

CHAPTER IV : MINISTRY OF FINANCE

Securities and Exchange Board of India, Mumbai

4.1 Avoidable loss in acquiring of office space

Securities and Exchange Board of India, Mumbai hired expensive office space without following normal procedures which resulted in blocking of deposit amount of Rs 4.60 crore for over four years after expiry of agreement for 'leave and licence' and loss of interest and extra expenditure on rent amounting to Rs 8.17 crore.

To meet the requirement of additional space, Securities and Exchange Board of India (SEBI), Mumbai with the approval of the Board decided in May 1994 to acquire office space on the 15 floor of Earnest House at Nariman Point, Mumbai on leave and licence basis. Without resorting to press advertisement seeking offers and/or tendering procedure the SEBI executed a leave and licence agreement with M/s 'A', Mumbai (licensor) on 1 July 1994 and took legal possession of the accommodation measuring 8000 sq.ft. on July 6, 1994 for a period of three years. As per agreement the SEBI paid a security deposit of Rs 4.60 crore . The agreement, *inter alia* included the following terms and conditions:

- (i) that the licensor would provide the premises complete with furniture, fixtures, fittings and other amenities at the time of occupation;
- (ii) that the licensor would pay annual interest of Rs 41.40 lakh on the security deposit of Rs 4.60 crore at the rate of 9 *per cent*;
- (iii) that the licensee (SEBI) would pay a monthly rent of Rs 19.20 lakh inclusive of taxes;
- (iv) that the licensee would pay Rs 2 lakh per day in the event of their not vacating the premises on expiry of the agreement i.e. from the day following June 30, 1997 and
- (v) that the licensee shall be under no obligations either to vacate the premises or pay the liquidated damage in the event of failure by the licensor to refund the deposit amount of Rs 4.60 crore on the date of expiry of the period of licence.

Audit scrutiny revealed that as the licensor failed to refund the security deposit of Rs 4.60 crore, the SEBI did not vacate the premises in July 1997 as per the terms of the agreement. SEBI filed a law suit in May 1998 and since then stopped the payment of rent. The matter was still pending in the court (July 2001). Audit scrutiny revealed that the following irregularities:

1. SEBI while acquiring the premises did not go for open tendering nor did it make any attempt to get the property valued before venturing into such huge financial commitment with a private party.
2. SEBI could not occupy the premises immediately from July 1994 as the licensor did not provide amenities as per the terms and conditions of the agreement. It is only after protracted correspondence, that SEBI succeeded in getting those amenities and finally occupied the premises only from May 1995, after the delay of 10 months by which time the SEBI had to pay Rs 1.92 crore towards rent.
3. Though the agreed monthly rent payable was Rs 19.20 lakh inclusive of taxes, the actual outgo of rent per month from SEBI stood at Rs 22.65 lakh [Rs 19.20 lakh + Rs 3.45 lakh (18 *per cent* interest on security deposit of Rs 4.60 crore less Rs 3.45 lakh per month to be paid towards nine *per cent* interest, by the licensor)]. Further the market rate of rent for the premises was Rs 6.7 lakh per month. Taking this into account SEBI had paid excess rent of Rs 12.50 lakh per month (Rs 19.20 lakh minus Rs 6.7 lakh) amounting to Rs 4.50 crore for the total "leave licence" period as per the agreement from July 1994 to June 1997 and as against this, SEBI could accept the liability of Rs 3.22 crore which they would have otherwise paid as market rent for the subsequent period from July 1997 to June 2001 (Rs 6.7 lakh x 48 months).
4. The licensor defaulted in making payment of nine *per cent* interest on deposit of Rs 4.60 crore to SEBI from July 1996. The loss of interest at the differential rate between the market rate of 18 *per cent* and the interest of nine *per cent* paid by the licensor amounted to Rs 82.80 lakh for July 1994 to June 1996. In addition to this, the amount of interest as per the market rate of 18 *per cent* on this deposit for the period from July 1996 to June 2001 amounted to Rs 4.14 crore.
5. There was no enabling provision in the agreement to take possession of the property in case the SEBI wanted to do so to make good the loss on deposit.

In reply SEBI stated in February 2000 that matter was pending in a court of law and even an attempt to effect out of court settlement with the licensor failed as the licensor had no liquidity.

Thus, in addition to blocking of the deposit amount of Rs 4.60 crore for over four years, after expiry of agreement for 'leave and licence' SEBI had to suffer a financial loss of Rs 8.17 crore on account of interest forgone and excess rent paid as of June 2001.

The matter was referred to the Ministry in June 2000 and again in October 2001; their reply was awaited as of January 2002.

4.2 Irregularities in hiring of residential flats resulting in blocking of deposit amount and loss of interest

Securities and Exchange Board of India, Mumbai hired residential flats without following proper procedure. This resulted in a loss of Rs 3.66 crore on account of interest besides blocking of deposit Rs 8.05 crore up to February 2001 and Rs 7.45 crore as of July 2001.

SEBI hired five flats in prime locations at South Mumbai and Juhu on leave and licence basis for a period of three to five years. The terms and conditions of the agreement *inter-alia* included the following:

1. The licensor would pay prescribed rate of interest on the deposit.
2. The licensor would pay penal interest at prescribed rate if he fails to refund the deposit by due date.
3. The licensor would refund the deposit on vacation of the flats by the licensee (SEBI).

These flats were allotted to the officers of SEBI including three deputationists who had come from other Government departments.

I The analysis of rent paid together with interest earned on deposit paid to the owners revealed that the real rent per flat worked out between Rs 0.85 lakh and Rs 1.93 lakh per month. It was further noticed that SEBI did not go through the process of press advertisement before hiring the flats. Furthermore, the decision to hire the flats was taken by the Chairman alone and not by the Board. The total expenditure on rent incurred by SEBI on hiring these flats up to July 2001 worked out to Rs 28.16 lakh besides deposit of Rs 8.05 crore with licensors of the flats at much lower rates of interest than usual market rate which is adopted by audit at 18 *per cent*.

Following table indicates the analysis of rent paid, interest paid on the deposits, interest foregone due to adoption of unrealistic lower rates of interest and the effective monthly financial implications for hiring these flats.

(Rs in lakh)

Sl. No.	Location of the building	Date of occupation and period upto which hired	Rent per month (Rs)	Deposit and rate of interest on deposit	Deposit refunded date and amount	Cost of capital foregone i.e. 18 per cent less interest rate on deposit	Interest foregone upto July 2001	Rent upto July 2001	Total rent and interest foregone (upto July 2001)	Effective monthly equivalent
1.	Bhaveshwar Sagar, N. Sea Road	26.2.96 to 25.2.01 (Continued further)	10000	220 8 per cent	9.3.01 10.00	10 per cent	110.00 <u>008.75</u> 118.75	6.50	125.25	1.92
2.	Juhu Tara Road	23.11.96 to 30.11.01	3500	150 8 per cent	-	10 per cent	70	1.96	71.96	1.28
3.	161, 'B' Wing, Sky Scraper	14.1.97 to 13.1.02	10000	140 8 per cent	-	10 per cent	64.16	5.50	69.66	1.26
4.	Jolly Maker (Cuffe Parade)	1.4.98 to 31.3.01 (continued further)	7500	230 10 per cent	31.3.01 20.00 30.4.01 30.00	8 per cent	55.20 01.40 <u>03.60</u> 60.20	3.00	63.20	1.58
5.	Sea Lord, Cuffe Parade	3.12.96 to 2.12.01	20000	65 6 per cent	-	12 per cent	36.40	11.20	47.60	0.85
Total				805.00	60.00		349.51	28.16	377.67	-

II Further, audit noticed the following points in the individual agreements for hiring of the flats:

1. In respect of hiring of flat at Sl.No.1 above the following points were noticed :

(a) the flat at Bhaveshwar Sagar was proposed by the occupant Shri Ashok Kacker himself and the same was considered and finalised by SEBI as per the practice. As per the guidelines of SEBI, the allottee was entitled for a total area of 1500 sq. ft. and according to the beneficiary occupant the area of the flat was 1500 sq. ft. only, however, SEBI did not get the area actually measured by any technical authority. SEBI stated that the requirement was noted for future.

(b) Though SEBI was satisfied about the reasonableness of deposit, interest and rent etc. no formal valuation certificate was obtained from any competent authority.

- (c) SEBI had decided to surrender this costly residential accommodation as early as 25 February 2001 without further renewal but it had not yet been surrendered (September 2001). Further, Shri Kacker was repatriated to his parent department with effect from 26 April 2001, however, he continued to occupy the same premises upto September 2001 and likely to continue upto December 2001 as per the terms of the deputation and Government rules.
 - (d) Sanction of the Chairman for hiring of the accommodation on payment of heavy deposit of Rs 2.20 crore was obtained, however, specific sanction of the Board was not obtained.
2. In respect of residential accommodation at Sl.No.3 though the occupant Shri L.K.Singhvi was repatriated to his parent department with effect from 18 May 2001 he continued to occupy the same premises hired by SEBI, as of September 2001 and likely to continue further until January 2002.
 3. The licensor of the flat "Sea Lord", Cuffe Parade failed to pay interest at the rate of six *per cent* as per the agreement, on the deposit amount from April 1997 amounting to Rs 16.90 lakh upto July 2001. SEBI filed a suit in the court in October 1999 for payment of interest. In the absence of any enabling provision in the agreement SEBI would not be in a position even to acquire the flat to redeem the deposit. Thus, SEBI had to face such situation on account of non-observance of proper procedure in regard to hiring of residential flats and drafting of agreements.
 4. That there was no penal clause in the agreement to recover the interest nor was there any enabling clause to acquire the flats in the event of the licensor failing to pay the interest and/or to refund the deposit.

Section 4(3) of SEBI Act 1992 provides as under:

“Save as otherwise determined by regulations the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board”. It was however noticed by Audit that there were no specific regulations regarding powers to be exercised by the Chairman for day-to-day functioning of the organization. Thus, there was no differentiation between the powers of the Chairman with that of the Board, as a result of which important decisions involving high financial implications were not placed before the Board.

SEBI while admitting the facts stated that the flats had to be leased for very senior executives, decision to take flats on lease basis was advantageous when compared with the capital outflow involved in purchasing flats, their surplus funds carried maximum interest of 11 *per cent per annum* and loss of interest pointed out was notional.

The contention is not tenable. In the absence of its own rules and procedures for hiring accommodation SEBI should have followed rules and procedures for hiring accommodation by a Government organization which should have afforded better financial option with less financial commitment while meeting the needs. The simple interest @ 18 *per cent per annum* has been adopted for working out the interest foregone based on the rate of interest payable by the licensor in case of default as per terms of the lease agreement.

Thus SEBI had to suffer financial loss of about Rs 3.66 crore (Rs 3.49 + Rs 0.17 crore) besides blocking of funds to the extent of Rs 8.05 crore up to February 2001 and Rs 7.45 crore as of July 2001, besides litigation in one case.

The matter was referred to the Ministry in June 2000 and again in November 2001; their reply was awaited as of January 2002.