

## Sebi objects to Securities Appellate Tribunal missing key member

Tribunal has taken opinion of senior counsel in the matter

Sachin P Mampatta | Mumbai May 13, 2021 Last Updated at 23:42 IST



The Securities and Exchange Board of India has objected to the absence of a technical member in the Securities Appellate Tribunal (SAT).

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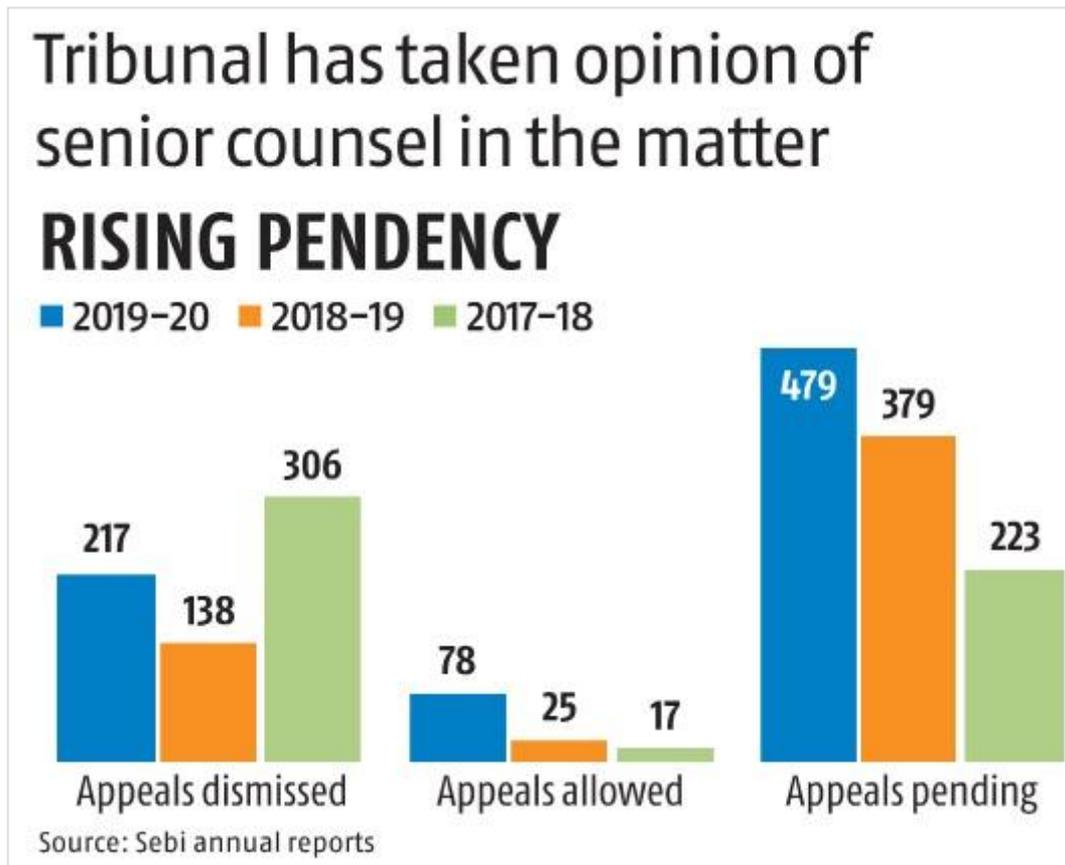
comprises judicial and technical members. The government had appointed C K G Nair as technical member with effect from April 1, 2016, and his five-year term ended recently. The markets regulator has objected to orders being passed without a technical member being present. Nair had a doctorate in economics and market regulation.

The other two members of the tribunal are former judges — former Bombay High Court Justice M T Joshi and former Meghalaya High Court Chief Justice Tarun Agarwala who is the presiding officer.

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“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. We direct the matter to come up for consideration on this point on May 7, 2021,” said the order dated May 6, 2021.

The tribunal subsequently heard senior counsel Rafique Dada, Gaurav Joshi, Fredun De Vitre, P N Modi, Somasekhar Sundaresan, and Suraj Chaudhary; according to subsequent records of proceedings. “The (tribunal)...is grateful for pointing out the various facets in the matter. Order reserved,” said the order dated May 7, 2021.



Queries sent to Sebi and the tribunal didn't get a reply.

The position in law may not support Sebi's stand, said Sumit Agrawal, founder of law firm Regstreet Law Advisors and former Sebi official. "A harmonious reading of Section 15L and 15R of the Sebi Act would show that having a technical member is desirable but not mandatory for the SAT to function. In Covid times, this is the only tribunal that has been functioning efficiently... Sebi's stand is also contradictory to its own earlier stand when a technical member was

acting as officiating presiding officer. At that time, Sebi had taken a stand that it submits to the jurisdiction of the SAT having a single member or Bench without a presiding officer who is a judge."

At least one submission has taken a similar position, according to a source. Objections to the composition would have to be taken up at a separate forum, said Sandeep Parekh, managing partner of Finsec Law Advisors and ex-executive director, Sebi.

"Under the Sebi Act, no one can challenge the order on account of any defect in the composition of the Bench before the tribunal itself. As a creation of statute, the tribunal is not well placed to go behind the merits of the provision. If at all anyone has an issue with the composition, the person has a right to go to a high court in writ jurisdiction to challenge the quorum of the Bench," he said.

There is also an alternative interpretation.

"Proviso to Section 15L(2)(b) of the Sebi Act, 1992 states that every Bench of the SAT should constitute at least one judicial and one technical member. Hence, in the absence of a technical member on the Bench, SAT is devoid of requisite composition and orders should not be passed by SAT while lacking in minimum quorum requirements," said Manjari Tyagi, Partner, Capital Markets, Shardul Amarchand Mangaldas & Co.