

SEBI can't retain penalty amount once its order is set aside: SAT

PALAK SHAH : 3-3 minutes : 22/06/2020

Can market regulator SEBI retain the penalty amount collected from wrongdoers even if its order is set aside by a tribunal? Recently, the Securities and Appellate Tribunal (SAT) directed SEBI to refund an amount of ₹6.35 lakh to an individual after it set aside the regulator's order.

"Once the order has been set aside, there is no amount to be recovered and consequently any amount so recovered has to be refunded immediately," SAT told SEBI.

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Last year, SEBI had imposed a penalty of ₹6 lakh on an individual for violation of market norms. The latter filed an appeal with SAT, which set aside SEBI's order. But SEBI had already recovered ₹6,35,521 from the individual. When the individual went back to SEBI and sought a refund of the penalty amount, the regulator refused it on the grounds that SAT had not specified if the money was to be returned. The individual went back to SAT, which directed SEBI to refund the amount.

"We are of the opinion that once the order of the (SEBI) adjudicating officer imposing a penalty was set aside, there was no justification for SEBI to withhold any amount. Such retention of the amount is without any authority of law. The fact that no direction for refund of the amount was issued by the Tribunal is immaterial," SAT said.

'Intention' to appeal

SEBI told SAT that it had withheld the amount on the grounds that it 'intended' to file an appeal in the Supreme Court (SC) against the setting aside of its order by the SAT. The Tribunal observed that the individual had already given an undertaking to SEBI, which said that he would deposit the penalty amount again if the SC ordered a stay on the Tribunal's decision to set aside the SEBI order against him. Also, the individual was in dire need of the money for medical purposes.

"There are two issues involved in challenging the SAT finding in the SC," said Sumit Agrawal, Partner, Regstreet Law Advisors. "If SEBI believes that pending its appeal to SC, it should not return the money to the noticee despite SAT allowing the appeal of the noticee, then SAT may consider relaxing the requirement of deposit of any penalty pending litigation before it. Alternatively, SEBI should be considered at the same footing as the noticee for the return of money. The SAT order must be considered positively to strengthen the internal processes at SEBI than to take it to the SC, involving public costs."