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Legal Framework for Securities Market Dispute Resolution in Nepal

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ABSTRACT

Dispute settlement provisions are crucial segments of the securities law for each and every jurisdiction as recognized within core objectives of the securities regulation even by International Organization of the Securities Commissions. This article deals mainly with the questions on how far the dispute settlement provisions in Nepali securities law are adequate to redress and compensate the investors for actual losses resulting from market malpractices. Employing doctrinal legal research followed by in-depth key informant interview with the regulatory representatives, experts and market participants to conduct the study, it is based on descriptive, analytical and interpretative in research design. Drawing upon the analysis of the existing grievances handling mechanism and securities dispute settlement practices, the author concludes that law on securities dispute settlement regime is quite scattered and it seems urgent to have a consolidated approach to bring them at one place within a separate regulation. The study recommends the concerned authorities to restructure the securities dispute settlement regime by means of amendment of the existing securities law to provide a Securities Dispute Settlement Committee under the aegis of the regulator Securities Board of Nepal, which could

function as a first-tier quasi-judicial body to look and decide over all kinds of securities disputes. Likewise, the concerned authorities are recommended to pass a separate legislation to establish and form an independent Securities Market Dispute Settlement Tribunal having its jurisdiction to hear an appeal against the decision of the proposed Dispute Settlement Committee under the Securities Board of Nepal.

KEYWORDS: Securities, disputes resolution, regulation, tribunal, investors

INTRODUCTION

Nepal's economy is projected to grow by 4.1 percent in year 2022, inching up from an estimated growth of 2.3 percent in 2021 as the economy is reviving from the

COVID-19 pandemic induced contraction (Asian Development Bank [ADB], 2021). With the economic activities being stagnant in almost all sectors since the outbreak of pandemic in March 2020, and further being deteriorated due to the hike in international market prices after the outbreak of Ukraine-Russia War, Nepal is in quite vulnerable state at present, possibly in the brink of a severe recession, most likely to be protracted for a long. However, exponential upsurge in the numbers of investors engaged in the securities trading in the only stock market of the country, Nepal Stock Exchange Ltd. (NEPSE) even during the inconvenient situation can be taken as a silver lining. Stock market capitalization in mid-January 2022 stood Rs. 4.04 trillion compared to Rs. 3.08 trillion in mid-January 2021 (Nepal Rastra Bank [NRB], 2022). The employment of full-fledged dematerialized transaction of securities, the introduction of application supported by blocked amount (ASBA), centralized ASBA (C-ASBA) and Mero Share system in the primary market enabling the applicants to participate digitally even from abroad, branch expansion of merchant bankers and securities brokers to outside Kathmandu valley and adoption of on-line trading through the trade management system (TMS) are major achievements resulting increased attraction of public towards the securities markets (Securities Board of Nepal [SEBON], 2020).

Black's Law Dictionary defines the term 'security' as "an instrument that evidences the holder's ownership rights in a firm (e.g., a stock), the holder's creditor relationship with a firm or government (e.g., a bond), or the holder's other rights (e.g., an option). A security indicates an interest based on an investment in a common enterprise rather than direct participation in the enterprise" (Garner & Black, 2009, p. 1476). Securities include equities, options on securities, warrants, preferred shares, depository receipts, bonds, debentures, collateralized debt and mortgage obligations, and mutual funds. A hallmark feature of a security is transferability in a readily available market (Arnett, 2011). The securities market is one of the major integral parts of the overall capital market. Rechtschaffen (2019) rightly points out that capital markets provide a marketplace where persons with financial capacity can meet persons who have needs for long-term or short-term capital. The securities market is a market for securities (equity, debt and unit), where business enterprises (companies) and governments can raise long-term funds for the initiation and expansion of business. The securities market thrives with investors' confidence based upon their return on investment as well as from anticipated capital appreciation from their investment (SEBON, 2020). Altogether 5.09 million of beneficial owners' dematerialized accounts are currently maintained at central depository, CDS and clearing Ltd (CDSC), a subsidiary company of NEPSE (CDSC, 2022). The number of active clients trading at NEPSE through the licensed 50 brokers stands at 337,360 among which 120,499 clients are using the online TMS as of September, 2020 (NEPSE, 2020). The online clients account for 35.71 percent that is more than one third portion of the total active investors. Securities Board of Nepal (SEBON) is the regulatory authority of the securities markets in Nepal under the Securities Act, 2006. On top of the mainframe guiding act, several other regulations and bylaws are put into effect to regulate the securities market operations, to ensure securities registrations, to make arrangements for securities listing and trading, to deal with businesses of the market participants and to ease the clearing and settlement process. The bundle of these Acts, various regulations and bylaws has formed a body of specialized law which can be regarded as securities law, which in every jurisdiction is expected to provide for the appropriate provisions to resolve effectively any disputes arising out of the securities transactions.

According to Merrills (2011), a dispute may be defined as a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another. In the broadest sense,

securities disputes are of transactional and commercial nature and can be said to exist whenever such a disagreement involves any investor/trader such as institutional investors, private individual investors contending on certain issues with any market service provider such as exchanges, brokers, dealers, market makers, portfolio managers, juristic persons (corporations), other market participants while taking part in the securities trading. Dispute settlement provisions are the most essential part and parcels of the securities law for each and every jurisdiction as enshrined within the core objectives of the securities regulation even by the International Organization of the Securities Commissions (IOSCO). The three IOSCO core objectives of securities regulation are: i) The protection of investors; ii) Ensuring that markets are fair, efficient and transparent; iii) The reduction of systemic risk (IOSCO, 2017). To fulfil the major objective of the protection of investors from misleading, the manipulative or fraudulent practices, including the insider trading and misuse of the client assets, they must be provided with the proper access to neutral mechanism of dispute resolution or means of redress and compensation for the improper behaviour (IOSCO, 2017). IOSCO prescribes as the international principles for securities regulation that a system for the redress of complain under the regulatory framework must be addressed through an ombudsman, external dispute-resolution provision or other third-party scheme or through oversight of individual firm arrangements (IOSCO, 2017). Hence, the domestic securities law of a jurisdiction must include the dispute resolution system with a fair and effective judicial system including other alternative dispute resolution (ADR) mechanisms with the guarantee of enforceability of court orders and arbitration awards, including foreign orders and awards as well (IOSCO, 2017).

The capital market regulator of Nepal, SEBON, has obtained the associate membership of IOSCO in July 2016 (SEBON, 2018). Thus, Nepali securities market is expected to implement its securities regulations at par with the international standards pursuant to the objectives and principles of IOSCO. However, still there exists challenge in Nepal as to development of the infrastructure, enhancement of the technology and above all, the availability of the specialized dispute settlement mechanism (DSM) to handle the securities disputes. Along with the explosive growth in securities transactions backed by the influx of new investors participating through electronic online TMS, also it emerges that the multifarious newer problems including that of technical system error, glitches and command suspensions, misuses or abuses of technology, unauthorized buying and selling, unethical trading practices of market participants, violations of trading rules and so on posit the stock market as one of the most fertile area of disputes.

Previous studies have shown that lack of transparency, problems of governance and functional autonomy of the regulator, inadequate disclosure of corporate information and limited access of public investors to such information as the pertinent issues in the stock market of Nepal. Shrestha and Pokhrel (2019) examined the factors affecting the stock market index in Nepal and found that securities market had been quite responsive to changes in political environment and policies of the central bank relating to share loan and they suggested the concerned authorities to enhance transparency by making easy availability of the corporate information as to the listed companies. Risal (2016) noted insufficient laws and regulatory agencies to regulate Nepali capital market, weak institutional mechanisms, partial automation system of trading securities, insufficient market makers and brokers as major limitations of the Nepali capital market. Kadariya et.al. (2012) found that awareness level is high among the equity investors in Nepal; however, there is problem on access to information in the secondary market. KC (2010) highlighted the problems of governance, accounting and auditing that leads to serious apprehension of to the fairness in securities market. Paudyal (2010) underscored the

limited functional autonomy to the regulator SEBON under the securities law and regulations, contradictions and overlapping legal provisions as one of the major impediments in the development of securities market. Koirala and Bajracharya (2004) asserted that management of the listed companies, attitude of the board of directors (BoD) and market intermediaries were unfavourable for the protection of the investors.

Thus, to identify major constraints on a proper access of public investors to DSM, this paper shall provide a systematic exposition of dispute settlement provisions in the major legal instruments relating to the securities markets from the perspective of the public investors so that effective, inclusive and affordable access to DSM could be attained. The article intends to find out whether the dispute settlement provisions in Nepali securities law are adequate to redress and compensate the investors for actual losses resulting from market malpractices and how far they are consistent to international best practices and standards.

METHODOLOGY

In this study, descriptive, analytical and interpretative design has been adopted employing a library based doctrinal and key informant interview (KII) method to critically analyse the existing provisions on dispute resolution within the legal instruments on securities market and stock trading. The major geographical location of the research is Kathmandu valley and Pokhara. For the selection of relevant literatures and the key informants, researcher applied the critical and heterogenous (maximum variation) purposive sampling to meet the purpose of the research to cover diverse issues involving the dispute settlement in securities markets. The primary information is collected from KIIs with the selected four key informants each representing the regulatory institution, investors, independent experts and the market participants respectively. They were consulted to obtain their experiences and insights relating to the ongoing phenomenon of securities market dispute resolution. Data of grievances handling by the regulatory body, SEBON is collected from its grievances handling unit. Secondary sources including the major existent securities laws, regulations, bylaws, guidelines, books, journal articles, etc. were perused to gather secondary data. The data collected from the legal instruments are descriptive and analytical whereas the data obtained from the KIIs are qualitative one.

The data obtained from the authoritative legal instruments are presented and analyzed based on textual analysis approach whereas the data obtained from the in-depth KIIs of the resource persons are analyzed using the interpretative and phenomenological approach. Validity and reliability of the study has been maintained on the basis of the logical and reasoning-based analysis of the primary legal authorities on securities market. The researcher follows the long-standing principles of research ethics to maintain the accuracy of the findings and protecting rights as well as welfare of the research participants. While obtaining the information, an informed consent is taken and the researcher ensures that information and data obtained for the purpose of this study is not to be used for any other purposes. Similarly, the intellectual property rights of the publisher and author of the secondary sources are respected at all times.

RESULTS AND DISCUSSIONS

Analysis of the Constitutional Provisions

Every citizen shall have the freedom to practice any profession, carry on any occupation, and establish and operate any trade and business in any part of Nepal (The Const. of Nepal, art. 17(2)(f)). Thus, any Nepali citizen can freely choose the area of securities trading also as a business profession. With regards to rights relating to justice,

art. 20(9) of the constitution provides that every person shall have the right to a fair trial by an independent, impartial and competent court or judicial body. This constitutional provision guarantees the investors with an access to independent, impartial and competent adjudicative authority. The fundamental right relating to property enshrined in the constitution recognizes any form of property including movable and immovable property; thus, it also includes the property rights on securities, which enables every citizen with subject to law, to acquire, own, sell, dispose, acquire business profits, from, and otherwise deal with property including the securities (The Const. of Nepal, art. 25(1)). It is guaranteed in the constitution that the state shall not, except for public interest, expropriate the property of a person as stated in its art. 25(2). Likewise, every consumer shall have the right to obtain quality goods and services according to the art. 44(1) of the constitution and a person who has suffered injury from any substandard goods or services shall have the right to obtain compensation in accordance with law. This constitutional provision is quite important to ensure quality and predictable services to the investors as well who are consumers of the services catered in the securities market. In the like manner, providing for regulation to maintain fairness, accountability and competition in the economic sector is major State policy as prescribed in art. 51(d)(4) of the constitution, which is relating to regulation of securities market as well. The constitution also states the policy of protecting interests of the consumers by maintaining trade fairness in its art. 51(d)(7), which is also the backbone of the securities trading. With respect to the policies on justice, the Constitution of Nepal (2015) lays down the state policy to make the administration of justice speedy, efficient, widely available, impartial, and accountable to people (art. 51(k)(1)). The state policy on resolving disputes emphasize to pursue alternative means such as mediation and arbitration for the settlement of disputes of general nature (The Const. of Nepal, art. 51(k)(2)). In the new federal structure, Schedule 5 of the constitution enumerates the subjects relating to securities regulation as the matters that fall within the ambit of Federation's power. There is not any constitutional restriction on private investment in the securities market, regulation of securities market and effective securities dispute resolution, which is quite positive part of the constitution.

Analysis of the Securities Act, 2006

Though the functions, duties and powers of SEBON as conferred by the s. 5 of the Act do not include the settlement of disputes in specific terms; however, the its power to supervise and regulate the conduct of the market participants and to implement the sanction measures where necessary are, in one way or another, relating to mitigation of potential securities disputes for the protection of investors. The prevailing Securities Act provides for stock exchange to establish and operate one such compensation fund as may be prescribed by the regulator SEBON in order to protect investors against possible loss or damage as stated in s. 53(1) of the Act. The funds deposited to such compensation fund shall be used to bear compensation as prescribed according to s. 53(2). If stock exchange is not able to establish and operate such compensation fund pursuant to s. 53 in order to protect investors against possible loss and damage or does not pay or fails to pay the amount of compensation to be payable as prescribed, in such condition, liability to establish and operate the compensation fund as prescribed to make necessary provisions in relation to the payment of the compensation amount is shifted to the regulator according to the s. 55 of the Securities Act (2006). Detail provisions to be made in the rules relating to operation of the compensation fund are mentioned in the s. 54 of the Act. However, it is quite disappointing to the investors that compensation fund envisioned by the Securities Act has not yet been established and operated either by the stock exchange

NEPSE or the regulator SEBON. Even the detail rules covering the provisions as mentioned in the s. 54 of Securities Act (2006) on the establishment and operation of the compensation fund has not yet been outlined and brought into implementation. This is one of the serious lacking in the securities dispute settlement and providing effective remedies to the investors who suffer loss and damage due to the malpractices in the securities market.

The cases relating to the securities offences referred to in the s. 91, s. 94, s. 95, s. 96, s. 97, s. 98, s. 99 and s. 100 of the Securities Act (2006) shall be State cases to which Government of Nepal shall be plaintiff pursuant to the s. 102 of the Act. Due to this legal provision, investors are compelled to rely on the regulator to initiate any legal actions against the accused in securities offences. Investors do not have appropriate options to initiate civil lawsuit and seek remedy against the alleged securities offenders under the prevailing Securities Act. In view of punishment for the securities offences, it seems urgent to define and criminalize the newer types of offences in the securities market often committed by abusing different social media, online messaging platforms and applications to swindle the investors and provoking them to take buying or selling decisions on certain scrips in the securities markets based on the distorted propagations. Punishments as provided in the Securities Act for securities offences up to maximum fine of NPR three hundred thousand or with imprisonment for a term not exceeding two years or with both punishments also seem to be meagre in proportion to the undue benefits that an offender can accrue through committing securities offences in securities trading in large trade volume. To discourage any criminal activities, proposed punishment to such crime must be far more disadvantageous in terms of cost-benefit ratio with comparison to the benefits that an offender can attain by taking risks of getting punished. Thus, it seems necessary to increase both the monetary fines and the punitive terms of imprisonment for the securities offences in the prevailing Securities Act, so as to discourage such offences, which could put the billions of funds of public investors at the vulnerable state.

The major lacunae in the procedures dealing with the securities offences under Securities Act (2006) is the lack of independent dispute settlement regime to handle the trial procedures of such disputes. Though legal provisions obliged SEBON to investigate each and every securities offence, in practice, SEBON has not been effectively enforcing its role as the investigator of the securities offences. Mostly SEBON seems to be remain engaged in the supervision and regulation of the securities market rather than investigating the offences and prosecuting the accused (Kharel, 2022). Investors are often reluctant to file complaints against the accused due to the lacking of the proper evidences as well. The regulator SEBON is devoid of the automated real time digital surveillance system to monitor and pin point the anomalies and suspicious trading in securities market. Thus, it is still a complex process for the regulator to investigate the securities offences in professional manner. There is also the lacking of the usage of ADRs as a mechanism of providing appropriate remedies and damages to the investors who fall prey to the securities offences. Investors must be provided with the effective alternative tools of ADRs and remedial civil action against the wrongdoers to pursue their claims on compensation for the loss and damage. An independent securities dispute settlement body having the capacity of investigation and adjudication on the matters relating to securities dispute must be envisioned in a separate legislation of securities disputes (Kharel, 2022).

Dispute Settlement Provisions in Various Securities Regulations, Bylaws and Guidelines

Besides Securities Act (2006), various regulations, bylaws and guidelines framed by the regulator, SEBON to provide detail rules and procedures on wide range of services

relating to securities trading and market operations also include some of the provisions on handling grievances and settlement of disputes. Dispute settlement provisions are scattered in various pieces of the regulations, bylaws and guidelines relating to securities trading, public issuance of the shares, mutual funds, services relating to central depository, clearing, settlement, portfolio management and such. The much-dispersed provisions on resolving grievances and disputes are found in various pieces of securities regulations consisting Stock Exchange Operation Regulations, 2008, Securities' Central Depository Services Regulation, 2010, Mutual Fund Regulations, 2010, Securities Registration and Issue Regulation, 2016, Specialized Investment Fund Rules, 2019. Likewise, the bundles of bylaws including Securities' Central Depository Services Bylaws, 2012, Securities Transaction Clearing and Settlement Byelaws, 2013, Securities Trading Bylaws, 2018 also contain few provisions on dispute resolution. Securities related guidelines comprising Portfolio Management Guidelines, 2010, Mutual Fund Guidelines, 2012, Securities Issuance and Allotment Guidelines, 2017 and Guidelines on Margin Trading Facility, 2017 also provide for grievances handling and dispute resolving procedures.

The grievances handling, redressal for clients/investors and settlement of disputes using method of arbitration are found so much scattered in the disorganized and piecemeal basis in various pieces of regulations, bylaws and guidelines. Thus, it is found to be cumbersome for the investors to have exact information and thorough knowledge about the procedures to seek redress while they face injustices due to the unwarranted behaviours and negligence of market participants. There is absence of any unified regulation relating with the dispute settlement procedures leading to an independent umbrella institution catering the services of securities dispute resolution employing the method of various forms of ADRs like mediation and conciliation along with arbitration or judicial settlement where necessary, to settle all forms of securities dispute under one roof (Kharel, 2022).

Status of Investors' Grievances Handling and Legal Action by SEBON

According to the data obtained from SEBON, out of the total 45 grievances filed at SEBON, 36 cases are resolved up to the third quarter (mid-April) of the last fiscal year (FY) 2021/22 whereas grievance resolving procedure is currently underway in 9 such applications. The 30 complaints forwarded through the "Hello Government" web portal of the Office of the Prime Minister and Council of Ministers are also resolved by the SEBON during that period up to mid-April. In previous FY 2020/21, altogether 46 grievances were settled by SEBON out of the registered 52 such complaints. Similarly, 48 cases forwarded by the "Hello Government" web portal were also resolved in previous FY (SEBON, 2021). In FY 2018/19 only 6 grievances among the 30 received by the SEBON (in written or via email) were resolved (SEBON, 2020a) whereas 43 such grievances were resolved by issuing necessary directions in 2017/18 (SEBON, 2018).

Table 1
Status of Grievances Handling by the Regulator SEBON

Fiscal Year	Grievances Filed at SEBON	Resolved Cases	Ongoing Resolving Procedure	Resolved Cases as Reported by Hello Government Portal
2021/22 (up to mid-April)	45	36	9	30
2020/21	52	46	6	48
2018/19	30	6	24	-

Note. Data obtained from SEBON dated 15 April 2022.

With an exponentially growing number of securities transactions taking place at NEPSE, market participants and even listed companies have been often investigated and penalized for securities misconduct for several instances by SEBON. Few of the notable cases are found in which legal actions were taken and financial penalties were imposed by the regulator against market participants. In a recent case of forged Share Certificate filed by SEBON against Govinda Ghimire at Kathmandu District Court, the final judgement of the court has imposed upon defendant, a sentence of six-month imprisonment and fine of NPR One hundred thousand along with authorization to Agrawal Securities Pvt. Ltd. to recover NPR 4.79 million claimed amount from the defendant (SEBON, 2021).

According to the investigation report on fictitious shares transaction of three listed hydropower companies, SEBON imposed financial penalty of NPR One million each to Agrawal Securities Pvt. Ltd. and Shreehari Securities Pvt. Ltd. Similarly, for not maintaining the full record of customers, the CEO of both the broker businesses have been fined NPR Fifty thousand each as per Assets (Money) Laundering Prevention Act 2008 (SEBON, 2018). Later High Court Patan quashed the decision of the SEBON on the basis of appeal filed by the CEO Sandip Jalan of Shreehari Securities Pvt. Ltd. and the appeal filed by SEBON challenging the judgment of the High Court Patan is now sub judice at the Supreme Court (SEBON, 2018).

Similarly, Sibrabi Securities Pvt. Ltd. was also fined NPR Fifty thousand for not keeping proper record of customer details (SEBON, 2018). Further, as per Securities Act 2006, Pragyan Securities was imposed a financial penalty of NPR Seventy-Five thousand for not complying the professional ethics (SEBON, 2018). The Linch Stock Market Pvt. Ltd. was fined NPR Fifty thousand for keeping wrong information of the client in beneficiary account and know your customer (KYC) information (SEBON, 2018). On the basis of analysis of share trading of listed companies, details have been asked with Grammen Bikas Bank, Himalaya Distillery and Nepal Investment Bank. Also, oral and written details were sought by the regulator from Primo Securities Pvt. Ltd., Kalika Securities Pvt. Ltd., Sani Securities Pvt. Ltd. and Linch Stock Market Ltd (SEBON, 2018).

Results and Discussion from KIIs

The profiles of the selected four key informants and the major issues in which the researcher has conducted intensive interviews to obtain the insightful authentic information and expert opinions on the securities dispute resolution practices are presented in Table 2.

Table 2

Details of Key Informants

S. N.	Key Informants Resource Persons	No.	Major Issues	Interview Location	Date of Interview
1.	Ambika Prasad Poudel, Chairperson, Capital Market Committee, FNCCI	1	Malpractices in the securities markets, measures to protect investors	Pokhara	16 May 2022
2.	Dr. Gopal Prasad Bhatta, Expert on Securities Market, Former Executive Director, NRB	1	Dispute settlement practices in foreign capital markets and ADR techniques	Kathmandu	17 May 2022

3.	Dr. Nabaraj Adhikari, Executive Director, SEBON	1	Regulatory perspectives and grievances handling in securities market	Lalitpur (Kathmandu Valley)	18 May 2022
4.	Parmeshwar Pant, Chief Executive Officer (CEO), Himalaya Capital Ltd.	1	Dispute settlement practices within market participants	Kathmandu	18 May 2022

Taking into account the major problems experienced in online trading by the investors, it is found from the KIIs that Nepali legal framework is not predictable as it fails to address potential systemic, structural and technical risks and lapses in the online TMS. There is not effective mechanism to pursue compensation for the wrongful acts of the concerned market participants and offenders of insider trading using the systemic and technical lacunae (Kharel, 2022). The market participants, for the most part, seem to be availing undue benefits from technical lapses and systemic glitches for the purpose of shifting their obligations and causing unnecessary delays in clearing and settlement procedures. As a consequence, general investors are made borne the ultimate risks associated with almost all technical problems relating to online TMS for which proper mechanism of redressal seems much crucial. Technical faults in Mero Share online portal and its system of Electronic Delivery Information Slip (EDIS) hindering the settlement of shares persist as one of the major pitfalls compelling investors to pay burdensome closeout fines of twenty percent of total amount of securities traded even for the incidents resulting due to the reasons beyond their control (Kharel, 2022). Hence, the formalities of EDIS process along with seeking virtual consent of investor to transfer the shares must be incorporated within the trade console of TMS while placing each selling order so that EDIS proceedings would also be completed through TMS automatically for settlement during the execution of the sell order by means of which seller would not fall prey to the closeout fines.

In addition, the pertinent issues needed to be addressed in the earliest manner possible to establish an efficient trading system are real-time surveillance system, data security and the mechanism to find out lapses and omission of service providers at different levels in the market. With regards to the regulatory role, based on the insights as expressed by the informants, it can be interpreted that inter-regulators coordination in between SEBON, NRB, Insurance Board (IB), Electricity Regulation Commission (ERC) and such is of the dire need to enhance and enforce prudent regulations curbing the malpractices. Uniform reporting standards and disclosure provisions must be implemented by the regulators in order to discourage the manipulative trade practices and control an unauthorized access to price sensitive information so that market disputes could be averted as much as possible.

Though a separate grievances handling unit is established by the SEBON and a dedicated nodal officer to receive the grievances of the investors is also appointed to look after the disputes registered at SEBON, it is exposed from the KIIs that there is no any clear legal and regulatory provisions and guidelines to handle the grievances brought into the notice of SEBON. As a consequence, SEBON is handling the grievances of the disputants on ad hoc basis. There are lacunae in the existing legal framework as the Securities Act does not recognize SEBON as an authority to provide binding decisions on the grievances lodged by the investors. SEBON has an authority to initiate legal action against the wrongdoers at the concerned courts having jurisdiction but there is not

concrete legal provision providing SEBON clear jurisdiction to handle securities disputes.

CONCLUSION AND RECOMMENDATIONS

The overall findings of the study lead the researcher to draw a conclusion that Nepali legal framework on securities market do not possess sufficient provisions on the settlement of securities dispute so as to provide with the investors, proper access to the independent and efficient mechanism of redressal and compensation for actual losses they suffer due to the market malpractices and negligence of the service providers. Having a closer look to the dispute settlement provisions in the existing Securities Act, major regulations, bylaws and the guidelines relating to securities market, it is clearly seen that they are not much comprehensive and coherent as much as they could have been in line with the international best practices and standards in securities dispute settlement. Despite SEBON being the associate member has expressed its commitments towards the international principles of securities regulations as set forth by the IOSCO, the prevailing Nepali legal framework of the securities law do not adhere to the worldwide accepted principles and international best standards.

Nepal needs a wide reform in its existing securities law with regards to the dispute settlement provisions to ensure proper access of the public investors to the redressal and compensatory mechanism for the losses arising out of the illegitimate activities, negligence and securities offences committed by unscrupulous segments. The major securities law instruments need vast improvements in the existing provisions on dispute settlement to address the particular concerns of the investors and the market participants as well and enhance their access and active participation for the prompt and effective settlement of disputes. To address the concerns of the Nepalese investors residing abroad who are active investors in Nepali securities market and in addition, to attract foreign portfolio investment from the global investors in upcoming days in Nepalese securities market, it is undoubtedly necessary to give due consideration to IOSCO Principles of Securities Regulation while reforming the legal provisions. The securities law must cater pro-disadvantaged adjudicatory system facilitating the general public investors to properly channel their grievances promptly against the wrongful measures and to reassert their legitimate rights restored through the dispute settlement processes set forth in consistent with the IOSCO international principles and standards on securities regulation. The reformed legal regime on securities market dispute resolution should be consistent also with the rest of country's laws in order to enhance coherence and smoothness by avoiding unnecessary conflicts and collisions of legislations.

Based on the detail examination of the dispute settlement provisions under securities law and the interpretative analysis of the inputs from KIIs, the researcher makes following recommendations to concerned authorities for the reform in the area of securities dispute settlement:

- Federal Legislature-Parliament is recommended to amend the existing Securities Act, 2006, in consistent with the principles propounded by the IOSCO, in order to provide a Securities Dispute Settlement Committee under the aegis of the regulator SEBON involving the experts and officials conversant in securities law, capital market, and IT sector, which could function as a quasi-judicial body to look and decide over all kinds of securities disputes by exercising the original jurisdiction of first instance.
- The amended Securities Act should provide for an automated real-time surveillance system at the regulator's end to supervise the online securities trading in order to find out the discrepancies, if any prevails in the market.

Likewise, in the amendment, Securities Act should increase both the monetary fines and the punitive terms of imprisonment for the securities offences as well as it should clearly define the newer types of securities offences often committed by abusing different social media, online messaging platforms and applications to swindle the investors by provocation for making investment decisions based on the distorted propagations.

- The Federal Legislature-Parliament is also recommended to pass a separate legislation for the establishment and formation of an independent Securities Market Dispute Settlement Tribunal which shall consist of three members including securities law expert member, one who is incumbent or qualified to become a judge of a High Court, capital market or corporate finance expert member and IT expert member having its jurisdiction to hear an appeal against the decision of the proposed Dispute Settlement Committee under SEBON, i.e. which is expected to be the first instance forum for the securities disputes. Likewise, the proposed tribunal should be provided with the original jurisdiction to try and decide the cases relating to the securities offences in which the SEBON investigates and prosecutes the accused before the tribunal. The proposed tribunal should be chaired by the law member and it should be entrusted with legal capacity to adjudicate and provide redressal and monetary compensation to the aggrieved investors on any matters relating to securities disputes.
- The capital market regulator SEBON is recommended to frame and enact a separate consolidated regulation to combine, unify and harmonize all of the scattered provisions on grievances handling and dispute settlements in securities market found in various securities regulations, bylaws, and guidelines, which would be easily accessible to the interested investor seeking redressal for the injustices suffered from any malpractices or negligence of the market participants. In such regulation, much emphasis has to be given on employing the tools of ADR including mutual negotiation, consultation, mediation, conciliation, arbitration as much as possible to resolve the dispute in fastest, transparent, efficient and participatory approach.
- SEBON is recommended to enact a separate regulation immediately to implement the provision of compensation fund set forth in the Securities Act into action and provide relief to the victimized investors who are suffered due to the loss arising out of market malpractices.
- The Capital Market Committee under FNCCI and professional associations of the market participants are recommended to take joint initiative and establish a private mediation and/or arbitration institution as an ADR mechanism in the securities market. Such independent Securities Market Mediation and Arbitration Institution should legally be entrusted to settle securities disputes arising out of transactions between the investors, securities brokers, other market participants as per the requirements.
- NEPSE is highly recommended for the overall upgradation of its online TMS to provide the services of online trading on par with the international standard so that major securities disputes could be avoided.

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