

### SEBI order to impact RNRL, Rel Infra negatively: Tulsian

Market regulator Securities and Exchange Board of India or SEBI has passed a consent order regarding the Reliance Infra, RNRL investigation that showed misrepresentation of investments. Reliance Infra, RNRL, Anil Ambani and four other directors have paid settlement fees of Rs 50 crore towards the consent order.

After this order, [Reliance Infra](#) and [RNRL](#) can't make investments in the secondary markets upto December 2012. And Anil Ambani and four directors have been barred from investing in secondary market until December 2011.

In an interview with CNBC-TV18, Sandeep Parekh, founder of Finsec Law Advisors and also Former ED of SEBI, SP Tulsian of [sptulsian.com](#), and Vyapak Desai, Head - Litigation, Nishith Desai Associates, gave their perspectives on SEBI's consent order.

**Q: Several conditions imposed and a ban on secondary market trading for Anil Ambani. What do you make of the move and the manner of the settlement?**

**Parekh:** I think it is clearly quite unusual. This is a new form of consent order in which there are two or three kind of differences from the usual consent order. Most consent orders are pure penalty or settlement charges as they are known as. We are not admitting or denying guilt. In this case there is a clause which says that the money has to be really paid by individuals. So indirectly shareholders are not paying this money which is an interesting kind of twist.

The second twist is that there is a consent order which says that both the company and these individuals cannot buy shares from the market. So without kind of impacting the capital raising of the company, which the company would not have agreed to, these people have agreed not to buy and sell securities in the secondary market. But that's another kind of new kind of order passed under consent.

Overall, I think the numbers are quite large. The order is quite complex as opposed to a pure penalty amount. So I think it's a very interesting twist and something which will have an impact on the reputation of these companies, even though it is actually passed without admitting or denying guilt.

**Q: Had these companies not settled in the manner that they have, what was the risk of liabilities going forward because like you said it is a pretty large settlement. But had this not happened what were the risks attached to it?**

**Parekh:** Like any other business house, they probably see a bargain by paying Rs 50 crore. So I am sure they saw some kind of bargain by paying such a huge amount. My guess would be that they probably thought that the companies are going to be debarred from raising capital in the market. So that would have two adverse consequences. One is actual money, you cannot raise money, and you cannot expand for several years. And the second is there is guilt attached to it.

So I think they have gotten away without either of these. The trade off is that they've paid a huge amount which a normal order would not result in such huge amounts of penalty and of course the normal order would be litigated all the way to the Supreme Court probably a million times. So it will probably take many years, many decades before the issue is finally settled.

So I think it is probably a good order by their own calculation which is why they have paid such a large amount.

**Q: If I can put the same question to you. What do you make of this consent and settlement? In terms of the impact on investors what do you foresee happening from hereon?**

**Tulsian:** This will definitely have far-reaching implications in respect to the company because I don't think that the basic objective for which the consent was moved by the promoter or by the company has been achieved because the company has been restrained to trade in the capital market upto December 2012 and that will always remain attached with the company. Now if you come on RNRL that has eventually got merged into RPower.

R Power has huge capex raising plans. I don't think that they can really put their plans into action unless and until they have the capital raising in my view to the extent of Rs 100,000 crore. Of that maybe about Rs 25000-40000 crore could be the promoters equity. So that will set them back to go for a preferential allotment as well, though they have not been barred from going to the primary market.

So one has to really read and understand whether they have been restrained to raise capital via preferential allotment as well. But yes the basic objective of the consent order I don't think has been achieved. When you see these kinds of penalties having been put and the conditions having been put by the SEBI restraining the directors as well as the company for a couple of years in case of company and one year for director and that too the house like Reliance will be having definitely a far reaching implications.

As such the group was not able to raise any capital in the last couple of years for various reasons, may be because of the

valuations and all. Therefore, I see it as a serious damage happening to the valuations of the share price of all the group companies.

**Q: Let me sort of try and ask you this point again to clarify just what you said and this is a very important remark. The bar does not apply to the mutual fund investments and given that, are you suggesting that this is actually a major negative for RPower? Because RNRL has been merged into it and therefore that is the big company for the group going forward, that is where the growth is planned for the group?**

**Tulsian:** Yes, you are right because as I said that I don't think that I have much apprehensions or much worry for Reliance Infra. But when you want to read this, even if I take that the penalty has been put in isolation of RNRL but eventually that company has got merged into RPower. As I said, RPower has the capex requirement of as I said Rs 100,000 crore, because they have all along given a crystallized program of completing 15000 MW, may be by 2015.

So I have serious apprehensions on the capital raising plan of Reliance Power and one has to see that how this will come in their way. Because eventually RNRL has got merged into RPower and when any capital raising plan will be made by RPower by way of the preferential allotment, this will definitely be coming in their way.

**Q: How was the fine figure arrived at this Rs 50 crore figure that we have – if you could just explain the process to us and also who is going to foot the bill? Do the directors themselves have to pay up – is it personally fine or what is the situation like?**

**Parekh:** Yes. Let me answer your second question first. This is clearly an amount which is going to be paid by the directors and that is there in the order itself. So we do not have to interpret that. It clearly says that shareholders indirectly the company and the shareholders are not going to pay this amount.

The process really is that first if there is proposal for consent, it has to come from the person who gets the showcause notice. After that, it is for an external committee which is headed by retired high court judge to make a recommendation. There is some kind of negotiation which goes on in terms of what number people are looking at.

In this case it is a lot more complex than just one number. So I am sure this is more detail and many more discussions took place. This external high powered committee has to be convinced that this is a good number and good terms of settlement and it is a recommendatory body. So they would recommend those terms to SEBI and then SEBI through two of its whole-time members will actually pass the order.

The high powered advisory committee is not binding on SEBI but typically in 9 out of 10 cases the SEBI does accept recommendation of this because of the kind of compensation of this committee of a retired high court judge.

**Q: Shareholders are not likely to bear the burden but investor reactions to this what do you expect now?**

**Tulsian:** As I said that I am going to see a negative reaction by the market. Obviously the investors are included in that category. The second worry is that I do not think that the company can really get absolved from the other inquiry which could be by the RBI and maybe the FEMA authorities. This is just a reprieve which they have got from the SEBI. So obviously taking all this into account there will be serious concerns on both these companies.

**Q: What do you make of this consent order? the fact that it's a Rs 50 crore settlement that we are talking about and the lawyers and the analysts that we seem to be speaking to suggest that there hasn't been a precedent of this sort in the recent past.**

**Desai:** Let me first start with a statement that such consent orders schemes is not uncommon for India as well because this was introduced in 2007 and also from a developed market scenario like US and UK such consent order schemes are available as well, but I believe in the recent past there were certain criticism and scrutiny in the way the consent order regime was being effective and people were raising questions as to whether this is an easy way or an easy exit for people who are not going through the litigation.

So I believe this is not a precedent but a kind of intention set by SEBI that consent orders going forward will be more effective from the purpose that the amounts would be heavy enough or there may be certain additional conditions like non-entry into secondary market to make it more effective. So from that perspective I think the SEBI has clearly set out a trend in this case.

**Q: How do you explain the rationale behind actually buying the company from the secondary market but allowing them in the primary markets?**

**Desai:** This is a consent order rather than an order imposing a penalty after coming to a conclusion that there is a violation. So the way the process works is there is a proposal from the company or the notices and there is a discussion with the internal committee.

So, I think it is more from the perspective that SEBI, considering the violations we have thought it to be appropriate to say that there is a Rs 50 crore penalty with non-access of secondary market will be sufficient in this case.

If it had gone into litigation, and if SEBI had ultimately given an order, then the orders may have been very different, including non-access to primary markets. So I think this is some kind of settlement wherein both the parties have agreed to come to a situation where they pay a certain amount without accessing the secondary markets, but still go ahead with their plans as we all know that they cannot survive without accessing the primary market at this moment.

Therefore, this may be a via media to ensure that they don't get into such an order if they had continued this litigation with SEBI.