NHAI Case: Procedural Delays Can't Mitigate Violation Of Law, Says SEBI

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The market regulator imposed a penalty on the National Highways Authority of India for multiple delays in filing half-yearly results with the stock exchanges.

The NHAI will have to pay a Rs 7 lakh fine for failing to comply with the timelines seven times in the financial years between 2015-16 to 2018-19, according to the order of the Securities and Exchange Board of India.

That comes after the NHAI approached the market regulator for an extension to file its unaudited half-yearly financials for the year ended March 31, 2019. SEBI conducted an inquiry found that the highways regulator had delayed filings by 4 to 78 days in the past.

As per the listing regulations, any entity that has issued listed securities must file financial results within 45 days from the end of half year. As NHAI had listed non-convertible bonds on the stock exchanges, it became a 'listed entity' by virtue of law and was required to comply with the timelines. The SEBI issued a notice earlier this year, saying that the NHAI had violated the listing regulations due to its consistent delays.

The NHAI argued that being a statutory authority, its financials required an approval by majority of its board members. It said the quorum for a meeting to seek approval could not be constituted due to various reasons, causing the delay. It also cited delays in obtaining approvals from various ministries.

The delay, however, didn't cause a noticeable impact on the securities price, the NHAI said. And, being classified as the "State" under the Constitution, the market regulator should have obtained prior consent of the central government before issuing the notice.

Citing repeated failure by the NHAI, the market regulator said procedural delays cannot mitigate an alleged violation of the regulations. Financial statements help in decision making for investors, the regulator said, while dismissing the NHAI's arguments.

Expert Take

According to Juhi Singh, partner at S&R Associates, SEBI has generally been strict about disclosure lapses under the listing regulations in the past. "The imposition of penalty on a statutory body is a clear validation of equal application of SEBI's disclosure requirements across all listed entities without any preferential treatment or special exemptions," she said.

This order will set a strict precedent for other listed companies to take SEBI's disclosure requirements seriously, she added.

L&L Partner's Harish Kumar agreed that the SEBI order would serve as deterrent for unwarranted irregularities under SEBI regulations, particularly where entities escape compliance citing procedural challenges. Listed companies are expected to ensure timely disclosures to enable public shareholders to make informed decisions, he said.

> Any consistent delay in such disclosure requirements should be looked into by the market regulator seriously as it results in information asymmetry for investors.

Harish Kumar, Partner, L&L Partners

Sumit Agarwal, partner at Regstreet Law Advisors, termed the order bold yet thoughtful. "Although the penalty imposed is meagre, the order is one-of-a-kind and sets the tone for compliance sought from government undertakings or statutory bodies involved in public issuances," he said.

The NHAI argued that the procedure of holding meetings and requirement of quorum has to be in accordance with NHAI laws, he said.

> Can compliance with one law create non-compliance with securities laws and a defence for such non-compliance? Such a defense is unlikely to pass muster of the Securities Appellate Tribunal, if appealed, and settlement will be pragmatic

Sumit Agarwal, Partner, Regstreet Law Advisors

If the matter goes into appeal at the Securities Appellate Tribunal, according to Kumar, it will also throw light on powers of quasi-judicial authorities like the to initiate actions against an entity, in this case SEBI, set up under a Parliamentary Act.