

Securities Laws (Amendment) Bill, 2014

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PUBLISHED 20 August 2014

In the light of SEBI's legal turf with the Sahara group, SEBI has been in dire need of enhanced powers to regulate the securities market. Adding fuel to the fire, the Saradha group, one of eastern India's biggest deposit-taking firms invoked the wrath of SEBI after it defaulted on repayments to depositors in April last year. Several investors lost their money due to Saradha's Ponzi scheme.

To protect investor interests against ponzi schemes and security law offenders the Securities Laws (Amendment) Bill, 2014 has been passed by the Lok Sabha and the Rajya Sabha both. The new law seeks to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

Salient Features of the Bill:

Unregistered Pooling of Funds – Any pooling of funds under any scheme or arrangement, which is not registered with Securities and Exchange Board of India [SEBI] involving a corpus amount of Rs. 100 crores or more shall be deemed to be a collective investment scheme.

Powers for investigation – SEBI can call for information and records from any person including banks, authorities, boards or corporations established under Central or State Act regarding any transaction in securities relating to any investigation or inquiry.

SEBI can also call for or furnish information to any authority outside India that performs similar function as SEBI in relation to the prevention or violations of securities laws. However, prior approval of the Central Government has to be taken before entering into any arrangement or understanding for this purpose.

Jurisdiction for cases of seizure – The jurisdiction for cases of seizure has been conferred to Magistrate or a Judge designated for this purpose instead of Judicial Magistrate of the first class under Section 11C of the Securities and Exchange Board of India Act, 1992.

Settlement – An option of settlement has also been provided to the defaulter upon the discretion of SEBI. The provision shall have retrospective operation from 20th April, 2007. No appeal shall lie consequent to the settlement proceeding.

Minimum Penalty – A minimum penalty has been prescribed for each offence under all the three Acts proposed to be amended.

Power to review and enhance penalty – SEBI has been given the power to examine the record of any proceedings in which the adjudicating officer has already passed an order.. If the order is considered to be erroneous or contrary to the interests of the securities market, SEBI may pass an order enhancing the quantum of penalty, after conducting a separate enquiry and giving an opportunity of fair hearing to the offender. However, such examination cannot be done after 3 months of passing of the order or in cases where the appeal is disposed off.

Disgorged Amount – The amount disgorged, pursuant to a direction issued under any of the three Acts that the new law seeks to amend, will be credited to the Investor Protection and Education Fund established by SEBI.

If a person fails to comply with any direction of SEBI for recovery of money, the Recovery Officer, appointed for this purpose, may recover the amount from the defaulter by one or more of the following modes:

- (a) attachment of the person's bank accounts;
- (b) attachment and sale of the person's movable property;
- (c) attachment and sale of the person's immovable property;
- (d) appointing a receiver for the management of the person's movable and immovable properties;
- (e) arrest of the person and his detention in prison.

Establishment of Special Courts – To expedite the disposal of cases pertaining to offences under the three Acts, Special Courts will be constituted. The Special Court will consist of a Single Judge appointed by the Central Government with the concurrence of the Chief Justice of High Court. The Special Court would however, serve as a Court of Sessions under the jurisdiction of the High Court.

Conclusion

The Bill has enhanced the powers of SEBI by allowing it to regulate even unregistered pooling of funds that constitute a corpus of Rs. 100 crores or more. SEBI will now be in a better position to regulate the markets as it can also enter into agreement with foreign agencies relating to securities violation.

The enhanced powers of the Recovery Officer to recover the amount by way of attachment of bank account, attachment or sale of movable as well as immovable properties will also act as a stringent measure in deterring the defaulters from non-compliance of SEBI's directions.

The Bill states that the amount disgorged would be credited to the Investor Protection and Education Fund. However, it does not provide any relief to the Investor who has suffered loss as a consequence of the wrongful actions of the defaulter.

The establishment of Special Courts for trying offences under the three Acts is a welcome change as it would ensure speedy disposal of cases and reduce the burden of the Court of Sessions.