

(Guest Post) Supreme Court: SAT has no jurisdiction to adjudicate on SEBI's 'Administrative Circulars'

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In a very interesting decision, the Supreme Court interpreted the provisions of SEBI Act ('the Act'), and ruled on a contentious question – **Whether administrative circular that is issued by SEBI under the Act can be the subject matter of appeal u/s 15T of the Act (<https://indiankanoon.org/doc/176066466/>)?**

This article is an analysis of the Apex Court's judgment in National Securities Depository Ltd. V. Securities and Exchange Board Of India (http://www.sebi.gov.in/cms/sebi_data/attachdocs/1490176050209.pdf) ["NSDL v SEBI"] [dated March 7, 2017].

Factual Matrix

On November 9, 2005, SEBI had issued Circular relating to "Review of dematerialization charges" u/s 11(1) of the Act. By the said circular, Depositories were advised that no charges shall be levied on Depository Participants ('DPs') and consequently by DPs on Beneficiary Owner ('BO') when a BO transfers all securities lying in his account to another branch of the same DP or to another DP of the

same depository or another depository. The objective of SEBI's Circular was: (i) To protect the interests of investors in securities, (ii) To promote the development of securities market, and (iii) To regulate the securities market.

A preliminary objection was raised by the regulator in the appeal filed by NSDL before the Securities Appellate Tribunal ('SAT'). It was urged that by the under the Act, SEBI has administrative, legislative and quasi-judicial functions and that the appeals preferred to the SAT can only be from quasi-judicial orders and not administrative and legislative orders. This preliminary objection was turned down by SAT by its **judgment dated September 29, 2006**. The SAT ruled that the expression "order" is extremely wide. Since there is nothing in the Act to restrict an appeal only against quasi-judicial orders, appeals would lie against all three types of orders under the Act i.e. administrative orders, legislative orders as well as quasi-judicial orders.

The Supreme Court's Analysis

The Apex Court observed that SEBI is an expert body created by the Act which has administrative, legislative and quasi-judicial functions. With an objective to decipher the critical issues and provisions relating to SEBI's quasi-judicial functions, SC perused the following provisions of the Act:

- o [Section 11 \(https://indiankanoon.org/doc/741499/\)](https://indiankanoon.org/doc/741499/) (relating to 'Functions of SEBI'),
- o [Section 11B \(https://indiankanoon.org/doc/1384717/\)](https://indiankanoon.org/doc/1384717/) (relating to 'Powers of SEBI to issue directions'),
- o [Section 12 \(https://indiankanoon.org/doc/1858817/\)](https://indiankanoon.org/doc/1858817/) (relating to 'Registration of stock brokers, sub-brokers, share transfer agents'),
- o [Section 15I \(https://indiankanoon.org/doc/102941821/\)](https://indiankanoon.org/doc/102941821/) (relating to 'Power to adjudicate'),
- o [Section 15T \(https://indiankanoon.org/doc/176066466/\)](https://indiankanoon.org/doc/176066466/) (relating to 'Appeal to SAT'),
- o [Section 30 \(https://indiankanoon.org/doc/1308863/\)](https://indiankanoon.org/doc/1308863/) (relating to 'SEBI's power to make Regulations').

SC primarily referred to 2 judgments which dealt with similar expert bodies. The Court relied on its own ruling in *PTC India Ltd. vs. Central Electricity Regulatory Commission* (<https://indiankanoon.org/doc/395434/>) [1], wherein it had held that Appellate Tribunal for Electricity has no jurisdiction to decide the validity of regulations framed by the Central Electricity Regulatory Commission u/s 178 of Electricity Act, 2003 (<http://www.lawzonline.com/bareacts/electricity-act/section178-electricity-act.htm>). The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Indian Constitution (<https://indiankanoon.org/doc/1712542/>). SC also relied on its own ruling in *BSNL Vs TRAI* (<http://www.advocatekhaj.com/library/judgments/announcement.php?WID=4224>) [2], wherein it had held that Telecom Disputes Settlement and Appellate Tribunal ['TDSAT'] does not have such jurisdiction on the Regulations being framed by TRAI u/s 36 of the TRAI Act ([https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjc-PjP85vTAhWHRY8KHcl_A1YQFggiMAE&url=http%3A%2F%2Fwww.tdsat.nic.in%2FVol.1_%2520Part-1\(bare%2520acts\).pdf&usg=AFOjCNFIXe8N13T70wXda0hUbskJFKpXxQ&sig2=vvPJ4Daa-FvJP](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjc-PjP85vTAhWHRY8KHcl_A1YQFggiMAE&url=http%3A%2F%2Fwww.tdsat.nic.in%2FVol.1_%2520Part-1(bare%2520acts).pdf&usg=AFOjCNFIXe8N13T70wXda0hUbskJFKpXxQ&sig2=vvPJ4Daa-FvJP)), being legislative in nature.

SC noted that the presiding officer u/s 15M of the Act (<https://indiankanoon.org/doc/1713162/>) has to be a sitting or a retired Judge of the SC, or a sitting or retired Chief Justice of a High Court (HC), or is a sitting or retired judge of a HC who has completed not less than 7 years of service as a judge in a HC. The Apex Court opined that "This is one indicia of the fact that the Appellate Tribunal, being manned by a member of the higher judiciary, is intended to hear appeals only against quasi-judicial orders."