

LIABILITY FOR FORWARD LOOKING STATEMENTS – DISCUSSION OF INDIAN LAW

Abstract

Forward looking statements are usually more important for investment decisions than purely statistical information. They are also considered more authentic as they are made by the management itself. However, as they are predictions about the future, there is also a lot of scope for the investors being misled, thus a coherent liability structure is important. In India remedies can be sought under torts, Contract Act, Companies Act, IPC and SEBI regulations amongst other myriad possibilities. This has meant same set of facts leading to different outcomes and the jurisprudence being developed in a disconnected manner. The paper looks into what forward looking information is and how liability has been imposed until now on companies. This paper also proposes that since forward looking information is being used in plenty of documents, a single regime to address it would be in the interest of investors.

I Introduction

“As for the future, your task is not to foresee it, but to enable it.”

- Antoine de Saint-Exupéry

DISCLOSURE REQUIREMENTS and the subsequent imposition of liability are an integral part of securities law. While legal systems can be very strict about the disclosure of events which have already taken place, the disclosure requirements relating to projections and forward looking statements (FLS) can be more difficult to regulate. Forward looking statements are speculative by their very nature and hence it is always uncertain to what extent their inclusion should be encouraged. Countries may differ widely in their approach to the subject.

Although after the coming in of the SEBI there has been greater regulation and development of the securities market in India the law relating to FLS has yet not yet been consolidated. It mainly remains a part of the law relating to negligent misstatements. Maximum discussion with respect to forward looking statements has been in the United States and the courts have also had to face unique fact situations.

In this paper an effort would be made to assess the nature of FLS and the instances in which they attract liability. The focus of the paper would mainly be with respect to India although a comparative perspective may be used to assess areas where Indian law does not yet provide for a solution. This has been done because market conditions and historical development of financial laws is usually unique to each country, especially in relation to forward looking statements. The

paper would mainly focus on the Issue of Capital and Disclosure Requirements (ICDR) regulations. And with respect to liability – the liability of issuers or the management would be the primary consideration.

This paper would first deal with the definition, importance and legal nature of forward looking statements as well as the documents where FLS may most likely be found. It would then be seen that what are the liability provisions relating to FLS as well as the case law in relation to it. There are also some remedial measures put in place like the concept of vanishing companies which have been of assistance. The last section of the paper would deal with the same.

II Forward looking statements – an overview

Defining information

Before an analysis can be made of FLS it is essential to understand the definition of information. Though the definition is mainly relevant in the context of business and management studies, its implications can be seen in law as well.

Information can be contrasted from raw data which is not meaningful unless processed. For example, “10 trees” or “50 apples” are merely raw data and not useful for anyone. However if they are processed and organised for example, “10 trees were cut in XYZ garden 2010” or “50 apples are needed to buy a boat”, the data becomes information. Information is thus raw data which has been verified, organised and presented within a context. Furthermore, information is important because it can affect ‘behaviour, decision or outcome’.¹ Some authors consider the affect on behaviour the sole quality which makes information different from raw data.² This is an essential characteristic even in legal decisions especially for FLS. This applies in cases of omission or determination of materiality where the court can take into account whether the decision was affected by the information omitted or wrongly given, and usually the answer is determined based on how the information determined behaviour.³

Classification of information and FLS

Information can further be classified into hard and soft information. Hard information is mainly historical facts, like accounts statements, capital utilisations,

1 Business Dictionary. Available at: <http://www.businessdictionary.com/definition/information.html>, (last accessed on Mar. 9, 2013).

2 See Susanna Kim Ripken, “Predictions, Projections, and Precautions: Conveying Cautionary Warnings in Corporate Forward-Looking Statements” *University of Illinois Law Review* 929-987(2005).

3 In fact in United Kingdom the Federal Securities Act has included affect on behaviour in its definition of market abuse. S. 118(1) of the Financial Services and Markets Act, 2000.

they are statements about things which have already happened, thus they are more certain and objectively verifiable. In case of hard information it is easier to identify a misstatement because the information is available for verification.⁴ Soft information on the other hand consists of FLS, opinions, statements of motives and purpose and evaluations, usually derived from hard information but are based on the amount of hard information available with the maker and the mode of evaluation used. Thus their verifiability depends on taking into account the circumstances and parameters which were used by the person making them.⁵

The distinction between hard and soft information may not always be clear. For example, if a company has had the same capacity utilisation, say of 500 units for the past 15 years and it claims to do so for the next two years as well, then even though the information is a projection, it is very certain and thus very close to being hard information.⁶

FLS are a subset of soft information, and are mainly prospective information.⁷ Though they have not been defined specifically anywhere in the Indian regulations or in court judgments, a reference can be found under the IDR Regulations.⁸ They require the disclosure of forward looking statements which are ‘not historical statements’, thus an inference can be drawn that in India also the above discussion relating to soft information can be applied.

Furthermore, a broader definition is used in the United States which provides that FLS also includes assumptions which underline the FLS as well as the report of an outside reviewer with respect to the FLS.⁹ The application of this definition in India is uncertain, especially in the latter case where the report of an outside reviewer might be covered under misstatements by experts.

Examples of FLS would be projections, forecasts, predictions, future economic performance, capacity utilisation, statements regarding plans of the company and expectations of growth.¹⁰ However while making disclosure of FLS care should be taken that the information is based on a *reasonable basis*. To quote Schneider “soft information must be disclosed only if [it is] virtually as certain as hard facts.”¹¹ This requirement is read into law as a requirement for reasonable basis before the disclosure of forward looking information is made.

4 Jennifer O’Hare, “Good Faith and the Bespeaks Caution Doctrine: It’s Not Just a State of Mind” *University of Pittsburgh Law Review* (Spring 1997).

5 *Ibid.*

6 *Supra* note 2 at 932.

7 *Supra* note 4.

8 S. 6A, Companies (Issue of Indian Depository Receipts) Rules, 2004.

9 S. 27, Securities Act, 1933.

10 *Supra* note 4.

11 Carl W. Schneider, “Nits, Grits, and Soft Information in SEC Filings” 121 *University of Pennsylvania Law Review* 267 (Dec. 1972).

Importance of FLS

Before analysing the nature of FLS it is important to understand why they are relevant in business decisions. Studies have shown that in case of investment decisions FLS are the most important element of decision making. This is so because hard information though an indicator of the past performance of the company cannot be used as an efficient determinant of the future performance of the company. Moreover hard information would have to be analysed and assessed by the investors before they can actually come to a conclusion about the future performance of the company. On the other hand, FLS are more helpful in investment decisions as they provide projections for the future using the past information. Furthermore FLS are a statement of the future performance of the company by the management itself which makes the information more reliable compared to analysis being done by outsiders who may not know the internal plans of the management or the working of the company.¹²

Usage of FLS

References to FLS can be found in various public documents relating to both primary and secondary markets. In case of India the main usage is in prospectus, letters of offer, red herring prospectus *etc.*¹³ They are also used in IDR issue documents, listing agreements, letters of offer in takeovers, collective investment schemes, advertisements for deposits, public communications of companies and in documents by rating or investment information agencies.

The standard format of inclusion of FLS is after the definitions section as a general disclaimer. That is, the section relating to FLS would state in general terms that the document contains FLS which can be identified by specific terms¹⁴ and the company is not responsible if the projection given therein does not come true.

¹² *Supra* note 2 at 935.

¹³ Corresponding references can be found in case of form S1 and S1A in the United States. Reference was made to the following documents for purpose of research and sampling: *Draft Letter of Offer for Rights Issue*, Sand Plast (India) Ltd.; *Draft Letter of Offer*, 2009, ISF Ltd.; *Letter of Offer for Rights Issue*, 2010, Sadbhav Engineering Ltd.; *Draft Letter of Offer for Rights Issue*, 2010, Asian Electronics Ltd.; *Red Herring Prospectus*, 2010, Tarapur Transformers; *Red Herring Prospectus*, 2010, EROS International Media; *Letter of Offer for Rights Issue*, Tata Coffee Ltd.; *Draft Prospectus for Public Issue*, Sunil Hitech Engineers Limited; *Red Herring Prospectus*, Reliance Power Ltd.; *Red Herring Prospectus*, KPR Pvt. Ltd.; *Public Announcement for under Takeover Code to Shareholders of Rane Engine Valves Ltd.* For the US documents the following were referred: S1A Form filed by Titan Holding Group; S1A Form filed by Linc Logistics.

¹⁴ The usual statement is that forward looking statements can be identified by the use of the terms “‘may,’ ‘will,’ ‘should,’ ‘could,’ ‘expects,’ ‘plans,’ ‘anticipates,’ ‘believes,’ ‘estimates,’ ‘predicts,’ ‘intends,’ ‘potential,’ ‘proposed,’ or ‘continue’ or the negative of those terms”.

Companies are also mandated to state the source of the information that they provide and in most documents companies either use the company resources or government data.

The disclaimer given is usually generic and the terms given therein do not provide real assistance in identifying FLS. As was seen in the definition section the distinction between hard and soft information is not always very clear thus it is difficult to determine merely by the use of certain words or phrases whether the information is forward looking or historical. Furthermore, investors are also asked to look into the risk factors to determine the validity and parameters of the forward looking information.

In truth, the disclaimer does not provide any real guidance to the investors and it also does not in fact curtail the liability of the issuer. The legal effect of the disclaimer is similar to the disclaimers on receipts or standard form of contracts¹⁵ which does not curtail the liability of the issuer. However, the disclaimer might create confusion in case of judicial decisions as was in *The Motorola* case¹⁶ where generic disclaimers and risk factors were given undue weight by the court to reduce the liability of the issuer. Thus it might be more useful if the requirement of including a generic disclaimer on FLS could be eliminated from the drafting of the documents.¹⁷

III Legal treatment of forward looking information

Legal nature of FLS

Under English common law as well as Indian law the liability for FLS was traditionally part of the law relating to fraud and misrepresentation. Under both forms of actions to attract liability it had to be proven that the representation made was a statement. Thus in the initial cases the defence was taken that the forward looking information was not actually a statement but a matter of opinion and thus exempt from liability under both fraud and misrepresentation. However through two important cases these arguments were negated. In the case of *Edington v. Fitzmaurice*¹⁸ the argument taken was that a projection a determination of the future and not a statement as to an existing fact. The court in this case held that the futuristic statement was statement about the state of mind of the person making it and was hence as much a statement as a statement relating to an existing fact. In *G & M, Inc. v. Nemburn*,¹⁹ a case directly on FLS, the court held that a forward looking

15 *Supra* note 11.

16 See *Iridium India Telecom Limited v. Motorola Inc.*, 2003 (6) Bom CR 511.

17 *Supra* note 11 at 254.

18 (1885) 29 Ch D 459.

19 488 F.2d 742, 745-46 (9th Cir. 1973).

statement would be a statement for the purposes of fraud and misrepresentation as it is based on two other factual representations *viz.* good faith and a reasonable basis.

Imposition of liability

FLS are supposed to be speculative by their very nature as no one can predict the circumstances in the future with certainty.²⁰ Thus issuers are not held liable for every minor deviation from results compared to the FLS. The liability of the issuers is usually based on materiality of the statement,²¹ absence of good faith²² and lack of a reasonable basis.²³ The next section would discuss these parameters along with the remedies. However to state in brief the requirement of materiality is imposed to obviate frivolous litigation, the issuer needs to disclose only those statements would have a material bearing on the investment decision under question. Secondly, the statements are forward looking hence there should be some basis on which they are made, there should be a possibility of them actually coming true if the circumstances remain unchanged. This requirement is important as it prevents issuers from making claims which would lure unsuspecting investors. The requirement of good faith on the other hand requires that the person making the statement has exercised due care and caution in arriving at the statement and did not have the intention of making wrongful gain out of the statement.²⁴

Remedies available

Under Indian law if an investor suffers a loss because of a FLS he has various remedies available to him. Relief can be sought under traditional remedies like tort of fraud or deceit or under recent regulations like the SEBI (Prohibition of Fraudulent Trading and Unfair Trade Practices Regulation), 2003 (henceforth the FUTP Regulations). The remedies would be discussed below in detail.

20 'Projections, by their nature, are inevitably inaccurate because things almost never go exactly as planned'. *Wielgos v. Commonwealth Edison Co.*, 892 F.2d 509, 514 (7th Cir. 1989).

21 Reg 57, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

22 *Progressive Aluminium Ltd v. ROC* [1997] 89 Comp Cas 147 (AP).

23 Schedule VIII, Part A, Reg. 1(e), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

24 Gregory S. Porter "What did you Know and When did you Know it?: Public Company Disclosure and the Mythical Duties to Correct and Update" *Fordham Law Review* 2199-2255 (May, 2000).

Tort of fraud or deceit

Tortious liability for fraud can be imposed if the person proves that he suffered a loss because of the fraudulent statement made in the prospectus. A fraudulent statement would be one which is made either with the knowledge that it is false or is made recklessly without regard to its truthfulness.²⁵ In the case of *Derry v. Peek*²⁶ the directors attracted investment based on the claim that they would be using steam engines instead of horses for pulling their tramways, however they had not obtained government approval for the same. The company had to go into liquidation because government approval could not be obtained. But in this case the directors were not held liable as they had reasonable belief that the approval of the government department was not essential as they were working under statutory authority. This case can be contrasted with the case of *Edgington v. Fitzmaurice*,²⁷ where the directors made statements about the proposed utilization of the funds collected from the issue. While in truth they wanted the funds to pay off their existing debts. This was held to be a misstatement liable for fraud as the directors had knowledge that the usage of funds would be different than what was projected.

Nonetheless to obtain remedy under fraud the investor has to prove that the information was directed to him. That is, in case of a prospectus only persons who are directly allotted the shares can claim a remedy. If a person buys the shares in the market even if he relied on the statements in the prospectus cannot claim liability.²⁸

Misrepresentation and rescission of contract

Investors can also claim rescission of contract and claim for damages on grounds of misrepresentation under section 64 and 75 of the Indian Contract Act, respectively. The definition of misrepresentation under Contract Act is wider than the tortious remedy. Under Contract Act misrepresentation includes a positive assertion of that which is not true even if the person believes it to be true. Any breach of duty which misleads another, even without intent to deceive, and leads to unfair advantage for one party is also considered misrepresentation.²⁹ In case of omissions or non-disclosures it was held in *Arnison v. Smith*³⁰ that mere non-disclosure would not amount to misrepresentation unless 'the concealment has prevented the adequate appreciation of what was stated'.

25 *Derry v. Peek* (1889) LR 14 App Cas 337.

26 *Ibid.*

27 (1885) 29 Ch D 459.

28 *Peek v. Gurney* (1873) 43 LJ Ch 19.

29 S. 18, Indian Contract Act.

30 (1889) 41 Ch D 348.

However based on case law it can be seen that the remedy of misrepresentation in case of FLS has not been very effective. In the case of *Shiromani Sugar Mills*³¹ the prospectus contained statement in red ink that the managing agents and directors have already promised to purchase shares worth Rs. 6 lakh however they purchased about half the amount. In this case despite false forward looking information the court held that there was no misrepresentation as it was only a promise. The remedies under tort and contract for misrepresentation are not usually preferred by litigants in case of FLS.

Provisions under the Companies Act

Under Companies Act issuers can be ascribed civil as well as criminal liability for misstatements in prospectus and fraudulently inducing persons to invest in the company.³² Most cases seeking remedy for misstatements relating to FLS have come before courts under these provisions of Companies Act.

The directors of the company at the time of issue of prospectus, promoters of the company, as well as every person who authorizes the issue of prospectus are considered liable for damages under section 62. Furthermore the liability of persons is not contingent upon intention and hence the plaintiff does not have to prove fraud. However the issuers can be held liable under the section if the director can prove that he had reasonable grounds for believing in the truth of the statement.³³ Under section 65, a statement included in a prospectus is deemed to be untrue, if the statement is 'misleading in the form and context in which it is included' and in case of omissions if the omission is 'calculated to mislead' then also the 'prospectus is deemed to be a prospectus in which an untrue statement is included'. This definition also applies to section 63.

Under section 63 criminal liability can be imposed on the issuers for misstatements, however, the defence of materiality and reasonable grounds for belief in the truth of the statement are still available to the directors.³⁴

After a notification the SEBI and the Department of Corporate Affairs now have concurrent jurisdiction on matters relating to these sections.³⁵

Various cases have come before courts dealing with misstatements in prospectus in relation to projections and FLS, however the approach of courts has not been very consistent in imposition of liability. In the case of *Hafeez Rustom Dalal v. ROC*,³⁶

31 AIR 1950 All 508.

32 See ss. 62, 63 and 68 of the Companies Act, 1956.

33 *Adams v. Tbrift* (1915) 2 Ch 21.

34 *R v. Kylsant* [1932] 1 KB 442.

35 Department of Company Affairs Circular No. 12/2000, dated Oct. 5, 2000.

36 [2005] 128 Comp Cas 883 (Guj).

the case came before the court under sections 63, 68 and 628 of the Companies Act. The investors had claimed that the projections made in the prospectus had not been sufficiently complied with, for example, the production did not start at the slated date and the plant was set up at a distance of 1.5 km from the location specified in the prospectus. However in this case court took into consideration the reasons for the deviation and the subsequent conduct of the issuers which justified the deviation. This case was important as the requirement of materiality in case of FLS was taken into consideration by the court. Even though there was no explicit reference to the rule of materiality the court refused to take into account minor deviations from the statements in the prospectus which imply a consideration of materiality.

Progressive Aluminium Ltd. v. ROC,³⁷ was also a case decided on similar facts where the prospectus contained statements about starting of production and subsequent profitability. However the production requirements were not met and the case was filed by the shareholders. The issuers succeeded in proving, in this case that production could not be started because of intervening Gulf War. Thus the circumstances were beyond the control of the issuers. In this case a specific reference was made by the court to the importance of materiality in imposition of liability. Moreover the court also said that the subsequent conduct of the issuers can be used to reduce liability. In the instant case the conduct of the parties proved that they had made no wrongful gain. Thus the issuers were acquitted.

The position as regards subsequent conduct is also not clear as different cases have taken different approach. Apart from the abovementioned cases which discuss subsequent conduct in *In Re: Tri-Sure India Ltd.*,³⁸ all directors of the company were acquitted despite various false projections being made in the prospectus. The prospectus also contained false statements as to accounts and balance sheets. However court based the acquittal on the basis that exit option had been given to the shareholders, once it was realised that most projections and profitability statements in the prospectus were wrong. This case is an example of instance where too much importance was given to subsequent conduct and even directors which did not participate in the giving of exit option to the shareholders were acquitted.

In another case before the Andhra High Court, *TG Venkatesh v. ROC*,³⁹ production was delayed by 15 months and the information in the prospectus that dividends would be paid within a year was also not complied with for sixteen years. Thus a case was brought forth for liability for misstatements in prospectus. In this case the issuers took the defence that the prospectus contained the caution that the

37 [1997] 89 Comp Cas 147 (AP).

38 [1983] 54 Comp Cas 197 (Bom).

39 [2008] 145 Comp Cas 662 (AP).

projections would be met 'barring unforeseen circumstances', however the court held that a generic caution cannot obviate liability for specific projections. Also the petitioner in this case had also argued that he was only a non-executive director hence he was not responsible for the contents of the document. However, the court said that any person who signs the prospectus is responsible under the section whether he is involved in the day to day affairs of the company or not.

This case can be contrasted with the case of *Jagjivan Hirala Dosh v. ROC*,⁴⁰ where the court held that the liability for part time and full time directors is the same but that leniency could be shown in favor of part time directors. Furthermore in another case the directors were acquitted because the court held that the person who had signed the power of attorney was responsible for the statements in the prospectus and not the directors as they did not sign the document in person.⁴¹

It is also interesting to note that in many cases investigations by authorities are started years after the prospectus is issued. In one case there was a delay of 19 years and most directors responsible for the issue of the prospectus had retired by the time the case was brought before the court.⁴² As the provisions impose criminal liability so limitation does not apply and courts have refused to consider the question of limitation in certain cases.⁴³ This approach of the court gives impetus to the investigating agencies to delay enforcement. A better approach could be to bar the litigation on account of delay and laches rather than basing it on limitation.⁴⁴

Other remedies

There are remedies available under other provisions as well which are not used very frequently. The first is the liability imposed under section 58A where there are misstatements made in case of inviting deposits from the public. Misstatements would include FLS and the defences available under section 58A are similar to the defences available under section 62 and 63 of Companies Act.

Liability for misleading FLS can also be brought in under the Fraudulent & Unfair Trade Practice (FUTP) Regulations. The definition of fraud under the FUTP Regulations is very wide and could include forward looking information in the

40 [1989] 65 Comp Cas 553.

41 *Ramakrishna Raja v. Registrar of Companies* [2005] 123 Comp Cas 319 (Mad).

42 *Supra* note 39.

43 *Ibid.*

44 Reference is made to the case of *Hafeez Rustom*, where the show cause notice was served after 10 years however the court barred the judgment on account of delay and laches. *Supra* note 36.

prospectus.⁴⁵ However there have been no cases under FUTP relating to FLS thus their actual application is uncertain.

There can also be criminal actions against issuers for dishonest misappropriation of property section (415) and cheating section (420) of the Indian Penal Code. The advantage under IPC is that a person need not be director or promoter of the company for liability to be attached but it can cover a wider range of persons. However under IPC it is important to prove intention as well as prove the case beyond reasonable doubt which can reduce the liability which attaches to persons.⁴⁶

The most important case under IPC in relation to misstatements in prospectus has been the case of *Motorola Incorporated*.⁴⁷ In this case, projections as to the profitability of an upcoming technology being developed by the issuers were exaggerated by the US parent company. The funds were collected from the Indian investors by the Indian subsidiary through a private placement memorandum. Two causes of action arose in this case, one by the Indian subsidiary against the US parent company while the other was the action of investors against the Indian subsidiary. The Indian investors filed private criminal complaints under section 120B (punishment for criminal conspiracy) and section 420 (cheating) of IPC. However despite admitting that the legal nature of a Private Placement Memorandum (PPM) was the same as a prospectus the court held that criminal liability could not be imposed on the issuers as a company was not capable of having the necessary *mens rea*. The court also laid substantial emphasis on the generic risk factors stating that investors should have exercised caution while investing based on the risks disclosed in the document.

This case is interesting because despite other remedies being available the petitioners chose to proceed under the IPC and furthermore despite provisions for imposition of criminal liability existing under Companies Act, the court did not hold in favour of the investors.

Vanishing companies

In India there had been many cases where the companies published prospectus with great projections which were actually not substantiated with any data or expert report. Most of these companies also called 'vanishing companies' misappropriated the money invested through the public issue and went into liquidation or ceased to

⁴⁵ Especially definition of fraud under s. 2 (9) FUTP Regulations states that the act of the issuer giving misinformation that affects the market price of the security leading to the investor being effectively misled constitutes fraud. This definition can thus cover misleading information put in prospectus in relation to forward looking information.

⁴⁶ *Supra* note 16.

⁴⁷ *Motorola Inc. v. Union of India*, 2004 Cri LJ 1576 (Bom) and *Iridium India Telecom Limited* *ibid.*

exist.⁴⁸ To address this menace the concept of vanishing companies was brought in where non-compliance with the provisions of the listing agreement for two years was made the basis for listing the company as a vanishing company. The listing agreements contains a specific section called “promise versus performance” under this section the company has to account for the projections and FLS are made with the actual results. The listing agreements now have the requirement of filing a promise versus performance statements every quarter for the large stock exchanges while filing of half yearly statements for small and medium scale enterprises.⁴⁹ Once a company is listed as a vanishing company it is debarred from trading on the stock exchange.⁵⁰

The concept of vanishing companies has the potential of being a check against the exaggerated projections being made by a company however the efficacy of the mechanism as of now has been doubted by critics. Apart from the laxity of enforcement the listing as vanishing companies happens only after non-compliance for two years which is a long time period and companies can easily misappropriate the funds in the two year period.⁵¹ A stronger enforcement regime could make this a more effective means of imposition of liability.

IV Conclusion

Thus in conclusion it can be said that the law relating to imposition of liability for FLS in India is intertwined with the liability provisions for misstatements in general. The requirements as regards materiality, good faith and existence of reasonable basis for information are usually the parameters used for imposition of liability.

However, the law specifically relating to projections and forward looking statements has not developed that well. The approach of the courts in relation to treatment of subsequent conduct and risk factors is not consistent. Furthermore as various remedies are available the judgment can be different for the same set of facts.

Moreover the focus of the law relating to misstatements has so far been on statements made in the prospectus but with increasing investment mechanisms the documents which contain forward looking statements are also increasing and they

48 S. Sivakumar, “Menace of Vanishing Cos.”, *Business Line*, Sunday, Jul 07, 2002. Available at: <http://www.thehindubusinessline.in/iw/2002/07/07/stories/2002070700620700.htm> (last accessed on Mar. 9, 2013).

49 Model Listing Agreement for Listing on SME Exchange, 2010.

50 “Chronological History of Events Relating to Vanishing Companies”. Available at: http://www.mtia.in/Rel4/html/summary_vanishingCosPrint.htm (last accessed on Mar. 9, 2013).

51 *Supra* note 48.

would require the extension of the remedies available to those documents as well. As the nature of the statements remains the same in all cases the law relating to them should also not be dependent on the type of document being used.

In Canada misrepresentation liability is now being imposed for oral public communication in relation to forward looking information. It is an important extension of the traditional boundaries of law of misrepresentation (wherein oral misrepresentation was much more difficult to prove) and can be useful area of research in Indian context.⁵²

Lastly the investigation and enforcement mechanisms in India are still not very strong and investigating agencies delay action by more than a decade on projections made in the prospectus. The concept of vanishing companies has been useful to some extent but stronger enforcement would be needed to protect investors from unsubstantiated forward looking information.

*Mini Gupta**

52 See Ramandeep K. Grewal, "Canada: Financial Regulation - Defence for Misrepresentations contained in Forward-Looking Information" *Journal of International Banking Law and Regulation* (2006).

* Corporate Law Consultant, Solo Practitioner, New Delhi.