

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph 033-22420638

Date: 22.10.2020

To,
Shri Ajay Tyagi, IAS
Chairman, Securities and Exchange Board of India
SEBI Bhawan, Plot No.C4-A, 'G' Block
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400051

Respected Sir,

Subject- Representation on the Settlement Scheme-2020 introduced in terms of Regulation 26 of the SEBI (Settlement Proceedings) Regulations, 2018 vide Public Notice dated July 27, 2020

This has reference to the "Settlement Scheme 2020" introduced by the Securities and Exchange Board of India (SEBI) in terms of Regulation 26 of the SEBI (Settlement Proceedings) Regulations 2018 vide Public Notice dated July 27, 2020 providing one time settlement opportunity to the entities who have executed trade reversals in the stock options segment of the BSE Limited between the period 1st April 2014 to 30th September, 2015 and against whom enforcement proceedings were initiated by SEBI.

In view of the same, we would like to make the following representations and humbly request your goodself to kindly consider the same:

1. **Validity of the Settlement Scheme-**

The Settlement Scheme, 2020 provides onetime settlement period which commenced from 1st August, 2020 and could be availed till 31st October 2020 (inclusive of both days).

Our Representation:

We request that, the period of onetime settlement should be extended till 31st March 2021 due to Corona Pandemic.

Justification for the representation:

Due to the outbreak of COVID-19, many companies had faced difficulties in sustaining their businesses and with no other option left were forced to shut down their business operations during the period of lockdown and even thereafter. The complete or

partial lockdown had not only affected the principal activities of the businesses but also affected the artillery activities associated with the entities.

As things have begun to partially normalize, the entities should be allowed to avail the benefits of the Settlement Scheme 2020 by way of extending the end period of the onetime Settlement Scheme from October 31, 2020 to March 31, 2021.

2. Settlement Amount-

To arrive at the Indicative Settlement Amount, three parameters were considered by the Board:

- (a) artificial volume
- (b) number of non-genuine trades and
- (c) number of contracts

resulting in creation of artificial volume/non-genuine trades.

Moreover, a uniform consolidated Settlement factor of 0.55 in all cases wherein the entities had executed reversal trades would be applicable while arriving Indicative Settlement Amount.

Our Representation:

We humbly request you to consider and revise the Settlement Amount up to a moderate limit, which may be at best uniform consolidated Settlement factor of 0.20 of net Profit or Loss in all cases. Settlement amount in all cases, should be based on the resultant NET profit or loss from transactions during the year/period. The Settlement Amount should not be left to the discretion of the Adjudicating Authority or any other authority but it should be prescribed in the Revised

Justification for the representation:

Amount to be paid by the entities under the Settlement Scheme 2020 are hefty in terms of cost to be paid as Settlement Amount. The amount should be definite based on NET Profit/ Loss which resulted from the transactions.

3. Action against entities not availing the Scheme-

The Scheme clarifies that after expiry of the Scheme, entities who do not avail the onetime settlement opportunity shall be liable for action as per Section 15-I of the SEBI Act, 1992.

Our Representation:

The action should be limited to monetary fine only.

4. Immunity from penalty and prosecution against entities availing the Scheme-

We request you to grant immunity to the **entities availing the Scheme** and persons associated with the said entities as mentioned in the Settlement Scheme from any inquiry, prosecution, punishment or disciplinary proceedings under the SEBI Act, 1992 or any other Act. Those availing the said Settlement Scheme should also be allowed immunity from penalty and prosecution under other laws including the Income Tax Act, the Companies Act and Prevention of Money Laundering Act, 2002 (PMLA) .

Justification for the representation: The entities who have entered such transactions should be encouraged to avail the settlement scheme as the purpose of the Government is not to prosecute entities. The immunity from penalty and prosecution under various laws is justified as one can not be punished twice for the one default and such immunity, as prated for will have tremendous positive impact for the success of scheme.

We request you to kindly consider the above representations favorably and we shall be pleased to provide any further information or clarification as may be desired by your good office.

Thanking you
Yours truly

CA Narendra Goyal, President, DTPA

**Advocate, Narayan Jain,
Chairperson, DTPA Representation Committee**

**Dr. (h.c) Advocate Mamta Binani (B.Com, FCS)
Co-Chairperson, DTPA Representation Committee
President (2016) of The Institute of Company Secretaries of India (ICSI)
Insolvency Law Award Winner (India) for 2020
Handphone: +91 9831099551**

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1. Smt. Nirmala Sitharaman

Hon'ble Union Finance Minister,
Ministry of Finance, Govt. of India
North Block, New Delhi-110001

2 Sri Anurag Singh Thakur

The Hon'ble Minister of State For Finance

3 Sri Rajesh Verma

Secretary, MCA