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Analysing developments impacting business

INTRODUCTION OF THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

4 December 2018

The Securities and Exchange Board of India (SEBI), through a notification dated 30 November 2018, has introduced the SEBI (Settlement Proceedings) Regulations, 2018 (Settlement Regulations). The Settlement Regulations, effective from 1 January 2019, will replace the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (2014 Regulations). The Settlement Regulations have set out the terms and procedure for settlement of any proceedings initiated and pending before the SEBI or any other forum, for the violation of specified securities laws.

Background

In 2017, a committee under the chairmanship of Justice Anil R. Dave (Dave Committee) was constituted to review the 2014 Regulations. With the passage of time and recent occurrences in the financial markets, certain conceptual changes were required to be made to the 2014 Regulations; which the Dave Committee has reviewed and opined on. Based on the report of the Dave Committee and comments from stakeholders, the SEBI introduced the Settlement Regulations. This article summarises the material changes introduced by the Settlement Regulations.

Material changes introduced by the Settlement Regulations

No settlement if default has market wide impact

A default shall not be settled if, in SEBI's opinion, it has had a market wide impact, caused losses to a large number of investors or affected the integrity of the market.

Prior to notification of the Settlement Regulations, it was considered whether breach of laws governing insider trading and fraudulent and unfair trade practices, violation of which are generally considered a grave offence, should be compoundable. The Dave Committee felt that in order for a violation to be refused settlement, the three parameters mentioned in the above paragraph should be met. Therefore, violation of insider trading laws and fraudulent and unfair trade practices that may not have market wide impact (such as front running, mis-selling to an investor, violation of internal code of conduct in insider trading) or where third-party interest are not involved, may be settled.

No settlement of offences by certain category of persons

The SEBI may not settle certain specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or

penalty imposed under securities laws. This amendment has clearly been introduced as a consequence of recent frauds committed by certain entities and persons in India.

Wider ambit of the term "securities laws"

The SEBI has the power to administer violation of certain rules and regulations not framed under the SEBI Act, 1992. For instance, certain provisions of the Companies Act, 2013 and the rules framed thereunder (such as the issuance of securities by listed companies, prospectus and allotment) are administered by SEBI. To allow for settlement of violation of such laws, the term "securities laws", as defined in the Settlement Regulations, has been defined to include "any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder". Therefore, the SEBI is permitted to settle, subject to certain exceptions, proceedings initiated for violation of "securities laws".

Settlement with confidentiality

The SEBI may agree to settle "in confidentiality" to benefit applicants who agree to provide "substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against any other person in respect of a violation of securities laws". This amendment is similar to the practices of securities regulators globally.

Settlement terms include monetary and non-monetary terms

The terms of settlement may include monetary or non-monetary terms or a combination of the two. Non-monetary terms may include suspension or cessation of business activities for a specified period, disgorgement on account of the action or inaction of the applicant, exit from the management of the company, submit to enhanced internal audit and reporting requirements, locking - in securities, etc.

Comment

While the amendment is reactive, it is certainly a step in the right direction. Habitual offenders and perpetrators of grave offences that affect the sentiments of the market at large should not be allowed to avail of the benefit of settlement – as a principle. In concord with the recent amendments to the Companies Act, 2013, which gave the SEBI the authority to administer listed companies, the Settlement Regulations plugs a loophole.

- Subhayu Sen (Partner)

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com