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Different Penalties For Similar Omissions In IPO Process Of DLF & CARE

In less than two months, market regulator Sebi has come out with contrasting orders about the role of merchant bankers and company promoters and top management in two similar cases, leading to confusion among market players and lawyers as to which of the two cases could eventually set the standard for future reference.

In the IPO offer documents of realty major DLF and ratings agency Credit Analysis and Research (CARE), there were instances of omissions of facts that were shared with investors. However, while in the CARE case six merchant bankers were together fined Rs 1 crore, in the DLF case, the promoters and some key officials were banned from the market for three years. The company, too, has been barred for raising funds from the market for three years. CARE's top management has been spared while in the DLF case merchant bankers have not been touched.

Sebi on Friday fined six merchant bankers for their negligence in clearly presenting the status of RBI rules relating to investments by nonresident investors in the IPO of CARE, a ratings agency in which PSU banks, including SBI and IDBI Bank, own about 32% stake but has no identifiable promoters. Earlier on October 13, Sebi had indicted DLF and its promoters and directors for alleged suppression of facts and inadequate disclosures in its 2007 IPO document. DLF has moved the Securities Appellate Tribunal and a final hearing in the case is scheduled for December 10.

“These are two similar cases, of which in the first case the punishment is on the promoters and key management personnel. In the second case, all the merchant bankers together are penalized. So naturally, the question is which of the two orders will prevail in future cases,” said Arun Kejriwal, director, KRIS, an investment advisory firm. The IPO documents of DLF and CARE show that four merchant bankers - Kotak Mahindra Capital Company, DSP Merrill Lynch, ICICI Securities and SBI Capital Markets - were common in the two IPOs. The other two who had also managed the CARE IPO and have been fined by Sebi are Edelweiss Financial Services and IDBI Capital Market.

The difference in Sebi's approach about who to haul up for inadequate disclosures in IPOs has also put lawyers in a spot. They said case laws play a crucial role in practice and here are two similar cases with two contrasting approach to fix responsibilities. Such instances can lead to confusion in future. They said the regulator should set an example for future reference. Lawyers and merchant bankers declined to go on record.

Market players are also confused that whether the orders were different because CARE, for all practical purposes, is a PSU while DLF is a private sector company. Although Sebi officials maintain they treat all companies equally, a former official from the regulator said that it usually goes soft on PSUs.

Merchant bankers, on their part, are also divided about who would share the penalty and by how much. This is because in every IPO, merchant bankers share the tasks and responsibilities at various stages of the IPO and they sign papers accordingly. “The merchant banker in the CARE issue who took care of the post market responsibilities may decline to share the penalty while others may insist that the merchant banker who did the main due diligence should pay the largest share of the penalty,” an industry veteran said.



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