Credibility of SEBI

Why in news?

The Hindenburg Research has levelled allegations of conflict of interest against the chairperson Securities and Exchange Board of India (SEBI).

What is SEBI?

- **SEBI** – The Securities and Exchange Board of India (SEBI) is the regulatory body for securities and commodity market in India.
- **Establishment** – It was *established in 1988* as an executive body and was given *statutory powers in 1992* through the SEBI Act, 1992.
- **Objective**– It aims to protect the *interests of investors in securities* and to promote the development of, and to *regulate the securities market* and for matters connected therewith or incidental thereto.
- **Management** - It is managed by its board of members called as SEBI Board
    - **Chairman** - Nominated by the Union Government of India
    - **Two members** - From the Union Finance Ministry
    - **One member** - From the Reserve Bank of India
    - **Remaining five members** – They are nominated by the Union Government of India, and out of them *at least three should be whole-time members*

What is credibility issue in SEBI management?

- There is an allegations of *conflict of interest against the chairperson* of SEBI.
- **Conflict of interests in SEBI** – It is any personal interest or association of a board member, which is likely to influence the decision of the Board in a matter, as viewed by an independent third party.
- *Accepting gifts* by Board members.
- *Holding or having held any post*, other employment or fiduciary position in the past five years.
- *Dealing in shares* based on unpublished price sensitive information.

How SEBI regulates conflict of interest of it board members?

- SEBI has introduced a separate code ***for 'Code on Conflict of Interests for Members of Board.***
- It has been *adopted by the Board in 2008.*
- It aims to ensure that it conducts in a manner that does *not compromise its ability* to accomplish its mandate or undermine the public confidence in the ability of Member(s) to discharge his responsibilities.
- **Code** – It requires extensive disclosures and even provides a procedure for the public

to raise conflict of interests.
- It provides that SEBI member shall take all steps necessary to ensure that any conflict of interest does not affect any decision of the Board.
- *Disclosure of shares* of the board member and their family holdings within 15 days of the assumption of Office.
- *Disclosure of substantial transactions* within 15 days of such a transaction.
- Members are *not allowed to deal in shares based on unpublished price* sensitive information.
- Members are *not allowed to hold any other office of profit* or professional activity.
- They are *not allowed to accept any gift* from a regulated entity and If received, it must be hand it over to the General Services Department of the SEBI.
- *Disclose any post*, other employment or fiduciary position" which they hold or have held in the past five years, in connection with any regulated entity.

What are challenges in ensuring credibility of SEBI?

- **Lack of Transparency** – As per the 'Code on Conflict of Interests for Members of Board' the disclosures shall be kept confidential, except in certain circumstances.
- This can lead to potential misconduct and cover-up by bad actors.
- **Circularity of the scrutiny** - SEBI chairperson determines if a member of the board has a conflict of interest and the board determines if the chair does.
- This process gives rise to the possibility of quid pro quo arrangements.
- **Regressive Lokpal amendment** – Statutory requirement under Lokpal and Lokayuktas Act, for *public disclosure was removed* in 2016.
- It was replaced with a clause empowering the Union government to make rules to determine the form and manner of disclosures.

Lokpal and Lokayuktas Act, enacted in 2014, was the statutory requirement for public disclosure of the assets and liabilities of public servants, including those of their spouses and dependent children.

- **Privacy issues** - Digital Personal Data Protection (DPDP) Act has amended the RTI Act to exempt all personal information from disclosure.

What lies ahead?

- Reform relevant codes and laws to *ensure public disclosure* of assets, liabilities and conflict of interest.
    - Include family members, close relatives and other known persons in the disclosures.
    - It shall include past associations of the person and family members with any listed companies.
- Ensure transparency in the functioning for SEBI management board.
- Institute impartial judicial or parliamentary enquiry to ensure fairness in the investigation.

Supreme Court has ruled that disclosure of information related to asset, liabilities and performance evaluations of public servants, all come within the scope of the privacy exemption.

References

1. The Hindu | SEBI's credibility
2. Indian Express | SEBI Conflict of Interest
3. SEBI| Code on Conflict of Interests For SEBI Board

