

An Assessment of India's Regulations and Its Effort to Curb Insider Trading

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AIM

Aim of the project is to make an assessment on India's Insider Trading Regulations and to study about Insider trading and its impact on the securities market in India and tries to give some suggestions to curb illegal Insider Trading in India.

ABSTRACT

Insider trading which has become rampant in many countries. It nothing but dealing in the securities of a company by the insider on the basis of certain confidential information relating to the company which is not published nor in the public domain. Insider is the person who has received or had access to such un published price sensitive information. Insider trading involves the breach of fiduciary duty of the Insider. Insider trading is an economic offence. If it is not dealt properly, it will not only affect the economic growth of the state but also slows the capital inflow and foreign investment and also casts a slur on India's Securities Market. It also extremely detrimental to the growth of healthy securities market. The integrity of the securities market also will be affected.

Keywords: Insider Trading, SEBI, Connected Person, Price Sensitive Information, Shares and Securities.

1. RESEARCH PLAN

1.1 Research Objective

- 1) To protect the Investors from Insider trading.
- 2) To make awareness among the public
- 3) To analyses the impact of Insider trading.
- 4) To make better suggestions to the law enforcing authorities and companies to curb insider trading.

1.2 Research Question

Research focus on the better understanding of Insider trading and its impact. The focus is on gaining a better knowledge of the effects of insider trading in short and long run on the securities market

and role of SEBI and laws enacted to curb insider trading. Research also on focused on the various cases and their outcome and tried to make suggestions to curb insider trading in India.

- 1). Is There any similar pattern of insider trading?
- 2). What is the outcome of previous insider trading cases in India?
- 3). What are the Impacts of insider trading on the securities market and economy.
- 4). Are regulations being enough to curb Insider trading in India?
- 5). What more is needed to safeguard the investors and the financial market?

1.3 Research Methodology

Keeping the above specific objectives in view the present researcher adopted the appropriate methodology which may be described as historical, analytical, evaluative and prescriptive. The method adopted by the researcher in the present work is Doctrinal Method of Research (Explanatory and Descriptive). It begins with the identification of the problem and then takes up a search for related questions which offer an explanation of the problem. Material has been collected from various sources to trace the history of the law. The relevant case law was systematically collected, classified and then analysed with Primary and Secondary Sources (i.e.) Acts, Regulations, Case laws, Scholarly Articles.

2. LITERATURE REVIEW

“Critical Analysis on Illegal Insider Trading and Its Impact Actions to Curb Insider Trading in India – By V. R Maheswararao Paleti, Dr. Sapna Bansal, Anu Solanki”

- This paper examines insider trading and its effects on the Indian securities market while also attempting to offer some recommendations for reducing unlawful insider trading there.

“An Analysis of Insider Trading in India – by Sakshi Rewaria”

- This paper deal which the issues with respect to insider trading in our country India, how this concept eventually evolved and the measures been taken to regulate it.

“An Analysis of Insider Trading in India – by Shradha Rajgiri”

- This paper addresses the issue of insider trading, its evolution in India and the measures adopted by SEBI in order to curb insider trading.

3. LIMITATIONS OF STUDY

Effective prevention of Insider Trading in the lack of Law and less heavy-handed ways to curb Insider Trading is a concern. Though Policy makers have tightened procedures governing the release of Economic date. Though the prohibition against Insider trading has experienced intense scrutiny but it is the officials who are insiders is the player. The Law even itself is limited should be applicable in a broad manner. Mindset of Insiders are less likely to be caught, Stringent mechanisms need to be followed. Thus, it points to a deeper uncertainty about the policy goals of the law and How information flows can reasonably be regulated within an innovative, complex securities market.

4. INTRODUCTION

The effective functioning and governance of a corporate organisation are attributed to ensuring transparency, openness, and disclosure. To achieve these attributes, it is essential to maintain a positive relationship among the managers and the stakeholders, and embrace the faith of the investors. Investors are attracted by good corporate governance and this increases their reliance on the companies. The Directors of the companies constituting the Board of Directors play a major role in deciding the future of the company. The decisions of the board can affect the stock market reaction towards investors. Hence, the meetings and decisions of the board amount to confidential information. Confidential information is only shared when it is required for the benefit of the company. Hence, it is important to maintain the confidentiality of the information, until disclosed in public. It has been observed over the years that to gain an unfair advantage over others, the people working in the organisation manage to get their hands on confidential information and often engage in unfair trade. This is an unfair practice and morally wrong, which can have bad consequences. Hence, it is essential to curb these practices globally. There are steps taken by different governments to prohibit such practices via regulations globally. The problem of insider trading emerged with the introduction of the concept of trading of securities in the global market.

5. INSIDER TRADING: MEANING

Insider trading refers to the practice of purchasing or selling a publicly-traded company's securities while in possession of material information that is not yet public information. Insider dealing is seen as an abuse of an insider's position of trust and confidence and as harmful to the securities markets

By non-public information, we mean that the information is not legally out in the public domain and that only a handful of people directly related to the information possess. An example of an insider may be a corporate executive or someone in government who has access to an economic report before it is publicly released.

Detailed rules regarding insider trading are complicated and generally, vary from country to country. The definition of an "insider" can differ significantly under different jurisdictions. Some may follow a narrow definition and only consider people within the company with direct access to the information as an "insider." On the other hand, some may also consider people related to company officials as "insiders."

"Insider trading is an act of buying, selling, subscribing or agreeing to subscribe in the securities of a company, directly or indirectly, by the key management personnel or the director of the company who is anticipated to have access to Unpublished Price Sensitive Information with reference to securities of the company and it is deemed to be insider trading."

Insider Trading as a term is subject to many definitions and it includes both legal and prohibited activities.

Insider Trading happens on a daily basis, legally, when corporate management and Board of Directors buy or sell or deal with stocks of their own companies within confines of the company policies and regulations governing the trading. In other words, Insider Trading is buying, selling or dealing with a security while breaching the company policies or regulations, thus breaching the trust and confidence of a company while possessing material or non-public information about the securities.

E.g.:

- The CEO of a company divulges important information about the acquisition of his company to a friend who owns a substantial shareholding in the company. The friend acts upon the information and sells all his shares before the information is made public.
- A government employee acts upon his knowledge about a new regulation to be passed which will benefit a sugar-exporting firm and buys its shares before the regulation becomes public knowledge.
- A high-level employee overhears some conversation about a merger and understands its market impact and consequently buys the shares of the company in his father's account

5.1 Definition

Henry G. Manne defines Insider Trading as “Insider trading generally refers to the practice of corporate agents buying or selling their corporation securities without disclosing to the public significant information which is known by them but which has not affected the price of the security¹.”

SEBI describes as The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992, does not directly define the term Insider Trading. But it defines the term "Insider", "Connected Person" and "Price Sensitive Information".

Insider Trading is the trading of securities of a company by an Insider using company's non-public, price-sensitive information while causing losses to the company or profit to oneself. Insider: According to the Regulations, "Insider" means any person who is or was connected to the company or is deemed to have been connected with the company and who reasonably is expected to have access, connection to unpublished price sensitive information in relation to that company.

Connected Person: The Regulation defines that a "connected person" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 of a company, or is deemed to be the director of the company by virtue of sub-clause (10) of section 307 of the Act.

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company, whether temporary or permanent and who may reasonably be expected to have an access to unpublished, price sensitive information in relation to that company.

Price Sensitive Information: means any information, which relates directly or indirectly to a company and which if published, is likely to materially affect the price of securities of the company.

Following are some examples of Price Sensitive Information:

1. Financial results of the company.
2. Intended declaration of Dividends.
3. Issue of shares by way of public rights, bonus, etc.
4. Any major expansion plans or execution of new projects
5. Amalgamation, mergers and takeovers.
6. Disposal of the whole/substantial of the undertaking.

¹Henry G. Manne, “Definition of Insider Trading” in Fred S. McChesney (ed.) The Collected Works of Henry G. Manne 364 (2009).

6. HISTORY AND EVOLUTION OF INSIDER TRADING

Insider Trading has been around the United States from 1792. Hence, Laws against Insider Trading was formed strictly in the United States of America. Therefore, it is very important to understand Insider Trading from American point of view.

The market crash in 1929 due to prolonged "lack of investor's confidence" in securities market followed by the Great Depression of US Economy, gave rise to the enactment of the Securities Act of 1933. The foundation of Insider Trading law was laid down by the Supreme Court of US in *Strong vs Repide*. Statutory Insider Trading Laws were first passed in the year 1933 and the Securities Exchange act in 1934. The second act created SEC (Securities Exchange Commission) to regulate the secondary trading of securities. These Acts were meant to create more transparency among the investors and placing due diligence on the preparers of the documents containing detailed information about the Security.

In 1984, the case of *Dirks vs SEC*, no one was termed liable of Insider Trading as they disclosed the information for exposing a fraud and for no personal gains. This gave rise to the concept of "constructive insiders". Constructively Insiders are Lawyers, Investment Bankers and others who receive confidential information from a corporation while providing service to the corporation.

In the *United States vs Carpenter*, 1986, the Supreme Court cited that the usage of Inside Information received by virtue of confidential relationship must not be used or disclosed and by doing so, the individual gets charged for Insider Trading.

In 1997, *O'Hagans Case*, the court recognised that a company's information is its property " A Company's confidential information qualifies as property to which the company has a right of exclusive use. The undisclosed misappropriation of such information in violation of fiduciary duty constitutes fraud akin to embezzlement- the fraudulent appropriation to one's own use of money or goods entrusted to one's care by another."

In 2007, representatives Brian Baird and Louise Slaughter introduced a bill "Stop Trading on Congressional Knowledge Act or STOCK Act".

6.1 Insider trading Law in India

The dealings in securities in India traces back to East India company. The first Indian legislation to regulate the securities market is Bombay securities contract act 1925.

i Bombay Securities Contract act 1925

By the assent of the Governor General, Bombay under section 80(A) of government of India act. It was enacted and published in the Gazette on 29 December 1925. It was enacted to regulate and control certain contracts for the purchase and sale of securities in the city of Bombay and in elsewhere in Bombay presidency. It is primarily focused on registration and recognition of stock exchanges and the rules and regulations and control of transactions in securities. After independence the same rules were incorporated in capital issue control act 1947².

ii Capital issue control act 1947

It was one of the last laws passed by Parliament four months before independence. Under this act no company shall except with the consent of the central government make an issue of capital. It was enacted on 18 April 1947. There are rules prescribed for purchase and sale of securities, power to make rules etc in this act. It was further amended in 1957. Under capital issue control act 1947 the office of

² Bombay Act No. VIII of 1925.

controller of capital issue was established to approve issue of securities, price of securities. Recognizing the impact of insider trading government of India constituted Thomas committee in 1948. It was constituted by seeing the market crash in 1929 in USA. In United States of America, the market crash in 1929 led to the enactment of the securities exchange act of 1934 to govern securities transactions. The purpose of securities exchange act 1934 is to ensure fairness and investors' confidence. In India there is Indian companies act 1895 and companies act in 1913 to deal with companies but no insider trading regulations are there in those acts. So, government of India constituted Thomas committee in 1948 to make recommendations regarding insider trading³.

iii Thomas committee report 1948

Thomas committee in his report clearly demanded government of India to intervene urgently in the affairs of the securities market. In their observation the stock market is involved in serious state of things and they clearly stated that company directors are utilizing the stock market for their selfish ends. He has submitted 168 pages report to the government and recommended for urgent regulations. The Thomas committee clearly stated that there is urgent need to regulate the stock market and to make rules and bylaws and need of regulatory mechanism to curb objectionable practices in stock market. Basing on the recommendations of Thomas committee section 307 and 308 were added to the companies act 1956. By these provisions directors and management of the company has to record their shareholdings and they have to disclose their holdings. But it was not very much affective and stringent enough to prevent insider trading⁴.

iv Sachar committee report 1979

Sachar committee was constituted in 1978. It submitted its report in 1979 suggesting to have certain provisions to restrict the malpractices in securities market⁵.

v Patel Committee report 1986

Patel committee was constituted by the government of India in 1986 to make recommendations regarding insider trading. It also recommended to make several changes to the securities contract regulations⁶.

vi Abid Hussain committee report 1989

Abid Hussain committee was constituted in 1989. The committee recommended that insider trading must be liable for punishment under civil and criminal law and also, he recommended for a separate statute for prevention of insider trading. Basing on these recommendations and to keep confidence in the investors and in view of TISCO case of 1992 Paved the way for a comprehensive legislation⁷.

vii The Securities and exchange board of India SEBI act 1992

The securities and exchange board of India established in 1988 under the resolution of government of India to regulate the activities of the securities market. Increase in fraud, malpractices in the securities market and based on the recommendation of certain committees it was established as interim administrative body to function under Ministry of finance, government of India. SEBI was made as a statutory body by giving the powers to issue regulations, to supervise, to carry out investigations, to adjudicate and impose penalties and it came into force on 31 January 1992 as securities and exchange

³ The capital issue (Control) Act 1947, Act of 29 of 1947.

⁴ Report on the regulation of the stock market of India by P. J. Thomas 1948

⁵ Sachar committee report 1979

⁶ Patel committee report on stock exchange reforms 1986.

⁷ Abid Hussain committee report 1989.

board of India act 1992. SEBI broadly divided into three parts in functions. The protective functions of SEBI is to safeguard the interests of traders and investors, limit price rigging, prevent insider trading. SEBI is a quasi-judicial, quasi-legislative, quasi-executive body⁸.

Section 11 of SEBI act 1992 prescribes the power and functions of the board. Under section 11(2)(g) prevention of insider trading is one of its main duties of SEBI. Section 12 A which was amended in 2002 explicitly prohibits insider trading in securities of companies which are listed in stock exchanges.

viii SEBI (Insider trading) regulations 1992

Due to increase in cases of insider trading in exercise of the powers conferred by section 30 of SEBI act 1992, the board with the approval of central government made these regulations to prevent insider trading⁹.

Section 3 deals with prohibition on dealing on matters relating to insider trading.

Section 4 deals with investigation in the cases of insider trading. Section 6 deals with procedure for investigation.

SEBI insider trading regulations 1992 Section 2(C) defines insider as any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or has received or has had access to such unpublished price sensitive information.

Section 12 of insider trading regulations obligates all listed companies and organizations associated with the securities market to frame and adopt a code of internal Procedure and conduct.

ix SEBI (insider trading) Amendment regulations 2002

Basing on the recommendations made by Kumar Mangalam Birla committee the amendment tried to cover almost the entire gamut of insider trading. These amendments have incorporated a new definition of price sensitive information and the model code of conduct for prevention of insider trading. It also specified disclosure of shareholding in the listed companies during initial period and to do it continuously by the insiders¹⁰.

x SEBI (Prohibition of insider trading) (amendment) regulations 2003

In this amendment Form A, Form B, Form C, form D were introduced. These are forms to be submitted to the SEBI regarding their holdings in the company by the directors and other insiders of the company on a continuous basis to curb insider trading¹¹.

xi SEBI (Prohibition of insider trading) regulations 2008

By this amendment the definition of insider was broadened. It also reminded the model code of conduct regarding opposite trade and it clearly prescribed that model code of conduct cannot be diluted in any manner. It also prescribed certain time limit to inform SEBI and to the stock exchanges regarding acquisitions and takeovers. E-filing was also introduced through this amendment¹².

xii SEBI (Prohibition of insider trading) amendment regulations 2014

This amendment included the promoters and promoter group of company to disclose the holdings and transactions regarding the securities of the company. Previously they are not included. The disclosures

⁸ Securities and exchange board of India Act 1992, No. 15 of 1992.

⁹ SEBI (Prohibition of Insider trading) Regulations 1992.

¹⁰ SEBI (Insider trading) Amendment regulations 2002.

¹¹ SEBI (Prohibition of Insider trading) (Amendment) regulations 2003.

¹² SEBI (Prohibition of Insider trading) regulations 2008.

requirements under regulations 13 now included promoters and promoter group of company by this amendment¹³.

xiii Justice NK Sodhi committee report an insider trading 2013

In this report the committee enlarged the definition of insider and connected person. It recommended that insider must be prohibited from accessing unpublished price sensitive information unless required in discharge of his duties. Trading by insiders and their immediate relatives would need to disclose to the company and to the stock exchange. It also recommended to formulate a code of conduct by the companies to regulate, Monitor and report trading securities by the insiders and other connected persons. It also recommended that the insiders must prepare and submit trading plans and they are to be disclosed to the stock exchanges¹⁴.

xiv Insider trading under companies act 2013

Section 195 of chapter 12 prohibited insider trading of securities by any inside person including directors and other connected persons¹⁵. It also defined insider trading and price sensitive information. Under companies act 2013 insider trading is an act of subscribing, buying, selling, dealing in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company.

It was held that this section creating practical problems and more conflicts especially with respect to defences under this act and SEBI regulations and omitted by companies (Amendment) act 2017. Section 458 of companies act 2013 delegate powers to SEBI to prosecute insider trading in securities of listed companies and it also applies to before the listing.

7. RATIONALE BEHIND CONTROLLING INSIDER TRADING

To protect general investors. The manipulation of market by using Insider trading generally causes great losses to a company, thus leading to loss for investors or great profit only for the Insiders and no investor. It steals away the possibility of earning profit from an investor.

To protect the interest and reputation of the company. Once a company faces a problem of Insider Trading, investors tend to lose confidence in the company and stop investing in the company and also selling all the stocks of the company.

To maintain confidence in the stock exchange operations. With SEBI also regulating all the trading, if any Insider gets a chance to get past the laws, it decreases the investors' confidence in the stock exchange operations itself.

To maintain public confidence in the financial system as a whole. Indian Financial Market is still very low in the domestic investment rate. To have a healthy economy, a proper financial system is a must and for that, confidence in the market is of utmost importance.

The smooth operation of the securities market and its healthy growth and development depends on a large extend on the quality and integrity of the market. Such a market can alone inspire confidence in investors.

Insider trading leads to lose of confidence of investors in securities market as they feel that market is rigged and only the few, who have inside information get benefit and make profits from their

¹³ SEBI (Prohibition of Insider trading) (Amendment) regulations 2011.

¹⁴ Report of High-level committee to review the SEBI (Prohibition of Insider trading) regulations 1992 by N.K. Sodhi.

¹⁵ Companies Act 2013.

investments. Thus, process of insider trading corrupts the 'level playing field'. Hence the practice of insider trading is intended to be prohibited in order to sustain the investor's confidence in the integrity of the security market¹⁶.

Aside from preserving capital market efficiency, there are other justifications too for regulating insider trading. Insider trading causes unfairness to investors who possess inferior information, it undermines investor confidence and integrity of the securities markets, and it is also regarded as theft or misappropriation of information. Yet, opponents of regulating insider trading wax eloquent about its virtues, including the fact that it may result in greater market efficiency and operate as a form of compensating employees, thereby motivating them to generate greater corporate performance that benefit all shareholders¹⁷.

The fairness objective seems to have trumped any perceived arguments in favour of insider trading. In fact, empirical evidence suggests that "more stringent insider trading laws are generally associated with more dispersed equity ownership, greater stock price accuracy and greater stock market liquidity"¹⁸.

Insider trading unquestionably undermines investor confidence in the fairness along with integrity of the capital markets. The manipulation of market by using Insider trading generally at times leads to a great loss to a company, which further might lead to loss for investors or great profit only for the insiders. It steals away the opportunity of earning profit from an investor. It is essential on the part of the company directors to protect the interest along with protecting the reputation of the company. Once a company faces a difficulty of Insider Trading, investors tend to lose confidence in the company and might then stop investing in the company in addition to start selling all the stocks in the company. "It is been said and is expected and required on the part of the market regulator to maintain confidence in the stock exchange operations. It is very important to maintain public confidence in the financial system as a whole. Indian Financial Market is still very low in the domestic investment rate. To have a healthy economy, a proper financial system is a must and for that, confidence in the market is of utmost importance."¹⁹

8. IMPACT OF INSIDER TRADING

Illegal insider trading not only affects the company but also affects the economic growth of the country. The impacts of illegal insider trading are Loss of investor's confidence in the financial market.

Insider-trading affects the fairness of the securities market. The confidence and faith of the investor will be decreased because of illegal insider trading. The common investor will not come forward to invest in the securities market resulting in decrease of capital flow and it will lead to harm the economy. To in still confidence and faith in the investor the investor must be protected from insider trading. Investor also must be more cautious in investing process²⁰.

A. It is against the integrity of the market

Illegal insider trading suffers the integrity of securities market. With the fear of being cheated, the investors will not come forward to invest in the securities market. If the illegal insider trading continues,

¹⁶ Baishali Das, Insider Trading Law in India, Pg.3,

¹⁷ Umakanth Varotttil, "The Long and Short of Insider Trading Regulation in India", 2, No.13, 2016

¹⁸ Laura Nyantung Beny, "Insider Trading Laws and Stock Markets Around the World: An Empirical Contribution to the Theoretical Law and Economics Debate", (2007) Journal of Corporation Law 237, <http://ssrn.com/abstract=193070>

¹⁹ Sakshi Rewaria, "An Analysis of Insider Trading in India", 815-816, Vol 2, Issue 7, 2021

²⁰ V.R. maheswararao. Paleti, Dr. Sapna Bansal, Anu Solanki, "Critical Analysis on Illegal Insider Trading and It's Impact Actions to Curb Insider Trading in India", 30-31, Volume 10, issue 8(1), 2021

the faith of investor in the market and the integrity of the market will be decreased. This results less interest in the market by the investors. They will possibly move to invest in other sectors.

B. It affects the economy of the country

Illegal insider trading seriously affects the economy of the country. the insiders with the access of unpublished price sensitive information, they will definitely think to earn huge profits with access of that information, the common investor will be in huge losses. It decreases the investments in the market. If there is no capital formation to the securities market, the companies have to depend on other sources for the capital formation. The economy of every country is based on the development of industries, if they are in lack of capital flow, The economy will be ruined.

C. Damage to the reputation of companies

If the insider of any company involves in unfair, illegal insider trading the company's reputation in the market will be hugely affected. The investor will lose his faith on the company and will not come forward to invest in those companies which involves in illegal insider trading. Companies should be more cautious in curbing insider trading. It not only tarnishes the image of the company; it also ruins the reputation of that company in the securities market. Investors will be more hesitant to invest in those companies and the company's share price will be collapsed in the market.

D. Unfair advantage to the insider

With the access of unpublished price sensitive information, the insider will get huge returns by trading in the securities of that company. Some of outsiders also will also get huge profits by the tip of that information from the insiders. The common investor will suffer huge losses because of this lack of price sensitive information before it made public. It makes unfair advantage to the insider and makes complete discourage to the investor. Insiders makes timely purchases and timely sales with the access of unpublished price

E. It affects foreign investments.

Illegal insider trading will have massive effect on the reputation of the country and the securities market. Foreign investment comes only when there is transparency, faith in the country's market. Unethical, illegal insider trading in the securities market is the biggest drawback and it stops the investments from- foreigners. Affect in foreign investments is very much detrimental to the economy of any country. The markets investment flows on the basis in the transparency of the market. The decrease in inflow of foreign investments will definitely be great disadvantage to the economy of any country. If the legal protection to the foreign investors is not fair enough, they cannot come forward to invest in the market. Government has to make efforts to in still confidence in the foreign investors.

F. Market crash.

So many illegal, unfair insider trading cases lead to market crashes in so many countries. Stock market crashes happens when confidence of investors is decreases in the securities market. Investors will go panic if they hear any investigations by market regulators against any company, they will be in a spree of selling shares of that company and it leads to drop of share prices and crash in the share market. The market crash of United States of America in 1929, lasted nearly 10 years and caused great depression in the USA securities market. sensitive information. The investor will do opposite to that.

9. SEBI – THE REGULATOR

The role of a regulatory body of stock market in a country is determined by the stage of development of stock market in that country. In the Indian context, having reference to the rising nature of the market, the regulatory body must necessarily have the twin role of development and regulation. Whether or not Rajat Gupta²¹, accused of insider trading in the United States, derived any financial benefit from doing so is a matter that will need to be proved at his trial in the US. But the key point here is that Gupta was brought to trial. This had significant implications for Indian regulatory approaches to insider trading²².

Regulatory and development functions are strongly interlinked and have almost the same objectives. Rapid and healthy developments in most of the cases are outcomes of well-regulated structures. SEBI is a statutory body, which operates within the legal framework of Securities and Exchange Board of India Act 1992. Powers and functions of SEBI are discussed in section 11 of the SEBI act.

The duty of the SEBI is to protect the interest of investors and to regulate the securities market. Prohibition of insider trading is one of the important regulatory measures of securities market of the SEBI²³. SEBI might investigate into the complaints received from investors, intermediaries or any other person on any matter having relation on the allegations of insider trading. In this connection, SEBI may appoint one or more officers to inspect the books and records of insider(s) or any other persons for the purpose of investigation. Before undertaking an investigation, the Board shall give a reasonable notice to insider for that purpose. The investigating authority may examine any books, records, documents and computer data or other

For identifying any insider trade, SEBI initially seeks to find out who is an insider, which naturally key for managerial personnel of a listed company, “company board, auditors, personnel handling financial information or sensitive information, promoters and persons connected to promoters”²⁴. Even close relatives of these officials are carefully analysed and checked whether persons are connected to insiders or not and thus can have right to use to information.

The second significant aspect is the clear understanding of what leads to as unpublished price sensitive information. This could be anything starting from company acquiring a major contract to good financial information.

Finally, it looks into the matter and takes into consideration that who traded on the basis of the information.

The powers of Investigation may be exercised by SEBI for two main reasons:

- i. To investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading.
- ii. To investigate upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations.

Under the Regulations, promoters of the company will be held liable irrespective of their shareholding status if they are found violating insider trading norms using unpublished price-sensitive information of the company in absence of any legitimate purpose.

²¹ United States v. Gupta, 747 F.3d 111, 115 (2d Cir. 2014)

²² Satvik Varma, “Is India too soft on insider traders?”

²³ Section 11(g) of the SEBI Act 1992.

²⁴ Sakshi Rewaria, “An Analysis of Insider Trading in India”, 817, Vol 2, Issue 7, 2021

There are certain exceptions to these prohibitions by SEBI such as²⁵,

- Disclosure is allowed for legitimate purposes, performance of duties or discharge of legal obligations. In the case of *Dirks v. SEC*, it was held that “persons like lawyers, accountants, etc. who are actually outsiders will be construed as insiders from the point at which the UPSI was shared with them under ordinary course of business.”
- Disclosure is allowed when there is an obligation to make an open offer; and where disclosure is required in the best interest of the company. In the case of *Samir Arorav*, SEBI, it was held that to attract a provision of Insider Trading, the unpublished private information needs to be true.

10. 2015 REGULATIONS OVERVIEW

The new Insider Trading Regulations has brought about several changes by amending definitions of various concepts. It comprises of Five Chapters, Two schedules and 12 sections. First Chapter deals with the definitions, second deals with the Restriction on Communications and Trading by Insiders. Chapter 3 talks about the disclosures made by the company and four prescribes a Code of Disclosure and Conduct. Chapter 5 consists of Power and Sanctions²⁶.

10.1 Salient Features

- i. Every connected person is an Insider. The term includes Relatives and public servants also who have expected to have access to UPSI.
- ii. Definition of UPSI has changed. Any information not generally available to public, which when available may materially affect the price of the securities are included in UPSI. For e.g.: Financial results, Dividends, Change in Capital structure, Mergers, demergers, acquisitions, delisting, disposals and expansion of business, changes in key managerial personnel, etc.
- iii. Trading Plans are novel concepts introduced in the regulations wherein Insiders who are liable to possess UPSI all-round the year are permitted to formulate trading plans with appropriate safeguards.
- iv. Every listed company must formulate and publish a code of practices to be followed for safe and fair disclosures UPSI in accordance to principles set out in Schedule A to the Regulations.
- v. Notional trading windows are set to 48 hours after the UPSI information becomes public.
- vi. Due diligence may be conducted when the Board is of the opinion that the merger or transaction is in the best interest of the company.

The main objective for the introduction of the new regulations is to strengthen the legal and enforcement framework, to implement international practices into Indian securities market, to clarify the definitions and concepts and regulate the legally valid transactions. It clearly focused on the issue that there is so many amendments and circulars, notifications regarding SEBI (Prohibition of insider trading) regulations 1992.

It created confusion among the investors and the companies. To avoid those confusion and to strengthen the legal structure it was enacted. It has five chapters, two schedules and 12 regulations.

²⁵ Shoronya Banerjee, “Insider trading in India: Regulations and Controlling Authority”, 6-8, 2021

²⁶ SEBI (Prohibition of Insider Trading Regulations) 2015

Chapter 1

Chapter one contains definitions. Some of the definitions in previous or modified or widened. Mainly the word “connected “is enlarged to include more relations.

Chapter 2

Chapter 2 contains restrictions on communication and trading by insiders.

Section 3 clearly prescribes the limits of communication and procuring of unpublished price sensitive information.

Section 4 restricts trading when in possession of unpublished price sensitive information.

Section 5 prescribes about trading plan to be submitted to a compliance officer by the insider of the company.

Chapter 3

Chapter 3 contains the disclosures to be made by the insiders Regarding trading.

Section 6 prescribes the trading disclosure should be made in such forms as prescribed by the immediate relatives and the connected persons also.

Section 7 states about the initial disclosures and continuous disclosures by the insiders of the company and the disclosures by connected persons also.

Chapter 4

Chapter 4 prescribes about the code of fair disclosure and code of conduct to be followed by the company and the insiders.

Section 8 prescribes about code of Fair disclosure and adhere to each of the principal set out in schedule A.

Section 9 prescribes code of conduct to formulate by the companies to regulate, monitor and report trading adopting the minimum standards set out in schedule B.

Chapter 5

Chapter 5 contains miscellaneous provisions. Section 10 prescribes about sanction for violation of the above regulations.

Section 11 prescribes about the power of the SEBI to remove Difficulties.

From the Bombay securities contract act 1925 to the securities exchange board of India (Prohibition of insider trading) regulations 2015 and up to till date in almost hundred years this is the history laws, statutes, rules and regulations prescribed to prevent insider trading in India. Even though so many rules and regulations are there to prevent illegal insider trading in India, these mal practices still prevail in India some of the cases of illegal insider trading are discussed in next chapter.

11. SHORTCOMINGS OF SEBI ON INSIDER TRADING

There are many lacunae within the SEBI insider trading laws that have been discovered over the years, eventually making it tough for the investors to repose their confidence in the laws designed to safeguard their rights and interests against the practice of insider trading. SEBI has time and once more encountered difficulties in establishing and proving a case (beyond reasonable doubts in case of criminal

proceedings) to convict the person/s accused of insider trading, substantially owing to the lack of evidence²⁷.

One of the foremost celebrated cases highlighting the vulnerability of the SEBI's 1992 regulations during this regard is Rakesh Agarwal vs. SEBI²⁸. In this renowned case, Rakesh Agarwal, the Managing Director of ABS Industries Ltd. (ABS), was concerned in negotiations with Bayer A.G, regarding their intentions to takeover ABS. He had access to this unpublished price sensitive data. The SEBI directed Rakesh Agarwal to deposit Rs. 34,00,000 with investor Education & Protection Funds of stock exchange, Mumbai and NSE (in equal proportion i.e., Rs. 17,00,000 in every exchange) to compensate any investor which may create any claim later on. along with a direction to

- (i) Initiate prosecution under section 24 of the SEBI Act and
- (ii) Adjudication proceedings under section 15I read with section 15 G of the SEBI Act against the Appellant.

On an appeal to the Securities appellate tribunal (SAT), Mumbai, the tribunal held that a part of the order of the SEBI guiding Rakesh Agarwal to pay Rs. 34,00,000 couldn't be sustained, on the grounds that Rakesh Agarwal did that in the interests of the company (ABS). It was further held that intention /motive of the insider has to be taken cognizance of even though the SEBI Regulations do not specifically bring in mens rea as an ingredient of insider trading.

Similarly, in the case of Samir.C.Arora vs. SEBI²⁹, Mr. Arora was prohibited by the SEBI in its order to not purchase, sell or deal in securities, in any manner, directly or indirectly, for a period of five years. Also, if Mr. Arora desired to sell the securities held by him, he required a prior permission of SEBI. Mr. Arora in the Securities appellate tribunal opposed this order of SEBI. SAT put aside the order of SEBI on grounds of inadequate proof to prove the charges of insider trading and professional misconduct against Mr. Arora.

12. METHODS OF PREVENTION

1. Disclosure of Interest by corporate insiders.

a. Listed companies:

- ✓ If change exceeds 2% of the total voting right of persons holding more than 5% of the shares/voting rights.
- ✓ If change exceeds Rs.5,00,000/25000 shares/ 1% of capital by Directors and officers.

b. Other entities:

- ✓ Initial statement of holdings.
- ✓ Periodic statement of holdings.

This can show any suspicious time based and trading-based activities by Insiders.

2. Disclosure of Price Sensitive Information:

- ✓ Limited access to price sensitive information, for ex.: Need to know basis.
- ✓ Dissemination of information by the Stock Exchange.

²⁷ Shradha Rajgiri, "An Analysis of Insider Trading in India", 143-144, Volume 9, Issue 3, 2019

²⁸ (2004) 1 CompLJ 193 SAT, 2004 49 SCL 351 SAT

²⁹ [2005] 59 SCL 96 (SAT-Mum)

- ✓ Transmitting Information to News agency.

3. Chinese Wall:

- ✓ Separate inside areas from public areas.
- ✓ Bringing over the wall.

4. Trading Window Facility:

- ✓ Decided by the Company.
- ✓ Closed during the time price-sensitive information is not published.
- ✓ Opened 24hours after the Information is made public.
- ✓ Allowing the exercise of ESOP.

5. Minimum holding Period:

- ✓ Securities to be held for minimum period of 30 days to be considered investment.
- ✓ 30 days holding from the date of IPO allotment.
- ✓ Only personal emergency cases be excluded.

6. Pre-clearance of trades prevents Front Running.**13. PROTECTION UNDER GENERAL LAWS**

The Regulations provide for certain exclusions where the charge of insider trading will not be applicable, namely:

- ✓ In the conduct of due diligence: communication and procurement of information in connection with transactions involving private investment in public equity PIPE and mergers and acquisitions, subject to certain conditions.
- ✓ For off-market transactions between promoters who are in possession of the same information, and are making a conscious and informed decision.
- ✓ In the case of non-individual insiders.
- The individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade;
- when the trade was executed in the absence of any leakage of information, thereby recognising the concept of “Chinese walls” in large organisations; and
- When trades were executed in pursuance of trading plans.

14. LEGAL INSIDER TRADING

Some economists as well as legal scholars “such as Henry Manne, Milton Friedman, Thomas Sowell, Daniel Fischel, and Frank H. Easterbrook” disagree with the view that law made with respect to insider trading making it illegal ought to be revoked. They state that insider trading based on material non-public information payback investors may be by more quickly introducing new information into the market.

Friedman, the Economist winning laureate of the Nobel Memorial Prize said: "You want more insider trading, not less. You want to give the people most likely to have knowledge about deficiencies of the company an incentive to make the public aware of that. Friedman did not believe that the trader should be required to make his trade known to the public, because the buying or selling pressure itself is information for the market. Other critics dispute that insider trading is a victimless act: a willing buyer plus a willing seller agree to trade property which the seller rightfully owns, with no prior contract (according to this view) having been made between the parties to refrain from trading if there is asymmetric information. The Atlantic has described the procedure as arguably the closest thing that modern finance has to a victimless crime". Advocates for legalization at times make free speech arguments. Penalty for communicating about a development significant to the upcoming day's stock price may seem to be an act of suppression. If a proprietary information is been conveyed and it has already been contracted to not to disclose such information, the person now has no right left to expose the information than he might would tell others about that confidential information which can be with respect to new design, product, formula or any password.

There are very limited laws against "insider trading" in the commodities markets if, for no other reason than that the concept of an "insider" is not immediately analogous to commodities themselves (corn, wheat, steel, etc.). However, analogous activities such as front running are illegal under US commodity and futures trading laws. For example, "a commodity broker can be charged with fraud by receiving a large purchase order from a client (one likely to affect the price of that commodity) and then purchasing that commodity before executing the client's order to benefit from the anticipated price increase"³⁰.

Legal trades by insiders are common, as employees of publicly traded corporations often have stock or stock options. These trades are made public in the United States through Securities and Exchange Commission filings, mainly Form 4. Prior to 2001, U.S. law restricted trading such that insiders mainly traded during windows when their inside information was public, such as soon after earnings releases.

SEC Rule 10b5-1 clarified that the prohibition against insider trading does not require proof that an insider actually used material non-public information when conducting a trade; possession of such information alone is sufficient to violate the provision, and the SEC would infer that an insider in possession of material non-public information used this information when conducting a trade. However, SEC Rule 10b5-1 also created for insiders an affirmative defence if the insider can demonstrate that the trades conducted on behalf of the insider were conducted as part of a pre-existing contract or written binding plan for trading in the future.

For example, if an insider expects to retire after a specific period of time and, as part of retirement planning, the insider has adopted a written binding plan to sell a specific amount of the company's stock every month for two years and later comes into possession of material non-public information about the company, trades based on the original plan might not constitute prohibited insider trading³¹.

³⁰ Sakshi Rewaria, "An Analysis of Insider Trading in India", 820, Volume 2, Issue 7, 2021

³¹ Baishali Das, "Insider Trading Law in India", 7

15. DEFENCES AND EXCEPTIONS ON INSIDER TRADING

Given the strict nature of insider trading regulation in India, the regime sets forth certain defences that enable parties to carry on genuine transactions without necessarily being treated illegal.

The following are defences available under the current regime for trading offences; in other words, the regime provides immunity if the trades are of the following types:

- ✓ Off-market inter se transfer between promoters who were in possession of the same UPSI.
- ✓ In organisations, individuals who were in possession of UPSI were different from those making trading decisions and where appropriate arrangements are in place to prevent communication of UPSI to individuals making trading decisions (Chinese walls).
- ✓ Trades that are pursuant to a trading plan³².

The defence relating to 'trading plans' allows insiders (particularly employees holding shares) to buy and sell the company's shares, subject to certain conditions. Such a trading plan has been found to be necessary to facilitate, on a regular basis, trading and monetizing of securities by insiders who may otherwise be unable to trade in securities of the company. The logic appears to be that once a trading plan has been established by an insider without being in possession of UPSI, then it does not matter if such insider subsequently comes into possession of UPSI because the decision to trade has already been taken prior to that. The company is entitled to set up a trading plan pursuant to which insiders may buy and sell shares. There is a cooling-off period of six months between the establishment of a trading plan and commencement of trading under it. Moreover, trading is not allowed in the vicinity of the announcement of financial results.

The concept of a trading plan would bring some certainty to insiders who may wish to trade. This is particularly so because in several cases under the previous set of regulations, parties had adopted the argument before SEBI or SAT that trades were carried out as part of their regular investment / divestment plans, not just in the company concerned but more generally in respect of their other investments. This has often operated persuasively to suggest that the insiders were not trading on the basis of UPSI. The trading plan mechanism has now formalized such an arrangement by imposing more objective conditions. It remains to be seen, however, whether the trading plan will be utilised effectively, and more importantly, not be subject to abuses. An apprehension, however, persists that the strict conditions laid down for invoking the trading plan defence may arguably operate as a dampener.

Another defence that pertains to the communication offence applies whereby an insider is allowed to communicate UPSI if it "is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations"³³. The scope of a similar phrase has been interpreted in other jurisdictions such as the European Union; in India, it would however be necessary to examine in detail what situations would legitimize a selective disclosure of information. Given that Indian companies are generally substantially owned by promoters, issues could arise as to whether or when a disclosure of information to a promoter or parent company would be "legitimate". One way to deal with some of these issues is for corporate groups to devise policies to deal with intra-group disclosures of UPSI relating to listed companies.

³² Umakanth Varottil, "The Long and Short of Insider Trading Regulation in India," 2-3, No.13, April 2016

³³ SEBI (Prohibition of Insider Trading) Regulations, 2015, reg. 3(1).

16. PENALTIES

No separate penalties have been prescribed under the Regulations. However, reference is made to the penalty provisions under the SEBI Act, 1992, which shall apply.

As per the Act, insider trading is punishable with a penalty of INR 250,000,000 (U.S.\$4,166,667) or three times the profit made from insider trading, whichever is higher.

SEBI is also empowered to prohibit an insider from investing in or dealing in securities, declare violative transactions to be void, and order the return of securities so purchased or sold.

Any person contravening or attempting to contravene or abetting the contravention of the Act may also be liable to imprisonment for a term which may extend to 10 years or a fine which may extend to INR 250,000,000 (U.S.\$4,166,667) or both.

The Regulations also prescribe certain disciplinary sanctions that may be taken by companies or market intermediaries to require due compliance with the Regulations³⁴.

SEBI may impose a penalty of not Rs 25 Crores or three times the amount of profit made out of insider trading whichever is higher.

SEBI may initiate criminal prosecution.

SEBI may issue orders declaring transactions in securities based on unpublished price sensitive information.

SEBI may issue orders prohibiting an insider or refraining an insider from dealing in the securities of the company. The prevention of insider trading is widely treated as an important function of securities regulation.

Section 11(2)(e) of companies act, 1956 prohibits the insider trading but does not define it.

17. INSIDER TRADING LAW IN US

USA is one of the most regulated stock market so far in the world market. Great securities scam was found not only in the US stock market but throughout the world. The companies such as Marcus Scholoss & Co., Drexel Burnham Lambert and the names of Michael Milken, Ivan F Boesky, Martin Siegel or Dennis Levin have cropped up and hurt the market sentiment which indicates and tends to suggest that there is large scale involvement of corporate insiders in the USA and also in the international arena³⁵.

The US Federal securities regulations do not have a specific insider trading code. Instead, rules have been developed by case law grafted on to the ubiquitous anti-fraud Rule 10b-5. The Securities Exchange Act of 1934 empowers the SEC to ensure that the markets remain honest in order to promote investor confidence. Section 10(b) of the Act provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

³⁴ Tanya Pahwa, Simone Reis, Nishchal Joshipura and Prtibha Jain, "India's New Regulations on Insider Trading", 2-3, Volume 21, Number 2, 2015

³⁵ Ashish Kumar Sana, "Insider Trading in Company Securities: An Overview", 174-175

The SEC, pursuant to its section 10(b) rulemaking authority, has adopted Rule 10b-5, which provides³⁶:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- a. To employ any device, scheme, or artifice to defraud, [or]
- b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

The main prohibitions are:

- An insider takes advantage of unpublished price sensitive information by acquiring or disposing of securities.
- The insider recommends or procures a third party to acquire or dispose of securities.
- An insider discloses inside information (usually with intent) to a third party otherwise than in the proper performance of his office, employment or profession.

Outside the US, the tendency is to limit the insider trading prohibition to publicly available or listed securities. There is no such limitation under the US Rule 10b-5 that applies to any purchase or sale of a security, as defined, whether or not listed. The US has the most comprehensive and effective insider trading regulations in the world. Insider trading has been controlled since 1934. In fact, the SEC has single-handedly pursued the task of bringing insiders to book even when the offenders were outside the US. Such aggressive extraterritorial application of the US laws has forced other jurisdictions to frame insider trading regulations where none existed and where regulations did exist enforcement has been substantially increased. In the US, from various case laws two broad theories of insider trading liability have emerged.

17.1 The Traditional or Classical Theory

Under the "traditional" or "classical theory" of insider trading liability, section 10(b) and Rule 10b-5 are violated when a corporate insider trades in the securities of his corporation on the basis of material, non-public information. The thrust of this theory is that an insider when dealing on inside information should disclose the information or must abstain from dealing. The theory rests on two propositions. First, that there exists a relationship giving access to confidential information to be used for corporate purposes. Second, it is inherently unfair for a person to take advantage of that information knowing that it is not available to those with whom he is dealing. The US Supreme Court stated³⁷ that "a relationship of trust and confidence (exists) between the shareholders of a corporation and those insiders who have obtained confidential information by reason of their position with that corporation." That relationship "gives rise to a duty to disclose (or to abstain from trading) because of the 'necessity of preventing a corporate insider from taking unfair advantage of uninformed stockholders.'" The classical theory applies to officers, directors, and other permanent insiders of a corporation as well as to attorneys, accountants, consultants, and others who temporarily become fiduciaries of a corporation.

17.2 The Misappropriation Theory

The recent validation of the "misappropriation theory"³⁸, has led to an expansion of the SEC's enforcement powers. The "misappropriation theory" holds that a person commits fraud "in connection

³⁶ Nishith M. Desai & Krishna A. Allavaru, "Insider Trading: A Comparative Study" 7-9, 1997

³⁷ Chiarella v. United States, 445 US 222 (1980)

³⁸ United States v. O'Hagan, 1997 WL 345229 (US)

with" a securities transaction and thereby violates section 10(b) and Rule 10b-5 when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information. The misappropriation theory premises liability on a fiduciary-turned-trader's deception of those who entrusted him with access to confidential information. Under this theory a person is liable for insider trading if he converts for personal use, information which has been entrusted to him. Two elements appear necessary for liability under the misappropriation theory;

(1) there must be a fiduciary type relationship between the person who trades and the source of the information; and

(2) Trading must be in breach of duty not to misuse that information. Accordingly, the mere giving of information is unlikely to be sufficient. There needs to be something more. The source of the information must be justified in relying on the recipient not to abuse the confidence of information being reposed in him.

The two theories are complementary. The classical theory targets a corporate insider's breach of duty to shareholders with whom the insider transacts; the misappropriation theory outlaws trading on the basis of non-public information by a corporate 'outsider' in breach of a duty owed to the source of the information and not to a trading party.

18. INDIAN CASE LAWS

The case of Hindustan Lever limited (HIL) Vs SEBI³⁹ was one of the earliest cases where SEBI acted against Insider trading, in this particular case around 8 lakhs shares were bought by HIL from the Unit Trust of India, and after some weeks a merger was announced between HIL and the other subsidiary. SEBI approved out an investigation and it was held that it was a case of Insider Information, an appeal was made to the Appellate authority furthermore they confirmed the order of the SEBI rejecting the arguments given by HIL denying having the information or knowledge for the same. After this case SEBI made an amendment to the regulations as well as added and defined the word "unpublished". This was the source for the definition of the term "Unpublished Price Sensitive Information in India"³⁹

In another case of Reliance Industries limited (RIL) Vs SEBI, "RIL had a stake of around 5 % in the L&T company and further there were two nominees for the company Mr. Mukesh and Anil Ambani. Further, RIL went on purchasing stake in L&T and almost got around 10 %. RIL further made a sale of these shares above the market price to Grasim Industries as a result of which the two nominees were removed and RIL was prohibited from further trading in shares of L&T. SEBI agreed to look out for an investigation and a case was filed against RIL in which they were held to be at fault of Insider trading. In an appeal the Appellate Tribunal reversed the order of SEBI stating that the information was not passed by the nominees of L&T and the same had no relation in communicating or passing of the information. L&T was not even aware of the deal and there was no evidence to prove the same. Therefore, RIL was not made liable for Insider trading⁴⁰."

Further, "recently Rakesh Jhunjhunwala was probed by the SEBI in January 2020 on account of alleged insider trading. These allegations were based on the trades made by him and his family in the IT education firm Aptech. Aptech is the only firm in Jhunjhunwala's portfolio in which he owns managerial control. SEBI also questioned Jhunjhunwala's wife, brother, and mother-in-law. This, however, is not the first time that Rakesh Jhunjhunwala has been embroiled in insider trading controversy. In 2018 too he was

³⁹ Hindustan Lever limited (HIL) Vs SEBI, (1998) 18 SCL 311 MOF

⁴⁰ Reliance Industries limited (RIL) Vs SEBI, 2004 55 SCL 81 SAT

questioned over suspicion of insider trading in the shares of the Geometric. Rakesh Jhunjhunwala settled the case via a Consent order mechanism.”

CONCLUSION

Insider trading is one of the root causes of so many problems in the securities market. Insider trading mostly effects faith and confidence of the investor in securities market. Image and reputation of the company is also affected. Transparency, stability, efficiency is needed to in still confidence in the investors. Strengthening of Regulatory, monitoring mechanism, stringent punishments, continuous surveillance, timely action, Speedy trial Will definitely decreases the malpractices in the securities market. There are so many instances of insider trading in India’s security market and caused huge losses to the investors and the companies. The main problem is dragging the Investigation and adjudication for decades, judicial process and punishing the offenders is a long process In India.

Even the 20 years back insider trading cases is also still under process in the courts. The violations are high and the punishments are low. SEBI with a limited Resources trying hard to prevent the malpractices in the securities market. The leak of unpublished price sensitive information by the insiders and using that information for their own benefit is very much detrimental to the others. The insiders with the access of unpublished price sensitive information will get huge advantage and abnormal gains with the expense of other investors. SEBI Prohibition of insider trading regulations, circulars for code of conduct and code of fair disclosure, pre-approval of trading plans, imposing fines and initiating criminal actions up to some extent they are preventing the insiders to take advantage of unpublished price sensitive information.

Companies also must be vigilant in enforcing the rules and regulations prescribed by the SEBI to curb the insider trading. Capital flow in the market is very much essential for any economy, capital flow will definitely base on the investor’s faith in the market, the investor will gain confidence in the market when the regulations and the punishments on the violators are effective. Lack of technologically advanced and modern mechanism for surveillance is the main drawback of SEBI. SEBI has no power to tap phone calls, it is also one of the main drawbacks that SEBI is facing to collect evidence. Collection of evidence is very much important to prove the offenders before the court of law.

SEBI is only alleging the offenders only based on circumstantial evidence. Globalisation made the world into a small village and the offence of insider trading also takes place across the borders but the existing Indian laws does not have extra territorial application, it is also a one of major drawback. Compounding of offences by paying fines and allowing it by SEBI will give an impression that insider-trading is not a serious offence and it will definitely lead to lack of fear in the minds of insiders. severe Criminal Actions also must be taken against the offenders. SEBI is equipped with lot of functions like Auditing, inspecting, investigating, punishing, formulating the rules and regulation, Adjudication, surveillance. These functions make SEBI overburden and it is not able to carry out all these tasks efficiently. Lack of human resources, financial resources, technical resources made SEBI handicapped.

19. SUGGESTED ACTIONS TO BE TAKEN UPON

A. Key measures to be taken by the SEBI to curb insider trading

a. Strict compliance to the initial and continual disclosures

SEBI has to make strict compliance regarding initial and continuous disclosure and approval of trading plans by the compliance officer, initial and continuous disclosures by the insiders, fair disclosure

of unpublished price sensitive information to the stock exchanges, reporting of Violations observed by companies, System driven disclosures and the verification of such disclosures will definitely ease the process of verification by SEBI. Initial and continuous disclosures by the family members and connected persons must be verified carefully.

b. Trading restrictions on insiders

By knowing the status of the company, the insiders of the company can quickly react after the disclosure of information to the public. Immediately insiders may buy the securities before the public respond. Insider trading may happen in between the disclosure of information and the public reaction to it. So, the trading window must be closed to the insiders up to a certain period after the disclosure of information to stop the insiders up to some extent from jumping into the unfair, illegal trade Practises.

c. Compliance officer must be appointed by SEBI

Compliance officer plays a vital role in regulating the affairs of the company. Companies and intermediaries should act according the rules and regulations prescribed by SEBI to carry out their activities. Monitoring compliance and he has to immediately and independently report to SEBI of any non-compliance they observe. Compliance officer is accountable for failure to institute proper mechanism and to implement and effective code of conduct for preventing insider trading and for failure to take steps to prevent the leak of unpublished price sensitive information. It is the duty of the compliance officer to implement the policies, procedures, controls in relation to dealing with Market related news. Compliance officer is responsible for any violation of policies, procedures, adherence to the rules for the preservation of unpublished price sensitive information, pre-clearing of designated persons and their immediate relatives' trades, monitoring of trades and the implementation of code of conduct under the overall supervision of board of directors. It is clear that complaints officer plays a major role in curbing insider trading in the companies. He gives periodical reports to the SEBI and stock exchanges regarding the code of conduct and code of fair disclosure, approved trading plans for the insiders. Board of directors appoints compliance Officer of the Company under regulation 6(1) of SEBI (listing obligations and disclosure requirements) regulations 2015 and regulation 2(1)C of SEBI Prohibition of insider trading regulations 2015. The independence of compliance officer is very much necessary in curbing illegal insider trading in the company. If he's not act as independent, unfair trading cannot be prevented. Compliance officer works under the board of Directors. He will not be able to complaint against the directors or some senior officers regarding their illegal insider trading. So, to curb insider trading independent compliance officer is needed. That can be achieved only when the compliance officer has been appointed by SEBI in the companies. If the compliance officer works under board of directors and the audit committee and with no extraneous powers conferred in prevention of insider trading regulations, he cannot act as independent and transparent. The letter and spirit of the prevention of insider trading regulations will be defeated .so he must be appointed by SEBI to protect the interest of the investors and the securities market.

B. Action to be taken by the companies' insider trading

a. Strict in-house vigilance system

Establishing a strict in-house vigilance system to watch the activities of insiders, who have access with the unpublished price sensitive information will definitely help the companies to curb illegal insider trading.

b. Educating the employees on insider trading regulations

All the employees, directors of the company must be educated on prohibition of insider trading regulations, punishments, penalties, code of conduct, code of fair disclosure and other fair practices to

follow to curb illegal insider trading practices. It will definitely prevent the employees in involving illegal trade practises up to some extent.

c. Quick investigations on the allegations of insider trading

If there is any allegation of insider trading comes into the notice of the company, it is very much necessary to start investigation as soon as possible before it tarnished the image and reputation of the company and it also must be informed to the market regulator as soon as possible.

d. Using technology to prevent insider trading

Technology is very much developed in nowadays. There is a software known as insider trade management systems (ITMS), which detects the trading by insiders up to some extent. Some of the software companies also providing techno support to monitor the trading by insiders. Artificial intelligence is very much useful to process many Tera bytes of data on a daily basis, it will also help to develop algorithms that flush out suspicious activities.

e. Others

Training and educating about the impact of Insider-trading is very much necessary to the investors, companies and as well as insiders. SEBI must be equipped with highly skilled manpower, technological support and SEBI cannot be influenced by the political sector. More severe penalties, stringent punishments like imprisonment are very much needed to cause fear in the minds of wrongdoers. Compliance officer in the companies plays a vital role in curbing insider trading, he must be independent and transparent. Compliance officer in the companies will be appointed by the board of directors, due to that reason he cannot be independent .so he must be appointed by SEBI to act as independent. Companies also must be cautious, they should make their vigilance system more powerful, timely response and investigation in the malpractices is very much necessary. Insider trading not only affects the security market, it also tarnishes the image, reputation of the company. The existing legal framework is not enough to deal with a huge securities market like in India and a single regulatory authority like SEBI with limited resources. even though it is acting in an efficient manner, still the punishments are very low. The existing laws must be improved to make it more suitable to deal with a huge securities market like in India.

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