

NSE Scam: Before you condemn Sebi, pause and consider these points

The regulator may have been slow, but it does not deserve to be condemned so harshly.

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Usually investigating agencies, including Sebi, need the help of insiders to make sense of the vast amount of data that can come up. (Photo by Atypeek Dgn from Pexels)

For the past few weeks, several articles and news reports have been published on how the **Securities and Exchange Board of India** (SEBI) failed to do its job in cracking open the NSE scam.

I offer a few points from a regulator's perspective, without holding a brief for the regulator.

Let us start with the fact that it was SEBI which unearthed the ‘yogi’ controversy, so some credit must go to it for exposing it, and also taking the matter to a conclusion by passing the final order.

SEBI as a regulator has to scrutinise millions of transactions done almost every minute in the stock market and that by itself makes its task herculean. The problem is compounded by the need to act swiftly, and naturally there are limitations on how deep it can go in a case and the extent to which it can allocate its resources for a particular scam or controversy.

Over allocation in one case can come at the cost of ignoring trouble brewing elsewhere. Still, six years could seem a long time to come out with an order. But there are investigations and matters pending with the regulator for over a decade. So, relatively this case seems to have progressed faster. In India, we are used to living with such timelines.

Another aspect to consider is also that any immediate public action (especially when Chitra Ramakrishna had already demitted office in 2016) effectively stating that management of NSE is not independent or that the exchange is being his process is adopted to ensure that conflicts or prejudices or biases do not creep into the process. This naturally has its costs in terms of timelines. Problem gets compounded by the fact that often, few of the seats of WTM's are not filled in time by the Government of India.

What happened at NSE seems, from available information, like a case of corporate misgovernance for which investigations have been done, fines have been levied and bans have been placed. There may be different views on sufficiency of the penal actions taken, and it is open to debate if any further actions may be warranted against the former NSE officers including initiation of the criminal proceedings. But like in courts, penal actions by SEBI are also typically judge centric.

What actions have been taken to ensure that such instances at the biggest stock exchange do not recur is another matter altogether. Perhaps, it may require a slew of reforms regarding the functioning of the stock exchanges and the recent changes to SEBI (Stock Exchanges and Clearing Corporation) 2018 may not by themselves be sufficient. Regulating the stock exchanges in an independent and efficient manner, especially when doubts have risen regarding the functioning of the NSE, hopefully would be high on the list of tasks for Madhabi Puri Bhuch, the newly appointed chairperson of SEBI.

It is true that there has been a systemic and governance failure at NSE and crucial information appears to have been passed to an outsider or outsiders. But there is no evidence yet that anyone benefitted from knowing how NSE functioned or by knowing the details of the persons at the helm of affairs at the exchange or its financial results or projections. NSE is not a listed company, so the insider trading related concerns do not arise.

manipulated by others would have had adverse effect on the whole securities market, and perhaps such a course was wisely considered by SEBI in pacing out the passing of order. NSE, set up after Harshad Mehta's scam, is today the largest stock exchange in India in terms of trading volume and figures also in the top list of Asia's stock exchanges. Pressing a panic button would have had a deleterious effect.

Another thing to keep in mind is the process that SEBI has to adopt in such matters. Typically, appointment of an investigation officer is done by one Whole Time Member (WTM), approval

of the investigation report is given by another Whole Time Member, and final orders against the errant entities are passed by a different Whole Time Member who is not involved in investigation.

Let me also add that **co-location** is altogether another controversy (pending at Securities Appellate Tribunal presently) and it is yet to be clearly determined if these two are inter-linked given the commonality of actors involved. If the outsiders have influenced NSE officials to act in the co-location incident so as to benefit from co-location of servers, then further actions in the co-location scam can perhaps be pursued.

Roadblocks placed

It is also well known that, whenever any regulator initiates a probe and it demands papers and information, the corporates involved do not very easily volunteer the information and create as many roadblocks as possible. NSE perhaps acted no differently. SEBI order also mentions repeated reminders having been sent.

Couldn't the market regulator have ordered a search-and-seizure? Yes, it could have. But, typically, even with search and seizure, only the persons in the company can assist in pulling out the relevant data. Otherwise, Sebi officials trying to make sense of the large data that they seized would have been like looking for a needle in the haystack. Investigators are often dependent on the participants of the scams in unearthing them.

In the end, if Sebi really wanted to conceal or downplay the whole story—of Ramakrishna's yogi guru—there are multiple ways in which it could have been done. SEBI has enough experience of the manner in which an order needs to be written. Certainly, there was no need for SEBI to have put in the public domain details about any 'divine' person who does not physically manifest and so on. But it seems to have put every cringeworthy detail into the order.

On a lighter note, I am thankful for the disclosures made, because the whole saga has been the subject matter of conversations at quite a few meals and has led to discussions on spirituality on a different plane!

Rather than condemning the regulator, I would say that passing an order against NSE is a bold admission by the SEBI that there were certain failings in functioning of the stock exchange situated in the building across the street in Bandra Kurla Complex, Mumbai, and the regulator was unaware of those. It may be recalled that in the past when orders were passed by SEBI against the depositories (NSDL & CDSL) in IPO scam, the orders were recalled and declared as illegal (non-est) because SEBI then did not want to admit its failure in overseeing the functioning of the depositories. I hope history does not repeat at SEBI.

We need to consider the above possibilities before condemning the regulator harshly.