

# SEBI seeks 'discretion' in prosecutions

PALAK SHAH Mumbai | Updated on March 24, 2021



## Watchdog wants the law amended as it faces charges of inconsistency

Market regulator SEBI will be seeking 'discretionary powers' with regard to the 'prosecution law'. The Securities and Exchange Board of India (SEBI) will take its proposal on discretionary powers for discussion in its board and then prepare a proposal to be put up to the government for amending the SEBI Act, sources said.

Discretionary power in this regard is akin to being your own master to decide whom to prosecute and whom to let go.

## Seeks full empowerment

The Section 24 of SEBI Act specifies violations and cases wherein criminal prosecution should be initiated. Though currently SEBI uses its 'discretion' on various matters, the Act has no specific mention of 'discretionary powers'. As a consequence, complaints have piled up against SEBI for inconsistencies in dealing with cases.

The Finance Bill of 2017 had empowered SEBI with discretionary powers on levy of penalty and quantum. This was following a 2015 judgement by the Supreme Court that said SEBI had no discretionary powers to decide the quantum of penalty and have to impose the maximum penalty for violations as specified by its Act. But the Finance Ministry then took

SEBI's counsel and amended the law. Therefore, SEBI believes that the government would again empower it with discretionary powers regarding prosecution matters too, the sources said.

“While SEBI Act does not provide if there is a discretion with SEBI to launch prosecution or not, there are a few judgments by Securities Appellate Tribunal and Bombay High Court that have mentioned such a discretion to be inherent with SEBI. This is a lacuna in the law and the application of Section 24 and 26 of SEBI Act has been non-uniform by SEBI calling the discretion of the regulator questionable. A single Securities Market Code on the anvil could settle this issue.” said Sumit Agrawal, Partner, Regstreet Law Advisors & former SEBI Officer.

## Consistent path

However, SEBI lawyers point out that following a consistent path in proceedings and legal matters is a necessity and SEBI must stick to it. View within SEBI is that not all matters can go for prosecution. In February, Lok Sabha MP Arvind Sawant wrote to SEBI Chairman Ajay Tyagi highlighting the inconsistencies in dealing with cases involving bogus loss and profit, long-term capital gains tax entries and trading in illiquid options. While these cases are of similar nature involving artificial trading for tax avoidance, SEBI has initiated criminal proceedings in some while leaving out others. Sawant has accused SEBI of lack of internal controls and inconsistencies in its dealings.

Another Rajya Sabha MP Rajamani Patel from Bhopal has written to the Finance Minister Nirmala Sitharaman pointing out how SEBI has not completed its investigations into matters involving trade reversal for seven years. SEBI fears it would have to launch mass criminal proceedings in the matter and hence the matter is on the back burner, sources close to the MP said. Therefore, SEBI is seeking a change in law that can provide it some relief from complainants.

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