

DICTUM

“Summary of Judicial Pronouncements”

ADMINISTRATION AND LEGISLATIVE ORDERS BY SEBI: UNASSAILABLE BEFORE SAT – National Securities Depository Limited v. Securities and Exchange Board of India [March 7, 2017]

BACKGROUND

Securities Exchange Board of India (SEBI) issues Orders which may be administrative, legislative or quasi-judicial in nature, deriving such power from Sections 11, 11B, 11D, 12, 15-I and 30 of the Securities Exchange Board of India Act, 1992 (Act). The Act under its Section 15T permits appeal by aggrieved person against the Orders made by SEBI and by any Adjudicating Officer (AO) under the Act.

SEBI, in 2005 issued an administrative circular captioning ‘Review of Dematerialization Charges’ (Impugned Order), debaring the Depository from levying fees while transfer of securities from one account to other, held by the same beneficial owner. National Securities Depository Limited (NSDL), the aggrieved, filed appeal in Securities Appellate Tribunal (SAT) against the Impugned Order. SEBI raised a preliminary objection stating appeals preferred to SAT can only be from quasi-judicial Orders and not administrative or legislative Orders, which was turned down by SAT.

The Apex Court, in this Case clarifies the position regarding the jurisdiction of SAT to hear appeals against administrative or legislative Orders by SEBI.

Issues of the Case

1. What is the scope of word ‘Order’ is as defined in Section 15T of Act?
2. Whether all SEBI Orders are appealable before SAT, regardless of the nature of Order?
3. What is the delineation between administrative and quasi-judicial decisions?

Court’s Ruling

1. **Supreme Court (SC) in National Securities Depository Limited v. Securities and Exchange Board of India (‘Case’) held that the administrative and legislative orders made by SEBI are not assailable before the SAT.**
2. SC noted that the criteria under Section 15M of the Act for Presiding Officer (PO) of SAT is member or an erstwhile member of the higher judiciary. This is indicia of fact that the intension of legislature regarding SAT to only hear appeals in relation to quasi-judicial matters.
3. Further that, the timeline for appeal prescribed under 15T of the Act states within 45 days of receipt of Order ‘by aggrieved person’. The administrative or legislative Orders are not personally received by aggrieved persons.
4. SC also noted that a copy of each Order made by the SAT shall be provided to SEBI, the parties to the appeal and the concerned AO which evidently only refers to parties to a quasi-judicial proceeding.
5. To shed further light upon the delineation between administrative and quasi-judicial decisions, SC in **Province of Bombay vs. Kushaldas S. Advani (1950)** laid down three

tests to determine what constitutes a quasi-judicial order:

- a. There must be legal authority;
- b. This authority must be to determine questions affecting the rights of subjects; and
- c. There must be a duty to act judicially

Our Views

1. Perusing the cases viz. **PTC India Limited v. Central Electricity Regulatory Commission** and **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors**, the ruling authority held that their respective Appellate Tribunals had no jurisdiction to sit in appeal over Regulations framed under the respective Acts. Hence, legislative Orders are out of the ambit of the Tribunal. Administrative orders of SEBI are not within the appellate jurisdiction of the SAT Provisions.
2. The validity of Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.
3. This SC judgment reduces the cases pertaining to appeals preferred against the SEBIs’ administrative and legislative Order with SAT.

Let’s Talk

For a deeper discussion on how this issue might affect your business, please contact:

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