

SAT rejects Sebi view, rules tribunal can function sans technical member

Requests government for faster filling up of vacancies, judicial clarity

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The Securities Appellate Tribunal has rejected the stock market regulator's argument that it cannot pass orders without a technical member on the tribunal.

The earlier technical member, C K G Nair, had retired on March 31, 2021. The

Securities Board of India had taken the position that SAT couldn't pass orders without a technical member being appointed. The position had been taken in multiple appeals. The tribunal passed an order in the matter of Axis Bank on Monday.

"...we are of the confirmed opinion that the functioning of the Tribunal presently consisting of a Presiding Officer and a Judicial Member is not defective on account of non-availability of a technical member," it said.

However, it remarked that vacancies shouldn't be allowed to build up. It pointed out that a fourth post of technical member had been created in March 2019. This hasn't been filled for two years. It said that steps should be taken to fill up an existing member's position at least a couple of months before he retires.

"Today, Sebi has raised an objection. Tomorrow a private litigant would raise a similar objection. It would be a never ending process. This issue needs to be resolved on the judicial side as well," it said.

The tribunal has requested the central government to fill up vacancies at the earliest, and to make any amendments that may be required to remove ambiguity on such issues. It has also requested that the matter be addressed as a public interest litigation (PIL) by the Supreme Court if necessary, so that there is judicial clarity on the matter.

“We also direct the Registrar to send a certified copy of this order to the Secretary General of the Supreme Court of India with a request to place our order before the Honourable Chief Justice of India and, if desired, to treat this order as a PIL and resolve the issue on the judicial side so that the matter is resolved once and for all from the highest Court in India,” said the order.

The two existing members of the tribunal are former judges. Former Meghalaya High Court Chief Justice Tarun Agarwala is the presiding officer. The other member is former Bombay High Court Judge M T Joshi.

“A reply has been filed by Sebi and one of the points urged is that this...(tribunal)...is not properly constituted. A very serious ground has been taken and, therefore, it is necessary for the respondent to argue on this issue before we proceed to hear this matter on merits and any other appeals,” said an earlier order in the matter dated May 6, 2021.

The tribunal subsequently heard senior lawyers on the matter, according to a record of proceedings. They included Rafique Dada, Fredun De Vitre, Pesi Mody, Gaurav Joshi, Somasekhar Sundaresan and Suraj Chaudhary.

The absence of a technical member is not reason enough to halt functioning of the entire tribunal, said Sumit Agrawal, Founder of legal firm Regstreet Law Advisors and former Sebi officer. Appellants would have had to try and approach various high courts for relief which could have resulted in unnecessary hardship, according to him.

"You cannot have a situation where SAT can't function," he said.

"In line with...(section)...15R the tribunal is competent to hear cases and in light of the backlog resulting from Covid, they are duty bound to hear cases till a competent court rules otherwise," said Sandeep Parekh, managing partner of Finsec Law Advisors and former executive director, Sebi.