

SAT set aside SEBI's imprisonment order

The Bombay High Court has *vide* a recent judgement¹ set aside an earlier order of the Recovery Officer of the Securities and Exchange Board of India (“SEBI”) dated December 18, 2014 (“SEBI Order”) under which SEBI had for the first time exercised its newly acquired powers under Section 28A of the SEBI Act, 1992 (“SEBI Act”).

Facts:

The SEBI Order directed that the petitioner be kept under civil imprisonment for 6 months pursuant to the powers conferred under Section 28A of SEBI Act since inter alia the petitioner failed to submit the proposal to make payment as per earlier directions of SEBI. It is pertinent to note that the officer ordered for imprisonment in spite of other options for recover of monies prescribed under Section 28A such as attachment of movable property, immovable property, bank accounts and appointment of a receiver.

As per Section 28A of the SEBI Act (introduced by the Securities Laws (Amendment) Act, 2014), the Recovery Officer of SEBI is empowered to inter alia order the arrest and detention of the petitioner for failure to comply with directions of SEBI. Section 28A stipulates that the said arrest is required to be done in accordance with the relevant provisions dealing with procedure for recovery of tax under the Income Tax Act, 1961.

Bombay High Court Ruling:

The Bombay High Court has set aside the SEBI Order on the ground that the due process established under the Income Tax Act, 1961 for ordering arrest were not followed. The grounds included were failure of Recovery Officer to provide reasons to show: (i) that the defaulter was dishonestly transferring, concealing or removing property; (ii) refusal or negligence by the defaulter to pay the amount despite having the means to pay the same.

The Bombay High Court categorically held:

“Ordering arrest and detention for not giving a proposal of repayment is a sheer abuse of power.”

Further, the Court clarified that in the absence of having the means to pay, mere non-payment by the defaulter cannot be classified as neglect or refusal to pay.

This judgment is an important step to clearly reiterate the statutory limitations placed on the powers conferred on SEBI. This judgment hopefully will go a long way to curb the arbitrary exercise of powers by SEBI officers.

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¹ [Writ Petition No. 639 of 2015](#)