



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INSIDER TRADING AND THE ROLE OF SEBI IN INDIA

AUTHORED BY - HARIHAR JAGANNATH

4th Semester LL.M, Commercial Law
Government Law College Ernakulam.

Introduction

Insider trading refers to the practice of trade of buying or selling of security by someone who has access to the otherwise material non-public information pertaining to the security which can be used to make crucial investment decisions. The primary reason why this practice should be prevented is that there is a duty that everyone owes to the entire benefit of the company and not for one's own satisfaction.

The term 'insider' has been defined in the SEBI regulations, 1992. There are primarily three types of 'insiders' as per the rules which are as follows-

- 1) People who are attached to the company.
- 2) People who were attached to the company.
- 3) People who are considered to be attached to the company.

Information should be uniformly circulated and no party is said to have advantage relating to the information of the securities, the main objective of the regulation is to ensure that there is fairness in the working of the system and that every member is able to avail the same information as the others. This special regulation formed to prevent the illegal practice was formed as part of section 11 of the SEBI Act 1992. There are two class of insiders-

- 1) Primary insiders- those who are directly attached to the company.
- 2) Secondary insiders- those who are assumed to be attached to the company as it is generally presumed that they will have access to all the requisite undisclosed information.

Aims and objectives

Aim of this research paper is to analyze the existing provisions pertaining to the role of SEBI with regards to its provisions under the insider trading. The question mainly concerns on whether the existing provisions are undertaken effectively. Along with that this research paper also aims to seek the question on whether the US model is better than the Indian model.

Statement of Problem

It is important to seek solutions to the problems pertaining to the problems of insider trading and have a carefully managed system; the question therefore is how it can be achieved.

Research questions

- 1) What are the reasons for failure of SEBI in curbing the practice of insider trading?
- 2) What are the major land mark decisions which have significantly changed the face of insider trading?
- 3) What are the advantages of the US model over the Indian model?

Literature review

Case laws

- 1) N Narayan V Adjudicating officer SEBI, (2013) 12 SCC 152
- 2) Hindustan Lever Ltd V SEBI, (1998) 18 SCL 311 MOF
- 3) DSQ K. Vekataswarlu V SEBI, 2008 83 SCL 397 Delhi
- 4) Indian Council of Investors V UOI, (2004) SC 331
- 5) Rajesh Agarwal V SEBI, (2004) 49 SCL 351 (SAT)
- 6) Samir Arora V SEBI, 2005 59 SCL 96 SAT
- 7) R.K Global Shares and securities ltd V SEBI, (2014) 9 SCC 225
- 8) V.K Kaul V The adjudicating officer, SEBI, [2012]116SCL 24 (SAT)
- 9) Chandrakala V SEBI, (2012) 111 SCL 703
- 10) SEC V Texas Gulf, 401 F.2d 833; 2 A.L.R. Fed. 190
- 11) Dirks V SEC, 463 U.S. 646 (1983)
- 12) United States V Carpenter, 585 U.S 138 S. Ct. 2206; 201 L. Ed. 2d 507

Evolution of the regulations pertaining to insider trading

The PIT regulation (prevention of insider trade) regime began sometime in the year 1992 which mandated all the companies to have a mechanism to prevent the efflux of any material information pertaining to the company. The Sodhi committee made regulations pertaining to the laws in the year 2015 and shortly after that in the year 2019, it was amended further. The companies' act of 2013 had laws to prevent this practice but that section was omitted in the year 2017. According to the 2015 recommendations, an insider can formulate their plan relating to the stock giving less room to transfer material information involving the company. However,

there is a term called 'for essential purposes' which has been mentioned in the act just to facilitate smooth functioning and working of the companies, any other information not included in the purview of this heading would be regarded as an undisclosed information and the trade of which would be deemed illegal.

Definition of some terms

- 1) Connected person- any person will be deemed as a connected person if he/she holds any important position in the company or has a strong business relationship with the company and someone who is reasonably expected to have access to such undisclosed information could be regarded as a connected person.
- 2) Dealing in securities- this act of buying, selling or dealing with any securities as a principal or an agent could be regarded as the act of dealing with the securities.
- 3) Insider- a person who is attached to the company and who could be reasonably expected to have access to information pertinent to the stock can be termed as an insider.
- 4) Investigating authority- any person who has been authorized by the board to carry out the investigation regarding the stock exchange and related offences.
- 5) Person deemed to be a connected person- there are several persons in this category namely-
 - a) a company, management or a group, or a holding or subsidiary company
 - b) an intermediary
 - c) a banker, an agent, broker and the like members
 - d) relatives of all the mentioned persons
- 6) Price sensitive information- any information that can directly affect the price value of the company can be termed as price sensitive information. The following are some of the examples of price sensitive information-
 - a) Financial records of the company
 - b) Mergers, amalgamation and take over etc. of the company
 - c) Any new plans etc.¹

¹SEBI PROHIBITION OF INSIDER TRADING REGULATIONS, 1992(21st September 2024, 09:00 am)
<https://www.sebi.gov.in/acts/insideregu.pdf>

Why is insider trading considered as an offence in India?

- a) Places the other investors at an inferior position- the access of a particular information places certain investors over on a higher pedestal and certain others on a lower pedestal which can lead to certain investors making more profit than others.
- b) Is against the ethical and moral standards of the company- it is obviously a deviance in the equality principle, every person should have equal opportunity to information. The moral or ethical balance is seriously affected and hindered if there is no equal access of information.
- c) Deteriorates the confidence of the people- the investors would be definitely placed in a far more difficult position if such unfair practices prevail in a company. Their confidence will be seriously affected which will drive them away from investing in a particular company and that can be proved detrimental to the company.²

Some instances relating to Insider trading

- 1) Rajat Gupta- this example involves the trading of information by Rajat Gupta who had access to the board room meetings of the company. Since, there was no visible personal gain involved, there was a question on whether he was actually an insider. The answer to this question was yes and the fact that the trading of information to another person which seriously affects the price value of a company was regarded as an insider trade and such information can also be termed as undisclosed information.
- 2) Acclaimed industries- Mr. Abhisek Mehta was the alleged inside trader in this case, he violated and was held for gross misconduct since he voluntarily sold his shares reducing his stake in a particular company that the said company was about to be merged with.

Punishments in case of insider trading

- 1) Section 15 G(i)- if any insider of a company either for his own benefit or for that of someone has acted upon any un-disclosed information, then he/she will be liable for a fine of Rs 25 crore or three times of the profit made thereby, whichever is higher.
- 2) Section 15 G(ii) - if any insider has given any price-sensitive information, even then the fine may be up to Rs 25 crores or 3 times the profits made thereby.

²Richa Sharma, *Is Insider Trading Legal in India*, (21st September 2024, 10:00 am)
<https://groww.in/blog/is-insider-trading-legal-in-india/>

- 3) Section 15G(iii)- the third condition is that if any person obtains any other person to act upon such confidential information even then the perpetrator will have to pay a fine of Rs 3 crores or three times of the profit made as a result of it.³
- 1) N Narayan V Adjudicating officer SEBI,⁴ the Supreme Court in this case opined that SEBI owed a duty to the economy by keeping a check on the directors and the companies. In case SEBI fails to undertake the duties, it can be assumed that it has failed to hold a transparent system responsible for economic harmony which it is responsible for.

There are several landmark judgments pertaining to the issue of insider trading, namely-

- 1) Hindustan Lever Ltd V SEBI (1996)⁵—this case gave rise to an amendment in the form of SEBI prohibition of insider trading regulations (2015).

Facts and ruling in the case-

The HLL (HUL now) made a purchase of Rs 8 lakhs from BBLIL shares from the Unit Trust of India on March 25, 1996. After the requisite investigation conducted by SEBI in the year 1998, it was found that when the purchase of share was made by HLL from BBLIL, the latter was already an insider and all the directors had prior knowledge about the acquisition that was carried out subsequently. Since, both the companies were governed by the same London based company of Unilever, HLL was termed as an insider. SEBI stated that HLL was aware of the unpublished confidential information. The case was taken before the appellate authority and the decision of the SEBI was affirmed once again. They are of the view that HLL had access to the information pertaining to the merger.

However, HLL made multiple attempts to prove that the information they had access to be not unpublished or undisclosed but rather had abundant publicity and therefore the information was not price sensitive. The appellate authority discredited the evidence by stating that the information pertaining to two well-off companies was to be regarded as price-sensitive and would not qualify as published information. By virtue of this decision, two sections that is section 2(k), this section deals with the term published information. The term published information now is referred to as a something which is not 'generally' known to the public. Along with that the term unpublished was also discussed in this judgment. Unpublished

³Kumar Gaurav, *Role of SEBI in curbing Insider Trading in India – An Analysis*, (21st September 2024, 09:29 pm) <https://blog.ipleaders.in/sebi-insider-trading-offences/>

⁴N Narayan V Adjudicating officer SEBI, (2013) 12 SCC 152

⁵Hindustan Lever Ltd V SEBI, (1998) 18 SCL 311 MOF

information amounts to any information that is not officially published by the company. Newspaper articles or news reports which clearly base suspicions on such statements cannot deem any unpublished information into published information.

The 2015 guidelines also describe the constituent of section 2(1) (e) that is the constituent of unpublished price sensitive information. Unpublished information according to the guidelines mentioned by SEBI in 2015 also defines the term 'generally available information'. Generally available information according them is

"Information that is accessible to the public on a non-discriminatory basis".⁶ However, the term non-discriminatory is ambiguous and unclear.

2) DSQ holdings ltd V SEBI (1994)⁷

Facts and findings in this case-

DSQB and DSQH entered into an agreement in the year 1994. The latter company purchased shares from the former company at the rate of Rs 15.94 per share. An offer for further shares was made at the later part of 1994. Prior to the acquiring of DQSH, the price value of the shares of the company in the late end of 1993 and the early part of 1994 was between Rs 12 and Rs 18. It can be taken note of the fact that there was a significant change after the DSQB acquired DSBH. The price value took a leap from that to around Rs 20 and Rs 92. Thus, it can be concluded from the information provided that advantageous information was made and then it was utilized by the company. Therefore, in this case DSQH was deemed to be the person 'attached' to DSQB.

Role of SEBI in order to prevent the practice of insider trading

The various roles of SEBI in curbing the practice of insider trading have been mentioned in section 11 of the SEBI Act 1992. SEBI has the power to form an investigating body to look after the issue and order a probe into knowing who the 'insider' is, if it has a reasonable suspicion that there is a person or a group acting detrimental to the interests of the company as a whole.

- 1) Protect the interest of the investors and ensure smooth trading.
- 2) Setting up of an enquiry committee in case something goes wrong.
- 3) Appoint officers to enquire into any unfair practices.

⁶Ankoosh Mehta *Insider Trading: Hindustan Lever Limited v. SEBI*, (21st September 2024, 11:00 pm) <https://corporate.cyrilamarchandblogs.com/2017/10/insider-trading-hindustan-lever-limited-v-sebi/>

⁷DSQ holdings ltd V SEBI, 2005 60 SCL 156 SAT

- 4) Sent notice to the alleged insider before any procedure is lodged against him/her.
- 5) Appointing an auditor to look into the books of accounts.
- 6) The insider should comply with the notice served by the committee and is required to provide for adequate documents to the investigating authority.
- 7) The officer has to submit the report within a month or so depending on the case
- 8) The SEBI will have to provide information pertaining to the findings within a period of 21 days.
- 9) The person should reply to the served notice within 21 days after which it is served.
- 10) An appeal can be filed if there is any dissatisfaction with the conduct of SEBI within 45 days after the notice is served to the concerned person.

K. Vekataswarlu V SEBI⁸, the Delhi High Court rejected a writ petition which indicated dissatisfaction of the investigating capacity of SEBI. The court held that SEBI being a watchdog of all the proceedings and transactions within itself has full liberty to order for an investigation and this cannot be questioned by any insider.

What can be regarded as a proof of the investigation conducted by SEBI?

In the case of Indian Council of Investors V UOI⁹, the power granted by SEBI is vast to the level wherein they could access all sorts of information. However, having access to the call information is not the same as interception of calls. Therefore, the powers of SEBI are wide but still there are restrictions prevalent just like any other investigating bodies. This power can be granted only in furtherance to an already pending enquiry or investigation.

Rajesh Agarwal V SEBI¹⁰ mentioned gave a very valid observation that only section 15G can be regarded as an actual power vested in SEBI to charge for a particular amount as part of the insider trading that occurred. Thus, it can be observed that there is no other provision which bestows any power on SEBI that it can charge the insider with a particular amount.

Samir Arora V SEBI¹¹ provides for the nature of evidence that can be admissible in a case of this kind, it is not a surprising fact that cases of this genre requires careful corroboration and merely an intuition or belief as used in the usual criminal courts cannot be considered effective.

⁸ K. Vekataswarlu V SEBI, 2008 83 SCL 397 Delhi

⁹ Indian Council of Investors V UOI, (2004) SC 331

¹⁰ Rajesh Agarwal V SEBI, (2004) 49 SCL 351 (SAT)

¹¹ Samir Arora V SEBI, 2005 59 SCL 96 SAT

Thus, there is always a requirement of careful analysis that is to be done to carry out the investigation steadily.

R.K Global Shares and securities ltd V SEBI¹² has also affirmed the contention in the previous case that mere presumption or assumption pertaining to a case cannot be considered as a conclusive proof as it can prove detrimental to the people as a whole.

V.K Kaul V The adjudicating officer, SEBI,¹³ even though in cases of this evidences that are merely based on suspicion are not admissible ordinarily there is an exception to this rule with regard to the admissibility of circumstantial evidence. Circumstantial evidences are not based on the idea of having mere suspicion to lead up to that particular evidence. Both of the concepts are polar opposites. For example, suspicious evidence could be when a particular officer was last seen at the office making him the offender. Whereas, circumstantial evidence is when a particular officer spotted at the same spot multiple times at around the same time for almost a week and then basing an allegation on him would be considered applicable. What separates a normal criminal act and the cases of this kind is the non-stringent requirement of proving mens-rea. It is important to take note of the fact that mens-rea is not necessary to be proved in cases of the like kind.

However, there were contradicting views taken with regard to this requirement. Several cases mandated the presence of mens-rea for the conduction of such offence but several others did not provide for a stringent mandate for the presence of mens-rea.

In the case of Rakesh Agarwal V SEBI,¹⁴ the court was of the opinion that if there is no motive proved there cannot be any allegations raised against that person. the absence of mens-rea or motive invalidates a person against that particular crime, therefore, even though there is no stringent mandate prescribed statutorily, it is essential for the court to consider this at first. A valid argument to this defense is that mere possession of price-sensitive non-confidential information of a person without acting upon it sufficiently will not make that person a culprit, only when there is furtherance in the form of acting upon this information is made can be

¹² R.K Global Shares and securities ltd V SEBI, (2014) 9 SCC 225

¹³ V.K Kaul V The adjudicating officer, SEBI, [2012]116SCL 24 (SAT)

¹⁴Rakesh Agarwal V SEBI, (2004) 49 SCL 351 (SAT)

termed as an offence.¹⁵

Chandrakala V SEBI¹⁶, it was mentioned in this case that a regulator usually keeps a check on the trading and the onus is on him to prove that the transaction between two parties in this case was 'unusual' and he/she will have to prove this by using necessary means.

When can procurement of confidential information be permissible?

It is permissible when it is done in order to fulfill the duties and obligations bestowed upon them. Another defense could be that when this information is not used for any purposes pertaining to the transaction of the securities. It can also be contended that this information is not relevant or something which can alter the entire set up of the company. Some of the other defenses include-

- 1) When the allegedly illegal transaction was done in the best interest of the people in the company.
- 2) When the board of directors makes the transactions at least two-trading day before the actual transaction and when it is subsequently regarded as particular public information.
- 3) The transactions between two similarly placed individuals when both of them had knowledge to the information can also be regarded as an exemption to the non-disclosure rule.

The Indian regulation 3 of SEBI prevents any communications, advising relating to insider trading. According to this regulation no insider is supposed to transact, advise others when in possession of any unpublished confidential information.

An important feature of the act is that no civil court can undertake any proceedings pertaining to this matter.

Powers of SEBI after the investigation

- 1) Refer the matter to an adjudicator who can impose penalties not more than Rs 5 lakhs.
- 2) The next option available to SEBI is to file a criminal law suit in a court not lesser than a metropolitan magistrate or a judicial magistrate. These courts can impose both fine and a punishment of imprisonment as well.

¹⁵ N.Shalini, *ROLE OF SEBI IN CURBING INSIDER TRADING*, (21st September 2024, 05:55 pm)

[https://ilsijlm.indianlegalsolution.com/role-of-sebi-in-curbng-insider-trading-n-shalini/#:~:text=The%20Securities%20and%20Exchange%20Board,growth%20of%20the%20stock%20market.&text=The%20SEBI%20\(Prohibition%20of%20Insider,the%20act%20of%20insider%20trading](https://ilsijlm.indianlegalsolution.com/role-of-sebi-in-curbng-insider-trading-n-shalini/#:~:text=The%20Securities%20and%20Exchange%20Board,growth%20of%20the%20stock%20market.&text=The%20SEBI%20(Prohibition%20of%20Insider,the%20act%20of%20insider%20trading)

¹⁶Chandrakala V SEBI, (2012) 111 SCL 703

Current position in India with regards to insider trading

It has been over thirty years since Securities and exchange board of India (SEBI) came into existence, there has been numerous investigations conducted as part of the insider trading allegations but the instances of conviction are almost nil. The statutory body of prevention of insider trading authority has made it clear that there cannot be any insider trading proceedings that can occur. It places stringent repercussions on the companies if it indulges itself in any sort of such illegal practice. The failure of SEBI to actually track down the offenders is mainly because of the lack of technological tools and adequate investigation tactics that are to be followed.

As per the records in the year 2017-2018, it can be observed there is a smaller number of cases which are being reported out of which only half the number of cases has been taken up for investigations. It can be observed from these rules that there is a strict non-compliance which is seen at this point. Even after the cases were brought for investigation, the ones that are brought forth do not significantly involve any information regarding who has communicated the requisite information to him or what was the pretext of communication. Therefore, it can be essentially proved that SEBI has failed miserably in carrying out the duty that they were bestowed with.

Methods in which SEBI actually proceeds with the investigation

- 1) The first obvious question is definitely on who is an insider who facilitated this transactions and what role did he play in creating a significant difference in the price-value of the company. This person could be anyone ranging from the managers, auditors or even a company board etc. any person who holds an authoritative position in the company. These are some of the examples of the people who could possibly be involved in the practice of insider trading as there is a large possibility of acquiring information pertaining to the company for these companies.
- 2) The second question is, what is the major unpublished information? This is always a very important question because there are times when a particular information could be regarded as a public information just because the public already had knowledge or access to this information. As mentioned before, suspicious news reports primarily based on speculations cannot regard any undisclosed information as disclosed

information. As long as the news is officially not disclosed by the company, the information will continue to take the status of unpublished confidential information.

- 3) The third aspect would be on who traded this relevant information and to whom. Therefore, SEBI should undertake a system which ideally involves a three-tier investigation regime i.e., identification of the possible suspects, the actual matter which led to the particular crime and lastly finding the culprit.¹⁷

What are the main reasons of failure of SEBI?

The main reason accounting to the failure of the apex entity in stock and related transactions could be the extreme difficulty in finding the culprits and carrying the complex investigation afterwards. As mentioned earlier, lack of essential tools to find source of the insider trading can also be a reason to the failure of SEBI. Notwithstanding the fact that SEBI has extreme power in carrying out the investigations pertaining to the matter, it is to be taken with utmost consideration that powers such as interception of calls cannot be accessed by SEBI still. It is to be noted that this is an important facility and when it is not provided, it can cause serious hindrance to the process of investigation. Access of phone records will not prevent any crime that is on the verge of happening, therefore, the existing cumbersome procedure is the reason why there is a serious mishap in providing justice to the system. However, efforts were taken in the year 2019, to prevent such practice and to prevent the delays pertinent to the issue, there was an issue of reward of about Rs one crore to those who find the insider who involves in this illegal act.

Position in the United States regarding insider trading

As it is widely observed that USA adopts a very stringent system pertinent to most of the issues in stock exchanges, it is not a surprise that they were one among the first to regard insider trading as an offence in their country. The following are some of the important case laws-

- a) SEC V Texas Gulf¹⁸- a person who has information which is deemed as undisclosed or unpublished has two options i.e., either to disclose the information or preventing oneself from trading.

¹⁷Mahip Singh, *Insider trading in India: Current state, role and powers of SEBI?* (21st September 2024, 12:00 pm) <https://www.livemint.com/market/stock-market-news/how-india-cracks-down-on-insider-trading-11580199120367.html>

¹⁸ SEC V Texas Gulf, 401 F.2d 833; 2 A.L.R. Fed. 190

- b) *Dirks V SEC*¹⁹- The person who received material information would liable if he/she knows that the person who provides for the material information is against their capacity and that the said act is illegal.
- c) *United States V Carpenter*²⁰- in this case, a journalist was convicted as he used material information pertaining to the company for his own benefit. It can be observed that USA prohibits the practice of trading of information when a person accords for the requisite information for his own benefit.

Thus, from the various case laws mentioned here it can be proved that any mention of information regarding the company to others is deemed as a material malpractice and the culprits would be discredited and punished.²¹

Conclusions and suggestions

From the above observations it is rather clear that the duty that SEBI is supposed to undertake is not carried out adequately because of various obstacles on their way. It is high time that there are serious and stringent mechanisms adopted to enable the smooth functioning of the companies. The US model of insider trading mostly concerns all the people who are involved in insider trading and there is no narrowing down of suspects like in the Indian system. Another example would be with regard to the actual access of information by SEBI. It is important for a crime to be prevented and in order to do that the before should be accessible to the investigating authority. Interception of calls is an effective way to keep a check on all the members of the company. Some may say that it is a violation of privacy but the truth is that all the company related affairs could be closely monitored and thereby it prevents any crime that is deemed to be conducted by the offenders. The investors often get deceived by the fake statistics put forth that they do not actually have access to actual ongoing proceedings of a company.

¹⁹ *Dirks V SEC*, 463 U.S. 646 (1983)

²⁰ *United States V Carpenter*, 585 U.S 138 S. Ct. 2206; 201 L. Ed. 2d 507

²¹ Sudershani Ray and KartikDawar, *Insider Trading And its Legal Mechanism in India - Commercial Law* (21st September 2024, 1:00 pm).

<http://www.legalserviceindia.com/article/1147-Insider-Trading-And-its-Legal-Mechanism.html>