



Dr. K. M. Abraham CFA
Whole Time Member

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

SEBI/KMA/2011/17495
June 1, 2011

Most Honourable Prime Minister Sir,

I am a Whole Time Member on the Board of the Securities and Exchange Board of India (SEBI) and have been working in this capacity from July 21, 2008. I have been on deputation from the Indian Administrative Service (Kerala Cadre) during this period.

2. I believe I have discharged the responsibilities and duties entrusted to me sincerely, diligently and honourably, under the powers delegated to me by the SEBI Board.
3. During my tenure here, I have been the Board Member in charge of the departments for Primary Market, much of Secondary Market, Investigation and Surveillance Department in addition to other duties. I have as on date, issued over 380 quasi-judicial orders and 300 consent (settlement) orders. This, I humbly submit, is a new record for any Whole Time Member of SEBI. These disposals include several significant landmark cases in the Securities Markets involving fraud or violations by major corporate groups. Some of the entities or their promoters involved in these orders/investigations under my charge include Sahara Group, Reliance (Both the Ambani Groups of companies), Bank of Rajasthan and the Stock Exchange (MCX-SX).
4. I am submitting the following with considerable anguish and pain. I am humbly aware that it is unusual for a person serving on a regulatory body set up by Parliament to approach the Honourable Prime Minister directly. But such is the gravity of the situation, that I make myself bold to do so, and entreat your kind indulgence.

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5. Supervising the investigation and surveillance functions in the securities markets as the Whole Time Member of SEBI for the last three years, has made me deeply conscious of the fact that the securities market in India is still fragile – despite considerable improvements following the implementation of several key recommendations of the two Joint Parliamentary Committees set up after the two scams. Several attempts continue to be made by powerful groups to misappropriate wealth both individually and at a corporate level, exploiting the vulnerability of this fragile ecosystem. All of it do not necessarily result in scams and most of it, despite attempts to modernise surveillance and investigation systems in SEBI, gets finely obfuscated and is hence beyond its regulatory reach.
6. Personally, I have been exposed to, what I believe sincerely, are attempts to harass and intimidate me in the discharge of my duties. I propose to raise these issues in the SEBI Board Meeting scheduled for June 30, 2011. A copy of the Board Note that I have circulated in this regard is attached as **Annexure**. However, painful these personal experiences have been, the purpose of this letter to the Honourable Prime Minister is not to highlight my grievances in this regard.
7. I am writing this letter to point out a malaise that is gradually setting into the functioning of SEBI itself. I sincerely believe that it can be corrected only by urgent intervention at the highest level. The regulatory institution is under duress and under severe attack from powerful corporate interests, operating concertedly to undermine SEBI. I am citing below several specific reasons why I believe these insidious attempts are orchestrated from the office of the Union Minister for Finance. Some of what I have submitted to the Honourable Prime Minister, herein, makes me also believe that what is happening is taking place with the knowledge of the Union Minister for Finance.

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8. As referred to above, I am handling several enforcement cases against many corporate groups a few of which are Sahara Group, Reliance Industries Ltd and ADAG Companies, Bank of Rajasthan and the Stock Exchange (MCX-SX). While reviewing these cases in his three months as Chairman SEBI, Shri. U. K. Sinha, Chairman, SEBI has directly or indirectly, referred to how these cases are sensitive and are engaging the attention of the Union Minister for Finance or Smt. Omita Paul, Advisor to the Finance Minister.
9. Prior to most of the visits of Chairman SEBI, to New Delhi, he has briefing notes prepared by the concerned officers on these cases – which he, carries with him for discussions. Given the apparent pressure that he seems to be under, he is unable to communicate to the forces bearing down on him, that SEBI exercises quasi-judicial functions in disposing of such matters, and that a proceeding in a court of law should not even be discussed and least of all settled elsewhere, extra-legally.
10. On several occasions, Shri. Sinha mentioned that **“they are not interested in too many cases in SEBI”**, and if he is able to **‘manage’** these few cases, then it becomes **‘easy’** for him. One some of these cases, he has suggested whether I could help resolve these cases before my tenure ends in SEBI, as I am conversant with the facts, without waiting for a new hand to take charge in my place. On two such occasions, I had simply mentioned that SEBI has several good and talented officers, and that given a free hand; it is only natural that such cases of corporate entities will keep getting detected and will investigated into. I was merely pointing out that a vigilant investigative machinery would detect fraud by groups both minor and major, and one should not expect such cases to go away for good. I could only see that he maintained a helpless silence to my response.
11. On a few occasions, the Chairman, in his discussions with me, has mentioned that on some of these issues, the **“Big Man”** (*which he then clarifies is the Union Finance Minister*) is interested, and that he has personally told him so.



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12. Furthermore, on a few occasions, the Chairman has aired his sad frustration that the “**Lady**” [referring to Smt. Omita Paul, Advisor to the Union Finance Minister] is controlling everything – and all such things are being done at her instance. He has, on a few occasions referred to **Julka** [referring to Shri. Bimal Julka, Additional Secretary (Capital Markets), DEA] as the “schemer” and **Thomas** [referring to Shri. Thomas Mathew, Joint Secretary (Capital Markets), DEA] as the “executor”. I have heard him mention that it is so difficult to interact with the Finance Ministry – “There is no single person there to whom one can talk - first one has to convince Thomas, then Julka and then finally the Lady.”
13. Even while discussing my own case of being personally harassed (as mentioned in the Annexure), he has, on more than one occasion, expressed that “**I know that the Lady** (referring to Smt. Omita Paul, Advisor to the Union Finance Minister) **is behind this.**”
14. I now cite a few instances on some of these cases, on which I feel that the Chairman is under severe coercion and stress, from the above-mentioned interests in the Ministry of Finance.
- a. In the matter of Sahara in Honourable Supreme Court and Honourable Lucknow High Court:
- i. On April 7, 2011, the Lucknow High Court vacated its stay of the order issued by me on November 24, 2010 prohibiting few Sahara Group Companies and its promoters from raising funds in the Securities Markets. After reading the news, he called me in to explain what happened – and told me, after the discussion “**see that your officers do not gloat over this**”. I was quite hurt by the fact that instead of complimenting the investigating officers for their professional work – he was more worried about how the perceptions elsewhere needed to be managed. When I proposed, that SEBI should issue a Newspaper Advertisement in the light of the judgement of the Honourable High Court for the benefit of investors (as had been done earlier by SEBI on a mention from the Honourable Supreme Court and also done independently by RBI), he discouraged me and



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finally agreed to a press release on the SEBI website in place of the newspaper advertisement.

ii. On May 12, 2011, the Honourable Supreme Court dismissed the appeal of the Sahara Group and has directed SEBI to expeditiously issue its final orders in the matter. Chairman SEBI expressed anxiety and asked me to be careful that nothing "harsh" is done. I assured him that such orders are issued very professionally in SEBI after careful legal consideration. All this confirms my belief that the Chairman is being subjected to undue pressure by vested interests, prima facie, borne out by his own statements, operating through the office of the Honourable Finance Minister.

b. In the matter of Reliance Industries Limited:

The Chairman asked for a review of the enforcement matter in this case and personally requested me to see whether the case can be settled through the 'consent' mechanism in SEBI. I explained to him that the unlawful gain by the company, prima facie, established in the investigation, has been placed at over Rs.500 crores and that under the SEBI Act, the punishment could be up to a maximum of three times that amount. He then requested me to look into the transactions and see whether there are classes of transactions that can get a benefit of doubt and be excluded in the computation of unlawful gains. Here again, I could see that he seemed to be acting under compulsion to make such a request to me.

c. In the matter of Bank of Rajasthan:

In this case also, the Chairman asked for a review of the enforcement matter and personally requested me to examine whether the case can be settled through the 'consent' mechanism. He asked me to explore the possibility of allowing the promoters to sell the ICICI shares received by them. I explained to him, that the SEBI interim orders prohibiting market transactions of the promoters cannot be selectively waived for this. I

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decidedly could see, that he was under pressure from extraneous forces.

d. In the matter of MCX-SX Stock Exchange:

In one of the first reviews the Chairman conducted on selected orders in SEBI, he asked me to explain possibility of any compromise in the orders (issued by me) disallowing the application of MCX Stock Exchange (MCX-SX) for granting the equity segment. I explained to him that the matter is in the Honourable Mumbai High Court, on an appeal filed by the MCX-SX. I now understand that he has instructed the Executive Director (Legal Department) of SEBI to file the affidavit on behalf of SEBI after he vets it. I have never come across any instance and indeed it is extremely unusual for a Chairman to express a desire to vet the affidavit to be filed on behalf of SEBI in a High Court. The Affidavits are not even put up to the level of Member, and they get approved at lower levels in the organization, after due care and consideration.

15. The admissions of the Chairman in his own words about the need to 'manage' some of the cases now live in SEBI, about the interest that the Union Finance Minister has in some of them, the admission that Smt. Omita Paul is behind what is happening, the difficulty that he is experiencing in interacting with key Ministry officials – suggest to me that Shri. Sinha is being pressured to intervene in several cases that are currently being dealt with in SEBI.

16. I am aware of other cases in SEBI also, where he has got such briefing notes for discussions prepared, prior to his visits to New Delhi. But in other cases, he has not had any discussions personally with me – and hence I have not included them in this letter.



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17. Whether the pressure exerted on Shri. Sinha by the above-mentioned interests yield the obviously execrable and illegal outcomes intended by the vested interests behind the same, no doubt depends on whether the Whole Time Members and officers succumb under such pressure, requests, demands or suggestions that get conveyed to them through the Chairman. This clearly is a matter that will have to largely do with the personal integrity of the officers themselves. But the fact that briefing notes are being prepared on selected enforcement cases and are being discussed outside SEBI, is already sapping the vitality of the investigative machinery in SEBI.
18. What I see happening now is a calculated assault on the regulatory framework in SEBI. A message is now spreading that cases against the influential and the powerful might put officers in SEBI to undue risk and scrutiny. A feeling is now gradually becoming pervasive in the investigative arm that it would be easy now for offenders violating laws and regulations relating to the securities markets to thwart the enforcement process itself, by approaching SEBI through the Ministry of Finance. This will, in no time, incapacitate the investigative machinery in SEBI. Needless to say, it does not bode well for the safety and integrity of the markets and for the investors. SEBI will be rendered toothless in fulfilling its mandate that Parliament has entrusted it under the SEBI Act to protect investors and the safety and integrity of the markets.
19. Under the SEBI Act, the Whole Time Members and the Adjudicating Officers operate as courts administering securities laws and regulations, in disposing of quasi-judicial matters. It is clearly illegal to discuss possible settlement of these matters in forums outside SEBI. They could further have deleterious effects on the governance of the country and on our democratic institutions, their processes and procedures. Such discussions could dangerously degenerate into tools in the hands of vested interests and pave the way for what could be grave forms of corruption.



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20. It is just over three months since Shri. Sinha has assumed office as Chairman, SEBI. But the order of pressure that he admittedly is facing is clearly significant. This can potentially debilitate the regulatory authority, demoralize officers themselves and reduce the machinery in SEBI to an abject state of ineffectiveness. If the integrity of SEBI is to be preserved, Shri. Sinha should not be subjected to and should be insulated from the kind of pressures and fears that he is facing now.
21. Other than copies of the briefing notes themselves, which are prepared for discussions outside SEBI, and are available in the files, there may not be any other documentary trail on what I have outlined above. I have attempted to humbly place before the Honourable Prime Minister only those facts, which I know myself with certitude, which are first hand and are not hearsay in nature. I am willing to testify to the above facts, under oath in any appropriate judicial or administrative forum, should I be called upon to do so.
22. I am also submitting a copy of this letter in a sealed cover to Sri. R. Sri Kumar, Vigilance Commissioner, for information, so that the facts will be on record of the official vigilance machinery of Government also.
23. My term on deputation as Whole Time Member in SEBI comes to an end on July 20, 2011, and thereafter that I will repatriate to my parent cadre in Kerala. But, I believe it is my moral, statutory and constitutional obligation to bring these unfortunate and disturbing developments to the kind attention of the Honourable Prime Minister of India, in the hope that the institution of SEBI itself, and the Chairman, its Members and its officers, get sufficient protection from the clutches of vested interests and be fully safeguarded from collusive action as outlined herein.



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24.1 pray and am hopeful that the Honourable Prime Minister of India will intervene in the best interest of the country, as appropriate as he deems fit, to safeguard the integrity of the securities market.

Yours respectfully,

K. M. Abraham

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