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# SECURITIES APPELLATE TRIBUNAL: A TOOTHLESS TIGER

AUTHORED BY - NIKHIL ASWANI

## **Abstract**

Tribunals, in India, have been established to primarily ease the burden on courts and are the new “adjudicators of disputes” in specialized spheres of law. Dispute Resolution has, in stages, come to be transferred to the “decision-making authority of tribunals” when it comes to complicated issues like taxation, securities law and its regulation, recovery of debts and the banking sector etc.

This newfound transfer of jurisdiction to tribunals to resolve disputes has met with certain hurdles, inasmuch as, the extent of transfer and the capability of tribunals to enforce their own decisions, “either through the carrot or the stick”. Traditional courts regulated by the Code of Civil Procedure, 1908 (“**CPC**”) have an independent enforcement mechanism through Order XXI whereby decrees passed by civil courts can be enforced through various mediums and the same acts as a valuable deterrent for the judgment debtor to comply with directions of the civil court before punitive measures are taken against him.

However, the tribunals, in some spheres of law, specifically ‘securities law’ find a glaring absence of enforcement mechanisms whereby penalties cannot be imposed by the appellate authorities; deterrent orders cannot be passed without impartiality; and the Supreme Court’s constant intervention and the practice of staying staunch orders dilutes the impact of the appellate authority and renders its decisions as a mere “rubber stamp” or just a “procedural hurdle”.

Securities & Exchange Board of India Act, 1992 (“**SEBI Act**” or “**the Act**”) was formulated to protect the investor interest in securities and promotion & regulation of the concerned securities market. SEBI (“**the Board**”) was created as a market regulator and within the Board a separate wing was created for adjudication of offences, disputes or penalties at the first instance, through the title of an ‘adjudicating officer’.<sup>1</sup> The problem comes to the forefront

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<sup>1</sup> The Securities & Exchange Board of India Act, 1992, § 15-I.

when the appellate mechanism in the Act, namely Securities Appellate Tribunal<sup>2</sup> (“SAT”) is rendered “unarmed with no such similar powers” and its decisions being “labelled as a mere additional step” for a disgruntled party to forcefully opt for, before reaching the second appellate stage<sup>3</sup>, namely the Apex Court.

### **India’s Wave Of ‘Tribunalization’ As An Effective Way Of Reducing The Backlog Of Cases**

India’s legal system has been plagued with such a huge number of disputes which have clogged the traditional courts and the same has led to an unending delay in adjudication of cases, representing an unprecedented backlog which increases with time. It is foolish to expect one court to handle all sorts of cases ranging from a complicated issue of taxation to an evolving issue of preserving the environment. The Legislature was posed with the question of farming out the duty of adjudication of disputes to ‘specialized tribunals’ ever since independence and the same was considered as the most effective method of handling the dispute adjudication coupled with the fast-paced increase in population of India.

As a result, the wave of tribunalization hit India with a welcoming move. Specific sectors like taxation saw this change post-independence. It was the Swaran Singh Committee in 1986 which recommended establishing tribunals in three sectors to reduce the backlog of cases. One rider along with the recommendation was that decisions of such tribunals be subject to the jurisdiction of the Apex Court under “Article 136 of the Constitution” and should exclude the writ jurisdiction under “Article 226/227 of the Constitution” effectively by-passing the High Courts. With the insertion of Articles 323A and 323B, constitution of tribunals was stamped by the Constitution.

The decision in “L. Chandra Kumar v. Union of India<sup>4</sup>”, clarified the jurisdiction of the High Courts over decisions of the tribunals, inasmuch as, it was held that the role of tribunals was “supplemental in nature” with respect to the High Courts and definitely not ‘substitutional’ in nature. However, the appellate mechanism in all such tribunals effectively sidestepped the jurisdiction of the High Courts to ease their burden and passed the baton to the Apex Court to act as the second and final appellate authority, while maintaining the position that High Courts,

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<sup>2</sup> Id at § 15-K.

<sup>3</sup> Id at § 15-Z.

<sup>4</sup> L. Chandra Kumar v. Union of India, (1997) 3 SCC 261, at 272.

under “Article 227 of the Constitution” can exercise supervisory jurisdiction over decisions of the tribunals in case of patent ‘unreasonableness’ or ‘unfairness’ or ‘non-compliance of principles of natural justice’.

In order to expedite the rate of resolving disputes, ‘Tribunals were set up to serve’ an important role in providing justice and the major impact came from the tribunals through the factor of a specialized bench ensuring that members which constitute a bench have certain minimum expertise dealing with the respective subject-matter which further strengthens confidence of the parties in decisions rendered by such specialized tribunals. Tribunals have thus, not only been vested with subject matter disputes which were originally meant for courts by the will of the Legislature<sup>5</sup>, but have also created a relatively new culture by endorsing to adjudicate disputes over limited areas of law where the members of the tribunal have significant experience with the same unlike in the traditional court mechanism.

### **Role Of Sebi As The Market Regulator & Adjudicator Of The First Instance Vis-À-Vis The Securities Appellate Tribunal**

India’s economic growth massively depends on the success of the stock market, i.e. more number of people investing rather than choosing the medium of saving. The role of investing in financial markets involves channelising savings to investments and thereby segregating these two activities. Therefore, ‘savers and investors are not constrained by their individual abilities’, but by the economy’s ability to invest and save respectively,<sup>6</sup> which inevitably ‘enhances savings and investment in the economy.’ The securities market enables a person “to allocate his savings among a number of investments. This helps him to diversify risks among many enterprises, which increases the likelihood of long-term overall gains.”

SEBI is the capital and commodities market regulator of India drawing its competence from the SEBI Act. This Board draws certain different types of powers from the Act, namely “quasi-legislative, quasi-executive and quasi-judicial powers in relation to the securities markets in India”. SAT is an “appellate body” to hear appeals against any order passed by SEBI or its adjudicating officers. Section 15-T of the Act empowers SAT to be the appellate authority and adjudicate appeals from decisions of an adjudicating officer of SEBI; or an order passed by

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<sup>5</sup> Rojer Mathew vs. South Indian Bank Ltd. and Ors. (2020) 6 SCC 1, at 1-3 (per D.Y. Chandrachud J.).

<sup>6</sup> G.N. Bajpai, Significance of Securities Market in the Growth of an Economy: An Indian Context, S. D. Gupta Memorial Lecture Chairman, SEBI at Mumbai on March 13, 2003.

“the Insurance Regulatory and Development Authority” or an order passed by “the Pension Fund Regulatory and Development Authority”. The authority and immense value of SAT emerges from the factum of it being the appellate authority of three original mechanisms of dispute resolution widening its jurisdiction over three spheres of law.

It is pertinent to mention the crucial role of an appellate mechanism such as SAT in an emerging economy like India where a major chunk of the population is still unaware of the potential of its own stock market. Where the focus of India towards its stock market is ever growing, one cannot underscore the increasing number of disputes and offences which stem from such a fast-paced environment where persons often violate the statutory and regulatory norms to “earn a quick buck”. The specialized tribunals have been plagued with cases of insider trading and other such regulatory offences, penalties for which are already stipulated in the SEBI Act.

An intriguing issue comes to the forefront where such power to impose such penalties vests only with the adjudicating officer of SEBI and not with the specialized bench of SAT, which is ironical since the latter is the appellate authority and shall ordinarily have more powers to exercise and more functions to discharge than the adjudicating officer of SEBI. Elaborating on the statements mentioned above, a closer look can be taken at Section 15-I of the Act which provides “the adjudicating officer of SEBI to impose a penalty on any person committing an offence as mentioned in the previous sections of the Act.” The Adjudicating Officer has additional powers of “summoning and enforcing the attendance of any person” he/she “thinks fit” to examine and connected with the dispute-in-question and to hold a proper inquiry. When the SEBI Act empowers the Adjudicating Officer to impose a penalty as “he/she thinks fit”, even though a proper inquiry is required to be held, a significant amount of power is placed in the hands of the adjudicating officer in the form of ‘discretion’. It is a common phrase which is relevant in India, “where there is discretion, arbitrariness is inevitable”. Even though it is wrong to presume the existence of such a practice, the existence of SAT comes as a sigh of relief to act as the perfect overwatch on the adjudicatory functions of SEBI.

SAT’s functions being carried out in an effective manner assume more importance since SEBI is not just an adjudicatory body, it is also the sole market regulator which falls under the definition of a ‘State’ under “Article 12 of the Constitution”, thereby discharging public functions. Therefore, it is imperative for SAT to intricately analyse the appeals which come after impugning orders of the Adjudicating Officer of SEBI since the element of bias can never

be written off.

However, the reality is far from an ideal situation, inasmuch as, functions/powers of SAT are codified in the Act in such a manner that SAT is rendered unarmed and can cause no harm to SEBI even if the latter strays the path of 'rule of law'. As per Section 15-T(4) of the Act SAT's functions are limited to examining the impugned order of the adjudicating officer of SEBI. In other words, the statutory function of SAT is to either "confirm, modify or set aside the order appealed against". The same completely disables SAT from rendering an effective decision and basically precludes SAT from passing any independent directions. It is inconceivable to think that the Legislature intended to strip SAT from any power to pass independent directions and to merely examine the order appealed against.

### **Absence of Powers To Issue Contempt Proceedings with SAT Which Effectively Disables Its Independent Functioning**

All decrees, orders and/or directions of a civil court of tribunal are to be followed by the parties and any such hint of wilful disobedience of the above would attract contempt proceedings against the defaulting party. However, not all courts have inherent powers of contempt. Such a jurisdiction is extraordinary in nature and unless conferred upon, no ordinary court or tribunal can exercise the same. The same gathers strength from Contempt of Courts Act, 1971 whereby powers of contempt are conferred upon "courts of record", i.e. the High Courts u/s 10 and 11 of the 1971 Act and the Supreme Court u/s 14 of the 1971 Act.

One such avenue where the Legislature conferred powers of contempt proceedings was on the NCLT and NCLAT through 'Section 425 of the Companies Act, 2013'. This legislation existed in the post-Independence era in the form of Companies Act, 1956 and after the LPG policy in 1991, when India opened its gates of investment and sales to the world, formation, regulation and conduct of companies came under the scanner in the form of mode and manner of investment; allegations of oppression and mismanagement of minority shareholders in a company along with regulatory hurdles during mergers and amalgamations. The Legislature correctly estimated the importance of the tribunal created under the aegis of the newly created Companies Act, 2013 and empowered the adjudicating authority (NCLT) as well as the appellate authority (NCLAT) with powers to issue contempt proceedings in case of wilful disobedience of its orders and/or directions and highlighted that powers to NCLT and NCLAT

are the same as the powers given to a High Court under the 1971 Act.<sup>7</sup> It is disappointing to know that NCLAT's sibling in the securities market, namely SAT is not equipped with a similar power, rendering its decisions as a mere procedural step for the parties to appeal to the Supreme Court.

This legislative vacuum brings to light the need for empowering the Securities Appellate Tribunal with 'codified contempt powers'. SAT is the 'singular judicial authority' in India's vast and rapidly growing securities market, where billions are traded daily. Due to the recent focus on India's stock market, there has been a huge increase in number of parties committing offences under the SEBI Act and evading procedural requirements to avoid paying the requisite fees or parties committing the offence of insider trading to gain a competitive edge in the market. It is imperative that codified contempt powers are entrusted in the hands of SAT to effectively render justice. The same would act as a deterrent from the parties approaching the Supreme Court to opt for a second appeal and orders/directions of SAT would attain finality, not to mention the reduced burden to handle and entertain appeals by the Supreme Court.

The decision of "Phenomenal Plantations Limited v. SEBI"<sup>8</sup>, highlighted the incapacity of SAT to exercise powers of contempt in cases of wilful disobedience. The matter pertained to SEBI's alleged misconduct by sharing a letter which was alleged to be defamatory and undermined the whole case which was sub-judice. It was alleged that this letter was a mischievous attempt of SEBI to prejudice the proceedings going on in SAT. A stark observation was made by SAT citing that "it had no power to punish any person for contempt of the Tribunal" and the only direction it could give was 'to make a reference to the High Court' which was the appropriate court to exercise powers of contempt under the 1971 Act.

Such an observation germinates a thought into the mind of the researcher, "whether directions of SAT carry any significance or meaning if no such enforcement mechanism is provided?" This can be answered by taking a closer look at the provisions of the SEBI Act, specifically Section 15-U titled "Procedure and Powers of the Securities Appellate Tribunal". Sub-section (1) clearly states that "SAT shall have powers to regulate their own procedure."<sup>9</sup> This provision indicates a certain level of flexibility in the directions that can be passed by SAT. Furthermore,

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<sup>7</sup> The Companies Act, 2013, § 425.

<sup>8</sup> Securities Appellate Tribunal, Mumbai, Phenomenal Plantations Ltd. v. SEBI, Appeal No. 45/2001 (March 28, 2002).

<sup>9</sup> Supra Note 2 at § 15-U (1).

the argument of not having an independent enforcement mechanism fails in front of sub-section (2)<sup>10</sup> which provides that “SAT shall have, for the purposes of discharging their functions, the same powers as are vested in a civil court under CPC”.

When it is clear through sub-section (2) of Section 15-U of the Act that SAT is vested with the ‘same powers as that of a civil court’, it would not be a stretch to conclude that SAT is vested with enforcement powers akin to that of a civil court under Order XXI. The force of this provision is sufficient to provide SAT with a clear mandate that it has the power to enforce its own orders and/or directions, if need be. In spite of such powers, if a party repeatedly fails to satisfy the directions of SAT, the Appellate Tribunal has the power to impose costs as a punitive measure to tune up the conduct of the parties. In most occasions, it is SEBI whose conduct is less than questionable and has to be put into line by SAT and there are various instances where costs have been imposed by SAT as a punitive measure or last resort or even staunch and glaring remarks have been made against the apparent misconduct of SEBI.

However, the researcher still persists on the need to include codified powers in order for SAT to exercise contempt jurisdiction which will further aid the Tribunal to discharge its functions better and its orders/directions would act as a sure-shot deterrent for parties to follow without question. This vacuum also assumes significance looking at the securities market in India gaining massive attention and scrutiny off-late.

### **Long Standing Tussle Between SEBI and SAT With Special Emphasis To The “Vital Communications” Case**

SEBI and SAT have been at loggerheads since time immemorial. It is understandable for SEBI to be unhappy with such glaringly disrespectful remarks made by SAT, but the latter would feel it is justified if such misconduct comes from a statutory authority and regulator of the securities market in India. Passing an adverse order against SEBI has been somewhat of a daily routine for SAT. From an objective point of view, one would assume that SEBI would read the directions and observations of SAT and attempt to identify its shortcomings and re-define their functioning. However, the reality tells us that SEBI sticks with an attitude of a teenager and cries foul to the referee (being the Supreme Court) every time SAT passes a staunch remark against it.

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<sup>10</sup> Id at § 15-U (2).

There have been numerous instances where SAT has pulled up SEBI for its judicial misconduct, such as in the decision of “Doel Saha v. Harishchandra Gupta”<sup>11</sup>, SAT remarked that “SEBI had a callous attitude since it had not complied with its orders.” This decision was taken by SAT after it observed that since 2008 SEBI had failed to conduct proper inquiry on the ‘complaints filed by investors of Vital Communications Ltd.’ and it was 2014 when the matter was taken up by SAT. It was observed that “solemn assurances were given by SEBI and yet it failed to conduct a proper inquiry and did not pass appropriate orders” which demonstrates ‘highly deplorable conduct on the part of officers of SEBI’.<sup>12</sup>

When passing of such remarks does not work in favor of SAT and it was observed that SEBI does not learn from its mistakes, SAT resorted to pass even more punitive but justified orders. In the matter concerning the company titled “Sterling International Enterprises Ltd.”, adjudication proceedings were initiated by SEBI for statutory violations of unfair trade practices and show-cause notice was issued. The same was appealed before SAT<sup>13</sup> in which the pleadings stage was not completed for a long time at the instance of SEBI. SAT gave a final direction to the Adjudicating officer of SEBI ‘to file a timely reply and this direction was again not complied with’. Being frustrated with SEBI’s casual attitude, SAT proceeded to record in its order that conduct of the adjudicating officer of SEBI amounted to “judicial dishonesty for dealing the issue in a very casual manner” and further directed the reply be filed by the officer himself requiring his attendance before SAT. The same could not be digested by SEBI and they immediately approached the Apex Court, whereby in the decision of “Securities and Exchange Board of India v. Yatin Pandya HUF”<sup>14</sup>, SEBI managed to obtain a stay of such an adverse direction as well as the observation made by SAT.

In a significant decision by SAT in 2022 titled “Vital Communications Ltd. v. Securities and Exchange Board of India”<sup>15</sup>, cost of INR 8,00,000/- (Rupees Eight Lakhs Only) was imposed on SEBI for disregarding the previous orders/directions of SAT and SEBI instead ‘conducted a fresh investigation for disgorgement’, which was completely without any jurisdiction as was

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<sup>11</sup> Securities Appellate Tribunal, Mumbai, Doel Saha v. Harishchandra Gupta, Misc. Appln. No. 53/2014 (July 13, 2014)

<sup>12</sup> Id.

<sup>13</sup> Securities Appellate Tribunal, Mumbai, Appeal No. 719/2021 (December 23, 2021).

<sup>14</sup> Securities and Exchange Board of India v. Yatin Pandya HUF, Civil Appeal No. 7904/2021 (Supreme Court) (January 24, 2022).

<sup>15</sup> Securities Appellate Tribunal, Vital Communications Ltd. v. SEBI, Mumbai, Appeal No. 318/2019 (December 20, 2021).

observed by SAT. It was observed that due to SEBI's misconduct parties spent considerable amount of time and resources fighting the proceedings and labelled the fresh initiation of proceedings as an 'abuse of process of law', entitling the aggrieved party for costs. Accordingly, INR 8,00,000/- was imposed on SEBI being INR 2,00,000/- each for the four (4) parties.

With little hesitation, SEBI moved the Apex Court seeking a stay of such an adverse direction by the SAT. This time, like the previous instance, Supreme Court came to the rescue of SEBI and stayed the directions<sup>16</sup> of paying cost of INR 8,00,000/. What is interesting in the case is that SEBI argued "that SAT does not have jurisdiction and is not empowered under the 1992 Act to impose costs on SEBI". This submission intrigued the Supreme Court as well and a 'question of law was framed' which was subsequently reserved for judgment on 05.03.2025 and judgment for the same is awaited eagerly.

Looking at provisions of SEBI Act, the researcher has already pointed out that Section 15-U (2) mentions that powers of SAT are akin to that of powers of a civil court as prescribed under CPC. A closer look at the provisions of CPC reveal that 'Section 35 empowers a civil court to impose costs while writing reasons for it'. There is no reason why SAT, an appellate authority, should be stripped off the power to impose costs, specially on a party that is being accused of judicial misconduct or having a casual attitude. This argument carries more weight when Section 24 of SEBI Act comes into the picture which mentions that "jurisdiction of Adjudicating Officer of SEBI enjoys adversarial powers, i.e. imposition of penalties and ensuring compliance through imprisonment as well." If Adjudicating Officer of SEBI, which is the first stage of dispute resolution can wield such a power of imposing monetary penalties, what is stopping SAT, an appellate mechanism from exercising the same.

Lastly, "Rule 21 of Securities Appellate Tribunal (Procedure) Rules, 2000", provides the power to SAT to, "make, such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice." This residuary provision can come to the rescue of SAT and the same is similar to Rule 11 of the National Company Law Appellate Tribunal Rules, 2016. The researcher submits that denuding SAT from its power to impose costs on SEBI would let SEBI run wild and free without an

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<sup>16</sup> Securities and Exchange Board of India v. Vital Communications Ltd., Civil Appeal No. 1649/2022 (Supreme Court) (March 16,2022).

appropriate watchdog and this situation would be contrary to the scheme of SEBI Act.

### **Conclusion And Suggestions**

The wave of tribunalization hit India to ease the burden on courts and to ensure that a specialized bench equipped with certain skills and knowledge was adjudicating certain subject-matter disputes. Appellate mechanism of the tribunals was created to ease the burden on High Courts and therefore, the second appellate stage was provided to the Supreme Court, while maintaining the supervisory jurisdiction of the High Court. However, the same would be rendered infructuous if tribunals would not be equipped with powers to exercise contempt jurisdiction and it would be a fruitless exercise to refer matters of contempt to a High Court, adding on to the backlog of cases. The researcher ponders on this legislative vacuum existing in the SEBI Act, 1992 and concludes that a paradoxical flaw exists in the legislative scheme, inasmuch as, if the parties have to take the route of a High Court concerning contempt of court, then the whole phenomena of tribunalisation is rendered useless.

SEBI being the first hurdle for adjudication has powers to impose penalties and non-compliance of the same leads to the threat of punishment through imprisonment under Section 24 of the Act. However, orders of SAT if not complied do not lead to any such conclusion or result. This in itself is a glaring example of an unreasonable conclusion which cannot exist while upholding the 'rule of law'. The effectiveness of an appellate mechanism under the SEBI Act has been reduced to being a mere procedural hurdle for the parties and decisions of SAT carry little to no weight since SEBI appeals almost every decision to mask its misconduct seeking assistance from the Apex Court. The Vital Communications decision which was heard and reserved for judgment on 05.03.2025 will hopefully settle the question, 'whether SAT is empowered to impose costs on SEBI?'

Lastly, the practice of SEBI being unhappy with the staunch remarks of SAT on its procedure and behaviour and discharging its functions, do not have to result in an automatic and mechanic appeal before the Supreme Court since merits of the case are completely disregarded before filing such appeals which just prolong the use of public funds. In conclusion, the researcher suggests that there is an urgent and imminent need to codify contempt powers for the SAT since the same would ensure that 'non-compliant market participants' do not escape from the Tribunal's clutches as the 'what ifs' in this regard, are numerous.