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Secondary market ban for one year

Consent order settles case over alleged routing of money raised overseas to the stock market in 2007

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The capital market regulator, Securities and Exchange Board of India (Sebi), on Friday, barred Anil Ambani and four other officials of Reliance Group—till recently known as the Reliance-Anil Dhirubhai Ambani Group (R-Adag)—companies from investing in listed shares until December 2011.

Two group firms, Reliance Infrastructure Ltd (R-Infra) and Reliance Natural Resources Ltd (RNRL), too, have been barred from making such investment till December 2012.

Sebi, however, has not banned any entity from dealing in mutual funds, primary issues, buybacks and open offers.

The directives are part of a consent order to settle a case that began in June 2010 when Sebi issued show-cause notices to these firms and five executives, including Ambani, for allegedly routing money raised through overseas bonds to the stock market in 2007.

Sebi had asked R-Infra, RNRL, Ambani (chairman of RNRL and chairman and managing director of R-Infra), and four executives—Satish Seth, vice-chairman of R-Infra; and S.C. Gupta, J.P. Chalasani and Lalit Jalan, directors of R-Infra —for explanations over the alleged violation of overseas debt norms.

On Friday, the case was settled for `50 crore, the highest consent fee paid for any case related to any corporate group.

The regulator also ordered the two companies to implement a policy of rotation of the statutory auditors and directed them not to re-appoint the auditors (as of March 2010) for a period of three years, beginning the fiscal 2011.

Consent orders settle administrative or civil proceedings between the regulator and a person (party), who may prima facie be found to have violated securities laws. Such an order may or may not determine that a violation has occurred.

“Conditions in the consent orders, in addition to payment of monies, such as restriction on trading in the secondary market serve as a deterrent and make the consent order regime more effective. This would help in avoiding misuse of the consent order process,” said Vyapak Desai, head (international litigation and arbitration practice) at law firm Nishith Desai Associates.

While Sebi’s order will only restrain the entities from buying listed shares, an official at one of the group firms said none of the entities mentioned in the order has, in any case, bought any listed share in the secondary market in the past few years.

RNRL recently got merged with Reliance Power Ltd (R-Power), and it is not clear whether the order will cover R-Power as well.

“Some of the businesses of RNRL have been demerged with R-Power and shares of RNRL have been delisted. But RNRL and R-Power continue to remain as two separate entities even today. So, the order will not affect the operations of R-Power in anyway," the official said. He declined to be named.

An R-Infra spokesman said: "Reliance Infra has voluntarily settled Sebi show-cause proceedings of June 2010 against the company and its directors... The settlement (was) made in interests of investors to pre-empt unnecessary and time-consuming litigation."

"Voluntary decision to not make investments in listed securities in the secondary market (till next year by the company, and this year by the directors) was to conserve resources for investment in own substantial projects, and will not impact growth prospects in any manner," said the spokesman.

In an emailed statement, the spokesman also said: "Rotation of auditors is in accordance with risk-management best practices, and already implemented."

Sebi began its probe after receiving information that some of the money raised through external commercial borrowings (ECB)s and foreign currency convertible bonds (FCCBs) by group companies had been ploughed into the stock market and that investment vehicles abroad had been used for this.

The regulator conducted investigations relating to the dealings in the shares of Reliance Communications Ltd (RCom).

Sebi said that its investigations were aimed at checking whether the entities had violated the Sebi Act, Sebi (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and foreign institutional investors (FII) norms.

According to Sebi's investigations, R-Infra and RNRL were prima facie responsible for misrepresenting the nature of investments in yield management certificates/deposits, and the profits and losses in their annual reports for the fiscal years 2007, 2008 and 2009.

It also found misuse of FII regulations.

The government had on 1 December 2009, in a written response to a query raised in the Upper House of Parliament, said that three firms of R-Adag—R-Infra, RNRL and RCom—had violated overseas debt norms.

In a written reply, minister of state for finance Namo Narain Meena said end-use violations had been observed by the Reserve Bank of India (RBI) regarding two ECB transactions—of $360 million and $150 million—by R-Infra.

The company brought the proceeds raised through the ECBs to India and these were not deployed for the declared end-use in violation of existing guidelines, the minister had said.

RNRL issued FCCBs worth $300 million for the purpose of pursuing projects under the automatic route. As much as $275 million was brought to India in May 2007 and was parked in debt mutual funds pending utilization.

Subsequently, in August 2008, an amount of `1,160 crore was invested in a wholly owned subsidiary in Singapore, the minister said.

Since the alleged transactions had a cross-border angle and since RBI does not have privileges of investigation, the issue had been referred to the enforcement directorate for investigation, the minister had said.

On 9 September 2010, the entities proposed a settlement of Sebi's proceedings through a consent order, to which Sebi agreed on 4 January.

As per the order, R-Infra and the four officials were to jointly pay `25 crore towards settlement, while RNRL and Ambani were to pay another `25 crore towards consent.

The entire amount of `50 crore was to be paid jointly by the five persons in their individual capacities, and the two companies were not liable to bear any expense in this regard.

Sebi said the entire amount has been paid by Ambani and others without admitting or denying the charges.

The case could be reopened if Sebi discovers any representation made by the entities is false.

Shares of RCom lost 0.07% to close at `138.40 on Friday while R-Infra lost 1.4% and R-Power Ltd lost 1.11% on the Bombay Stock Exchange. The exchange's benchmark index, the Sensex, lost 1.68%.

V.K. Sharma, head of private broking and wealth management at **HDFC Securities Ltd**, said, "With the case being put to rest, some of the negative bias in the market pertaining to the two companies might go away."

"Inability to invest in the secondary market would not have much implication, since they can still deal in the primary market. Also, some other companies that are controlled by Anil Ambani, but not directly implicated in this matter, can still invest in the secondary market," Sharma added.

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Reliance Power has sued HT Media Ltd, publisher of Mint, *in the Bombay high court over a 12 May front-page story in Mint that it disputed. HT Media is contesting the case.*