The Concept of Insider Trading in India

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ABSTRACT

This Article deals with the ILLEGAL INSIDER TRADING in India and reflects the main provisions of S.E.B.I. Regulations regarding the same such as the meaning of insider, insider trading, code of conduct, procedure for the complaint and also expresses the main elements of illegal insider trading with illustrations mentioned by judiciary to prove the regulations as a SILVER LINE FOR THE (POOR AND MINORITY) INVESTERS in such a inflation (dearness) and recession era.

Keywords: Insider Trading – Person Connected – Regulation of SEBI – Procedures – Appeal

(A Introduction : The development of CAPITALISM is the basic root for the creation of COMPANY. Post-independent era of India had to establish BHABHA COMMITTEE in 1950 to repeal the Companies Act 1913 and to enact (new) independent Company Law for India i.e. the Companies Act, 1956 for the betterment of the economic affairs of the country and to protect the rights of investors. However, especially, for the equity market transactions, a new legislation has been enacted named THE SECURITIES AND EXCHANGED BOARD OF INDIA Act, in 1992. In short it is known as the SEBI Act in short. As the equity transactions were rising day by day, for the protection of the rights of investors, a new committee under the Chairmanship of Dr. J.J. Irani, Director, Tata Sons, was constituted on 2nd December 2004 and the committee submitted the report on 31st May 2005 in which it has been mentioned such as:

“….. At the same time, it should be facilitate disclosure of actual control structures and prohibition of INSIDER TRADING as well as management entrenchment.”

It suggests that the investors are suffering a lot even though there are so many legal machinery for the protection; however, investment in Equity market has been an essential requirement for a layman to meet the end of his economical condition. On seeing a prospectus of a company, or after watching the business channel, or by other information, a layman, the poor investor invest his hard earned money in a script and the CORPORATE CRIME in the name of fraud, misappropriation, cheating, insider trading and other means comes to the way of his fortune as a calamity that makes the life of the peter familia frustrated. Thousands of small investors in India, have been the victim of the corporate crime, illegal insider trading. It is the SEBI that is the true protector of the pater familia who worries and cares for them and for that purpose SEBI is having a weapon named SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 enacted as per powers mentioned in Sec.30 of the S.E.B.I. Act, 1992.

(B) Meaning of Insider Trading : The use of confidential information about a business gained through employment in a company or a stock brokerage, to buy or sell stocks and bonds based on the private knowledge that the value will go up or down.2

Suppose an employee receives any unpublished information regarding acquisition of the other company and immediately purchases the share of that company (to be acquired) and makes profit by this way. That is known as (illegal) insider trading.

(C) The main elements of Insider Trading in India : If a person must be an INSIDER or a CONNECTED PERSON as per SEBI Regulations. There must be price sensitive information. That information must be an unpublished one. The insider or connected person must have used the information in buying or selling the script related with the information or must have made so. By this way, the insider or connected person earns the benefit or the layman investor must have suffered for that

(D) The main featured of the SEBI Regulation related with (Illegal Insider Trading) : D.1 Aims of the Rules : Section 11 of the S.E.B.I. Act, 1992 deals with the powers and functions of the Board. As per sec.11 of the Act, it has been mentioned that there are three main duties of the Board.

Further more, Sec.11 (2) of the Act says that:

“Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for:-

(g) Prohibiting insider trading in securities.

So considering Sec.11 and 30 of the Act, the SECURITY AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 has been framed.

D.2 The scenario of the Rules in brieftabular format : The scenario of the Rules is as under:

THE SECURITY AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING REGULATIONS, 1992

Total Regulations: 15
D.3 The Meaning of Insider:

The insider means any person who – (i) 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 another company, or (ii) has received or has had access to unpublished price sensitive information in respect of securities of another company and is reasonably expected to have access to such unpublished price sensitive information.

It means the insider is the person who must be

(A) Connected with the company with having sensitive information about unpublished regarding price of the script.

(B) A deemed person as per (A).

D.4 Price Sensitive Information:

It 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 that company or of another company. It means violation of Regulation 3 and 3A shall be proved whether temporarily or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to that company.

Who 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 temporarily or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to that company.

The explanation says that a connected person means a person who is a connected person 6 months prior to an act of insider trading.

The explanation may be the defense of the act (!).

D.6 Prohibition on dealing, communicating or counseling on matter relating to insider trading:

No insider shall:

(I) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information, or

(II) either on his own behalf or on behalf of any other person, deal in securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

Further Regulation 3A says that no company shall deal in all securities of another company or associate of that other company while in possession of any unpublished price-sensitive information.

It means violation of Regulation 3 and 3A shall be proved whether temporarily or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to that company.

The meaning of ORDINARY COURSE has not been defined in the regulations. However, the ordinary meaning is enough to understand the words for the construction of its.

D.7 Code of Conduct:

Part A deals with the model code of conduct for prevention of Insider Trading for listed companies. Such as:

- The Compliance Officer Senior level employee appointed by the listed company shall report to the Managing Director / Chief Executive Officer.
- He shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of Price Sensitive Information. He shall maintain a record of the designated employees. He shall also assist all the employees in addressing any clarifications regarding the regulations and the company's code of conduct.
- Officers comprising the top three tiers of the company management and the employees designated by the company to whom these trading restrictions shall be applicable shall include DESIGNATED EMPLOYEE who shall follow the code of conduct.
- All the directors and employees shall maintain the confidentiality of all Price Sensitive Information. They shall not pass on such information to any person directly or indirectly by way of making recommendation for the purchase or sale of securities.
- Files containing confidential information shall be kept secure and Computer Files must have adequate security of login and password etc.
- The company shall specify a trading period, to be called TRADING WINDOW for trading in the company's securities. The trading window shall be closed during the time of declaration of financial results, declaration of dividends.
issue of securities by way of public/rights/bonus, any ma-
jor expansion plans or executive of new projects, amalg-
amination, mergers, takeovers and buy-back, disposal of
whole or substantially whole of the undertaking or any
changes in polices, plans or operations of the company.
The TRADING WINDOW shall be opened 24 hours after
the information made to the public.
• The directors are bound to pre clearance transactions.
• An undertaking for not breaching the code is necessary.
• All directors or officers or designated employees who buy
or sell any number of shares of the company shall not
enter into an opposite transaction.

VIOLATION OF THE CODE OF CONDUCT
• Any employee or officer or designated officer, in violation
of the code of conduct, shall be subjected to penalties
and other appropriate action to be taken by the company,
such as, disciplinary action like suspension, wage freeze
or other actions. And the same decision shall not preclude
SEBI from taking any action in case of violation of SEBI
Regulations.
• The SEBI shall be intimated about the violation by the
company or the Compliance Officer.

D.8 Power of SEBI in receiving the complaint of (Illegal)
insider trading:
As per Regulation 4, any insider who deals in securities
in contraventions of the provisions of Regulation 3 shall
be GUILTY of INSIDER TRADING.
As per Regulation 4A the Board is having power to inves-
tigation such as:
• The Board may make inquiries in receiving any complaint
regarding this matter.
• The Board is having also a SUI MOTU power to make
inquiry.
• The Board may appoint one or more officers to inspect
the books and records of the case.
• Where the Board is having prima facie opinion that it is
necessary to investigate and inspect the books of account
or records and documents of an insider, it may appoint
an investigating authority for the purpose after giving a
reasonable notice to the insider for that purpose. By this
way THE DOCTRINE OF NATURAL JUSTICE prevails in
Regulation 6.
• The insider is bound to co operate the investigating team
as per Regulation 7.
• After making investigation, the investigation authority
shall within reasonable time of the conclusion of the in-
vestigation, submit an investigation report to the Board.
However, the meaning or definition of REASONABLE
TIME has not been mentioned under the Regulations.
• After getting the report, the report shall be communicated
to the insider and the insider shall reply to the same within
21 days.
• Then after considering all the pros and cons of the facts
before the Board, the Board may take such measures as
it deems fit to protect the interests of the investors and in
the interests of the securities market and for the compli-
ance of the provisions of the Act such as –
  o Directing the insider not to deal in securities in any par-
ticular manners.
  o Directing the insider from disposing of any of the securi-
ties acquired.
  o Releasing the insider to communicate or counsel any
person to deal in securities.
  o Declaring the transactions in securities as null and void.
  o Directing to deliver the securities back to the seller.
  o In case the buyer is not in a position to deliver such secu-
rities, the market price prevailing at the time of issuing of
such directions or at the time of transactions whichever is
higher, shall be paid to the seller.
  o Directing the person to transfer an amount or proceeds
equivalent to the cost price or market price of securities,
whichever is higher to the investor protection fund of a
recognized stock exchange.

D.9 Penalties and Punishment for the Insider Trading :
Section 15G of the SEBI Act, 1992 says that if any insider
who —
(i) either on his own behalf or on behalf of any other person,
deals in securities of a body corporate listed on any stock
exchange on the basis of any unpublished price
sensitive information; or
(ii) communicates any unpublished price- sensitive informa-
tion to any person, with or without his request for such
information except as required in the ordinary course of
business or under any law; or
(iii) counsels, or procures for any other person to deal in any
securities of any body corporate on the basis of unpub-
lished price-sensitive information—
shall be liable to a penalty of twenty-five crore rupees or
three times the amount of profits made out of insider trading,
whichever is higher.

Even the insider is also liable for maximum of 10 years of
imprisonment.9

In short an insider may be punishable with imprisonment for
a term which may extent to 10 years or with fine which may
extend to Rs.25 Crores or with both.10

D.10 Appeal11 :
Any person aggrieved by an order of the Board under these
regulations may prefer an appeal to the Security Appellate
Tribunal.

However, the provisions for Security Appellate Tribunal has
been mentioned in Section 15K of the SEBI Act,1992.

After the decision of the SAT, the aggrieved may approach
within 60 days to the Supreme Court of India.12

E. Cases decided as Insider Trading :
E.1 Hindustan Liver Limited Case:13
No person can be insider in his own case – was the first
argument raised by HLL in the insider trading case of Hindu-
stan Lever Limited Case. The fact of the case is that HLL had
purchased 8 Lac Shares of Brooke Bond Lipton India Ltd be-
fore the public announcement of the merger between HLl and
BBLIP. According to HLL, the information was received the in-
formation independently because it was one of the principal
parties to the merger. But SEBI rejected the argument with
considering the SEBI ( prohibition of insider trading ) Regula-
tions, 1992. However, the final decision is yet to be declared
by the upper court.

E.2 Kalpana Bhandari And ors. Vs. S.E.B.I. and ors,
On 5th August 2003 the H’ble Bombay High Court rejected the
appeal of the petitioner. In this case, a subsidiary company
issued a preference share at the premium price of Rs.12.50
on stating that it would be listed in any stock exchange very
soon. However, on not keeping the promise, the small in-
vestors along with the petitioner approached before the re-
spected court by the writ of Mandamus and demanded to re-
purchase the script at Rs.57/- by the company. However,
it was not proved to have any insider trading and hence it was
dismissed.

E.3 A case of the director of Ranbaxy :14
On 9th Oct.2012 the Security Appellate Tribunal upheld the
decision of SEBI. Solrex Pharma, the subsidiary company of
the Ranbaxy had declined to invest in the Orchid Chemicals.
One of the directors of the Ranbaxy and his wife made a large
investment of the shares of Orchard Chemicals and the same
had been done by the help of UNPUBLISHED PRICE SEN-
SITIVE INFORMATION. That is why SEBI, on January 2012
had decided it as INSIDER TRADING CASE and the director
and his wife was ordered to penalty of Rs. 50 Lac and Rs.10
Lac respectively. It was decided by the SAT that to invest in
ORCHID CHEMICALS was the unpublished matter. However,
the aggrieved is having their option to approach before the Supreme Court of India.

E.4 In the matter of Insider Trading by Shri J.E.Talaulicar in the Shares of Tata Finance Ltd.15 (WTM/PS/82/V/ID-10/MARCH/2012)

On 27th March 2012, SEBI in its order para 20 in considering SEBI Act, 1992 suspended the certificate of registration of a stock broker for a period of Four Months.

CASES DICIDED BY SEBI16

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<td>1.</td>
<td>In the matter of M/s. Sarang Chemicals Ltd. Holding more than 5% share of M/s Sarang Chemicals Ltd. Penalty of Rs. 3 Lac was levied on M/s Atlanta Share Shopee Ltd.</td>
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<tr>
<td>2.</td>
<td>In the matter of M/s MTZ Industries Ltd. (2/12/2010) On failing to comply with disclosure requirement under Regulations 13(3) and 13(5) of the SEBI Rules, 1992, a penalty of Rs.3 Lac was levied on M/s. MTZ Industries Ltd.</td>
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<tr>
<td>3.</td>
<td>Mr. Manmohan Shetty Vs. SEBI (Appeal No.132 of 2010) As the appellant was found guilty of Code of Conduct prescribed under the SEBI Regulation, 1992, the Adjudicating Officer imposed the penalty of Rs. 1 Crore rupees on 9th June 2010 and the same decision was challenged before SAT and it was decided that the penalty should be reduced to Rs.25 Lacs.</td>
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F. Conclusion :
The small investors are shading tears in the equity market at the time of insider trading, fraud, misappropriation and recession period. Amongst all, insider trading is the most dangerous corporate crime. However, SEBI is trying its best to prevent the corporate crime. Even the efforts of SEBI in disposal of such types of cases is also appreciated. In its report it has been mentioned that 28 and 24 cases of Insider Trading were approached before SEBI in 2010-11 and 2011-12 respectively, while 15 and 21 cases were competed in 2010-11 and 2011-12 respectively.

The SEBI is trying to make amendments in the regulations from time to time. SEBI has enacted the SEBI (Prohibition of Insider Trading) Amendment Regulations, 2011 and necessary amendments have been made in Regulation 13 and Form B and Form D.

The regulation is truly nothing but a silver line for the small and poor investors of India. The extension of powers of SEBI to regulate insider trading is the urgent need of the hour, even in 2013 year

REFERENCES