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Publication: Economic Times Mumbai; Date: 2009 Jan 09; Section: Indias Enron; Page Number 6



Coming to America may cost Raju dear; more stringent action likely

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WHEN he took the decision to list Satyam on the New York Stock Exchange in 2001, Ramalinga Raju probably didn't expect to confess to fraud and cooking the accounts. As things stand now, the founder chairman of Satyam Computer Services could now face far more stringent action in the US than in India. More importantly, US investors, who launch a class action against the company, could also make regulator Securities and Exchange Board of India (Sebi) a party in a possible fraud case, feel experts.

"In the US, there could be multiple counts on which the directors could be held liable and this could lead to a significantly long-term imprisonment and compounding of penalties," said Siddarth Shah, partner and head corporate affairs, Nishith Desai Associates. Other than Mr Raju, some of the independent directors, who are residing in the US, could also face prison terms and fines whether they were aware of the fraud or they discharged their duties.

"One of the main grounds for the actions would be the general anti-fraud provision in Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.... The actions can be initiated against the issuer as well as its officers, directors, and anyone in control of the issuer's operations," said Anoop Narayanan, partner with law firm, Majmudar & Co. "Class actions are very strong in the US and are pretty serious in terms of penalties and imprisonment. Sebi may be made party on the ground that it did not exercise diligence as a regulator. Both India and the US, cases may make it party," he said.

However, the potential for prosecuting Mr Raju would be subject to the nature of action initiated in the US and extradition arrangements between the countries, he added. In the Enron case, for example, CEO Jeff Skilling was convicted in May 2006 on 19 counts of fraud. While he has appealed his 24-year prison sentence, media reports suggested that the resentencing could also result in a lengthy prison term. Securities and Exchange Commission (SEC), Sebi's counterpart in the US, and the NYSE could also initiate action.

A government official said prima facie the case seemed to be of misstatement of accounts and can come under regulatory action in the US. Incidentally, both Sebi and SEC are members of the IOSCO (International Organisation of Security Commissions), which is the international standard setter for securities markets. All IOSCO members have to sign a memorandum of understanding and follow the principles endorsed by the body and facilitate exchange of information among the international community of securities regulators.

In India, Mr Raju and others could face criminal prosecution under the Companies Act, Sebi Act and Securities Contract (Regulation) Act (SCRA). Since Mr Raju has already confessed to fraud, he can be arrested even today, said a corporate lawyer. Under the Indian Penal Code (IPC), suspects can be remanded to custody so they don't tamper with evidence.

"Action against the officers of the company responsible for the fraud can be initiated from several quarters. But the fastest would be for the Department of Company Affairs, along with Sebi, to take immediate action. Shareholders and other stakeholders may also initiate proceeding depending on their grievances but prosecution through would take longer," said Nitin Potdar, partner, J Sagar Associates.

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