Sebi mulls 'bright line' rules to define control in merger and acquisitions

In a major step towards bringing greater regulatory clarity for M&A deals, Sebi plans to put in place new guidelines to define 'bright lines' identifying the change of control in such transactions.

Under Sebi's Takeover Regulations, the definition of 'control' is based on certain defined principles rather than on rules and there have been cases when multitude of opinion gives rise to different assessments of 'control' over a listed company, a senior official said.

To deal with such cases, the regulator has decided to define certain 'bright lines' for identifying the control, he added.

A bright-line rule or a bright-line test generally refers to a simple and basic standard that can be applied to remove ambiguity and resolve contentious issues.

In cases of merger and acquisitions, an acquirer or any other entity would be considered to be gaining control of the target company, if it fulfills the 'bright line' tests with regard to acquisition of voting rights, control over operations and influence in board decisions.

There have been many cases, including in the much-talked about Jet-Etihad deal, when the issue of 'control' was debated a lot and it was felt that Sebi needs to put in place specific guidelines defining 'bright lines' to determine the control.

Sebi has also received representations from various investor groups and other entities, seeking some kind of guidance with a view to provide more clarity on the definition of control and to define bright lines on the same, the official said.

In view of the same, he said, Sebi is attempting to provide more clarity on the principle-based approach for the term 'control'.

The fair trade regulator CCI had first pointed out in its order on Jet-Etihad deal that the various pacts between the two companies indicated Etihad's joint control over Jet.

Following CCI's observations, Sebi began looking into the matter to determine whether the deal was leading to joint control over Jet by its existing promoters and Etihad, which could have triggered a mandatory open offer for minority shareholders.

Sebi, however, eventually ruled that the deal did not attract provisions of the Takeover Code, as it found a lack of substantial controlling powers with Etihad.

It was said that Etihad had right to nominate only 2 out 12 directors, while promoters had powers to nominate the chairman of the board of Jet with, who will have a casting vote. Besides, Etihad did not have any quorum rights at the board or general meeting, there was lack of any veto or affirmative voting rights with Etihad, among others.

(Economic Times)