

Securities Laws (Amendment) Act, 2004

Chapter III - Amendments to the Depositories Act, 1996

After Section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following Sections shall be inserted, namely:-

"19A. Penalty for failure to furnish information, return, etc.-- Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder, -

(a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or the bye-laws, fails to file return or furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19B. Penalty for failure to enter into an agreement.-- If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), and is required under this Act or any rules or regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.

19C. Penalty for failure to redress Investors' grievances.-- If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19D. Penalty for delay in dematerialisation or issue of certificate of securities.-- If any issuer or its agent or any person, who is registered as an intermediary under the provisions of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19E. Penalty for failure to reconcile records.-- If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19F. Penalty for failure to comply with directions issued by Board under Section 19.-- If any person fails to comply with the directions issued by the Board under Section 19, within the time specified by it, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19G. Penalty for contravention where no separate penalty has been provided.-- Whoever fails to comply with any provision of this Act, the rules or regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

19H. Power to adjudicate.-- (1) For the purpose of adjudging under Sections 19A, 19B, 19C, 19D, 19E, 19F and 19G, the Board shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the Sections specified in sub-Section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those Sections.

19-I. Factors to be taken into account by adjudicating officer.-- While adjudging the quantum of penalty under Section 19H, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default ;
- (c) the repetitive nature of the default.

19J. Crediting sum realised by way of penalties to Consolidated Fund of India.-- All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India."

Section 18 - Substitution of new Section for Section 20

For Section 20 of the principal Act, the following Section shall be substituted, namely:-

"20. Offences.-- (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both."

Section 19 - Substitution of new Sections for Section 22

For Section 22 of the principal Act, the following Sections shall be substituted, namely:-

"22. Cognizance of offences by courts.-- (1) No court shall take cognizance of any offence punishable under this Act or any rules or any regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange

Board of India or by any person.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

22A. Composition of certain offences.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

22B. Power to grant immunity.-- (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that recommendation of the Board under this sub-Section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-Section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

Section 20 - Amendment of Section 23A

In Section 23A of the principal Act, in sub-Section (1), after the words, brackets and figures "Save as provided in sub-Section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999 (32 of 1999), under this Act, or the regulations made thereunder," and before the words "may prefer an appeal to a Securities Appellate Tribunal having a jurisdiction in the matter," the words "or by an order made by an adjudicating officer under this Act" shall be inserted.

Section 21 - Substitution of new Section for Section 23F

For Section 23F of the principal Act, the following shall be substituted, namely:-

"23F. Appeal to Supreme Court.-- Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

Section 22 - Amendment of Section 24

In Section 24 of the principal Act, in sub-Section (2), for clause (a), the following clauses shall be substituted, namely:-

"(a) the manner of inquiry under sub-Section (1) of Section 19H;

(aa) the time within which an appeal may be preferred under sub-Section (1) of Section 23;"

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