in writing or three months salary and allowances in lieu thereof, and the Ombudsman shall also have the right to relinquish his office, at any time, before the expiry of period specified by giving to the Board notice of not less than three months in writing. The salary, allowances, honorarium or fee payable to, and other terms and conditions of service of, an Ombudsman shall be determined by the Board from time to time.

4.6 Stipendiary Ombudsman - the Board may appoint a person as a Stipendiary Ombudsman out of the panel for the purpose of acting as an Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction, as may be specified in the order of appointment. the Stipendiary Ombudsman shall exercise all powers and functions as are vested in an Ombudsman under these regulations as specified by the board. Every

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379 Regulation 6 of SEBI (Ombudsman) Regulations, 2003
380 Regulation 7 & 8 of SEBI (Ombudsman) Regulations, 2003
381 Regulation 9 of SEBI (Ombudsman) Regulations, 2003
Ombudsman or Stipendiary Ombudsman shall exercise jurisdiction in relation to an area as may be specified by the Board by an order. A person shall be eligible to be appointed as Stipendiary Ombudsman who:—

(i) has held a judicial post or an executive office under the Central or State Government for at least ten years, or

(ii) is having experience of at least ten years in matters relating to consumer or investor protection, or

(iii) has been a legal practitioner in corporate matters for at least 10 years, or

(iv) has served for a minimum period of ten years in any public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956) or a regulatory body.

5. Powers and Functions of Ombudsman.

5.1 The Ombudsman shall have the following powers and functions:\(^{382}\):—

(a) to receive complaints specified in regulation 13 against any intermediary or a listed company or both;

(b) to consider such complaints and facilitate resolution thereof by amicable settlement;

(c) to approve a friendly or amicable settlement of the dispute between the parties; and

(d) to adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

5.2 Other powers and functions:\(^{383}\)

The Ombudsman shall—

(a) draw up an annual budget for his office in consultation with the Board and shall incur expenditure within and in accordance with the provisions of the approved budget;

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\(^{382}\) Regulation 11 of SEBI (Ombudsman) Regulations, 2003

\(^{383}\) Regulation 12 of SEBI (Ombudsman) Regulations, 2003
(b) submit an annual report to the Board within three months of the close of each financial year containing general review of activities of his office; and

(c) furnish from time to time such information to the Board as may be required by the Board.

5.3 Power to call for information

For the purpose of carrying out his duties under these regulations, an Ombudsman may require the listed company or the intermediary named in the complaint or any other person, institution or authority to provide any information or furnish certified copy of any document relating to the subject matter of the complaint which is or is alleged to be in its or his possession. In the event of the failure of a listed company or the intermediary to comply with the requisition without any sufficient cause, the Ombudsman may, if he deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the listed company or intermediary.

The Ombudsman shall maintain confidentiality of any information or document coming to his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person except and as otherwise required by law or with the consent of the person furnishing such information or document. However, such confidentiality shall not prevent the Ombudsman from disclosing information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings. Furthermore, the confidentiality shall not apply in relation to the disclosures made or information furnished by the Ombudsman to the Board or to the publication of Ombudsman’s award in any journal or newspaper or filing thereof before any court, Forum or authority.
6 Procedure for redressal of grievance

6.1 Grounds of complaint\textsuperscript{384} A person may lodge a complaint on any one or more of the following grounds either to the Board or to the Ombudsman concerned:

(i) Non-receipt of refund orders, allotment letters in respect of a public issue of securities of companies or units of mutual funds or collective investments schemes;

(ii) Non-receipt of share certificates, unit certificates, debenture certificates, bonus shares;

(iii) Non-receipt of dividend by shareholders or unit-holders;

(iv) Non-receipt of interest on debentures, redemption amount of debentures or interest on delayed payment of interest on debentures;

(v) Non-receipt of interest on delayed refund of application monies;

(vi) Non-receipt of annual reports or statements pertaining to the portfolios;

(vii) Non-receipt of redemption amount from a mutual fund or returns from collective investment scheme;

(viii) Non-transfer of securities by an issuer company, mutual fund, Collective Investment Management Company or depository within the stipulated time;

(ix) Non-receipt of letter of offer or consideration in takeover or buy-back offer or delisting;

(x) Non-receipt of statement of holding corporate benefits or any grievances in respect of corporate benefits, etc.;

(xi) Any grievance in respect of public rights or bonus issue of a listed company;

(xii) Any of the matters covered under section 55A of the Companies Act, 1956;

\textsuperscript{384} Regulation 13 of SEBI (Ombudsman) Regulations, 2003
(xiii) Any grievance in respect of issue or dealing in securities against
an intermediary or a listed company.

6.2 Procedure of filing complaint

Any person who has a grievance against a listed company or an intermediary
relating to any of the matters specified in regulation 13 may himself or
through his authorised representative or any investors association recognised
by the Board, make a complaint against a listed company or an intermediary to
the Ombudsman within whose jurisdiction the registered or corporate office of
such listed company or intermediary is located. If the Board has not notified
any Ombudsman for a particular locality or territorial jurisdiction, the
complainant may request the Ombudsman located at the Head Office of the
Board for forwarding his complaint to the Ombudsman of competent
jurisdiction. The complaint shall be in writing duly signed by the complainant
or his authorised representative (not being a legal practitioner) in the form
specified in the Schedule to these regulations and supported by documents, if
any. No complaint to the Ombudsman shall lie –

(a) unless the complainant had, before making a complaint to the Board or
the Ombudsman concerned, made a written representation to the listed
company or the intermediary named in the complaint and the listed
company or the intermediary, as the case may be, had rejected the
complaint or the complainant had not received any reply within a period
of one month after the listed company or intermediary concerned
received his representation or the complainant is not satisfied with the
reply given to him by the listed company or an intermediary;

(b) unless the complaint is made within six months from the date of the
receipt of communication of rejection of his complaint by the
complainant or within seven months after the receipt of complaint by the
listed company or intermediary under clause (a) above;

(c) if the complaint is in respect of the same subject matter which was settled
through the Office of the Board or Ombudsman concerned in any
previous proceedings, whether or not received from the same

Regulation 14 of SEBI (Ombudsman) Regulations, 2003
complainant or along with any one or more or other complainants or any one or more of the parties concerned with the subject matter;

(d) if the complaint pertains to the same subject matter for which any proceedings before the Board or any court, Tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed by any such competent authority, court, Tribunal, arbitrator or forum;

(e) if the complaint is in respect of or pertaining to a matter for which action has been taken by the Board under section 11(4) of the Act or Chapter VIA of the Act or under sub-section (3) of section 12 of the Act or under any other regulations made under the Act.

The Ombudsman may dismiss in limine a complaint on any of the grounds specified under sub-regulation (3) or when such complaint is frivolous in his opinion.

6.3 Settlement by mutual agreement

These regulations also provide the investor redressal by mutual agreement for early disposal of complaints. As soon as it may be practicable so to do, the Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the registered or corporate office of the listed company or office of the intermediary named in the complaint and endeavour to promote a settlement of the complaint by agreement or mediation between the complainant and the listed company or intermediary named in the complaint. If any amicable settlement or friendly agreement is arrived at between the parties, the Ombudsman shall pass an award in terms of such settlement or agreement within one month from the date thereof and direct the parties to perform their obligations in accordance with the terms recorded in the award. The Ombudsman shall follow such procedure and take such actions as he may consider appropriate.

6.4 Award on adjudication

In the event the matter is not resolved by mutually acceptable agreement within a period of one month of the receipt of the complaint or such extended

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386 Regulation 16 of SEBI (Ombudsman) Regulations, 2003
387 Regulation 17 ibid
period as may be permitted by the Ombudsman, he shall, based upon the material placed before him and after giving opportunity of being heard to the parties, give his award in writing or pass any other directions or orders as he may consider appropriate. The award on adjudication shall be made by Ombudsman within a period of three months from the date of the filing of the complaint. However, the award shall not be invalidated by reason alone of the fact that the award was made beyond the said period of three months. Thereafter, the Ombudsman shall send his award to the parties to the adjudication to perform their obligations under the award.

6.5 Correction of award

For correction of any typical error or computation error, the party may apply within fifteen days from the receipt of the award, with notice to the other party, may request the Ombudsman to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award. If the Ombudsman considers the request to be justified, he shall make the correction within fifteen days from the receipt of the request which shall form part of the award. The Ombudsman may also rectify any of these errors, on his own initiative, within fifteen days from the date of the award.

6.6 Evidence Act not to apply in the proceedings before Ombudsman

In proceedings before the Ombudsman strict rules of evidence under the Evidence Act shall not apply and the Ombudsman may determine his own procedure consistent with the principles of natural justice. The Ombudsman shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials. It shall not be necessary for an investor to be present at the oral hearing of proceedings under these regulations and the Ombudsman may proceed on the basis of the documentary evidence submitted before him. No legal practitioner shall be permitted to represent the defendants or respondents at the proceedings before the Ombudsman except where a legal practitioner has been permitted to represent the complainants by the Ombudsman.

388 Regulation 18 ibid
6.7 Finality of award and circumstances of review

An award shall be final and binding on the parties and persons claiming under them respectively. Any party aggrieved by the award on adjudication may within one month from the receipt of the award under Regulation 17 or corrected award under Regulation 18 may file a petition before the Board setting out the grounds for review of the award. An award may be reviewed by the Board only if —

(a) there is substantial mis-carriage of justice, or

(b) there is an error apparent on the face of the award.

6.8 Review of award by Board –

Where a petition for review of the award is filed by a party from whom the amount mentioned in the award is to be paid to the other party in terms of the award, such petition shall not be entertained by the Board unless the party filing the petition has deposited with the Board seventy-five per cent of the amount mentioned in the award. However, the Board may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-regulation. It may review the award and pass such order as it may deem appropriate. It shall endeavor to dispose of the matter within a period of forty-five days of the filing of the petition for review.

The award passed by the Ombudsman shall remain suspended till the expiry of period of one month for filing review petition or till the review petition is disposed of by the Board. The party so directed shall implement the award within 30 days of receipt of the order of the Board on review or within such period as may be specified by the Board in the order disposing of the review petition. The Board may determine its own procedure consistent with principles of natural justice in the matter of disposing of review petition and may dismiss the petition in limine if it does not satisfy.

6.9 Implementation of the award

Implementation award and Consequences of non-implementation of the award - The award shall be implemented by the party so directed within one

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389 Regulation 20 of SEBI (Ombudsman) Regulations, 2003
390 Regulation 22 of SEBI (Ombudsman) Regulations, 2003
month of receipt of the award from the Ombudsman or an order of the Board passed in review petition or within such period as specified in the award or order of the Board. If any person fails to implement the award or order of the Board passed in the review petition, without reasonable cause—

(a) he shall be deemed to have failed to redress investors’ grievances and shall be liable to a penalty under section 15C of the Act;

(b) he shall also be liable for—

(i) an action under section 11(4) of the Act; or

(ii) suspension or delisting of securities; or

(iii) being debarred from accessing the securities market; or

(iv) being debarred from dealing in securities; or

(v) an action for suspension or cancellation of certificate of registration; or

(vi) such other action permissible which may be deemed appropriate in the facts and circumstances of the case.

7. Cost and Interest

The Ombudsman or the Board as the case may be shall be entitled to award reasonable compensation along with interest including future interest till date of satisfaction of the award at a rate which may not exceed one per cent per mensem. The Ombudsman in the case of an award, or the Board in the case of order passed in petition for review of the award, as the case may be may determine the cost of the proceedings in the award and include the same in the award or as the case may be, in the order. The Ombudsman or the Board may impose cost on the complainant for filing complaint or any petition for review, which is frivolous.

8. Display of the particulars of the ombudsman

Display of the particulars of the Ombudsman in office premises and documents- Every listed company or intermediary shall display the name and address of the Ombudsman as specified by the Board to whom the complaints are to be made by any aggrieved person in its office premises in such manner and at such place, so that it is put to notice of the shareholders or investors or
unit-holders visiting the office premises of the listed company or intermediary. The listed company or intermediary in its offer document or clients agreement shall give full disclosure about the grievance redressal mechanism through Ombudsman under these regulations. Any failure to disclose the grievance redressal mechanism through Ombudsman shall attract the penal provisions contained in section 15A of the Act.

9. Conclusion – The success of office of Ombudsman in Banking and Insurance sector made it indispensable for Capital Market in India. Moreover, looking at the large number of complaint received by SEBI, it has decided to establish an Ombudsman to look after the interest of investors. Any investor, whose rights are affected in any manner, can file complaint to Ombudsman. The Ombudsman at initial stage tries to redress the grievances of the investor by mutual settlement. In case settlement does not materialize, it can passed the award and implement them. The proceedings are in very formal way and the Evidence Act is not applicable to the proceedings. Therefore, SEBI has initiated very good step to establish the office of Ombudsman to protect the interest of Investor. However, The institution of the Ombudsman shall be examined carefully, in its own light, as guardian of the people’s right to hold the government accountable. Close attention shall be placed on the distinction that the Ombudsman is not a watchdog of the administration but of the people. When our legislators learn the difference, they will be well on their way to constructing Ombudsman Avenue-a free, easy access to effective petitioning for redress against seemingly improper administrative action or omission. If this is achieved, one may see yet another new chapter in the history of capital markets in India.

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