Sebi’s new buyback regulation hits legal hurdle

The Securities and Exchange Board of India’s new rules to curb swindle by promoters in share buybacks could face a blockade as the law ministry has backed the ministry of corporate affairs’ claim that the market regulator was not empowered to change the regulations.

The department of legal affairs has maintained that Sebi did not have the power to amend the provisions spelt out in Section 77A of the Companies Act. Supporting the objections raised by ministry of corporate affairs (MCA), it said that a subordinate law could not alter or modify the provision of the main Act.

Sebi, in August 2013, notified stringent buyback norms where promoters were required to go for a minimum buyback of 50 per cent of the targeted buyback amount within 6 months as against 25 per cent mandated earlier to be completed in 12 months. While, Sebi mandated companies to buy at least 15 per cent of the capital under the mechanism, it also said that they will neither be allowed to raise capital nor make another buyback offer within a year from the date of closure of the buyback.

Before it could be notified, the MCA challenged Sebi board’s approval. It wrote to the law ministry last July that the Sebi board approval, under the said Section, was in violation of certain provisions of Companies Act, 1956. “The provisions of Sections 77A(2)(f) do not empower Sebi to alter any of the provisions (including any specific time limit) provided under Section 77A through its regulations,” said the MCA. The law ministry endorsed MCA’s position on July 18, 2013 saying, “By subordinate or delegated legislation provisions of main Act may not be altered or modified. Hence, we agree with the views of administrative ministry (MCA).”

Meanwhile, Sebi obtained an opinion from legal firm KJ John & Co siding with its decision. MCA wrote to law ministry that it felt that “the legal opinion obtained by Sebi is not legally correct.”

The law ministry had, then, through a letter dated July 29, 2013, said that it stands by its position stated in the letter dated July 18.

Following this, the MCA secretary, in a note to the law ministry, wrote, “It may suffice to mention here that while we have no difficulty in accepting the opinion rendered by the department of legal affairs, reiteration of the same by a law officer of the Union will lend higher credence to the same and avoid conflict between the regulator of the companies (MCA) and the capital markets regulator (Sebi).”

While the MCA has now offered to get its objections examined by either the Attorney General or the Solicitor General, the law ministry agreed to the same on February 5, 2014. This raises question marks on the validity of the new buyback norms that are being followed by companies.

(Indian Express)