SEBI gets teeth to act against exchanges, new market outfits

As part of the proposed amendments in the Finance Bill 2018, the government has given more power to the Securities and Exchange Board of India (SEBI) to impose monetary penalties on important market intermediaries such as stock exchanges and clearing corporations and also act against newer categories of participants likes investment advisers, research analysts, real estate investment trusts (REITs) and infrastructure investment trusts (InvITs).

The proposed amendments to the SEBI Act and the Securities Contracts (Regulation) Act now allow the capital markets regulator to impose a monetary penalty of at least Rs. 5 crore on stock exchanges, clearing corporations and depositories for non-compliance with regulatory norms.

The penalty can go up to Rs. 25 crore or three times the amount of gains made out of such failure or non-compliance. Hitherto, SEBI only had the power to censure or warn against any form of failure.

Incidentally, the new powers come at a time when the National Stock Exchange is under the SEBI scanner in the co-location matter, with regard to which it has been alleged that a certain set of brokers were given preferential access allowing them to make undue gains.

The amendments also allow SEBI to act against entities that furnish false or incomplete information to the regulator. Earlier, it could act only if the entity did not furnish any information.

The whole-time members of SEBI have also been given additional powers to act against wrongdoers. “[Powers to] punish for filing of false, incorrect or incomplete information, return, report, books or other documents was very much needed for SEBI,” said Sumit Agrawal, a regulatory lawyer and an ex-SEBI official.

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Quality of disclosure

“It will increase the quality of disclosure rather than just tick-the-box approach. Twin-fold penalty powers with the wholetime member and adjudicating officer (AO) is welcome for efficient use of human resources. Minimum penalty of Rs. 5 crore proposed on market intermediaries such as stock exchanges, clearing corporations and depositories [has emerged] for the first time and is likely to be used rarely,” he added. This is not the first time that the government has used the Union Budget to empower the capital market regulator.

While presenting the Budget for 2015-16, finance minister Arun Jaitley proposed the merger of the then commodity market regulator Forward Markets Commission with SEBI. This followed the Rs. 5,600 crore settlement scam at the National Spot Exchange Ltd., which came out in the open in July 2013.

“Since things are more electronic now, it is becoming easier for regulators to keep track of happenings in the market, more so [to track] non-compliance,” said Pranav Jain, partner, MDP & Partners, a law firm.

“India is giving exposure to a lot of hybrid funds such as AIF, InvIT and REITs. Though there were applicable laws for their incorporation, management and functioning, there was a need felt to impose deterrents. In the long run, it is expected that more investors will be investing in such funds and will have investment exposure. Hence such a deterrent is necessary,” he explained.

Rs. 1 lakh per day penalty

Incidentally, REITs and InvITs along with research analysts and investment advisers, will have to be more careful now as the Finance Bill allows SEBI to impose a penalty of up to Rs. 1 lakh per day for the period of non-compliance.

Interestingly, the government has also allowed the regulator to pursue cases against the legal representatives of defaulters if in case a defaulter passes away during the course of regulatory proceedings.

“Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person,” the Finance Bill states.

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