

# Business Standard

## Split verdict in Sebi-PNB Housing case underscores SAT's exigency

The tribunal lacks a third member to fall back upon, thus putting the PNB Housing plea in a limbo

Samie Modak | Mumbai August 09, 2021 Last Updated at 19:38 IST



*The PNB Housing split verdict comes within days of the Supreme Court warning the government to fill up vacancies in various tribunals*

The split verdict in the PNB Housing-Sebi matter on Monday has once again underscored the pain the capital market ecosystem has to face due to indefinite delay in filling up vacancies at the Securities Appellate Tribunal (SAT).

At present, SAT—which entertains appeals of those aggrieved with the directives passed by market regulator Sebi, insurance regulator Irdai and pension sector regulator PFDR—if functioning with just two members—presiding officer Tarun Agarwala and judicial member M T Joshi.

On March 31, 2021, technical member C K G Nair retired, casting a cloud on whether the tribunal can function and pass orders. In March 2019, the government approved creation of a fourth post of technical member to speed up the disposal process, however, has done little to fill up the positions.

“While, we have had an even number of members in the securities tribunal previously and a split verdict as well, it is best to avoid it. In fact, the government should consider multiple benches of the tribunal, which the

statute permits, to minimise backlog in the critical securities sector of the economy,” said Sandeep Parekh, founder of Finsec Law Advisors.

Experts said, previously, there has been a difference of opinion between two members and in such cases the decision of the presiding officer is considered final. However, in the latest instant, the tribunal lacks a third member to fall back upon, thus putting the PNB Housing plea in a limbo.

"The (PNB Housing) judgement once again underscores the importance of having sufficient members at SAT. Recently, the Finance Act has been amended to have more benches of SAT. This desire of the Finance Minister will remain elusive if we are unable to fill the current vacancies itself. For the securities market and international investment in India, it is high time that the quorum and sufficiency of members at SAT is given due attention by PMO." said Sumit Agrawal, Founder, Regstreet Law Advisors.

The PNB Housing split verdict comes within days of the Supreme Court warning the government to fill up vacancies in various tribunals.

Last week, a bench of Chief Justice of India NV Ramana and Justice Surya Kant cautioned the central government over the issue and warned that it would summon top officers of the government if urgent action is not taken.

“...you want to continue to tribunals or close it down," the CJI had remarked.

The vacancy at SAT had also come to the fore in May when the tribunal, while passing an order in an appeal filed by Axis Bank, had rejected Sebi’s argument that it cannot pass orders without a technical member on the tribunal.

“...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,” SAT had said. However, it remarked that vacancies shouldn’t be allowed to build up.

Legal experts say the government has to ensure that steps are taken to fill up an existing position at least a couple of months before the member is set to retire.