

## **Sebi gets back discretionary powers on penalties**

The Finance Bill 2017 has inserted an explanation that does away with the ambiguity regarding the discretionary powers of the Securities and Exchange Board of India (Sebi) in deciding the quantum of penalty levied against companies. This will provide relief to several companies reeling under heavy penalties post the Supreme Court's Roofit judgment in 2015.

The SC had, in its ruling in the matter of Roofit Industries in November 2015, said that Sebi had no discretionary power under Section 15J of the SEBI Act, 1992 to reduce penalties imposed on companies. Following the judgment, penalty of crores of rupees was levied by Sebi in different matters. This led to the Securities Appellate Tribunal (SAT) remanding several matters back to Sebi and quite a few appeals being withdrawn by the appellants fearing higher penalties. "The inclusion of the explanation has finally settled the position and done away with the conflict in the minds of the regulator and the appellate body as to their powers. This will bring much-needed respite to capital market participants who were being subjected to heavy penalties even for trivial procedural non-compliances," said Deepika Vijay Sawhney, partner - securities law & transaction advisory, Corporate Professionals.

The relief will be for offences committed between October 2002 and September 2014, as the penal provisions of the Sebi Act were amended with effect from September 2014.

In its November 2015 ruling, the SC had observed that the formula used for the reduction of penalty by SAT in the Roofit case was not forthcoming, making the exercise arbitrary. SAT had modified the order of the adjudicating officer under Sebi and reduced the penalty payable by Roofit Industries under Section 15A of the Securities and Exchange Board of India Act, 1992 (Sebi Act) from Rs 1 crore to Rs 60,000.

The SC bench had pointed out that penalties should not be reduced on extraneous grounds other than that mentioned under Section 15J. The factors to be taken into account by the adjudicating officer under Section 15J include the amount of disproportionate gain or unfair advantage made as a result of the default; the amount of loss caused to an investor or group of investors and the repetitive nature of the default.

Prior to this judgment, both Sebi and SAT examined the gravity of the offence as well as the conduct and financial condition of the entity before levying penalties. SAT, at times, reduced the penalty even on humanitarian grounds.

"It is a welcome move as it will bring rationality to the process of imposing penalty," said Sandeep Parekh, managing partner, Finsec Law Advisors, adding that some level of discretion is required in imposing penalty. "Imposing maximum penalty under law can lead to disproportionate penalties being levied even for minor infractions."

Interestingly, Sebi itself had filed for a review before the apex court on the Roofit judgement last year. However, during the pendency of the review petition, a two-member division bench of the SC had differed with the views in the Roofit judgement in the matter of Siddharth Chaturvedi versus Sebi. In its order of March 2016 pertaining to this case, the bench had referred the matter to a larger three-member SC bench, creating further ambiguity regarding the imposition of

penalties

### The Roofit Saga

- In its ruling in the matter of Roofit Industries in November 2015, the Supreme Court said that Sebi had no discretionary powers to decide on penalties
- Following the judgment, Sebi started levying flat/maximum penalties
- Delayed/non-filing of return or non-furnishing/delayed furnishing of information, for instance, attracted the maximum penalty of Rs 1 lakh per day
- .Sebi subsequently asked for a review of the SC decision after being criticised for levying high penalties
- In March 2015, in another case, a division bench of the SC differed with the Roofit judgement
- The Bench referred the matter to a larger SC bench
- Securities Appellate Tribunal (SAT) started sending several matters back to Sebi, reportedly because of maximum penalties in all cases
- Several appellants withdrew their appeals fearing higher penalties by Sebi
- .An explanation in the Finance Bill 2017 has given back Sebi its discretionary powers in terms of amount of penalty to be imposed

This will provide relief for alleged offences committed between Oct 2002 and Sep 2014.

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