Budget 2021 | Government takes the Budget route to give SEBI more teeth

Ashish Rukhaiyar ⁝ 6-7 minutes (Published on: 01.02.2021)

For the top honchos of the Securities and Exchange Board of India (SEBI), listening to the Union Budget is not only about knowing the government's thinking on important policies related to the various aspects of the economy like finance, health, infrastructure, and agriculture among other things but also about the capital market regulator's own jurisdiction, powers, and new initiatives.

The government seems to have taken a special liking for the Mumbai-based watchdog to ensure that there is at least one major announcement in the Budget related to the regulator that monitors key sections of the capital market like equities, commodities, and currencies, along with a vast number of mutual funds and foreign investors.

On Monday, Finance Minister Nirmala Sitharaman unveiled her policies for 'Financial Capital' with a big-bang announcement related to SEBI. Many significant regulations, including the SEBI Act, would be consolidated with other important laws to create a common single Code.

"I propose to consolidate the provisions of SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalised single Securities Markets Code," she said.

And that was not all. She followed it up with another proposal to make SEBI the regulatory authority for gold exchanges - an idea that was first proposed in the Union Budget 2018-19.

While these were the two broad-level announcements related to SEBI in the Budget speech this year, it was certainly not the first time that the spotlights were on the market regulator in the Union Budget.

While presenting the Union Budget on July 5, 2019, Sitharaman announced a proposal for establishing 'Social Stock Exchanges' for the listing of social enterprises or those working towards social welfare objectives.

Prior to that, her predecessor in the finance ministry, the late Arun Jaitley, while presenting the Union Budget for 2018-19, had announced that SEBI will consider making it mandatory for all listed entities to meet about 25% of their financing needs from the bond market.

That was just a year after he had announced that the capital market regulator would aid in the overall ease of doing business initiative of the country by going completely digital for registering the various capital market intermediaries.

"The process of registration of financial market intermediaries like mutual funds, brokers, portfolio managers, etc. will be made fully online by SEBI. This will improve ease of doing business," stated the Union Budget for 2017-18.

Incidentally, one of the biggest announcements related to SEBI was made in the Union Budget for 2015-16, when the government proposed merging the erstwhile Forward Markets Commission (FMC), which was the regulatory body for the commodities market, with the capital market regulator.

This was following the scam at the National Spot Exchange Ltd (NSEL) in which investor money in excess of Rs 5,600 crore got stuck.

Meanwhile, market participants are of the view that the capital market has grown in size and importance and hence it is no surprise that the government makes it a point to include it in the all-important budget document.

"The importance of the capital market is growing with each passing day and hence the role of the capital market regulator is also increasing," said J N Gupta, managing director of Stakeholders Empowerment Services, a proxy advisory firm.

"SEBI has demonstrated itself as an able and effective regulatory body even while the scope of SEBI's jurisdiction has been increasing continuously. Hence, we see the government making important announcements related to SEBI almost every year in the budget," added Gupta, a former SEBI executive director.

However, not all proposals are taken positively and there have been instances when the government had to go back to the drawing board after making a proposal in the Budget.

In the Union Budget 2019-20, there was a contentious proposal for increasing the stipulated minimum public shareholding in all listed entities, which faced stiff opposition from all sections of the market, including the regulator.

"It is the right time to consider increasing minimum public shareholding in the listed companies. I have asked SEBI to consider raising the current threshold of 25% to 35%," Sitharaman had said while presenting the Budget.

This was announced at a time when many of the public sector undertakings had failed to comply with the then prevailing norms for minimum public shareholding.

"In the zest to take 'decisive action' and 'strengthening' the regulatory framework in the wake of scams/irregularities/crises, one rarely pauses to wonder if granting of further powers is at all necessary or how existing powers are being used," said Sumit Agrawal, Partner, Regstreet Law Advisors, and a former SEBI law officer.

"Finance minister had announced increasing the minimum public shareholding requirements to 35% even though 25% itself has been a challenge," added Agrawal, stressing on the fact that while successive finance ministers have proposed amendments to SEBI laws through the Finance Bill, it leads to enhanced powers for SEBI, but without any discussion and debate in the Parliament.

"In the speech this year, the FM seeks to consolidate the securities laws including the Government Securities Act into a single Code. One has to wait and see if this proposed overhaul of the securities laws would be scrutinised by the Parliament or be pushed through as a 'Finance Bill' and face challenges subsequently. The Supreme Court had questioned one of the proposals of the Finance Bills recently," said Agrawal.