

DE JURE NEXUS LAW JOURNAL

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2nd Year, BA; LL.B.**THE LAW ON INSIDER TRADING UNDER SEBI ACT 1992 AND
COURT'S INTERPRETATION****ABSTRACT**

Securities and money market instrument serves the growth of economies around the globe. The same even in the near future are provided in a wide-ranging trading facility by the digital assimilation of stock exchange in the nooks and corner of the country. Potential investors and capitalists find an easy way to divert their money and channeling them for the investment and getting a specified rate of return. However, with the ongoing increase in the investment in stock exchanges, the risk of potential insider trading also increases. The threat of insider trading can necessarily make or break any incorporated body within a fraction of second. For prohibition of the same in Indian legal scenario, the SEBI (Prohibition of Insider Trading) 2015 is widening its reach and changing as per the needs of the circumstances. The series of regulations imbibed under it protects potential hardworking investors and promoters from being slipped away by sudden increase or decrease in price of share market as a result of Insider Trading. The provisions are also meticulously practices by the court having jurisdiction prescribed by the SEBI Act. Moreover, the level of strict penalty ensures a fear in the minds of anyone lured by the improper profits of the insider trading and thus abstain them from committing the same. However, the same provisions can be claimed to have certain loopholes which if nullified, the same regulation can be claimed to be one of the leading statues of prohibition of Insider Trading in the entire world.

INTRODUCTION

India as well as other countries around the sphere is emerging as a global hub of investment by prominent and secured investor. With the advent of dematerialized system of securities trading the scope of trading in securities imploded into the various scopes of economics of the nation. This was further expedited by the opening of stock exchange and their whole-time provisions of online trading and investing. Talking about India, as the economy is booming at a rapid rate, more and more companies are trying to throw its hats in the ring of getting itself listed in stock exchange and getting attracted to numerous compliances of SEBI and Company Act.

However, in spite of it, the insider trading can be considered as a serious lacuna in the floor of smooth economy and investment. This has led and become a formidable challenge for the entire capitalists around the world. This major challenge was hit back by induction of several securities' regulation out of which SEBI (Prohibition of Insider Trading) Regulation 2015¹ is protruding part of it.

Insider trading implies in layman's language trading or dealing in companies on basket of security on the basis of some intimate information which is yet to be published before the general public. United States was the first country giving a legal recognition to this serious issue and this was followed by several other countries in their aim of achieving investor's will and desire in the capital market

India in the case of historical context was not belated in recognizing and acting on the impact of insider trading. Its history dates back to 1940s with the necessary set up of the Thomas Committee to appraise the regulation that can be inducted on the short saving profit of 1948. Thereafter regulations on Insider Trading were formulated and imbibed under the Companies Act. But under the advocacy of Sachar Committee 1979, the penal committee 1986 and Abid Hussain Committee in 1958, its necessary provisions were separated into a different statute under SEBI Act and thus resulted in the genesis of SEBI (Insider Trading) Regulation 1992 which was further re-scripted after the inconsistency in these regulations as observed in case like Rakesh Agarwal vs SEBI Act². This further discharged to the sitting of the high-level committee under the espousal Justice N.K Sodhi and finally submitted the report in 2013. Talking about the recent development of SEBI (Prohibition of Insider Trading) 2015, the credit of the same goes to the Sodhi Committee which repealed the previous provisions and enacted the new one.

¹ Regulation No. LAD-NRO/GN/2014-15/21/85

² (2004) 1 CompLJ 193 SAT, 2004 49 SCL 351 SAT

LEGAL PROVISIONS OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATION 2015

SEBI (Prohibition of Insider Trading) Regulation 2015³ provides a series of regulation and penalty as well as appellate judicature to curb the threat of Insider Trading which can be summarized as follows:

REGULATION 3: - This section basically restricts any insider as described under this Act from communicating sensitive information only for official obligation. It also provides the exceptional scenario where unpublished price sensitive information can be conveyed in open offer and if board of director deems to be necessary in the best interest of the company.

REGULATION 4: - Its provisions restrict the trading of securities based on unpublished price sensitive information. However, like Regulation 3, also provides a series of exceptional cases for Insider trading like off market inter transfer taking place between Insider, in a block deal between Insider, is the legal requirement calls for the same or when SEBI specify or also under trading plans. It allows the same when insider is an artificial person and he has different offices who deal with search sensitive unpublished information.

REGULATION 5: -This regulation necessary gives application and compliances offsetting a trading plan. It states that the same cannot be started before 6 months. Moreover, it cannot be conducted from 20 days before the quarter and up to two days before the requested result is declared. Every trading plan needs to be for a minimum period of 12 months and every trading plan should either value its transactions as well as number of securities to be traded. However, Regulation 5 states that a trading plan should not be for market abuse. Additionally trading plan once approved cannot be reversed and once approved it should be notified immediately to stock exchange.

REGULATION 6: Regulation 6 specifies the disclosure requirement of insider to do trading in securities. The same disclosure must be given either by insider or any person in benefits of whom the trading decision took place. It was also necessary includes the derivative of securities and same shall be maintained for a period of 5 years

REGULATION 7: It is one of the wide-ranging provisions prescribed under the act. It consists of three sub-parts. Regulation 7(1) deals with initial disclosure before the commencement of the act as well as after the commencement of the act. Regulation 7(2) necessary give detail of continual disclosure and finally Regulation 7(3) deals with the disclosure by connected person.

REGULATION 8: - It deals with the provision of requirement of board of directors in every listed company to publish unpublished price sensitive information whenever it is necessary. This in fact will necessarily obviate the principles mentioned in this section without nullifying the

^{3 3} Regulation No. LAD-NRO/GN/2014-15/21/85

other regulations in any manner. Some of the principles though not limited to under this regulation can be summarized as: -

1. Quick public disclosure of unpublished price sensitive information that influences the price is covered in near future.
2. Uniformity in dissemination of unpublished price sensitive information whenever it is necessary
3. Appointment of chief investor relations officer to deal with the dissemination of information
4. Quick dissemination of unpublished price sensitive information whenever it has a risk of getting published selectively.

REGULATION 9: The Regulation 9 gives a series of provisions for the Board of Directors for formulation of code of conduct with the approval to curb trading by designated person and achieving the compliances with the regulations. Moreover, the Board of Directors is required to adopt a minimum standard set out in Schedule B and Schedule C of this act for ensuring strict maintenance of unpublished information not to be leaked in the hands of defaulter.

PENALTY PROVISIONS

The most required aspect of prohibition of insider trading is the strictness in penalty provision against anyone making or attempting to commit this offence. The same is provided in Section 29 of SEBI Act 1992 which states that penalty of minimum 10 lakhs INR and maximum of 25 Crore INR to be faced by any defaulters or offenders. Additionally, it also provides imprisonment for a period of 10 years in addition to the fine.

PROVISIONS OF APPELATE TRIBUNAL

Since the provisions of the above-mentioned penalty is quite wide-ranging and strict the SEBI Act 1992⁴ as well as SEBI (Insider Trading Prohibition) provides for a sufficient appellate system to Securities Appellate Tribunal (SAT) and finally to supreme court for any person not satisfied with order or judgment of lower court of jurisdiction. Why were the limitation period for appealing in Securities Appellate Tribunal (SAT) is 45 days may be extended by court's discretion?

⁴ Securities Exchange Board of India Act, 1992, No. 15, Act of Parliament, 1992(India)

RECENT LEGAL DEVELOPMENT AND COURT'S INTERPRETATION

The SEBI and its appellate tribunal have necessarily given a series of good interpretation of the regulation and direction. Understanding of the same will allow an enhancement wide applicability of these regulations in current legal scenario.

1. Aditya Omprakash Vs SEBI⁵

This case was embarked upon the certain articles came into newspaper and magazine alleging publication of UPSI in several social media platform like WhatsApp group. As a matter of hit back, SEBI initiated a series of examination preliminary in nature as well as search and seizure operation for 26 entities. It was found out that almost 12 company's financial information got leaked and revealed in WhatsApp groups. It was further observed that Bana India Ltd. had disclosed financial results and the notice among the others have disseminated UPSI related to Bana Ltd.

The above-mentioned case necessarily signifies wiping out of UPSI whenever a WhatsApp message is deleted and thus cleans any traces of Insider trading. Such an act can necessarily get into the general public and will compromise the willfulness of investors and their confidence. So in order to prevent such attempt in near future, SEBI directed payment of 1500000 as a penalty on the notice in terms of the provisions of the Act and regulations.

2. Mr Amendu Mukharjee(Noticee) in matters Ricoh India Limited vs SEBI⁶

The notice decided to trade using the account of Fourth Dimension Solution Limited (FDSL) while taking the accountability of possessing UPSI of Rioch India Limited and made huge sum of wrongful gain and also avoided a huge loss.

The SEBI necessarily lifted the corporate veil and thus made notice liable for Insider Trading, its improper conduct, the fraud of manipulation of account and was made liable for an amount of INR 2, 30, 34,010 with an additional interest of 12 percent to be paid within 45 days. He was also refrained from using capital market for a period of 7 years.

3. Dr. Udvaant Malhotra (Appellant) vs SEBI

The appellant being the CEO and managing director of a company named Dynamic Technologies Limited. The same company was engaged in listed stock exchange and was carrying activity of manufacturing aerospace, automotive and engineering products. The appellant was seriously charged of selling 51000 shares of the company having some insider

⁵ Adjudication order No. Order/BD/VS/2020 21/7916

⁶ Adjudication Order No. WTM/MPB/IVDID6/120/2020

knowledge of price sensitive information. This led to the price of the scrip company to crash drastically

Securities Appellant Tribunal considering meticulously the facts and circumstances as well balances of convenience and irreparable injury, the appeal by the appellant was allowed in the court of law.

OPINION AND CONCLUSION

The provisions of the SEBI Act in order to curb Insider trading is quite far reaching and has a series of positive impact on the legal scenario. The level of strictness of the penalty provisions as well as the mandatory discloser requirement and compliances leaves almost no scope of indulging in a Insider Trading by any company or individual. However, with the rapid changing use of technologies like WhatsApp and other social media platforms, the threat of leaking price sensitive information into the general public or any particular individual increases rapidly. So to deal with it, SEBI must change its statutory provisions and comply with Information Technology Act 2000⁷ to deal with the same. The same was evident in the year 2018 when SEBI realized that several price sensitive information were circulated in the private social networking groups.

Additionally, there can be also necessary improvement in the court's interpretation of this regulation. For example, in the matter of Insider Trading in the Scrip of Deep Industries Ltd⁸, SEBI was compelled to go beyond its necessary definition of Connected Persons in order to find the real culprit of the same offence. This can necessarily be avoided if there exists some amendment in the definitions connected with the offence of insider trading so as to extend its reach to wider circumstances of cases and court remain within their reach of jurisdiction. Moreover, if the level of the statutory provision is made flexible instead of its rigid nature it can deal with the ever-changing needs of the dynamic legal character.

⁷ Information Technology Act 2000, Act No 21, Act of Parliament, 2000(India)

⁸ Adjudication Order No SEBI/WTM/MPB/IVD/ID-6/162/2018