
Money & Banking

Securities & Appellate Tribunal says it can function without a technical member

PALAK SHAH Mumbai | Updated on May 17, 2021



But asks Finance Ministry to fill up post lying vacant for 2 years

Can the Securities and Appellate Tribunal (SAT) hear matters in the absence of a technical member in the bench? In response to an objection raised by market regulator SEBI on SAT hearing cases without a technical member, the two member bench has ruled that it has the authority to run the tribunal.

In a rare instance, SAT has also marked its order copy to the Finance Ministry and the Supreme Court, and asked for it to be treated as a Public Interest Litigation (PIL) in the Apex court. SAT members were more amused when SEBI effectively questioned their ability to run the tribunal, lawyers present in the hearing said.

The members

SEBI questioned the current composition of SAT, which is currently presided by Justice Tarun Agarwala, the former Chief Justice of Meghalaya High Court, and Justice MT Joshi of the Bombay High Court.

Both Agarwala and Joshi have over three decades of experience of working with Indian judicial system. Third SAT member, CKG Nair who was the technical member retired earlier this year and SAT is awaiting another appointment in his place.

However, lawyers were of the view that in 2018, Nair was alone hearing matters for several years when appointment of the two legal members was delayed and then SEBI had no objections.

“In effect, the stand of SEBI, though it has not been stated in so many words, is that this tribunal should not hear appeals till such time technical member is appointed by the Central government. Similar assertion is being made by SEBI while filing their replies in other appeals and, therefore, it has become imminent to decide this issue,” the two member bench said.

SAT told SEBI that the the tribunals are established in aid of the constitutional courts and inclusion of technical members is only to bring specialised knowledge but that does not mean that it can substitute a judicial member nor can it mean that a judicial member does not possess specialised knowledge.

“SEBI has the option to take it in appeal to SC. SAT cannot remain defunct till the government appoints a technical member. If SAT had taken any other interpretation, it would have paralysed the appeal mechanism

against SEBI Orders in India which is not desirable. It is perplexing why a regulator like SEBI had taken this stand while Depositories, Stock Exchanges, IRDAI, PFRDA did not talk like this,” said Sumit Agrawal, Founder, Regstreet Law Advisors.

Driven by rules

SAT observed that the contention of SEBI was driven by rules that state that every bench must have at least one technical member a mandatory provision and since the current bench are of judicial members, the constitution of the bench is defective and orders passed by this bench would be *coram non judice* (not before a judge)

“In light of section 15R of the SEBI Act, 1992, a temporary gap would not harm the quorum of the bench. In any case all the SC cases on tribunals deal with absence of a judicial member and that too, permanently. The tribunal must keep functioning with the current load of cases going up because of Covid,” said Sandeep Parekh, Finsec Law Advisors.

SAT said it would deal with the question of whether the vacancy in the SAT office of a technical member was fatal to the constitution of the tribunal?

Relying upon past SC orders and constitution of bench, the SAT observed that it had the right to hear the cases.

“The principle has been laid down by the SC that any proceedings taken before the tribunal cannot be questioned in any manner on the ground of any defect in the constitution of SAT. It protects the legality and validity of the orders passed by the Tribunal even if it is found that there was a defect in the constitution of the tribunal,” SAT said.

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