

Business Standard

An interim Sebi order must not be open-ended

Delayed justice is unfair to those who may ultimately be found not guilty, and also to those who may be found guilty

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On July 28, the Securities and Exchange Board of India (Sebi) revoked an interim order that had been issued 4.5 years ago, as the alleged contraventions, which were the basis of the order, could not be established.

The order had restrained one Vishal Shah, among others, from accessing the securities market, either directly or indirectly till further orders. An interim order in the *Kailash Auto Finance Limited* case had imposed similar restraint on 246 persons in 2016. This order too was revoked 1.5 years later in the case of 244 of those involved. In 2015, an interim order was issued in the *Polaris Software Lab Limited* case. The order itself came 7.5 years after the alleged contravention, only to be revoked 2.5 years later. There are several such revocations, after the persons have suffered ignominy for years for no fault of theirs.

On July 6, in the *Supreme Tex Mart Ltd* case, Sebi issued a final order, 5.5 years after the interim order, restraining several persons from dealing in securities for a period of six years. It, however, allowed a set-off of 5.5 years of restraint already

suffered by them under the interim order. Sebi had issued an interim order in 2009 directing Raju G Shah, among others, not to deal in the securities market till further directions. Eleven years later, considering Mr Shah had already suffered debarment for so long pursuant to the interim order, Sebi did not impose any further sanction in the final order. There are several such final orders where persons have suffered what the contravention would otherwise warrant.

Sebi issues interim orders under section 11(4) of the Sebi Act, in the interest of investors in the securities markets, pending investigation or enquiry. Such orders provide for a variety of measures such as suspension of trading of any security, restraint on accessing securities markets, prohibition to buy, sell or deal in securities, the impounding of proceeds or securities, among others. Many of them also carry directions permissible under section 11B, which can be issued only after the completion of the enquiry.

The Act does not prescribe any timeline for the process to be completed. At times, decades pass between the interim order when Sebi has enough material to find a *prima facie* contravention, and the final order, when it has complete material to take a firm view. Such a long journey from “enough” to “complete” has a demoralising effect on the persons who are ultimately “not found guilty”. The loss of reputation, opportunity, livelihood, and freedom of the accused cannot be made good even if the process ultimately finds that they were innocent.

It is also unfair to those who may ultimately be found guilty, as the sword of Damocles may hang over them for years and they may face ostracism from the market till the conclusion of the case. Waiting for the conclusion of the proceeding is more painful than the worst penalty the contravention may warrant. It even makes it difficult for them to put forth a timely defence after decades of alleged “misconduct”, depriving them of natural justice.

An interim order is even troublesome for third parties. A suspension of trading deprives innocent investors of liquidity. A restraint on an intermediary, meanwhile, deprives its customers from participating in the market. A suspension of an office-bearer of a stock exchange deprives the exchange of its leadership. A restraint on a company triggers internal investigation against key management personnel. All of this happens even as no one has any inkling as to how long the interim order would remain in force, and whether the accused would be found guilty ultimately.

Though intended to safeguard the interest of investors, an interim order mostly operates as a punishment on the person concerned. It deems the person guilty until proven innocent through the fact-finding process and the enforcement actions

emanating therefrom. The accused could well be found innocent ultimately or the punishment suffered could be more than warranted. In a different context, the Supreme Court, in *Sanjay Chandra vs CBI*, reiterated that every person is deemed innocent until found guilty after due trial and that the punishment begins only after conviction. The detention of under-trial persons in jail for an indefinite period amounts to punishment before conviction. Every accused is entitled to speedy trial lest he may end up in jail longer than the period of sentence, if ultimately found guilty.

The constitutionality of section 11(4) which provides for interim order has been rightly upheld by the apex court. Several interim orders have also been upheld, albeit with notes of caution and advice. In *Sebi vs Udayant Malhotra*, the apex court upheld the order of the Securities Appellate Tribunal (SAT) setting aside an interim order of 2020, where investigation was pending since 2017, on the grounds that there was no urgency to pass such an order. A month later, Sebi itself closed the proceeding as there was no contravention.

Many have sought intervention of the SAT to stay the operation of interim orders, particularly when there has been inordinate delays in completing the investigation. The SAT has generally advised Sebi to complete the investigations expeditiously or within a specified time. It has occasionally directed that if Sebi does not complete the investigation/pass an order within a specified time period, the interim order shall stand vacated. It has also set aside the interim order or waived restraints in a few cases where it took a long time to complete the proceedings.

“For reasons to be recorded in writing” is the statutory requirement for issuing an interim order. The order must record satisfaction of evidence of contravention, and the need for immediate restraint, considering the balance of convenience and rights of the accused. However, it should impose restraints permissible under section 11(4) only. It must be issued expeditiously and automatically lapse after a certain number of days, during which the regulator must conclude the process. Section 11(4), being an extraordinary power, must be exercised with extra-ordinary discipline.

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