A Dissertation on

ANALYSIS OF INSIDER TRADING REGULATIONS IN INDIA

Submitted to

As a Partial fulfillment of the requirement of the LL.M. Degree

Under the guidance of
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DECLARATION

I, the undersigned bearing **roll no. 20ML023** do hereby declare that the work in the dissertation titled ***Analysis of insider trading regulations in India"*** has been carried out by me and submitted in partial fulfillment of the LLM degree in Constitutional and Administrative Law in the Institute of Law, Nirma University, under the guidance of Professor, **NIIRBHAYA KUMAR INDRAYAN**.

I further declare that all the work in this dissertation represents my ideas in my own words and where ideas of others are taken I have cited their original source. I have not copied or fabricated anything in this final report and do hereby declare that the whole dissertation is my own work and neither nor any part of the said dissertation is published anywhere.

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CHAPTER -1: INTRODUCTION

1.1 ABSTRACT

The goal of this study is to look at insider trading in the Share market and see how profitable it is as well as how much data it contains. It also intends to look at the link between insider trading and market collapse.

Insider trading is ethically and legally unacceptable to the uninformed population to utilize classified information for stock and security trading in order to gain or prevent loss. It is the most frequent form of abuse in the stock exchanges and also the most threatening because it leads to asymmetric information to the disadvantage of small entrepreneurs. It's always been a point of concern and scandal, with headlines and a destructive image of the not only enterprises but the economies. This has been an area which affects equitable chances for investing in financial market. It lies at the heart of prejudice, as a small minority, which is usually quite privileged, has an unfair advantage over the large population whose knowledge or chance is not equivalent. The elimination of this exercise is essential for the efficient working and credibility of any market and of the communities in which it operates since it does not only harm the credibility of the market as well as the trust which is based on it and eventually the economic growth of the country in general, at home and abroad. Therefore, it is important, for law policymakers' shareholders, and the public to regulate the insider trading on the stock market. India, one of Asia's quickest developing economies, needs comprehensive insider trade controls on financial markets to give domestic & global investors fair and equitable footing if they are to rank among the world's most developed economies. This thesis focuses mostly on regulating the insider trade in India and has therefore been attempted to study it in a variety of ways.

Keywords: Insider trading, corporate governance, SEBI regulations 2015, mergers and acquisitions

1.2 INTRODUCTION

Insider means anyone who has access, by Securities and Exchange Board of the India (SEBI) (Prohibition of Insider Trading) Regulations, to Unpublished Price Sensitive - information (UPSI) regarding securities of a company. (1992).

An insider trade occurs when a person trades with price sensitive knowledge in a company's securities before the general public has access to it. Similarly, insider-trading is defined as an act in which a company's key managerial personnel or a director, who is expected to have full rights to the UPSI with regard to corporate shares, directly or indirectly subscribes to the company's securities and is regarded as insider-trading under section 195 of the Company Act 2013.

Insider trading is perceived to be associated with prohibited behavior. It is an action by a person with UPSI of the company to buy and sell securities before they are accessible to the public to create abnormative income and evade losses (Corporate Governance Emerging Scenario (NSE), 2010). If a business insider is involved and follows all of the requirements, it is referred to as lawful insider trading, while any infraction is considered unlawful insider trading. As a result, they must promptly notify their legal transactions to SEBI in order for the regulator to keep track of insider trading. The purpose of this research is to conduct an empirical examination of the Indian insider trade.

Corporate insiders may trade in their own shares in Indian context but must disclose these transactions to prevent abuse of any priced information which is non-publicly-sensitive.

In order to build investor confidence and improve transparency, SEBI has framed numerous insider disclosure regulations. The aim of these communications is to provide equal conditions for all market participants. The Company Act, 2013 adopted by the Parliament of the Indians also devised an insider trade code of conduct.

The companies listed in the country are guided by the 2015 SEBI (Listing Bonds) regulations (SEBI (LODR) regulations), which specify that the issuer must inform the stock market where the

company lists events, such as power-cuts closures, lockouts, strikes, etc., immediately. In the early part of the event as well as after the end, all events that have a position on a company's operations or execution and price-sensitive information must be reported. This aims to facilitate information assessment and action for shareholders and the public. Security Exchange Board India has made a number of changes to its SEBI Regulation (Insider Trading Banning) over the years with a view to enhancing the transparency of the share markets.

Company insider trading shall occur legally daily, if, under limited company policies and codes of practice, employees, Managers, executives, and other business officials buy and sell their own company's stock.

1.3 STATEMENT OF PROBLEM

A stable economy requires that any organization regulating economic activity on the market must be guided by fairness and equity trading. For the establishment of an efficient economy, security and fair dealing in securities transactions is essential. Fairness advocates against the exercise of coercion, disappointment or any other undertaking in order to promote self-interest and, especially, insists that participants have the same access to information about securities prices among all participants. This is why the insider trade reflects market unfairness and also interferes with the fair play canon, investor trust, transparency and orderly market evolution.

The regulation of insider trading in India was established through the adoption of the Securities and Exchange Board of India Act, 1992 and the introduction of the SEBI regulation, 1992 specifically on the regulation and banning of this misuse. This was continuously amended and amended to address the gaps that arose during their implementation and enforcement, and finally to enact the 2015 SEBI (Insider Trading Prohibition) Regulation. However, in most cases insider trading in India is not recognized, and the prosecution fails to decide the case against the accused, even when it is detected. There have been some suspensions, prohibitions or simple warnings in cases of insider trading investigated by SEBI. The rare convictions resulted in a mere monetary penalty being imposed on the criminal. In certain cases, consent orders have been issued by SEBI. But no one has gone to prison. Some western countries are much ahead of India in this regard. In the U.S, Raj Rajaratnam and Rajat K. Gupta were the most visible examples of such achievement. This isn't the only example of regulators' success in other nations; there are plenty more. This definitely leads

to the conclusion that India's current legal system, whether in respect of prosecution or enforceability, must have some flaws or weaknesses.

It can also be said that while India has taken strong steps since liberalization to curb this threat of insider trade through the introduction of the 1992 SEBI (Insider Trading Prohibition) and Securities Act (Indid Trade Prohibition) Regulations and the SEBI (Insider Trading Prohibition) Regulations, 2020 the regulatory framework was unable to maintain the regulatory framework This thesis is hoped to be useful to legislatures, companies, managing directors, employees, agents, professional consultants (lawyers, bankers and brokers), employees, shareholders, investors, friends or families of above all, to the common man and the economy in general if a definitive resolution to this statement is found.

1.4 HYPOTHESIS

The hypothesis of the research is as follows. Because the Market in India lacks a fair playing field or perfect competition, information imbalance has a negative influence on the market. The appropriateness of the legislation and an effective enforcement system in order to prevent tricksters and scammers from taking advantage of the asymmetries of information are therefore highly vital.

1.5 OBJECTIVE OF STUDY

• Explain the concept of insider trade, the historical retrospective and the legal debate on the need for / justifying its regulation with a view to better understanding of the field of research.

• Analyze nationally the judicial approach to interpreting and building laws on the subject of the research study.

• Analyze legislation on insider trading in India on a critical basis based on the existing scenario of the capital market.

• To propose appropriate modifications or changes to the Indian legislation currently in force or its enforcement mechanism which are worth considering with regard to the topic under study.

Broadly speaking, the thesis aims to achieve a comprehensive understanding of insider dealing regulation in India's financial market. The final objective of the thesis is, however, to come up with good recommendations for reform of the regulation concerning insider trafficking in India.

1.6 SCOPE OF STUDY

This thesis is an in-depth study of the subject of prohibition of insider trading. Attempt starts with understanding the concept of insider trading under heads like meaning, types, mechanism, impact, etc. and the need and rationale behind regulating it.

1.7 LITERATURE REVIEW

1. **The Indian Institute of Enterprise Secretaries** has explained the regulatory framework on insider trading in India in its book **Prohibition of insider trading: Law and Procedure.** Regulation wise details accompanied by the insider trading orders SEBI and SAT have been drawn up.
2. **Amit K. Vyas** made a similar attempt to shed light upon the regulatory framework on insider trade with India's background and outstanding characteristics in his book **Insider Trading – Law and Practice.** The book provides an overview of the proof of insiders and the grey areas, their deficiencies and their challenges. The book concludes with a table study of Indian law and United States and UK laws.
3. **Dr K.R. Chandratre's Insider Trading Law** in his book has criticised Lucan in the Indian market by covering the history of PIT and the law on thereto and trading plans and the Fair Outlook Code of Conduct.
4. **Shoma sundaram law concerning the transfer of shares**
5. SEBI (Insider Trading) Regulations, 1992 were analyzed by **Reddy Vinay and Prakash N. (2000), "Insider Trading- Need to strengthen legal regulations", SEBI and Corporate Laws, January 3, 2000.** They indicated that existing restrictions against insider trade would need to be tightened up to address this complex problem. In another paper they argued that in addition to criminal punishments in India, civil redress should be provided.
6. In an essay **Singh Manoj Kumar(2006) , "Prohibiting insider trading: A challenge for market regulators", SEBI and Corporate Laws, May 22, 2006** considered major regulatory rules that have been developed to address the problem of insider trading, market misconduct in securities and investment protection regulatory measures. The US

securities market regulations and Indian securities market regulations have also been compared. She proposed that SEBI should be granted additional ability to fight market manipulations by the principal Indian regulator.

7. **The Indian Institute of Company Secretaries (2007)[1]** has published a thorough paper on Indian insider trade regulatory practices. They looked at recommendations from the several committees which were specifically designed to address this abominable crime. It conducted a comparative analysis of SEBI's revised version of the Insider Trading Regulation, 1992.
8. **Guy Cohen in his book "The Insider Edge:-how to follow the insiders for windfall profits"** In the book the role of informed merchants was mentioned. What they are doing and how they can be used by everyone. Is it shopping or trending on the markets? It is always worth waiting for a clear chance. Every skilled trader knows that they have to have a border to make a difference and it shows how to make the appropriate investment by combining specific graph patterns.[2]

1.8 RESARCH METHODOLOGY

The methodology primarily will be in the doctrinal way, as there lot of debate over the prison system of India, the author will deeply try to understand the topic with the help of jurists understanding on the punishment as well as the prison system in India, author will also refer to the judgments given by the district court, high court and Supreme court judges. As this would play an important role in deciding upon the solution of the problem. The author will take the help of primary sources like the statues, law commission reports, reports submitted by the committees that were made to resolve the issue of Juvenile Justice System. The secondary sources are also majorly considered like articles, blogs, journals, law reviews and judgments of the higher courts.

The author will not totally rely on the doctrinal approach but will also focus on the empirical approach as well; the author will consider the experiences of the prison authorities, and collect the data like how actually a prison system works and the practical loopholes in the system. Doctrinal as well as empirical approach will be done.

[1] The Institute of Company Secretaries in India," Prohibition of Insider Trading Law and Procedure", New Delhi,2007
[2] .Guy Cohen "The Insider Edge:how to follow the insiders for windfall profits", (John Wiley & Sons Pvt. Ltd, 2012)

1.9 RESEARCH QUESTIONS

- What are the determinants of insider trading?
- What is the impact of insider trading on Share market?
- What are the problems relating to insider trading in mergers and acquisitions?
- What is the regulation on insider trading in India?
- What are the challenges in enforcing the insider trading laws in India?

1.10 PLAN OF STUDY

Chapter-1 Introduction

Chapter 2- Meaning Types and Theories of Insider Trading

Chapter 3- Regulation of Insider Trading In India

Chapter 4- Problems of Insider Trading In The Event Of Mergers & Acquisitions (M&As)

Chapter 5- Insider Trading and Corporate Governance

Chapter 6- Selected Indian Case Studies of Insider Trading

Chapter 7- Conclusions and suggestions

CHAPTER 2

2.1 MEANING TYPES AND THEORIES OF INSIDER TRADING

Meaning and definition of insider trading

"Insider trading" is a worldwide phenomenon that requires immediate consideration and regulation, and if left untreated, it will exacerbate a number of issues, particularly economic issues such as widening of the wealth gap, stock market crashes, and economic recessions. It is a bad trend since the rich get richer and the poor get poorer, which is bad for any economy.[3] According to published figures, by the end of the twentieth century, 87 nations had enacted insider trading legislation.[4]

It is exceptionally hard for someone who has insider information and uses it to make a future profit or reduce a loss by discounting that knowledge to stay away from trading based on those facts. The current effort is an attempt to comprehend the scope of the situation and the legal processes in place to counteract it. "The share market is also a crucial and effective tool for shifting limited resources from surplus to deficit units." [5]

Insider trading has a wide range of meanings and definitions. It is the use of non-public price sensitive information with the purpose of making illicit profits or avoiding certain losses. Insider trading is defined as the purchase or sale of a stock by any individual who has material or unpublished facts about company. Based on when and how the insider makes the trade, insider trading can be legal or illegal. [6]

Insider trade has been defined as "trading in shares of a company, on the basis of unrevealed price-sensitive information about the operation of the firm which they own, but do not have access to, to those involved in or near the management. Such trading entails the misappropriation of sensitive

[3] *Insider Trading and its Harmful Effects – A Legal Perspective, available at http://www.ialm.academy/insider-trading-and-itsharmful-effects-a-legal-perspective*
[4] *Bhattacharya and Daouk, "The World Price of Insider Trading", Journal of Financial Economics 75, vol. 57*
[5] *Wurgler J.(2000), "Financial Markets and the Allocation of Capital", Journal of Financial Economics, 187-214, Vol-58*
[6] *Insider Trading https://www.investopedia.com/terms/i/insidertrading.asp#ixzz56mi2wYzp*

information, which, aside from being immoral, equates to violation of a fiduciary position of confidence and trust." [7]

2.2 Some substantial definitions

"Using materials or non-public knowledge in trading company stocks by a company insider or by anybody who owes the firm a fiduciary obligation" is defined in Black's Law Dictionary.[8]

"Well known to the public, however, the insiders often mean the practice of corporate agents purchasing or selling their corporate shares without divulging substantial information that does not alter the cost of the security," said the founder of law and economic discipline Henry G. Manne.[9]

Advanced Law Lexicon describes it as: "Insider trade is the practice of providing an unauthorized advantage over the dealing of securities in the handling of individuals by accessing confidential and non-public information"[10].

To avoid future misunderstanding, three fundamental definitions of (i) insiders, (ii) insider information, and (iii) company securities must be clarified.

2.3 Who exactly are insiders?

A company's investors can be divided into two groups: internal investors and external investors. Staff members, directors, executives, and other connected individuals and regarded to be connected persons of a corporation are examples of internal investors. Inside investors have traditionally been regarded as insiders. Other people are directly connected to the company because of their positions. They've also been referred to as "insiders from the outside."

"An insider is someone who has exposure to important information about a firm before it is made accessible to the broader public. Any individual who is or was connected with said corporation, or is deemed to be connected with the corporation, and who is expected to have direct exposure to

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[7] Vyas Amit K. "Insider Trading : Review of Some Important Cases", Chartered Secretary, ICSI, pp-1133-1138, August 2006.

[8] Bryan A. Garner, "Black's Law Dictionary" 798 7th edn., New York, 1999.

[9] Henry G. Manne, "Definition of Insider Trading" in Fred S. McChesney (ed.) The Collected Worksof Henry G. Manne" 364, 2009

[10] P. Ramnath Ayyar, "Advanced Law Lexicon" 3rd edn., 2363 Wadhwa and Co., Nagpur, 2007

unreleased price-sensitive information in regard of company securities or who has received or has had significant exposure to such unproduced price information, is also considered an insider."[11]

Insiders are divided into two groups: primary insiders and secondary insiders. Primary insiders are people who obtain information straight from its source and have the relevant ability to access the information's materiality. They must be aware of the ramifications of trading on the basis of sensitive information.[12]

Some individuals are characterized as secondary insiders because they learn secret information from somebody else. They have a special relationship with someone who has the inside scoop, they can learn such knowledge. Tippers are individuals who receive information from a key insider. Tipping is when a primary insider passes material classified knowledge to a secondary party in order for that party to benefit on it. Tippers are not permitted to trade on such data.

2.4 What is price-sensitive information?

"Unreleased Price Sensitive Information" refers to information related to the aforementioned issues or is of direct or indirect concern to an organization and that is not usually recognized or posted by that corporation for general knowledge but that, if printed or known, is likely to substantively affect the price of that company's securities in the market segments if published or known. [13]

Price-sensitive information continues to remain private information that could affect a company's stock price. As a result, it is predicted that this knowledge will impact an investor's investment choices. The material is confidential, pertains to the company, and hasn't even been made public. At the time of disclosure, the data may have an influence on the stock price.

The SEBI (Prohibition of Insider Trading) Regulations, 1992, define price sensitive information and unregistered information. There is no comprehensive definition of inside info available. However, SEBI has explained price sensitive information by providing a comprehensive set of seven price sensitive information segments.

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[11] Regulation 2(e) of SEBI (Prohibition of) Insider Trading Regulations, 1992.
[12] IOSCO Report (2003) Op. Cit, p-9
[13]S. Ramesh, S. Padmalata And vs Securities And Exchange Board Of india on 22 June, 2004

“These are:

i. the company's periodic financial outcomes;
ii. the company's targeted dividend declarations (both interim and final);
iii. the company's issue of securities or buyback of securities;
iv. any major expansion plans or project execution;
v. amalgamation, mergers, or takeover;
vi. the company's disposal of the whole or substantial part of the undertaking; and
vii. Any significant change in policies” [14]

However, this comprehensive list looks to be overly detailed and ambiguous, making it a bit difficult to address lawsuits and for insiders to determine when they must disclose knowledge prior to trading.

2.5 What do you mean by "Company Securities?"

In section 2(h) of the Securities Contract (Regulation) Act, 1956, the term "securities" is defined broadly. “It includes:

i. shares, stocks, bonds, debentures, debenture stock, or other marketable securities of a similar character or of any incorporated company or other body corporate;
(ia) derivatives; and
(ib) units or other instruments given to investors in any collective investment scheme.
(ic) a security receipt, as defined in Section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, clause (zg).
(id) units or other similar products distributed to investors as part of a mutual fund plan;
(ie) any certificate or instruments (by whatever name called) issued to an investor by any issuer that is a special purpose distinct entity that owns any debt or receivable, including mortgage debt, and acknowledges beneficial interest of such investor in such debtor/ receivable, including mortgage debt, as the case may be.
ii. government securities;
(iia) such other instruments as the Central Government may determine to be securities; and

[14] *Section 2(h)(a) SEBI (Insider Trading) Regulations, 2002*

iii. Securities rights or interests."[15]

2.6 Types of insider trading

Insider trading has a wide range of definitions, and it can refer to both legitimate and illicit activities[16]. An insider's trade does not necessitate legal intervention for every transaction he or she engages in. Though the phrase has a shady ring to it, and stock market authorities throughout the world spend a lot of effort drafting legislation to counteract it, it is not always a bad thing[17].

In this context there are two forms of insider trading

There are 2 sorts of insider trading in this scenario.

a) **Legal Insider Trading**: While most people identify insider trading with shady activities by insiders, it is important to recognize that not all insider trading is illegal[18]. In fact, unlawful insider trading accounts for only a small percentage of total insiders trading. Insider trading can also refer to the entirely legal purchase and sale of stock by business insiders[19]. When corporate insiders, officers, directors, and workers buy and sell stocks in their own firms, the legal version came into effect, and in order to legalize the transaction, the company's directors and employees must inform about their securities dealings[20]. Trading by company insiders, such as officers, key workers, directors, and major shareholders, may be allowed in most countries if done in a way that does not take advantage of nonpublic information and within the bounds of public policy and insider trading rules[21]. While dealing in securities, an insider, employee,

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[15] *Section 2(h) of the Securities Contract (Regulation) Act, 1956.*

[16] *Christopher P. Montagano, "The Global Crackdown on Insider Trading: A Silver Lining to the Great Recession" 19 Indiana Journal of Global Legal Studies 581(2012)*

[17] *S.K. Lokkeswari, "Inside of Insider Trading", online available at http://www.thehindu businessline.in/iw/2007/04/29/stories /2007042902001300.htm.*

[18] *M.L. Gopichandra, "Insider Trading Insights" in Jayshree Bose (ed.) Insider Trading: Perspectiveand Cases 5 (2007).*

[19] *Ibid*

[20] *Astha Mishra and Anand Mishra, "Strengthening the Insider Trading Laws in India: A realizationfrom Rajat Gupta conviction" 115 SEBI and Corporate Laws 106 (2012).*

[21] *Priti Aggarwal, Neha Khaitan and Richa Kaur, "Regulating Insider Trading - An Indian Perspective" 1 Research Directions 2 (2014).*

officer, or director of the company must not possess material non-public information to be considered legitimate insider trading. As a result, an insider is free to trade in his company's stock based on publicly available information regarding the company's current or future financial status. For example, if news of a potential bankruptcy filing is published in the media, a director can sell his shares in the company because his choice is based on knowledge that any other shareholder would have learned.

b) **Unlawful Insider Trading: T**he type of insider trading covered in this thesis, however, is illegal insider trading. The fact that insider trading is based on unpublished price sensitive information is illegal since it is harmful to the interests of other participants and goes against the broader concept of equal access to information. In comparison to when the counterparty is aware of the information in question, the person in possession of price sensitive information obtains superior terms in a contract of sale by doing so. "It is illegal not only to trade your own shares in a firm based on this information, but it is also criminal to offer someone inside information or a tip in order for them to profit from trading on that information or tip."[22] The Securities Exchange Commission defines illegal insider trading as "purchasing or selling a security while in possession of substantial, nonpublic information about the security, in violation of a fiduciary responsibility or other relationship of trust and confidence." Such information, the trading of stocks by the tapped person, the trading of securities by the misuse of such information are all examples of in-house trading crimes."[23]

Thus, referring to the illegal activity as "insider trading" is inappropriate for two reasons: etymologically, it is misleading because even outsiders such as lawyers and chartered accountants can engage in such activity; and it is ambiguous because it is used to refer to both legal trades made on the basis of publicly disclosed information and trades made by insiders on the basis of non-privileged information. 'Trading on the basis of inside information' would be a more accurate word for 'insider trading.'[24]

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[22] *M.L. Gopichandra, "Insider Trading Insights" in Jayshree Bose (ed.) Insider Trading: Perspectiveand Cases 5 (2007).*

[23] *SEC, "Insider Trading", online available at http://www.sec.gov/answers/insider.htm.*

[24] *William B. Irvine, "Insider Trading: An Ethical Appraisal" 6 Business & Professional Ethics 4(1987).*

2.7 Insider Trading Theories

Insider trading theory must begin with a study of who the insiders are. Insiders are those who have comprehensive knowledge of a company's or transaction specific information. Insider trading theories have mostly been developed in the United States through a number of legal rulings. Some of which were issued even before the Securities Exchange Act of 1934 23 was enacted. Currently, there are three major hypotheses that underpin an insider's responsibility in insider trading proceedings. The "theory of abstain or reveal," "theory of fiduciary duty," and "misappropriation theory" are the three theories.

a) Theory of abstinence or disclosure

The concept for abstention or disclosure arose in the case of Cady Roberts & Co.[25], the first enforceable measure to combat insider trading on the open market. The SEC states that any person possessing material knowledge within the firm has either to reveal it in advance of trade or to refrain from dealing with the stocks of the afflicted company. This theory has been widened from a corporate insider into "anybody" with a seminal case SEC versus Texas Gulf Sulphur. [26]

b) Fiduciary duty theory

The US Supreme Court abolished the premise of equal access in Chiarella against the USA[27] through the fiduciary duty argument. The fiduciary obligation depends on a trust and trust connection between the parties to the transaction or on another similar relationship. Fiduciary duties in the U.S. are concepts of judges, which are invented and refined over a century in judicial rulings. Judges are informed by preliminary court views based on specific facts. The scope of the insider trade was significantly reduced under this hypothesis. It was emphasized that a mere holding of non-public information does not imply an obligation. Instead, the trader with inside information and the complainant should have a fiduciary or other relation of trust and confidence.

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[25] *SEC v. Cady Roberts 40 SEC 907 (1961)*
[26] *SEC v. Texas Gulf Sulphur 401 F.2d 833 (2d Cir. 1968).*
[27] *U.S. v. Chiarella, 445 U.S. 222 (1980).*

In 1909, in the case of Strong v. Repide[28], the U.S. Supreme Court declared that, when the shareholder purchased the shareholder's significant information about the company, it was disclosed by an administrator; it was violated as a director's obligation to divulge such data and was deceitfully considered.

In the course of the years, the judicial interpretations of the U.S. courts found that an insiders' fiduciary obligation was a duty owed by individuals in trust with the corporation, the shareholders or the source of substantial price-sensitive information. They found that insider trading does not violate a general trust obligation, but rather violates a particular trustee obligation to refrain from self-employment, on the basis of confidential, material price-sensitive knowledge.

c) Misappropriation Theory

In the early 1980s, the Federal courts in the United States created the third theory of "misappropriation." According to this idea, if for valid reasons, the individual commits fraud in relation to the acquisition or sale of a guarantee for such dealing and trade for personal benefit, he misuses the information he has given him. The responsibility for insider trade occurs when an insider trade bases it’s inside information on a business that has arisen from a source other than the firm where the insider submitted the information without breaching fiduciary duties. [29]

The United States Supreme Court subsequently restated in 1997 the doctrine of misappropriation in the U.S. v O'Hagan[30] case. In the case in point, the court held that "disappointment through non-disclosure was the key to the culpability theory that is recognized in the government." Furthermore, the Court concluded “there would be no violation of Rule 10b-5 if a misappropriate has communicated his trading plans at the source of the information before trading.”

The principle of misappropriation was created partly for the purpose of preventing corporate externals from utilizing the information for their personal gain, although they normally have

[28] *Strong v. Repide 213 US 419 (1909).*
[29] *Read also Ian Ayres & Stephen Choi, Internalizing Outsider Trading, 101 Mich. L. Rev. 313*
[30] *U.S. v O’Hagan 117 S.Ct.2199 (1997).*

no trust duty to shareholders. Moore contends that an institutional agreement between shareholders and insiders can resolve misappropriations. However, corporate outsiders should not be so shielded. The idea of trust states that agents within the company have the obligation to promote shareholder interest and that the inner business by management or workers frequently goes against this obligation. The function of innovators in theory seems to address the issue of insider trade appropriately and supports the shareholders' interests.

Before a suitable evaluation of the insider trade in the financial system can be made, much serious effort is necessary. In other aspects of social life, too, significant investigation is necessary to treat and grasp the issue more fully.

2.8 ROLE OF SEBI IN CURBING INSIDER TRADING

The function of a share market regulatory authority in a nation is dictated by the phase in which the stock market develops in that nation. With reference to the growing state of the economy in India, the regulatory authority must unavoidably have the dual responsibility of progress and control. Rajat Gupta[31], who is suspected of insider trading in the United States, will have to demonstrate whether or not he profited financially from his actions at his prosecution in the United States. Nevertheless, the most important issue is that Gupta was tried. This had important consequences for Indian insider trading legislative measures.[32] The roles of regulation and growth are intimately interrelated and have nearly identical aims. In most situations, fast and robust growth is the result of very well systems. Securities and Exchange Board of India Act 1992 provides for the operation of SEBI as statutory entity.

Section 11 of the SEBI Act discusses SEBI's competences and functions. The SEBI is responsible for protecting investors' interests and regulating the stock exchange. The ban is one of the key government regulations for the SEBI stock exchanges.[33] In any cases involving the suspicions of insider traders, SEBI could investigate the complaints filed by investors, middlemen and any other individual. In this context, SEBI may assign one or more officials for the purposes of the inquiry to

[31] *United States v. Gupta, 747 F.3d 111, 115 (2d Cir. 2014)*
[32] *Satvik Varma, "Is India too soft on insider traders?" https://economictimes.indiatimes.com/slideshows/economy/is-india-too-soft-on-insider-traders/insider-tradingis-a-criminal-offence/slideshow/11066581.cms*
[33] *Section 11(g) of the SEBI Act 1992*

examine the books of accounts of insiders and other persons[34]. The Board shall offer an insider adequate notice for that reason before conducting an investigation. Any books, logs, documentation and electronic information, or other pertinent statements by any member, manager, partner, holder or staff of the insider or other individuals may be examined by the investigative authority.

2.9 INSIDER TRADING: A WHITE COLLAR CRIME

For the phrase 'white collar crime' there really is no formal meaning. In a presentation to the famous criminology professor Edwin Sutherland defined "white collar crime" as "a crime conducted by an individual of respectable and high social rank in the conduct of his occupation"[35].

India likewise lacks a defined legal definition or regulations on white collar crimes. The 47th report by the Law Commission on 'Social and Economic Operations Trial and Punishment 361 defined the report as 'a crime committed by a member of the highest level of society," for the sole purpose of the report."

In contrast to conventional offenses such as a killing that is the result of the current heat; financial crimes require scheme predetermination and preparation. "The crime involves a calm analysis and a purposeful design, with a view to financial gain, irrespective of the impact on society. The lack of regard for the Public's interest can only occur at the expense of giving up the Society's confidence in the system to supervise the justice system evenly without fright of the quarters criticizing white collar crimes with a lenient eye without due consideration to damage caused to national economies and interests."[36]

Indeed, the form of the offence, class of the perpetrators and the economic and social consequences of the offence are also considered by India to be white collar crime. To date, however, India has been unable to set precedents for effective enforcement of inside trading investigations, which can prevent potential infringers. In India, the SEBI appears to be not being prosecuted for a crime, but Section 24, according to the SEBI Act, authorizes the SEBI, for the breaches of the SEBI Act, the Rules and the Rules lay forth therein, to commence prosecution.

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[34] *Regulation 4(A) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*
[35] *, Stuart P Green, The Concept of White Collar Crime in Law and Legal Theory, 8:1 Buff L.R.1 (2005)*
[36] *State of Gujarat v. Mohanlal Jitamalji Porwal and Anr (AIR 1987 SC 1321)*

There is a complex and burdensome way to build the trader as an insider and the crime of insider trading. To conclude, the Indian regulatory structure should classify insider trading as a serious white-column offence and should include measures in the Security Exchange Board India Act itself that make it a felony, followed by prison.

CHAPTER 3

3.1 NEED FOR INSIDER TRADING REGULATIONS

Rules of behaviour are at the heart of regulations.[37] There are many rules of conduct in every country, as a means of reconciling the competing rights and interests of its residents. Many of these rules are designed to govern how individuals interact with one another on a social level.. Uncertainty, information asymmetry and the absence of perfect competition can allow certain participants to take unfair advantage of investors by exploiting regulatory deficiencies. In this context, an effective securities market regulation is of vital importance.[38]

In the financial system, financial regulations are rules that govern the commercial behaviour of participants. Trade and commerce can flourish within the framework of financial regulations, benefiting all parties.

The prevention of insider trading is widely regarded as a key function of securities regulation. Regulators appear to devote significant resources to combat insider trading in the United States - the world's most-studied financial market. Because of this, many Indians have accepted that insider trading is a SEBI function. Government actions against insider trading are much more limited in most countries other than the United States of America. There are many countries that give lip service to the idea of preventing insider trading, but do little to actually enforce it.

For speculators outside a company, insider trading appears unfair, especially when they face stiff competition from inside traders. Speculators and fund managers alike face lower returns when markets are more efficient due to insider trading. Insider trading is not harmful by itself. Clearly, insider trading hurts individual and institutional speculators, but there is disconnect between the interests of the economy and those of these professional traders. Like foreign goods that compete on the domestic market, the economy as a whole benefits even as one class of economic agents suffers.

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[37] *Carmicheal Jeffry, Pomerleano Michael, "The Development and Regulation ofNon-Banking Institutions, (2002) pp 12-33*

[38] *Bose Suchismita, "Securities Market Regulation: Lessons from US and Indian Experience", ICRA Bulletin. Money and Finance, Jan-June, 2005, p 83*

To supervise the operations on securities markets, which are recognised around-the-world, statutory regulations and regulatory authorities are needed. The great majority of securities legislation in every country attempt to promote fair and complete disclosure of essential data relating to financial markets and individual stocks transactions To ensure that all shareholders have a level field, it encompasses all areas of market trading, financing and financial reporting by listed companies. It is possible that the activities of insider traders could undermine the confidence of investors in shares.[39]

The urge for regulation isn't only an irrational reaction based on hazy concepts of justice and morality. Variables that impact public trust may not always be defined in a rational fashion, but the need to minimise market abuses comes logically from the realisation that public confidence must be preserved. In order to combat a problem, regulation is framed in a particular way. Illegal behaviour is not tolerated by the civilized society, so criminal laws are enacted. As a result, insider trading is regulated by the government. Another strong foundation for the concept of civil society is that of level playing fields. Some insider trading regulations are intended to provide a fair playing field for all market players, while at the same time regulatory agencies like SEBI, SEC and others are expected to refrain from interfering at the micro-level with commercial choices.[40]

3.2 INDIA'S REGULATORY MECHANISM'S HISTORY

Former President of the BSE opened his presentation at a financial market seminar by noting that "insider trading is the only kind of trading in India." The fact that by the time the retail people get the hot tip, the true operator has already dumped their shares is a different story."[41]

As a result of new economic policies for integrating the Indian economy with the rest of the world, and the opening of investment channels for foreign institutions and funds, it was appropriate to introduce new regulations to ensure compliance with insider trading regulations, especially to serve

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[39] *Weston Fred J., Chung Kwang S. and Hoag Susan E., Mergers Restructuring, and Corporate Control", Prentice Hall of India Pvt. Ltd. (1999), p-560*

[40] *See Robert C. Rosen, The Myth of Self-Regulation or the Dangers of Securities without Administration: The Indian Experience, 2 J. Comp. Corp. L. & Sec. Reg. 270-71 (1979) at p.286.*

[41] *Sucheta Dalal, "Nabbing Insider Trading: Easier said than done" The Rediff Columns, Aug. 16,2000.*

as a source of reassurance for investors from other countries that our country has such laws as well.[42]

First, you should know how the developments that India had previously gone through formed the foundation for the legislation regulating insider trading, namely the SEBI (Prohibition of Insider Trading) Regulation, 1992 and the SEBO (Securities and Exchange Board of India) Act, 1992.

3.3 The Patel Commission (1987):

In May 1984, the Indian government formed a High-Powered Committee (Patel Committee) to conduct a complete evaluation of the operation of stock exchanges and give suggestions. "The committee's final report expressed grave concern about the lack of particular regulation in India to prevent the misuse of insider knowledge and advocated harsh penalties for insider trading. Insider trading is common in the country's stock exchanges, according to the research, and is one of the main causes of excessive speculative activity"[43]. Even lawyers' offices, auditors' offices, financial consultants' offices, and financial organisations with secret price sensitive information have been accused of engaging in such behaviour. Most stock brokers participate in speculative trading in their accounts while conducting transactions for their insider clients, which is harmful. The stock exchange should take immediate action to address this threat. Any news or events impacting the companies that may be price-sensitive should be quickly communicated to the stock exchanges as soon as they are placed on the board's agenda and circulated to the directors. To develop a healthy and transparent stock exchange practise and maintain investor confidence, such trading should be regulated by legislation.

3.4 Committee of Abid Hussein (1989)

In 1989, the Working Group on the "Development of the Capital Market," also known as the Abid Hussein Committee, was established. Insider trading should be deemed a significant offence punishable by civil and criminal sanctions, according to the group. Insider trading and secret takeover bids are issues that may be largely addressed by suitable regulatory measures. It was suggested that the SEBI be given the task of drafting the appropriate legislation and being given the ability to enforce it.

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[42] *R. Parthasarthy "Insider Trading Regulations: A Critical Appraisal" 1 Company Law Journal 102(1993).*
[43] *Patel Committee Recommendations, No-7.26*

3.5 India's Securities and Exchange Board and Insider Trading

History and Formation of SEBI.

1. SEBI is headquartered in Mumbai's Bandra Kurla Complex commercial district, with regional offices in New Delhi, Kolkata, Chennai, and Ahmedabad, respectively.
2. Before SEBI, the regulating authority was the Controller of Capital Issues, which had authority under the Capital Issues (Control) Act of 1947.
3. Initially, SEBI was a non-statutory entity with no legal authority.
4. However, the Government of India amended the Securities and Exchange Board of India Act, 1992 in 1995, giving the SEBI more statutory authority.
5. A resolution of the Government of India established the SEBI as the regulator of capital markets in India in April 1988.
6. The SEBI is run by its members, who include: a) The chairman, who is appointed by the Union Government of India.
7. b) Two participants who are Union Finance Ministry officers.
8. c) One person from India's Reserve Bank.
9. d) The Union Government of India nominates the remaining 5 members, at least three of whom must be full-time members.
10. SEBI's headquarters are in SEBI Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051, and it has regional offices in Kolkata, Delhi, Chennai, and Ahmadabad.
11. Recent openings include the openings of offices in Jaipur, Bangalore, Bhubaneswar, Patna, Kochi and Chandigarh.[44]

SEBI's Roles and Responsibilities

1. As a quasi-legislative and quasi-judicial body, the Securities and Exchange Board of India (SEBI) is empowered to draught regulatory requirements, conduct inquiries, make rulings and place sanctions.[45]
2. Its purpose is to meet the needs of three distinct groups of people:

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[44] M.S.Sahoo, "Historical Perspective of Securities Laws", online available atwww.icsi.edu/.../31nc/historicalperspectiveofsecuritieslaws-mssahoo.doc.

[45] Dharmishta Raval, "Improving the Legal Process in Enforcement at SEBI", online available athttp://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf.

- Issuers - By creating a marketplace for issuers to expand their capital.
- Investors – By assuring the security and availability of precise and accurate data.
- Intermediaries - By allowing for a competitive professional intermediary market.

3. SEBI can now regulate any money pooling arrangement of Rs. 100 crore or more and attach assets in cases of non-compliance under the Securities Laws (Amendment) Act, 2014.
4. "Search and seizure activities" can be ordered by the SEBI Chairman. Any person or entity can be asked to provide information, such as telephone call data records, in relation to any securities transaction under investigation by the SEBI board.
5. SEBI is in charge of registering and regulating venture capital funds as well as collective investment plans, such as mutual funds.
6. It also promotes and regulates self-regulatory groups, as well as preventing unfair and deceptive financial markets operations.[46]

3.6 The Companies Act of 2013 regulates insider trading.

"The establishment of a unique provision on insider trading in the Companies Act of 2013 was another novel good measure against insider trading. The notion of insider trading gained formal recognition in company law legislation with the notification of Section 195 of the Companies Act in 2013"[47]. The old Companies Act, 1956, did not have any sections dedicated to insider trading, except for Sections 307 and 308, but under the current Companies Act, 2013, a new section, Section 195, has been inserted that deals directly with insider trading. Following SEBI's lead, the Ministry of Corporate Affairs included a particular provision in the Companies Act 2013 in the shape of Section 195[48]. It reads as under:

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[46] *Ashima Goyal, "Regulation and De-regulation of the Stock Market in India", online available athttps://papers.ssrn.com/sol3/papers2.cfm?abstract_id=609322.*

[47] *Nikhil Sureesh Pareek and Soha Banerjee, "Insider Trading – Analysis of Price Sensitive Information" 121 Corporate Law Adviser 4 (2014).*

[48] *Dr. S. D. Israni, "Insider Trading: Bane of Securities Market" 64 Chartered Secretary 262 (2014).*

"(1) No person including any director or key managerial personnel of a company shall enter into insider trading.

Provided that nothing contained in this sub section shall apply to any communication required in ordinary course of business or profession oremployment under law.

Explanation – For purpose of this section:

a. Insider trading means:

   (i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of company either as principle or agent if such director or key managerial personnel or any other officer of company is reasonably expected to have access to any non public price sensitive information in respect of securities of company; or

   (ii) an act of counselling about procuring or communicating directly or indirectly any non public price sensitive information to any person;

b. "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 the securities.

(2) If any person contravenes the provision of this section, he shall bepunishable with imprisonment for a term which may extend to 5 years or with fine which shall not be less than five lacs rupees but which may extend to twenty five crores or three times the amount of profit made out of insider trading, whichever is higher or with both."

Section 195 of the Act prohibits any person, including company directors and key managerial personnel, from engaging in insider trading, which is defined as a trade done based on inside information, that is, an act of purchasing, selling, or dealing in securities because of confidential price information, or acting as a confidant and providing this confidential price information to others. Any information relating directly or indirectly to a firm that, if disclosed, is likely to materially affect the price of the company's securities has been characterized as price sensitive information.

"It is apparent that the section was added to the statute book solely because of the "adequateness of the enabling clause" on the crime of insider trading in the main legislation dealing with corporations[49]. It was not the intention to replicate the provision or to enter SEBI's jurisdiction."[50]

3.7 Introduction

The Securities and Exchange Board of India is the governing organization in India that oversees effective corporate governance. This institution keeps a close eye out for any odd purchases or sales of publicly traded stocks. In 1992, the TISCO Case cleared the path for the founding of the Securities and Exchange Board of India. In the case of Tisco[51], the company's profitability crashed, and shares were sold in modest numbers even before half-year results were announced. There was no insider trading, according to the court, due to unavailability of any evidence. The perpetrators could not be held accountable given the absence of laws and processes. The Securities Exchange Board of India (Insider Trading) Regulations, 1992 were enacted as a result of this. Insider Trading regulations in India were significantly changed in 2015, following the 1992 Regulation. As a result, the "SEBI (Prohibition of Insider Trading) Regulation, 2015" was adopted to address the shortcomings in the previous policy, as the illegal transactions were not addressed by the regulation's narrow scope. In the year 2019, another substantial change was made with the goal of covering both direct and indirect transactions.

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[49] *Vinod Kothari and Shampita Das, "Insider Trading in Unlisted companies: Understanding the operation of Section 195" 30 Taxmann Corporate Professional Today 52 (2014).*

[50] *Delep Goswami and Anirudh Goswami, "Insider Trading Norms: Lessons Independent Directors hould not Forget" 31 Taxmann Corporate Professionals Today 79 (2014).*

[51] *Tata iron and Steel Co. Ltd. Etc. Vs. Union of India and Anr (1992) SCR 3*

Section 195 of the Companies Act, 2013 [Now Scrapped]

Insider trading was also prohibited as per the Companies Act of 2013. Provisions contained in Section 195 of the Act made it illegal for key management personnel to share confidential material. Afterwards, this provision was removed because section 458 of the Companies Act delegated the authority to conduct trials of accused individuals to SEBI, hence causing confusion and doubt as to whether the accused should be held liable as per the Companies Act or the SEBI regulations. As a result, section 195 was removed by notification in 2017. As a result, the SEBI (Prohibition of Insider Trading) Regulations, 2015, as well as Sections 12A (Prohibition of Insider Trading) and 15G (Penalty for Insider Trading) of the SEBI Act, govern insider trading in India.

SEBI's Regulations 2015 (Prohibition of Insider Trading)

3.8 Salient features of PIT regulations:

"As per the new laws, if someone is found communicating UPSI would he will be punished; whereas, under the previous SEBI (PIT) Regulations, 1992, simply communicating UPSI without entering into trade was not prosecuted. When the UPSI is revealed deliberately, corporations now are compelled to mildly disapprove the same.

What does it mean to be an insider as per the SEBI Regulations 2015?

An insider, according to the new definition, is "someone who possesses or has exposure to price-sensitive data of the company or any person who is connected to the company in one of the ways as stated below."[52]

Anyone associated with the company on the premise of in any commercial, professional, or occupational relationship are included in the SEBI's definition of Insider as these people can easily access the UPSI i.e unpublished price sensitive information.

Connected person as per SEBI's regulation 2015

This is a new definition included in SEBI's new regulations, which defines "connected person" as "anyone who is or has been associated with a company, directly or indirectly, in any capacity, during the six months prior to the act, including by reason of frequent communication with its

[52] *Section 2(1)(g)of SEBI's Regulations 2015 (Prohibition of Insider Trading)*

officers, or by being in any contractual, fiduciary, or employment relationship, or by being a director, of the company."[53] It also applies to anyone in a role in the company that gives them easy and undisputed access to the unpublished information (UPSI)

The aforementioned description of a linked person also includes those who may not appear to hold any role in a firm but are in daily contact with either the officers of the company engaged in day to day activities of the company or the company itself.

3.9 **Information that is widely available:**

Any information that is generally available to the public and every one with basic knowledge can access it, is referred to as "generally available information."

Note: The goal is to clarify what data is normally accessible in order to make it easy to understand and recognize what data is unpublished and price sensitive. Normally, the data that is available on the site of stock exchange market on which the shares are traded is termed as generally available information and that is not available on the website of stock exchange can be accessed only through inside the company with help of connections is termed as Price sensitive and unpublished information.

Disclosure Threshold Limit [include KMPs and Employees]:

If the securities of more than 10 lakhs are traded during a calendar quarter, Directors as well as employees are required to make disclosures about the trade within two days of the transaction. This provision is unaffected by whether the securities were exchanged in a single transfer or in a series of actions.

3.10 **Compliance Officer's Responsibilities:**

New responsibilities are imposed on the company's Compliance Officer by the new SEBI (PIT) Regulation, 2015 that includes supervising and ensuring adherence with the requirements listed in the SEBI's 2015 regulations. Such responsibilities must be carried out with extreme caution.

For example, there is no obligation for early revelation of the information in the case of workers, but continuous revelation is necessary in the event of exceeding the limit. It becomes a very difficult task for the officer to determine whether or not requirements have been met in this situation. Furthermore, the regulations impose an obligation on the corporation to notify trade

[53] *Section 2(1)(d) of SEBI's Regulations (Prohibition of Insider Trading) 2015*

exceeding a limit of Rs. 10 lakh in price, regardless of the revelation received by the worker, as stated in Regulation 7(2)(b):

If the securities of amount more than 10 lakhs are traded during a calendar quarter, Directors as well as employees are required to make disclosures about the trade within two days of the transaction.

According to the new SEBI (PIT) 2015 requirements, the corporation must initiate a mechanism to supervise all of its workers' trading, rather than only specific personnel as needed under previous laws.

3.11 **Trading Strategies:**

An insider is given a right to develop strategy to trade and present the same in front of the compliance officer for his permission and disclosure to the general public. After seeking the approval of the compliance officer, securities can be traded on behalf of the insider based on his strategy.

This clause aims to provide individuals who could have continuous access to unpublished and price sensitive data with an opportunity to enter into the transactions and trade the securities in a legal way. This provision would allow an insider to create a strategy or a plan in order to arrange trades that will take place in future. With the help of this provision an insider who has an uninterrupted access to the UPSI can formulate trade strategy or plan and present it to the compliance officer and he will not be barred from trading the securities on the ground that he has continuous access to the Confidential and price sensitive information.

The strategy for trade must meet the following requirements:

i) It must be presented for a period of at least 12 months.

ii) There will be no connection between the plan and the previous plan presented by Insider.

iii) It must specify the amount to be traded or the quantity of securities that needs to be exchanged, as well as the kind of the exchange and the periods or occasions on which the specified exchange will be made.

iv) Exchange can only take place six months following the announcement of the trading plan to the public.

v) No exchange of securities will take place from the 20th day before the end of the F.Y. and the 2nd business day after the financial statements are released.

vi) The strategy must be approved by the Compliance Officer.

vii) After getting the approval from Compliance officer, the trading strategy can neither be reversed nor be revoked; the insider is liable to carry out the plan as stated without deviating from the same or trading any other securities not mentioned in the plan. Exception - In the cases where the insider has some unpublished information with him that was not revealed to the public at time of disclosure. In this situation, the plan can be revoked.

viii) After approving the trading strategy, the Compliance officer is liable to communicate this information to the concerned stock exchange.

3.12 Insider Trading Transparency:

Those who are direct relatives of the individual who is/has made the trading, as well as any other person for whom such person makes trading decisions, must submit a declaration.

Trading in stocks must also involve trading in securities alternatives, and the transacted value of the derivative products must be disclosed. (Note that the Director and KMP are prohibited from participating in forward transactions or related operations under section 194 of the Company Act, 2013.)Disclosures must be kept current:

The corporation is required to keep the disclosures made by the insiders under these laws for a minimum of five years.

Disclosures are classified as follows:

a) Initial Public Disclosures

b) Consistent Disclosures or continual disclosure of information

Certain individuals' disclosures (Regulation7):

a) Initial Disclosing Information:

Every promoter, KMP and managing director of a company whose inventors are traded on any recognized stock exchange shall notify the company of its holdings of the stock of the corporation within a period of thirty days from the date of entry into force in this legislation.

Each person shall reveal his holdings of a company's securities within seven days of appointment to Key Managerial Person or to its director, or upon becoming a promoter, as of the date he was appointed director or promoter in the company.

b) Regular Disclosures:

i) If the price of the shares bought and sold, either in one money transfer or a series of money transfers over any calendar quarter, exceeds the limit of Rs. 10 Lakh or any other amount as may be specified by the regulations, Directors as well as employees are required make disclosures about

the trade within two days of the transaction. The disclosure shall contain the form as well as the quantity of the securities involved in the transaction.

ii) Within 2 working days of receiving the disclosure or getting to know about such information, every firm must has the liability to inform the concerned Stock Exchange of the specifics of such transaction.

Other linked people's disclosure (Disclosure by a connected person):

Every company having listed securities on the Stock exchange can make any connected person disclose the information containing their buying and selling of securities of the company. This is done to ensure that the compliance rules have been duly followed. There can be no question from the side of the connected person and he needs to submit the information in required quantity as well as form.

3.13 Fair Disclosure Code:

A code of conduct should be developed by the companies in order to disclose the unpublished information that affects the price of the shares. The code developed should disclose this information in fair and efficient manner.

Companies must develop a code of conduct and procedures for the fair disclosure of price sensitive information that has not been published.

According to the new SEBI (PIT) Regulations, 2015, listed businesses must develop a defined structure and strategy to disclose all the events and happenings that may in any affect the prices of their securities.

The following are the concepts outlined in the schedule:

i) Information shall be equally assessed by all

ii) All the policies relating to dividends, inorganic growth objectives, phone calls, and analyst meetings shall be published to be accused by all.

iii) All the details of such calls and meetings shall be published

The stock markets where the shares are traded must be promptly informed of the Code of systems and policies to disclose unpublished price sensitive information fairly.

Code of Ethics:

- Every Publicly traded company must develop a code of conduct to govern, supervise, and disclose trade transactions by its staff and other associated people in order to comply with these rules.

- Every publicly traded firm that creates a code of conduct must identify and select an official solely for the purpose of compliance and to oversee the code of conduct and other restrictions.

- In addition, the Auditor of a publicly traded business is required to examine and monitor whether adherence is being done with the SEBI 2015 regulations at least one time in a financial year.

- Every publicly traded firm must have documented rules and processes to initiate the inquiry in case of reported or suspected UPSI leak and it must initiate an inquiry as soon as it becomes aware of the suspected leak. Such information leaks, enquiries, and the outcomes of such investigations must also be reported to the SEBI as soon as possible.
- All the listed firms have a policy by which they can report incidences of any leakage of unpublished and price sensitive information. This policy is often termed as a whistle blower policy and the staff is generally aware about it. In case an investigation is initiated by a firm under this policy, it's intermediaries and subsidiaries are under an obligation to cooperate with the company in the ongoing investigation.

3.14 **Internal Supervision system to prohibit Insider Trading**

A CEO or Director of a publicly traded company, an intermediary, or a fiduciary is required by the regulation 9A to implement an appropriate and effective internal supervision system to ensure that compliance is being done as per the Prohibition of Insider Trading regulations to combat the practice of insider trading in the firm. Internal supervision systems should include: (a) all workers with availability to UPSI should be recognized as designated employees; (b) all the unpublished information that may affect the price of the securities must be recognized and remain secret in accordance with the SEBI's regulations 2015; and (c) interactions or acquisition of the unpublished information should be strictly limited as per the PIT Regulations (d) all other relevant processes indicated in these regulations must be followed; and (e)all workers as well as other people with whom the unpublished information is exchanged should be identified, and confidentiality clauses should be executed or prior warning in the form of a notice should be provided to all such workers and individuals (f) Internal controls should be evaluated on a regular basis to determine their effectiveness.

As per the Regulation 9(A)(3) of the PIT regulations, the board of directors of every publicly listed company along with the board of directors of their subsidiaries and intermediaries have the responsibility to make sure that CEO and director of the company is complying with both the previous regulations i.e. 9(1) and 9(2) of the PIT regulations. This regulation helps in establishing an internal system to control and prohibit the practice of Insider Trading.

3.15 Mens Rea in Insider Trading

The Securities Appellate Tribunal concluded in Rakesh Agarwal v. SEBI[54] that if an individual commits insider trading in stocks on the premise of unpublished and price sensitive information without any personal gain involved, it can't be termed as illegal. The legislative note to Regulation 4 of the New Regulations, on the other hand, expressly specifies that if an individual trades securities while in possession of unpublished price sensitive information, he is believed to be driven by knowledge and understanding of such information. As a result, these trading transactions' mens rea isn't supposed to be significant. Exchanging securities while in knowledge of UPSI is enough to establish a case against an individual.

3.16 Concluding Remarks

- The SEBI's regulations of 2015 was the much-desired shift in India's insider trading framework, tightening the noose around anyone who would commit the horrific crime of insider trading. Despite the revisions, the New Rules are devoid of clarity in some areas, which must be addressed in order for the Rules to be enforced effectively.

- Legislative annotations have been added to the Regulations by the legislature; however it is uncertain whether these have legal authority. Although these Regulations are intended to apply to organizations who are considering going public, there is some confusion about what the word means.

- Furthermore, the Regulations do not clearly specify a meaningful purpose as an exception to UPSI transmission. When an instance of insider trading is discovered, the Rules make no indication as to what investigation method should be followed. Nevertheless, it is believed that all these concerns will be addressed through justifiable interpretations by officials and

[54] *Rakesh Agarwal v. SEBI (2004) 49 SCL 351 SAT*

judiciary, laying the groundwork for advancement and effective implementation of the Financial Market Regulator's prevention of insider trading regulations.

- The purpose underlying these broad revisions must be admired, especially in view of the necessity for oversight on the maturing Indian Finance Market. Furthermore, it must be evaluated if the regulator has gone too far in guaranteeing adherence with the SEBI's 2015 regulations (PIT), and whether these requirements listed as to compliance in the PTI regulations are realistic.

- SEBI has overhauled India's regulation framework in the context of insider trading by broadening the definition of who qualifies as an insider and a connected person. The amended rules seem to be encouraging, realistic, and broadly consistent in accordance with the international perspective to insider trading.

- They also appear to be better prepared to assure implementation as well as enforcement of these PTI regulations. Insider trading is seen as a long-standing issue in India, and the PTI rules provide a level playing field in the financial market while safeguarding the rights of all stakeholders.

CHAPTER 4

PROBLEMS OF INSIDER TRADING IN THE EVENT OF MERGERS & ACQUISITIONS (M&AS)

4.1 Introduction

Insider trading it is an exceptionally troublesome wrongdoing to demonstrate. The hidden demonstration of purchasing or selling securities is, obviously, entirely lawful movement. This lawful movement can only make it a denied proof of insider trading in the minds of the trader.

Direct proof of insider trading is uncommon. There are no conclusive pieces of evidence or actual proof that can be deductively connected to a culprit. Except if the insider (merchant) admits his insight in some allowable structure, proof is as a rule incidental. The examination of the case and the verification introduced to the reality locater involves assembling bits of a riddle. It requires analyzing innately harmless occasion's gatherings in cafés, calls, and connections between individuals, trading examples and drawing sensible deductions dependent on their planning and encompassing conditions to prompt the end that the litigant purchased or sold stock with the advantage of inside data unfairly acquired. A solid foundation in terms of capital assets, innovation, the market, and the executives is required for any corporate substance to ensure its own survival and development in a time of fierce competition. Because of the changing nature of innovation and the financial climate, it is virtually impossible for any single organization to achieve sufficient strength in the previously mentioned areas through its own efforts. As a result, co-operation amongst one another is the only viable solution. Merger is a significant type of co-activity in which the member organizations lose their individual identities and merge into a single substance whose capacity in terms of capital, innovation, market, and executives is greater than the sum of the capacities of the organizations that have been combined. The synergistic effect of a merger helps to increase the development capability of corporate bodies, and the distinctive characteristics of these bodies increase significantly. That is why virtually every corporate merger is met with enthusiastic approval by the financial backers who provide the majority of the funding.

At the time of the merger or the securing of the exchange correspondence, care must be taken to ensure that hearsay does not become the dominant source of data for the partners. Moderators should build up a correspondence plan before making a public announcement of M&As. All of the partners who will be affected by the change should get the communications. All partners should be informed about of as many objectives as possible so that they can face the most appalling situation. There should be thorough explanations of possible changes, to make it clear to people why M&A deals are first and foremost being carried out. Various sources shall be used to advertise M&A. The booklet, recordings, internal reminder and explicit eye-to-eye collaboration should conduct internal communications. All external mail should be coordinated with the advertising division in the official announcements.

With this in mind, how probable is it that unlawful Insider trading will be detected by the market? Insider trading is a popular practice in the United States, and those who obtain inside information and trade on it have strong motivations to keep their actions hidden. Controllers look at a range of criteria to see if there is any insider trading going on. For example, the New York Stock Exchange checks all of its recorded stock and uses factual screenings to identify odd cost and volume examples. These incidents motivate inquiries into the impacted organization to investigate whether any significant information exists that could explain the anomalous trading behavior. In extreme cases, the Securities and Exchange Commission (SEC) is contacted and launches its own inquiry. When confronted with inside information on these implementation instruments, existing dealers with inside information spread their trading across numerous records and brokerage firms, as well as across time, to avoid swapping designs that would result in simple identification. Insiders have tremendous motivations to conceal their actions so that diverse merchants can only derive the data they have from their trading activity with great effort, regardless of whether there were no genuine expenses involved with insider trading.

If an incident with India occurs, the SEBI reconnaissance office is closely monitoring the cost and volume developments in the contents, which have unexpectedly become top picks. It has also asked stock exchanges to keep an eye on counters that are experiencing a lot of volatility.

SEBI surveillance refers to the monitoring of insider trading risks that occasionally manifest themselves in the form of instabilities in a specific counter only prior to important takeover announcements.

The Securities and Exchange Board of India (SEBI) outlaws insider trading and self-dealing, as well as other fraudulent and unfair trading practices. Insider trading is defined as "taking place when insiders or other persons who, by virtue of their position, have access to confidential information"

Accessing price sensitive information relating to a company's affairs, whether through their position in office or otherwise, and engaging in securities trading or causing securities trading while in possession of such information, or communicating such information to others who use it in connection with the purchase or sale of securities" is prohibited.

Insider trading occurs due to a variety of circumstances.

In the unlikely event that any insider who,-

(I) Bargains in securities of a body corporate recorded on any stock market based on any unpublished value touchy data, either for his own benefit or in the interest of another individual; or

(ii) Communicates any unpublished sensitive data to any individual, with or without his request, unless as required in the ordinary course of business or by law; or

(iii) Anyone who advises or arranges for another person to trade in any company stocks based on unpublished value sensitive material would be subject to a fine of not more than five lakh rupees.

Following the announcement of the Uber acquisition, Indian stock exchanges are well aware of such value behavior. However, the development of expenses and trading volumes of such offers long before the official announcement of a mega merger is a mind-boggling experience that the nation's stock exchanges have recently seen in a number of situations. To illustrate the concept of the equivalent, several noteworthy events are listed below.

Reliance Polypropylene Ltd. (RPPL) and Reliance Polyethylene Ltd. (RPEL) were merged with Reliance Industries Ltd. (RIL) in November 1994, resulting in the following: The share price of RPPL and RPEL increased dramatically from Rs.35 to Rs.100 prior to their amalgamation with the parent company RIL, indicating a significant increase in value.

(ii) The combination of Ciba-Geigy and Sandoz. The following was written in March of 1996: On 6.3.1996, the trading volume on the counter of Hind Ciba-Geigy, the Indian subsidiary of Ciba-Geigy, reached a record high of 2045 shares, with the daily average trading volume increasing by 10 shares to 270 shares, according to the company.[55]

4.2 Mergers and acquisitions of various kinds

Any authoritative documents, including business blends, may be used to bring about their realization. Keeping in mind that the ultimate goal is clarity, let's call the organizations A, B, and C. In one structure, obtains B's resources and liabilities by engaging in direct negotiations with the company's top management. In this case, B is sold as a result of the distribution of resources or securities obtained from A to its investors. A survives and continues to operate the consolidated business. Alternatively, in another structure, both organizations A and B are disintegrated, with their combined resources and liabilities being transferred to a newly formed organization C. The business of the two organizations is carried on by the new organization. In the third structure, A obtains a controlling interest in another organization, either through the acquisition of a majority of the voting stock or through some other means of acquiring control. [56]Both organizations continue to operate as separate but interconnected legal entities under the law. The relationship between them is referred to as a holding-auxiliary relationship in the literature. If A has control over B, then is the controlling organization and B is the auxiliary organization. Turnaround securing is a type of business procurement that is distinct from the rest. When an endeavor accepts responsibility for portions of another venture as part of a trade, it is known as an exchange. As a result, it generates sufficient democratic offers to induce the transfer of control in the consolidated enterprise to the proprietor of the endeavor whose offers have been obtained. In substance, the element making the offer has been obtained through the efforts of another element. The current situation is depicted as an acquisition in the opposite direction. In business, a merger is defined as the combination of at least two organizations into a single organization. The term "merger" refers to a combination of two organizations in which only one organization survives and the consolidated organization ceases to exist8. A merger can occur as a result of a mixture or as a result of ingestion. The term "mixture" refers to the combination of

[55] *Fisher Liz (1996), "A Union to Dye For", Accountancy- International Edition August 1996, p-38-39*
[56] *Patrick (1999), Op. Cit., p-23*

two or more organizations. Following the merger, the personalities of the two organizations are lost, and a third organization emerges. Because of the merger of Brooke Bond India Ltd. (BBIL) and Lipton India Ltd. (LIL), a new organization, Brooke Bond Lipton India Ltd., was formed. Brooke Bond Lipton India Ltd. (BBLIL). Integration involves the merger of a small organization with an extremely large one, also known as assimilation. Following the retention, the more modest organization is no longer in existence. Following the merger of Oriental Bank of Commerce and Global Trust Bank (GTB), GTB ceased to exist, whereas Oriental Bank of Commerce expanded and continued its operations. Mergers can also be divided into three categories: flat, vertical, and aggregate. When two competitors combine, this is referred to as an even merger. If a flat merger results in the consolidated firm experiencing an increase in market power, the consolidated firm will be subject to significant negative consequences. Vertical mergers are business combinations in which there is a buyer-dealer relationship. A combination merger occurs when two organizations that are not competitors and do not have a purchaser-vendor relationship come together.

The Companies Act 1956 deals with mergers under the heading "combination," and it specifies the procedures that must be followed in order to achieve the same result. The Companies Act also recognizes a combination of Indian organizations as well as a combination of an Indian organization and a 'unregistered organization,' which may include an unfamiliar organization or a portion of an unfamiliar organization. Blend in India must be approved by the High Courts of the respective States in which the organizations' enlisted offices are located in order to be valid. In accordance with Section 2(1B) of the Income Tax Act, 1961, arrangements are made for blends. Management of at least one organization with another or the merger of at least two organizations to form a single organization is the responsibilities of this department. Those organizations have merged with another organization, which is referred to as the amalgamated organization, and the 110 other organizations are referred to as the amalgamating organizations. When investors own at least three-quarters of the value of the offers in the amalgamating organization or organizations, they automatically become investors in the amalgamated organization as a result of the amalgamation's ideals of mixture.[57]

[57] *Fisher Liz (1996), "A Union to Dye For", Accountancy- International Edition August 1996, p-38-39*

Following are the stages that are being followed in India during the amalgamation process:[58]

An application to the respective High Courts for direction to convene a meeting is required.

• A draught scheme of amalgamation must be prepared, which must include details regarding the valuation of the respective companies' shares as well as establishing a method by which to calculate the swap ratio.

• A petition for approval of the scheme must be filed with the respective High Courts after the scheme has been approved by a majority in number representing 75 percent in value of the shareholders (special resolution) and creditors present and voting at such meetings.

4.3 Empirical Investigation

To determine the presence of insider trading, an analysis of the cost of closing stock on a daily basis and the volume of trading on a daily basis for the selected target organizations is carried out. There have been 165 trading days since the merger declaration date, which includes the day of the declaration, that have passed since this examination was completed This includes the 150 trading days leading up to the declaration, as well as the 15 trading days immediately following the declaration.

An extensive data set on merger declarations has been compiled for the four-year period 1996-1999 in order to complete the investigation's findings. The news item as it appears in the public dailies, such as the Economic Times, Business Standard, Business Line, and so on, is the most important source of information for merger declaration. We counseled the news clippings from the Institute of Studies in Industrial Advancement (ISID) library in New Delhi, where they are organized in a logical manner. The choice of the time period is based on the available evidence2 pertaining to merger activity in the country, which suggests that the frequency of mergers has increased in the second half of the 1990s when compared to the first half of the decade. This activity provided us with the names of 139 objective organizations, as well as the dates on which each organization declared its merger.

[58] *Reichmann Nancy (1993), "Insider Trading", Crime and Justice, Vol-18, pp-55- 96*

We also obtained information on stock costs and trading volume for each of these organizations from sources such as CMIE-PROWESS, WWW.INDIAINFOLINE.COM, and WWW.BSE-INDIA.COM. Regardless, information on these factors was available for 99 of the organizations that were chosen. The information was not available for ten days prior to the declaration date in the case of organizations, which was a significant percentage of the total. Due to the fact that the investigation conducted in this case emphasized the conduct of stock costs and trading volume in the period immediately preceding the merger declaration, these thirty-two organizations were removed from the example as a result of the findings. As a result, the number of organizations has been reduced to 67.

The declaration date is the date on which the target organization is publicly disclosed for the first time as a potential merger up-and-coming. Some open declarations are made after the market closes, while others are made before the market closes. In this particular instance, the market's reaction occurs a day before the news of the merger is published in the public daily newspapers. As a result, in this situation, we may incorrectly interpret the daily market reaction before the news broke in the public dailies as the presence of "strange return" as a result of trading on non-public information. As a result, in order to avoid this predisposition, the declaration date is defined as a span covering the date on which the news was first reported in the public dailies and the quickly preceding day, if the day in question is a trading day. Stock cost for day '0', for example, the day of the declaration, is determined by taking a basic normal of costs on the day when news appears in public dailies and on the immediately preceding day, if the trading day is involved in this situation.

4.4 **Regulation relating to insider trading problems in the event of M&As**.

In the event of a merger or acquisition, there are legal provisions in place to deal with insider trading issues.

The purpose of this section is to examine the viability of administrative provisions designed to combat insider trading issues that may arise as a result of mergers and acquisitions and other corporate restructurings. In India, mergers and acquisitions are subject to strict regulations.

Guidelines for mergers and acquisitions in India Although a significant portion of the provisions available in the Income Tax (IT) Act relate to the transfer of shares between holding and auxiliary organizations, there is no specific provision available in the IT Act that addresses insider trading or any corrective measures in this association. The Companies Act in India, like the Information Technology Act, is deafeningly silent on insider trading and the measures to combat it. The Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, set forth the fundamental administrative measures that must be followed in the acquisition of substantial shares and takeovers.

Section 376 imposes a condition that prevents the company from being reorganised or amalgamated; Section 391 enables the company to negotiate a settlement with creditors and members.

To Enforce Compromises and Arrangements, Section 392 of the Companies Amendment Act 2002 gives the National Company Law Tribunal (NCTL) and the High Court the authority to reduce the capital of a company, amalgamate it, or adjudicate on a dispute.

Section 393 - Disclosure of Information Regarding Compromises or Arrangements with Creditors or Members

Section 394- Provisions for the facilitation of the reconstruction and amalgamation of businesses.

Notification to be given to the central government for applications under sections 391 and 394 of the Code of Civil Procedure.

Section 395 outlines the authority and obligation to acquire the shares of shareholders who are opposed to a scheme or contract that has been approved by the majority.

Section 396 of the Constitution grants the Central Government the authority to provide for the amalgamation of companies in the national interest.

Section 396A - Preserving the books and papers of a merged corporation.

4.5 Conclusion

This section focuses on the issue of insider trading, which arises in the context of large-scale mergers and acquisitions. Following our investigation of guidelines and contextual analyses on insider trading practices in the context of mergers and acquisitions, both foreign and domestic, we arrive at the following relevant perceptions:

a. There is a disparity in administrative practices among countries that are associated with mergers and acquisitions;

b. There is a lack of insider trading guidelines in the Indian Companies Act; and

c. There is a great deal of variation among countries that are associated with insider trading exposure rehearses in the media.

The examination was completed for the 150 trading days prior to the declaration, as well as for the 15 trading days on and following the declaration date. Depending on how the example organization's stock costs and trading volume are evaluated, the investigation will proceed in one of two directions. As an example, normal residuals (AR) and Cumulative Average Residuals (CAR) have been calculated for the example of stock costs, respectively. The investigation looks into the unusual returns that occurred prior to the merger announcement, the trading volume that occurred prior to the merger announcement and the quick market response to the merger announcement in terms of strange returns and trading volume.

Insider trading should not be defined in an ambiguous manner in the SEBI guidelines, as doing so may provide insiders with escape clauses from prosecution. It is possible that an autonomous Merger and Takeover Panel, similar to the Takeover Panel in the United Kingdom, will be established in India with the goal of examining shareholding during the hours preceding merger and takeover transactions. At the time of each merger, stock traders should keep a close eye on the development of the offer value and the trading volumes of the companies involved. Web-based trading can be extremely beneficial in this situation. The government should make it mandatory for each organization to disclose all material information about its proposed merger to investors and

financial backers in a complete and precise manner as soon as the merger exchange is in place. According to the Sachar Committee's recommendations, an insider should be permitted to bargain in his or her organization's offers during a predetermined arrangement that occurs not long before and then after the date of the merger declaration is announced. There are a variety of motivations for the unusual execution of an objective organization's offer cost prior to the announcement of the bid.

(1) Insiders acting on inside information,

(2) Bidders increasing their stake in the company,

(3) Objective analysis and research, such as that conducted by private individuals or newspaper commentators, and

(4) Increased speculation in the stock market as a result of rumors sparked by 1, 2, and 3 above, among other things.

If insiders purchase a significant amount of protections prior to merger and acquisition announcements, this can signal to pariahs that something significant is likely to occur. Different financial backers may be obligated to guarantee damages from an organization that has dishonestly denied that it was involved in exchanges that resulted in the formation of a subsequent merger.

CHAPTER 5

CORPORATE GOVERNANCE AND INSIDER TRADING

5.1 INTRODUCTION

The cornerstones of corporate governance are "righteousness, truth, perseverance, and social justice".[59] Companies that deal in stocks are listed on the NSE or the BSE, which have been the nation's two registered stock markets. They must manage their activity on stock exchanges in compliance with SEBI's (India's stock market regulatory) guidelines. The author emphasizes the relevance of corporate governance in businesses that trade on stock exchanges in this chapter. A publicly traded corporation must treat its shareholders with fairness and justice.

One strategy for combating the problem is to encourage businesses to conduct self-regulation and take preventative measures. This is inextricably linked to the field of business and management. It is a mechanism through which an institution signals to the corporate sector that it has established credible self-regulation and that investors may feel secure investing in its securities. Self-regulation is seen as a realistic approach for increasing shareholder respect, in addition to prohibiting wrongdoing (which may or may not be prohibited). Companies can simply steer their executives/officers around the law's prohibitions.

Thus, “corporate governance is an element of business self-governance in which a corporation's "firm value" is increased by increased and substantially improved transparency as well as more ethical conduct. It must be separated from legal regulations, which impose behaviour on the basis of a threat of punishment.”[60]

The Consultative Paper on Modifications to SEBI (Prohibition of Insider Trading) Regulations 1992, which were adopted in 2002 amendments to the Regulations and 2015 regulations, give detailed ideas as well as extensive regulations wrapped up in corporate good governance terminology. The majority of the effective governance standards are stipulated as

[59] *Indrajit Dube, Corporate Governance 4 (Lexis Nexis Butterworths Wadhwa, New Delhi, 2009).*
[60] *Barry Dunphy, “Corporate governance – liability issues arising out of directors responsibilities”http://business.tafe.vu.edu.au/dsweb/Get/Document156601/Issues+arsing+ out+of+directors+responsibility.pdf*

obligatory.[61]

Prior to the amendment of 2002, the SEBI (Prohibition of Insider Trading) Regulation, 1992 was purely punitive in nature, defining what insider trading was and then punishing it with fines. However, with the implementation of Chapter IV of the SEBI (Prohibition of Insider Trading) Regulation, 1992[62], the Regulation took on a penal as well as precautionary tone, requiring all listed businesses, market intermediaries, and advisers to take actions to prevent the violation from occurring. Such a strategy is justified by the fact that such offenses are beneficial to avoid than to establish and punish. With this method, SEBI transferred the majority of the processes to the above-mentioned entities, ranging from preliminary report to final review meeting to approaching SEBI for punitive action. The Regulation also established a set of procedures and codes for organizations which are likely to use UPSI in trading with their employees, directors and owners.

5.2 Insider Trading and Corporate Governance Reports Committee

Committee of Kumar Mangalam Birla[63]

SEBI created a committee to examine into corporate governance on May 7, 1999, underneath the presidency of Mr. Kumar Mangalam Birla.

"Another significant area of corporate governance pertains to problems of insider trading," [64]the report reads. It further observed that "the presence and enforcement of the Legislation pertaining to insider knowledge and insider trading are critical to strong corporate governance."[65] Despite the fact that grappling with insider trading was included in the terms and conditions, the report did not make any recommendations for modifying the insider trading regulations.

"Adequate financial statements and transparency are the cornerstones of sound company governance," the report stated. These necessitate the presence of competent accounting

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[61] *Alan Calder, "Corporate Governance: A Practical Guide to the Legal Frame Works and International Codes of Practice"10 (2008)*

[62] *SEBI (Prohibition of Insider Trading) Regulation, 1992, Reg. 12 to 15.*

[63] *Securities and Exchange Board of India, Report of the Committee on Corporate Governance (May,1999).*

[64] *Id., Para 1.4.*

[65] *Id., Para 2.9.*

standards and disclosure regulations, as well as their execution."[66] In the event of corporations having many operations, the Committee suggested that financial information for each product segment be made public to shareholders and the market in order to receive a total financial image of the company.[67]

"While developing the suggestions, the Committee kept in mind that any corporate governance code must be flexible, progressive, and should alter with changing settings and periods of time," it said. As a result, it would be required to examine this code on a regular basis in order to stay pace with the dynamic requirements of investors, stockholders, and other participants, as well as the rising specialization reached in the capital market."[68]

Committee of Naresh Chandra[69]

The Department of Corporate Affairs, which has published its report in December 2002, established the Committee on 21 August 2002, to study a variety of corporate governance practices. It presented suggestions in two critical areas of corporate governance: financial as well as non disclosures, as well as independent audit and managerial oversight by the board of directors.

It's critical for stockholders to understand a company's credit risk because they could be substantial risk factors that jeopardize the company's long-term viability. As a result, the Committee advised that management offer a comprehensive statement of each material responsibility and its risks in plain English, followed by the auditor's unambiguous comments on the management's position.

Committee of N. R. Narayana Murthy[70]

Delegates from stock markets, chambers of business, investor associations, and professional groups made up the Committee, which included people from different areas of public and professional life. The Committee's mandate was to: (1) assess the functioning of corporate

[66] *Id., Para 2.10.*

[67] *Id., Para 12.1.*

[68] *Id., Para 3.1*

[69] *Government of India, Report of Committee on Company Law Reforms (Ministry of CompanyAffairs, 2002).*

[70] *Securities and Exchange Board of India, Report of the Committee on Corporate Governance(February, 2003).*

governance; and (2) define the impact of firms in responding to rumor as well as other price sensitive information flowing in the markets, in order to improve transparency and accountability and integrity.[71]

1. Details on the securities owned by non directors must be published annually by the Organization.[72]

2. Employees who notice immoral or unsuitable activities should be able without notification to the Board of the audit committee. Corporations shall take action to guarantee that the right to access through inner circulars is notified to all employees[73].

5.3 Corporate Governance and Insider trading relationship

It is crucial that the notion of corporate governance is defined before further consideration is given. Corporate governance is an internal system that encompasses rules, procedures and stakeholders that meet the needs of investors, and other stakeholders through good business skills, objective, accountable, and integrity management operations. Corporate governance is a method of corporate self-governance, in which a company raises its firm value by increased and better disclosure and responsibilities[74]. The placed directly and which require conduct at the risk of penalty are to be differentiated by them.[75] It derives from company's culture and mentality and cannot be governed by law alone.[76] Good corporate management deals with the management of the company activities so that it is fair to all shareholders and enriches most shareholders. [77]A dedication to the lawful, moral and transparent administration of a corporation entails good corporate governance – a commitment that must begin at the top and penetrate throughout the organization.[78]

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[71] *Id., Para 2.2.*
[72] *Id., Para 3.9.1.2.*
[73] *Id., Para 3.11.1.1.*
[74] *Sandeep Parekh, "Prevention of Insider Trading and Corporate Good Governance", online available at http://www.iimahd.ernet.in/publications/data /2003-01-03SandeepParekh.pdf.*
[75] *Ibid.*

[76] *Id., Preamble.*
[77] *Id., Para 1.1.3.*
[78] *Naresh Chandra Committee Report, p. 5.*

Insider trading and corporate governance are mutually exclusive. They contradict each other in the sense that a person restricts disclosure to the existing shares, whilst the second reduces the transparency. Insider trade is thus seen as a threat to the control of corporations. "The key to strong corporate governance is the presence and implementation of rules on insider and insider trading," said Pratip Kar, ex Executive Director at SEBI (and a Kumar Manga Birla Committee member).[79] The introduction of solid corporate governance standards can be seen as a real attempt to deal symptomatically with insider trading by preventing such unfair activities from occurring. As a third strategy to deal with insider trade is by encouraging and mandating corporations to comply with corporate good governance standards through self-regulation and prevention, aside from the establishment of rigorous civil and criminal sanctions under the SEBI Act and SEBI Regulation. The corporation is thus signaling to the market that effective self-regulation is in place and that investors can invest safely in their stocks[80].

5.4 Corporate governance measures

Officer, manager and significant shareholder should make their participation in particular occasions or at specified intervals known.

The reporting obligation at the 5% level should be coordinated to meet the requirements of the takeover code. In fact, takeover reports are more broad in certain ways since they demand that anyone reports on certain criteria and they also necessitate group reporting — a concept not covered by these standards.

Restricted trade of insiders, i.e. prior to company announcements, purchases etc., is made within a set timeframe.

The restrictions are unfortunately so broad that they are sometimes fairly wide-ranging, thus chill trade. In the rules, trade with insiders should not be asphyxiated. As we saw before the

[79] *Kumar Mangalam Birla Committee Report, Para 3.13.*

[80] *Sujesh Somanathan, "Insider Trading and Significance of Mens Rea - an Indian Perspective" 21 International Company and Commercial Law Review 347 (2010).*

business of insiders and staff, its interests are aligned with those of the company and should be supported in the absence of misconduct.

Officer for Compliance

As with any senior officer reporting to the BOD or head of the organization, in case the BOD hasn't been in place, Regulation 2(1)(c) defines compliance officer. Compliance officers are responsible for policy compliance, processes, record keeping, monitoring compliance with the unpublished pricing information requirements, the tracking of trade and codes established by those Regulations. Compliance officers are to be responsible for the application 68 The Compliance Officer is also responsible for regulating the behavior of the linked individual, monitoring and reporting it.

Trading Window

The Trading Window principle is included in Schedule B. Trading Windows denotes a period during which businesses are traded in corporate securities by managers, agents and authorized workers as well as the other related parties. A compliance officer can close the trade window on a realistic anticipation of UPSI being owned by a designated person or class of persons.

Trade Pre-clearance

The compliance officer must, in accordance with this section, make pre-clearance trade by authorized users, if the amount is within the limit imposed by BOD and UPSI is not available to the person in charge. The compliance officer may also attempt to make a statement that at the moment of request for pre-declaration of trade, the designated individual is not in UPSI's control. The authorized person must also execute the deal within 7 days, or another period of time not exceeding seven days, once the pre-clearance has been given. If he fails, fresh pre-clearance is necessary to carry out the trade.

Wall of China "Chinese Wall" means to create an artificial wall that prevents the flux of information from one portion of the office to the next. In order to deal with the conflict of interests arising when the listed businesses deal with the undertakings, the notion of the

Chinese wall has evolved. The best example of Chinese Wall's relevance is when a public firm may tell the investor that it will buy another company

Law on Chinese Walls in India

In India, the Chinese wall policy was implemented by an amendment in 2002, Part B of Schedule I clause 2.4 that made Chinese wall policy compulsory for all corporations and organizations that are listed in securities markets. The modification also accepted the Chinese wall policy as a valid defense. If secret information is to be given to public service employees in an unusual scenario that information is "need to know" and must be provided inside the insider area.[81] Penalty The Code of Conductivity under Schedule B authorizes the company, including pay freezes, suspensions, etc to apply sanctions and take disciplinary measures.

[81] http://lawfarm.in/insider-trading-and-the-chinese-wall-defense/

CHAPTER -6

SELECTED INDIAN CASE STUDIES OF INSIDER TRADING

6.1. Introduction

Every country is rooted in judicial affairs. The judiciary is the govt's third branch. The Nation's political power is vested among legislature, executive or judicial authorities. The legislature and the executive rely on the legislative power, whereas the law in certain circumstances resulting from the infringement is applied by the Judiciary.[82]

Some of its fiduciary responsibilities include: resolution of disputes, punishing persons who break relevant laws and regulations, interpreting the land constitution and checking the operations of the other governmental agencies, notably the administration and the parliament.[83]

The effect of the insider deal not only damages the reputation of the country on the financial market. Only a fair market can hopefully inspire investors and an investor places his funds on the market only if the market is secure and clear. The Indian Supreme court also has acknowledged this, ruling in a number of decisions that the legal system must prevail in all circumstances. Unlike in other countries, the rules barring the trade in insiders in India are not too ancient. However, the Indian justice system is not too far from the comprehension of the problem of insider trade, and some cases involving insider dealing have been handled by the courts and legislation have been interpreted and the powers of the SEBI stated. An examination of major case laws is necessary before we really comprehend the judiciary methods to insider trading, since the judge's rule, by means of jurisdiction, the validity and adequacy of all legislation.[84]

1) The case of TISCO (1992)[85]

Under this scenario, TISCO's profitability for the first 6 months of the fiscal year 1992-93 was Rs. 50.22 crore, compared to Rs. 278.16 crore for the previous F.Y.. From October 22, 1992, to

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[82] *"Indian Constitution and Separation of Powers", available at https://www.lawteacher.net/free-law-essays/constitutional*

[83] *"Importance of Judiciary in Democracy", available at http://www.thenewswriterng.com/?p=13071*

[84] *Verma, Payal, _Insider Trading - Meaning of Insider and Legal Mechanisms' available at http: // www.manupatra.com/corporate*

[85] *Machiraju, H.R., (2009) "The Working of Stock Exchanges in India", New Age International (P) Ltd., pp-164-165*

October 29, 1992, there had been a lot of movement in the stock market until the half-yearly results were announced. During the same time span, the SENSEX, on the other hand, fell by 8.3 percent. Insiders with access to the information influenced the markets to execute short sales.

There has been no insider trading, according to the court, because there was no proof of it. The perpetrators could not be held accountable due to a lack of laws and processes. The "Securities Exchange Board of India (Insider Trading) Regulations, 1992" were enacted as a result of this.[86] Insider Trading regulations in India were significantly changed in 2015, following the 1992 Regulation. As a result, the "SEBI (Prohibition of Insider Trading) Regulation, 2015" was enacted to address the shortcomings in the previous policy, as the illegal transactions were not covered by the regulation's thin scope. In the year 2019, another substantial change was made with the goal of covering both explicit and implicit transactions.[87]

2) **SEBI vs. Reliance Industries Limited (RIL)**[88]

In an another dispute, Reliance Industries Limited (RIL) against SEBI, RIL held a 5% share in the L&T entity and two beneficiaries, Mr. Mukesh and Anil Ambani. RIL also went on to buy a share in L&T, virtually obtaining 10% of the company. RIL then sold these stocks to Grasim Industries for more than fair value, causing the two nominees to be withdrawn and RIL to be barred from dealing in L&T shares in the future. RIL was held liable of insider trading after SEBI investigated the matter and registered a lawsuit against them. The Appellate Tribunal overturned SEBI's decision, claiming that the info wasn't really passed by L&T's nominees and that the two had no connection in discussing or transmitting the information. L&T had no knowledge of the sale, there was no proof to back up this claim. As a result, RIL was exempt from being held accountable for insider trading.

3) **DSQ Holdings v. SEB**[89]

It was another instance wherein the Insider Trading Regulations were construed by SEBI as well as the SAT. SEBI had launched research into the unexpected spike in DSQ Biotech Limited

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[86] *Kumar Gaurav. "Role of SEBI in Curbing Insider Trading in India – An Analysis."* I Pleaders, *4 June 2018, blog.ipleaders.in/sebi-insider-trading-offences/.*

[87] *Srivastava Anushweta & Shah Maharashi. "Latest Insider Trading Regulations: Prohibitions & Exceptions"* TaxGuru, *30 Sept. 2020, https://taxguru.in/sebi/latest-insider-trading-regulations-prohibitions-exceptions.html.*

[88] *Reliance Industries limited (RIL) Vs SEBI, 2004 55 SCL 81 SAT*

[89] *DSQ Holdings v. SEBI 1994 Appeal No: 50/2003 decided by SAT on 15.10.2004 (www.sebi.gov.in)*

('DSQ') prices and volumes. DSQ Holdings Ltd. (DSQH), one of its promoters group of companies, has discovered that a considerable amount of stock of the firm have been bought with the information of the imminent offering of DSQ privileges. The stocks bought by DSQH previous to the rights issue gave them rights to participate throughout the rights issue. It was thereby prima facie established that DSQH infringed the Insider Trading Regulations. SEBI issued a decree on February 27, 2003, charging DSQH with insider trading and prohibiting it from trading in the financial market for a period of five (5) years. Before the SAT, DSQH contested the decision of the SEBI. One of its arguments stated by the DSQH was that rights issue knowledge is not UPSI. SAT decided against DSQH and stated that the data on the question of rights was a UPSI and was owned by DSQH as part of its group. There is thus a breach of Insider Trading laws by the acquisition of DSQ stocks by DSQH. While DSQH argued that they're not aware to the UPSI and did not benefit, the SAT chose not to accept those arguments. The SAT remarked that the stocks were committed as collateral security by the founders of DSQH to the bankers, which reveals that the appellant made profit. SEBI has been establishing the fact that the appellants is an insider and transacted in the securities of DSQH after its ownership of UPSI, and also that the SEBI consequently has shown in a certain way that DSQH did an insider trading offense.

4) **Hindustan Lever Limited v. Securities and Exchange Board of India**[90]

M/s Hindustan Lever Ltd. (HLL) was a 51 percent owned Indian subsidiary of Unilever. Brook Bond Lipton India Ltd was also 50.2 percent owned by Unilever (BBLIL). Both were indeed held by Unilever, Inc. and both were the subsidiary of the joint holding enterprise Unilever. The two were therefore under the same leadership. The facts in the case were HLL's acquisition on 25 March 1996 of eight lacs BBLIL shareholdings of the Trust Unit of India (UTI). This transaction was made about 2 weeks before the intended merger of HLL and BBLIL was publicly disclosed.

HLL and its board had previous information of the transaction, according to SEBI, because they were affiliates of the same London-based Unilever and were managed effectively by the very same people. As a result, HLL was included in the above-mentioned criteria of an insider.

[90] *(1998) 3 Comp. L.J. 473 (AA).*

Both UTI and HLL lodged independent appeals to the Appellate Authority, the Central Government, challenging the judgment.

The aforementioned issues associated a) whether HLL has acquired / sold BBLIL shares; b) whether it can be regarded as a "insider" in accordance with Regulation 2(e); c) whether HLL had also acquired and bought the shareholdings on UPSI; d) whether BBLIL was traded / bought from HLL as an insider under UPSI and as such violates the rules and legislation.

The Appellate Authority concurred with the SEBI's Decision that the data known to HLL in regard to the amalgamation went outside self-generated facts, i.e., knowledge originating from its own decision-making. Furthermore, the Appellate Authority found that the presence of board members who were common to both HLL and BBLIL, as well as a similar parent company in Unilever, meant that companies (i.e., HLL and BBLIL) were effectively managed together. As a result, HLL might be classified as an insider within the 1992 Rules, and it is reasonable to assume that HLL was aware to the BBLIL panel's choice on the acquisition subject.

Regarding whether the available information with HLL was UPSI, the Appellate Authority consented that it should satisfy the two-fold standards provided for in paragraph 2(k) of the 1992 Regulations to treat knowledge as UPSI:

1. The information should not be widely known or disseminated by the business;.

2. Is expected to have a meaningful impact on the market pricing of that enterprise 's shares if disclosed or publicized.

It was noted:

“However, there are reports that are important prior to the merger. A review of post-merger reports reveals that most of them made reference to prior market awareness of the transaction. ‘Hind Lever, BBLIL ready for big merger,' according to the headlines in the Telegraph of April 20, 1996. While it is true that there are few reports before to the actual purchase, post-merger press reports undoubtedly convey the impression that merger expectations were common in the market before the purchase. It's hard to believe that an investor like UTI, which has the resources to do market research and analysis to assist in its market judgments, was

unaware of these press reports and can claim complete ignorance on the issue of HLL and BBLIL's upcoming merger... In light of the numerous press reports indicating market speculation on the merger during that time period, there are compelling reasons to believe that the impending merger, while not formally acknowledged or published, was in some sense widely known, and UTI's denial of knowledge cannot be interpreted to mean that the market as a whole was unaware of it."[91]

HLL also claimed that knowledge about a merger among two strong, profit-making firms is not price sensitive in itself, as price sensitivity would occur in the case of a merger among a powerful and a poor company, which affects the enterprises' stock prices. Perhaps in the fusion of two strong companies, the Appellate Authority said, there still are synergistic potential that might contribute to price sensitivity for either entity. As a result, the Appellate Authority concurred with SEBI's assessment that merger news was price sensitive (but not "unpublished").[92]

"SEBI has decided to use omnibus powers under Sections 11 and 11B to award compensation instead of using the specified provision to impose a penalty.[93]"

The Appellate Authority issued the following statement in support of SEBI's decision to sue officials of the Committee Members under Section 24 of the Act:

"Neither has SEBI provided any basis to believe that the findings of insider trading in this case are substantial enough to warrant prosecution. There is compelling evidence that market knowledge and extensive discussion about the likelihood of a merger existed before HLL purchased the shares in question from UTI, undermining a key part of the insider trading claim that the information involved should not be widely known. A prosecution order should be based on a thorough examination of all aspects of insider trading, as well as precise reasoning in terms of the gravity of the offense."[94]

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[91] *Id. at 483*

[92] *Id. at 484*
[93] *Id. at 488.*
[94] *Id. at 489.*

As a result, the Appellate Authority concluded that SEBI was not justifiable in directing the petitioners' investigation under Section 24.

As a result, the Appellate Authority reversed the SEBI's decision. Due to the above mentioned reasons, SEBI amended section 2(k) by inserting an Explanation that broadens the definition of "unpublished information".[95]

5) **Rakesh Agarwal v. SEBI**[96]

Rakesh Aggarwal versus SEBI is one of most well-known insider trading lawsuits, and it highlights the flaws in SEBI's 1992 legislation. In that occasion, the MD of ABS business Pvt. Ltd was Rakesh Agrawal. The ABS firm negotiated with the German-based Bayer A.G. Therefore, the unreleased information of the Bayer firm was made available to Rakesh Agrawal. SEBI said that Rakesh Agrawal's law-brother had bought certain ABS shares and bought the shares in the market call to Bayer. The ABS corporation has made significant gains. The ABS Company was overtaken after Bayer. ABS was an insider and hence, 51% of the shares which the corporation had purchased were not available. The applicant thus acted in insider's trading and also in breach of the SEBI Act Regulations 3 and 4

SEBI ruled that the complainant was liable of infringing Regulation (3) on SEBI (PIT) Regulations of 1992. Rakesh Agarwal was ordered, in attempt to repay any subscriber that could claim, to pay Rs. 34.00,000 with the Investor Education and Protection Fund of the SEBI and NSE. The action was brought to the Securities Appeallte Tribunal by the SEBI on 10 June 2001. The SAT deduced the result that “the Complainant was an insider inside the definition of the Regulation, on the grounds that he was the Managing Director of the corporation and also given access to the conversations of takeover with Bayer, was not denied by the Appellant himself, after taking into account submissions from both parties and content available on register.”[97] "Although Bayer's membership as partner for improving the efficiency of ABS has been publicly recognized by a great number of press stories, none of those statement/reports said in the SAT that Bayer was a 51 per cent partner. Nothing was recorded to demonstrate the general

[95] *SEBI (Prohibition of Insider Trading) Regulations 2015, s 2(k).*

[96] *Rakesh Agarwal v. SEBI (04) 49 SCL 351(SAT)*

[97] *Id., Para 140.*

knowledge of the required material"[98]. Therefore, the charge was established that the appellant, an insider, bought ABS shares on the basis of UPSI. "But SAT considered the acquisition of shares not being in violation of the SEBI Regulation with a view to taking action against the appellant, taking into account the facts or circumstances"[99]. "The intention/motive of the insider must be taken into account in my assessment, taking into account the basic purpose of the SEBI Regulations forbidding insider trade. It is correct that mens rea is not a specified element of insider trade in the regulation. This does not mean, however, that the reason cannot be ignored."[100]

Thus, SAT held that, since the "appellant was acting in the best interest of the company, the restriction of Regulation could not be deemed to have been breached."[101]

The Securities Appeal Tribunal established that SEBI is only permitted to levy a monetary punishment by 15G of this Act.

6) <u>Dilip Pendse vs. SEBI (2001)</u>[102]

TFL was the sole owner of Nishkalpa, that was a subsidiary of the corporation. The TFL Chief Executive was Dilip Pendse. Nishkalpa suffered an enormous deficit on March 31, 2001, of Rs 79.37 crore, which would have an impact on TFL's profitability. This was essentially the pricing info Pendse knew about that was unpublished. Only on 30 April 2001 was this data made publicly available. Therefore, every trade carried out by an insider's between 31 March 2001 and 30 April 2001 was forcibly covered by insider trade. This data was transmitted to Dilip Pendse, who liquidated 2,90,000 TEL shares owned on behalf of himself as well as under the control of the firms under his authority and his dad-in-law. A month later, this knowledge was communicated to the public. Dilip Pendse has been investigated by SEBI. After the examination was completed, SEBI found that unpublished price sensitive data was used by Pendse and that loss was prevented. He was convicted and sentenced. Each of Dilip Pendse, its wife and his Nalini Properties Limited has been subject to a fine of Rs. 5,00,000. This may have been the easiest instance of SEBI trading in insiders, which encountered little difficulty in penalizing the

[98] *Id., Para 146.*
[99] *Id., Para 148.*
[100] *Id., Para 152.*
[101] *Id., Para 155.*

[102] *Appeal No:148/2005 decided on 26.10.2006 (www.sebi.gov.in)*

perpetrator.[103]

7) Samir Arora vs SEBI (2004)[104]

Samir C. Arora, the applicant, was a fund manager for Alliance Capital Mutual Fund Limited, an investment group. He told us that Digital Globalsoft Limited script was very intriguing in a conversation with Business Standard printed on 5 May 2003.

The complaint leveled against Samir Arora is that he is informed of the amalgamation ratio that would have an unfavorable impact on the value of the scripts at the Board Meeting of DGL on 12 May 2003. During the period from 8 May to 13 May 2003 he sold the full shares based on this classified intel. The grounds for selling all interests on separate dates have been recorded simultaneously by him.

SEBI said that by providing a promising statement the price of DGL script has increased by Rs.575.5, to Rs.597.25. SEBI determined that Samir Arora, on the basis of previous information of both the unpublished value ratio and the pricing sensitive, was engaged in insider trading through the liquidation of the shares of DGL.

The SEBI directed him not to handle any securities and stocks and not to purchase them for a five-year term. In addition, the respondent had previous clearance from SEBI to deal with or selling stocks. However, by claiming that SEBI has not enough evidence to charge the insider trading defendant, the Securities Appellate Tribunal dismissed the order. Therefore, the responder will not be restricted.

"Although SAT accepted the argument of SEBI that there can be no direct evidence for the matter of insider trading and that one had to take the facts into account, it stated that, in fact, it found that it was reasonable for the appellant to sell a DGL stock even after his interview with Business Standard because of the aftermath of events.[105]"

"SAT has therefore concluded that the liquidation of the whole shares of DGL is not an insider's trading case and independent proof must be provided to support this allegation, which was missing and, consequently, the charge has not been proved. The appeal was therefore permitted

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[103] *Katarki, Suneeth. "India: 'Mens Rea' In Insider Trading – A 'Sine Qua Non'?" Mondaq, 3 June 2015, www.mondaq.com/india/x/401724/Securities/Requirement Of Mens Rea As A Criterion for Penalising Insider Trading In India.*
[104] *Samir Arora vs SEBI (2004) 63 CLA 38 (SAT)*
[105] *Id., Para 68.*

and the order contested reserved." [106]

While analyzing these cases it appears that the judges have construed the SEBI's regulations and working in a number of cases, assisting the SEBI in performing its obligations and assisting the courts in comprehending the correct application of the regulations. Despite this, the SEBI's recent stringent efforts have not generated positive effects. The sanctioning of punishment is more akin to civil liability/penalty than it is to any criminal consequence.[107]

The researcher believes that the solutions available by our Indian judicial system are fairly extensive, and that the majority of the times the SEBI's initial decisions are overturned on numerous reasons. The absence of competent workers, a lengthy inquiry period, the insufficient information and the company's lack of proper help lead to acquittals for claimed incidents in the field of insider trading. When dealing with issues of insider trading, Courts in India regard the greater probability of proof (Strict rule of evidence), i.e. above reasonable doubt, which should never be the case.

[106] *Id.,Para 61.*
[107] *Kumar, Arun, Kumar, Anil ―INSIDER TRADING: COMPARATIVE ANALYSIS OF INDIA AND USA‖ available at https://dx.doi.org/10.2139*

CHAPTER 7

CONCLUSION

'Insider Trading' means simply the sale or buy by the few privileged to sells or purchase securities of a listed company on the basis of unpublished price-sensitive information, such as an officer or management member, a company employee or a consultants, agents, consultants etc. “Therefore, for any regulatory regime on the capital market, preventing such transactions is an important obligation. For example, the insider would have a significant exposure in particular to the scripts before he knows the bonus issue, knowing that after the bonus is announced, his holdings would significantly increase.” [108]

The core of the securities regulations is implementation of the aim of ensuring equal access to securities rewards for all investors. In other words, the same market risks should be imposed on all members of the investment public. Unequal access to knowledge should not be treated in our way of life as inevitable. It is thus important for markets to be free of all sorts of fraud, particularly inside trading which disillusions common investors from the functioning of the markets, as if invited to play a crap game with loaded dices.[109]

The transactions carried out by an individual who owns UPSI are supposed to be inspired and found guilty of insider trading by the awareness of that data. in Simple terms, any mistreatment of personal advantages situation or power by insiders, whether financial or otherwise, is scam of the public owners, who anticipate the company's operations to be managed impartial. The PIT Regulation's 2020 modifications are designed to enhance compliance and alleviate defects. Prior to the amendment the managing of UPSI by middlemen was highly confusing. In spite of the FAQs released by SEBI to address the same, predefined details of how such enterprises maintain an electronic database remain unclear Furthermore, there were no additional options to the list of transactions in accordance with Annex B of the Regulation disqualifying them from the trade

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[108] *.“NEED FOR INSIDER TRADING REGULATIONS AND ITS IMPLEMENTATION”, Chapter 6, available at https://www.lawteacher.net/free-law-essays/business-law/need-for-insider-trading-regulations-law-essays.php*

[109] *Sandeep Parekh, “Prevention of Insider Trading and Corporate Good Governance”, available at:http://www.iimahd.ernet.in/publications/data/2003-01-03SandeepParekh.pdf*

window constraints. Their sensible growth to include dealings of a similar nature was prohibited. Finally, there was also the question of non-compliance with the PIT Code of Practice.

Recent changes to the trade in insiders: Through its earlier amendment effective on 1 April 2019, SEBI had required every listed entity, middleman and trustee to maintain an organized digital database with the names of the people to whom the UPSI was exchanged, along with PAN particulars. This was done to make sure that the SEBI had to evaluate UPSI exchanging a trail of data. In July, via an amendment, SEBI ordered the UPSI to be recorded in its database as well as the personality information it shares. In addition, it must be closely controlled to maintain this database and cannot be externalized. For the preceding eight years, the dataset must store information at any time.[110]

The SEBI also stipulated that the listed entities, middlemen and recipients are now obliged to notify any code of ethics infringing pursuant to the PIT rules promptly and voluntarily in the prescription formats and to transfer to the investment protected and education program any amounts recovered from the defaulting bursary.

Analysis and impact: The main advantage of the amendment mandating a structured digital database is the reduction in asymmetry of the information while the SEBI examines insider trading matters. In all cases it is progressively important to differentiate the insider who transported the UPSI, to reduce the expected culprits and keep track of the data. This is one of the relevant issues in the current "WhatsApp" case, where the SEBI punished some people for spilling information that was found to be price sensitive after substantial inquiries have been conducted. However, since WhatsApp messages are generally secured by end-to-end authentication, the SEBI could not recognise the trading entities efficiently and in such cases set an alarmingly low level of evidence. The new, organized and structured digital database is hoped that such cases can help and preclude. In the context of the ongoing efforts to make it simple to take capital by the SEBI, the second amendment that cuts a specific exception to trading window. This is very necessary and gives listed companies more chances of raising capital quickly. Finally, a more strong compliance system would be made mandatory by announcing a violation of the code of conduct.

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[110] *Javish Valecha, "Anticipative And Statistical Analysis of Insider Trading" available at:http://jlsr.thelawbrigade.com/index.php/2017/04/21/anticipative-and-statistical-analysis-of-insider-trading (Visited on July 28, 2017)*

Regulating remedies: Whereas the SEBI has shortened its brokers' and trustees' added duties and has simplified its regulatory competences with scholarships, there are still global impacts for market hygiene. Although the type and extent of control that stock markets may carry out over non-listed entities appear to be a major concern, the same applies to the effective exercise by SEBI of the PIT amendment as well as further clarifications and circulations.

SEBI's testing and monitoring process is in accordance with the requirements to sustain an extended digital database. It could lead, however, to certain operations and maintenance challenges and problems for the listed company, middleman or trustee as the entity is no longer allowed to oversee the data base maintenance task as well as to manage more information for an extended period of time.

The LODR (Listing Obligations and Disclosure Requirements) of SEBI includes all of the applicable CG principles. The LODR framework of enforcement ensures that the CG's 'form' is respected. The next step is to make it easier for corporate governance to abide to "substance." Ideals are broad declarations of regulatory motive, while guidelines of corporate governance help to interpret the principles into common industry responses. Corporate India will be guided by CG rules based on the LODR principles in order to improve corporate governance in India.

Indeed, the tone of the corporate governance standard has already been set by SEBI. Whenever deficits of governance are complied with, SEBI maintains circulations that prescribe expectations of governance. SEBI has had a very good understanding of corporate responses to different governance events thanks to the experience gained with the implementation of LODR. These observations and regulatory responses need to be consolidated to develop a "Corporate Governance Standards Agenda." The process follows once the agenda is drawn up.

"The main distinction between a ‘rule' and a ‘standard' is that the former specifies the ‘what' and ‘how' parts of compliance, whilst the latter offers the ‘most desirable' approach to a governance challenge. A "standard" helps businesses solve a dilemma or clarifies how the company should respond to a governance event.

When secretarial audits, governance occurrences and company responses are checked against the standards, the utility and efficiency of corporate governance standards will be further enhanced. Once established corporate governance standards can also be an acceptable way of recognizing the

great, the good, the evil and the ugly. Over a period of time, 'ugly' can be transformed into 'great' if well followed through the appropriate regulative framework. Company management standards are expected to help companies determine the "right" responses to a complex governance event.

Standards on corporate governance may require regular review. The question however is whether, for correct reasons, at the right time, and in the right way, the corporate response to the complex governance event will lead. SEBI looks ideally prepared for the pioneering initiative and is proud to be the first country in the world to issue "Corporate Governance Standards."

Although SEBI as a control board and the Govt are confronting this threat with the repeated implementation of up-to-date laws and attempts to strengthen investigative efforts, the intended outcome of the law has not been accomplished with the still widespread insider trading practice on the financial market. In such a scenario, the legislation as it currently stands should develop and enhance in order to avoid insiders from abusing highly classified information in any way that is necessary, taking into account the preferences and the losses of shareholders. For this to be achieved, the hour is needed to implement certain statutes and other adjustments as reflected in the suggestions to maximize the productivity of the Indian financial structure It is hopeful that the issue of Indian insider trade will be addressed better if the above recommendations are given due weight age and that the economies can help to provide the investment public with the simple financial services to preserve their trust and faith of the stock market. However, if the suggestions mentioned above do not get to grips with the issue quickly, the danger of insiders trading threatens to damage the equities markets' efficacy and credibility.[111]

The greater incidence of proof (strict proof rules) is considered in Indian courts, i.e. beyond possible suspicion, which should not be identical when dealing with issues of insider trade. The amount of proof will never be the same in business transactions as in criminal cases, and it assist the offenders to avoid the investigations conducted by the SEBI. Similarly, the principle that anything initiated by the SEBI is accurate and can't be tried by the suspect is not good at the same time. We must have equilibrium. The final objective is to avoid fraud and make the economy transparent and effective. So far, this is a sensible job for the Indian judiciary and the legislative authorities. The relevant authorities have made a few amendments and explanations. There was a

[111] *Jeremy Bentham, The Rationale of Punishment, 19-20 (Robert Heward, London, 1830)*

very optimistic and well modified judicial approach to the issue of insider trading. What is only of concern is the speedy judgment by skilled officials, so that every individual who admits, or tends to engage in, insider trading or misconduct which affects common investors is sent a message. The only thing is the stringent punishment for the offenders.

Suggestions

1. Being educated, trained, and aware Aiding in public awareness of insider trading and its adverse effects can have a massive effect on reducing this behavior. In order to enable this, SEBI may publish a trading insider handbook (leaflet) and disperse it to specific parts of the general populace either on its own or in conjunction with various NGOs, stock exchanges, companies, or intermediaries, and also hold conferences and programs/discussions/seminars to make investors aware of the harmful effects of insider trading and how to protect themselves from such harmful activities.[112]
2. Corporate governance and preventative measures
   In order to manage potential insider trading risks, each company should implement watertight insider trading code in its governance framework and make sure that this strict adherence is met at the first level of defense. This will be done by the compliance officer who will oversee all personal trading by employees.[113]
3. To facilitate punishment, it is recommended that the use of consent mechanisms is ended for cases of insider trading, as it will ensure that sufficient deterrence occurs. This alternative approach, which doesn't place restrictions on developing the area of judicial jurisprudence on insider trading, does not serve as a deterrent because it leads insiders to believe that insider trading is a low-risk practice. [114]
4. Merger and acquisition – India also needs to establish a federal ban similar to Rule 14 e-3, Securities and Exchange Rules, 1932 in the USA, so that specific emphasis can be paid to trade carried on during such time frames. Merger and acquisition- Given that the period

[112] *Roopanshi Sachar& Dr. M. Afzal Wani, "REGULATION OF INSIDER TRADING IN INDIA: DISSECTING THE DIFFICULTIES AND SOLUTIONS AHEAD" 2 (JCIL) 5 Issue 11(2016)*
[113] *Supra note 5*
[114] *Ibid.*

before announcement of merger or acquisition or any other corporate restructure for the insider trade committee is more favourable,[115]

5. An in-depth performance audit of SEBI's systems, structures, and practises is needed in order to ensure that more effort is invested where necessary.

[115] *Ibid*

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