

SEBI

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Recent orders of Securities Appellate Tribunal binding on SEBI

Proceedings before SEBI are usually prolonged, taking time, efforts and money to deal with them. The proceedings may start with SEBI seeking some information and this may be in ordinary course or SEBI may issue formal summons to appear personally and/or provide information and documents. This may be followed by a show cause notice though it is also common that an interim order may be directly passed by SEBI particularly if it is desired that some immediate action is needed (for example, to stop a person from continuing what SEBI believes is a wrong). The show cause notice then needs to be replied meeting every allegation of SEBI and refuting those statements which the noticee believes to be factually wrong, logically incorrect, etc. The person may need to seek extension of time if he believes that he will not be able to provide the reply within the specified time. There is an opportunity for a formal personal hearing provided. Thereafter, there may be a final order, which may be in the form of adverse directions or dropping of the proceedings. While the person may need to spend time in collecting facts and documents to present to SEBI, legal advice and representation is also often needed.

Much of this is avoided if there are precedents available on similar facts and legal questions of the Supreme Court or the Securities Appellate Tribunal. However, it has been found that SEBI does not accept these precedents. While obviously, if the facts and/or legal issues in a particular case can be differentiated, SEBI would be right in not following. However, it was found in some cases that SEBI has refused to follow such precedents of SAT on the grounds that it does not agree with the ruling of SAT and also that an appeal has been preferred to the Supreme Court against such ruling. The result would be that despite that such issue has been already gone through in detail in earlier cases, the time and efforts of the party (and also SEBI) end up being spent going over the same arguments.

SAT has recently sought to bring an end to this and has emphasized that, unless the Supreme Court has reversed the order of SAT or otherwise granted a stay against it, SEBI would be bound to follow the orders of SAT if they are on similar facts/legal issues. The following two decisions may be usefully referred to in this regard:

1. IFGL Refractories Limited v SEBI (decision dated 6th January 2023)
2. Indian Infotech and Software Limited (decision dated 14th January 2023)

In the case of IFGL Refractories Limited above, the SAT, referring to precedents of Supreme Court in this regard, observed as follows:

"The principle of judicial discipline requires that the order of the Tribunal should be followed unreservedly by the AO which in the instant case has not been followed."

What is more, in this case, the SAT also imposed costs of Rs. 50,000 on SEBI.

Such rulings of SAT should help now closure proceedings at an early date, saving time, efforts and costs not just for the party but even SEBI. It is possible though that, if SEBI has appealed to the Supreme Court and it believes that it may get a ruling favorable to it, it may keep the proceedings pending till the outcome of such appeal. But, in other cases, it is possible that SEBI may not even commence the proceedings and even if it does, it would be obliged to close it in favor of the person.