



Widening the Ambit of Consent Mechanism

 drishtias.com/printpdf/widening-the-ambit-of-consent-mechanism

A panel set up by SEBI under the chairmanship of Supreme Court former Justice A.R. Dave to review the consent mechanism has proposed changes for settling market violations.

Consent Mechanism

- Under the consent mechanism a **fine is paid without any admission of wrongdoing**. Under consent mechanism norms, someone who anticipates penal actions by SEBI can settle the matter in question by offering SEBI a fee.
- The consent process was introduced in 2007 with the idea of reducing the regulatory time spent on minor violations. It initially gained popularity among stock market participants, as it helped save time and expenses of a legal proceeding.
- However, relatively serious violations, such as insider trading, fraudulent and unfair trade practices, among others, cannot be settled via consent.
- Violations that have not had a market-wide impact or not caused substantial loss to investors will be eligible to apply for settlement under consent mechanism.
- The smooth functioning of the consent route is also critical for SEBI, which is overburdened with pending litigation.

Key Points

- The committee has suggested measures such as **confidential settlement, higher penalties on late submission of consent applications and extending the ambit of consent mechanism for any violations being investigated by SEBI**.
- The rationale behind the proposed changes is to broaden the ambit of offences that can be settled under the route. It will also help SEBI reduce the burden of pending cases.
- Public concern over accountability and responsibility has to be addressed in a more cost-effective, less time-consuming manner by seeking means and devices to arrive at an arrangement relieving the aggrieved of a cumbersome procedure.

- The settlement process should not be used as a platform for forum shopping. Accordingly, an application shall not be filed for the same alleged default again, if the earlier application was rejected.
 - Such a step will ensure that the settlement process is taken seriously by an applicant.
 - The recommendation can ensure that the Board's time will not be misused or wasted by non-genuine applications.
- The panel has also suggested adding a new provision on **settlement with confidentiality**.
 - The Settlement Regulation do not have a provision for settlement with confidentiality.
 - All settlement orders contain details of the applicant and are published on SEBI website.
 - There is no explicit provisions for an applicant to voluntarily provide information to the regulator relating to the fraudulent and unfair trade practices and other serious defaults that would assist it in dealing with any inquiry, investigation, inspection, and audit.
 - Confidentiality is multi-faceted and depends on the nature of the assistance provided to the board. There will not be any public disclosure unless such disclosure is made by the applicant himself or agreed to by the applicant in writing.

Effect of Widening the Ambit of the Consent Mechanism

- Widening the ambit of the consent mechanism **will reduce the administrative burden on SEBI**.
- Current settlement regulations disallow violations such as insider trading, fraudulent and unfair trade practices such as front-running, and the failure to make an open offer in case of a takeover to be settled through the consent window.
- Violations such as failure to redress investor grievances, failure to make material disclosure in offer documents and non-compliance of SEBI notices are also excluded from the scope of settling with a fee.

NOTE:

- **Forum shopping** is the practice of choosing a country in which to bring a legal case through the Courts on the basis of which country's laws are the most favourable. In some instances, there is a choice of jurisdiction
- **Insider trading** is the buying or selling of a security by someone who has access to material nonpublic information about the security.

- **Front-running** is the practice of a broker or trader stepping in front of large orders to gain an economic advantage. It also occurs when a broker buys shares for their account ahead of a firm's strong buy recommendation to clients. Front-running is also known as tailgating. Front-running is a prohibited practice for brokers.