Sebi May re-look at Scheme of Arrangement Rules

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Mumbai: Market regulator Sebi is looking into regulations concerning clearance for scheme of arrangements such as merger and acquisitions by listed firms to check any possible 'bypassing' of norms due to the companies directly seeking approval of courts for such deals.

As per the listing agreement norms, a listed company needs to file any scheme of arrangement with the stock exchanges for observations at least one month before filing it with any court or tribunal for approval.

Further, the stock exchanges have to forward their objection/no-objection letter on the scheme with Sebi which can also review the scheme and issue necessary observations.

At a recent industry event, Sebi Chairman U K Sinha said, "There has been an observation from one of the high courts that what is the locus with Sebi in asking companies to first come to Sebi and then move the high courts...It is not provided in any Sebi regulations that listed companies should come to Sebi first before moving the courts...So is there a violation?"

"Sebi should provide that companies have to come to Sebi otherwise if they don't come to Sebi and go directly to the high court or the National Company Law Tribunal what is the violation for that. So, we are going to amend our regulations and make specific provision for that," Sinha added.

According to Nishith Desai Associates' Co-Head (M&A) Simone Reis, prior to 2013, listed companies were required to file a draft with the stock exchanges on scheme of arrangements and could move courts after receiving an NOC.

"In 2013, Sebi stepped in and said it would also review and issue observations on the schemes. However, the companies would approach the courts before receiving observations from Sebi...So, things were running on parallel lines," Reis said.

She further said, "The regulator could bring in a provision wherein it stipulates a violation for approaching the courts/tribunals without awaiting Sebi approval."

Finsec Law Advisor' Founder and Sebi's former Executive Director Sandeep Parekh said that the listed companies are "bypassing" certain regulatory requirements and approaching courts directly with respect to the schemes of arrangement.

Noting that consequences of such action by a listed company is not clear, Parekh said, "Sebi could amend the listing norms to specifying violations to such acts."

A scheme of arrangement is a court-approved agreement between a company and its shareholders or creditors.

The role of the Securities and Exchange Board of India (Sebi) and the stock exchanges in reviewing the scheme can help ensure that it is not in violation of the securities norms and also safeguard the interest of shareholders. Going by the norms issued by Sebi in 2013, upon receipt of objection/no-objection letter from the exchanges, Sebi has to provide its comments on the draft scheme to the bourses.

While processing the draft scheme, Sebi may seek clarifications from any entity relevant in this regard including the listed company or the stock exchanges and may also seek an opinion from an independent chartered accountant. Sebi has been taking an average of 13 days to issue observations on scheme of arrangements as against prescribed time limit of 30 days, Sinha had said at the event.