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

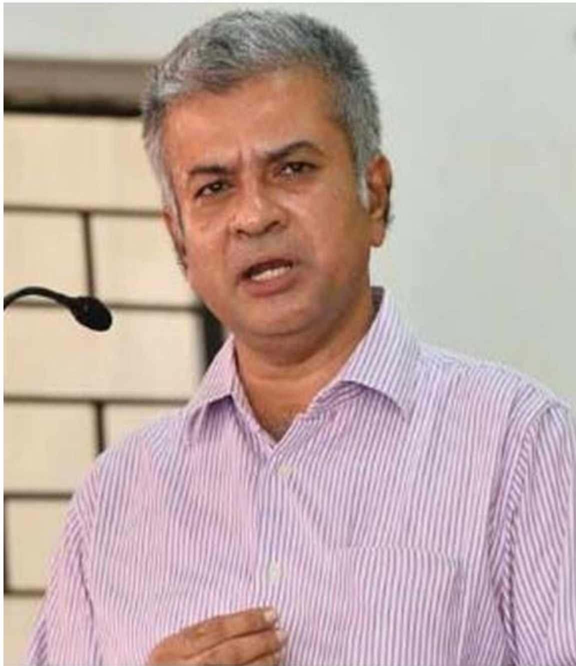
DISCLAIMER

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.

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.

WHITE BLACK LEGAL

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 providededicated 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

WHITE BLACK LEGAL

INSIDER TRADING UNDER THE INDIAN CORPORATE LAW REGIME

Authored By- Arjun Khanna

ABSTRACT

The seamless operation of the securities market, as well as its viability, progress, and development, are heavily reliant on the market's quality and integrity. Such a market can only inspire investor trust, which can be gathered by treating the investors equally when they are protected and safegaurded against the unethical use of price manipulative data being used in dealing of equties. Unjust and malafide behaviours such as price manipulative dealing and other security frauds can jeopardise the securities market's integrity, fairness, and efficiency, as well as investors' confidence. In India, SEBI was founded to safeguard the preferences of shareholders in shares and facilitate growth and management of the share market, it was given the authority to draft rules by notification in accordance with the sebi Act 1992 .Accordingly, Sebi initiated the securities exchange board of India (PIT) Rules, 1992, which have been invalidated now, and the securities exchange board of India (PIT) Rules, 2015 have been enacted to overcome the inadequacies of the earlier rules and laws as well as to limit the growing threat of price manipulative trading, an unlawful strategy employed by certain corporate executives to meet their own short term financial expectations or cause loss to others. According to Indian company law, a firm must submit an annual account detailing its trade performance for the fiscal year in question. It also requires the corporation to reveal its liabilities and assets at the conclusion of the term. This has been given to ensure accountability in the company's operations. Furthermore, the firm shall schedule an AGM every year for the stakeholders, which is held to assure and assessthe company's operations. The information contained in Annual Reports and Annual General Body Meetings is important in influencing the views of current and future investors. Persons within the firm or otherwise involved with the company, however, have access to some data before it is made public. For instance, a Chartered Accountant examines the firm's accounts; corporate directors make decisions, and so forth. Persons connected to the firms who have access to this undisclosed price-sensitive information have an advantage over others who do not. Such data may be capitalized to profit by procuring equities at a reduced price in probability of a price increase or selling them before

prices decline. Such a transaction results in one of the most severe allegations in the securities market, insider trading. As a result, the current research study investigates the notion of insider trading in India as well as acritical examination of the 2015 Regulations developed by SEBI for insider trading.

INTRODUCTION

Insider trading is the illegal trading of persons who are directly tied to, or have any relationship with, a corporation. These individuals utilise their position to obtain price- sensitive information, such as the value of the shares, that is not publicly available.[1] In layman's terms, "Insider Trading" refers to trading with inside information, that is, data that has not yet been revealed to the public. However, insider trading is classified as either lawfulor unlawful. Legal insider trading is mostly carried out by business insiders, a group that includes officials, directors, and workers who purchase and sell equities in their own companies. However, we are more concerned with the unlawful element of insider trading, such as when confidential information is divulged or leaked out without regard for the interests of the investor. Insider trading is defined as "trading to one's benefit by having inside knowledge." Insider trading is commonly defined as the act of subscribing to or purchasing or selling, a firm's stocks while in the knowledge of unpublished price-sensitive information ('UPSI') regarding the company.

It also entails UPSI informing people about the firm so that they may subscribe to, buy, or sell the company's stocks. Insider trading regulations state unequivocally that it is prohibited for management of Public ltd companies to trade on the basis of manipulative price data in order for any benefit or prevent any damage. [2] A company trading its own shares based on its own information is deemed to be unethical as the data is not known to the public and therefore, they breach the trust of their investors. Simply by taking employment,the corporate insider has entered into an agreement with the investors to preserve the rights of the shareholders instead of the owners of the company. Therefore, its is a violation of the shareholder contract when a person who has price manipulative data purchases or disinvests in securities.

---

[1] AK Pathak and Bhanu Pratap Singh, Insider Trading in India, Company Law Journal, Vol 4, 201, p.40-48

[2]Saurabh Chakraborty, “Insider Trading in India”- International Journal of Law Management & Humanities, Vol 5, 2022, p.1-5

WHITE BLACK LEGAL

As a result, insider trading occurs when a corporate insider or any other individual who owes a fiduciary obligation to the firm uses substantial non-public data in trading the company's shares.

It has been defined as trading in the company's shares for the purpose of gaining or avoiding losses through price manipulation by persons in the company's management or their acquaintances based on manipulative price data dealing with the company's operation, they obtain but which isn't accessible publicaly. Most countries in the world with reputable stock exchanges have barred this. The reason for the prohibition of insider trading is "the evident need and concern about the damage to public's trust that insider dealing is likely to cause, and the real intention to prevent, to the greatest extent possible, what amounts to fraud when those with inside information use that information to generate a profit in their transactions with others." The SEBI Act's Insider Trading Regulations particularly prohibit dealing in shares of a listed enterprise or a firm planned to be listed while disclosing or in possession of UPSI to an individual barred from trasaction of the equities when knowing the data. Price manipulative trading is committed by any insider who trades in securities "in violation of" these regulations.

INDIA'S EVOLUTION OF INSIDER TRADING LAW

India was not slow in understanding the impact that insider trading may cause on rights of public investors , fiscal markets and corporate governance. Thomas Committee formed in 1948 was India's first trial to control price man which analysed worldwide methods of regulating insider trading, including the Securities Exchange Act of 1934. Sections 307 and 308 of the Companies Act 1956 were added in response to the Thomas Committee's proposal. This amendment prepared the path for some mandated disclosures by directors and management, but it proved ineffective in deterring insider trading.

[4]In 1978 the Sachar Committee was established and after that the Patel Committee took over in 1986. They suggested ways to curb price manipulation in India. Insider trading was described by the Patel Committee as "trading in the shares of a business by persons in the company's management or close to them on the basis of secret price sensitive knowledge

[3] Udai Khanna, "The Concept of Insider Trading: A Comprehensive Study", Company Law Journal, Vol.3,2016, p.33-46

[4] Himanshu Chahar and Sumeer Sodhi, "Insider Trading in India" Legal Service India, p.3-

regarding the operation of the firm, which they possess but which is not available to others." Both the Sachar Committee and the Patel Committee advocated, among other things, the establishment of separate legislation to combat price manipulation.

The suggestions given by Abid Hussain Committee established in 1989 state anybody accussed of price manipulation will get punished in civil and criminal proceedings. Separate legislation to baninsider trading was also one of the Abid Hussain Committee's proposals. The 'SEBI (Insider Trading) Regulations, 1992' were issued and brought into law based on the recommendations provided by these committees. In 2002, this law was significantly revised and called the Securities Exchange Board of India(PIT) Rules, 1992. After that the price manipulation rules have been revised 5 times, with most recent update being in 2011. The SEBI (Prohibition of Insider Trading) Regulations, 1992 have now been abolished, with effect on May 15, 2015, and the new regulations have taken effect. SEBI, which is known as market regulator controls the price manipulation with the help of the various statutes.

Growth of price manipulative dealing rules in India can be seen through a case which occurred in 2003. A fund manager Samir Arora of a mutual fund company sold his entire shares of a sotware company DGL when he got to know about the merger of DGL with Hewlett Packard. The securities board acuused Samir Arora of using unfair means as he raised the price of his stock on 2nd May 2003 which was rupees 537.55 to rupees 597.23 on 7th May 2003. He also expressed certain details on 30th April 2003 to a magazine Business Standards which were published on 5th May 2003. Then he sold his entire stock and averted a loss of Twenty-Three Crores. The board found him guilty of manipulative trading and banned him for a period of 5 years to deal in securities market.

The Appellate Tribunal on the other hand acquitted Samir Arora as the evidence provided by the board did not clearly prove that the data used by him can be categorized as malafide and that Samir Arora may have used his analysis of the publicaly accessible material.

IMPLICATIONS OF INSIDER TRADING

Following are the disadvantages of Price Manipulative Trading as it has now become a malfeasance regarding shareholders who are at a loss due to some using unfair means to obtain price manipulative data. Other drawbacks of insider trading includethe following:

---

[5] Himanshu Chahar and Sumeer Sodhi, "Insider Trading in India" Legal Service India,

- Insider trading is a prevalent problem in stock markets, and it is deceptive for investors when they purchase shares. It is dishonest and unlawful since it is unfair to individuals who don't have access to price-sensitive data, and when someone exploits such knowledge to make money, he puts others at threat of paying more or suffering agreater loss.
- Insider trading may undermine the public's or shareholders' confidence. Price manipulative trading could disrupt the public's or investors' confidence. Several price-manipulative dealing incidents which occur frequently discourage shareholders of a company to invest in the securities to gain some profit.
- The company's reputation is at risk, and the entire industry suffers as a result. When insider trading is identified and publicised, corporations can face significant unfavourable publicity. Such unfavourable publicity, and the accompanying reputational damages, are likely to inhibit intelligent trade. Furthermore, CEOs of organisations with greater reputational capital have more to lose from the unfavourable press and hence benefit very little from insider trading. It is important tohighlight that individual behaviour can seriously affect the image of the business.
- Trading on inside knowledge, particularly unlawful insider trading, may have a severe negative impact on the effectiveness, integrity, and credibility of financial markets.

UNPUBLISHED PRICE-SENSITIVE INFORMATION

WHITE BLACK LEGAL

Before delving into the legal rules that define what constitutes price manipulative dealing. We should define what constitutes 'undisclosed manipulative price data.' [6]The current rules of the board do not define 'undisclosed manipulative price data,' instead, define both words 'manipulative price data and 'undisclosed' distinctively. Rule 2(h) defines manipulative price data as "any information pertaining directly or indirectly to an organization that, if disclosed, is likely to substantially impact the price of the firm's securities."Furthermore, essential information has been determined to be price-conscious information first, quarterly financials of the firm; second, anticipated declaration dividends (both provisional and final); third, the

issuance or repurchase of shares; fourth, growth plans or the implementation of new projects; fifth, mergers and acquisitions; sixth, divestiture of the entire or a major portion of the

[6] Insider Trading - Analysing the Indian Perspective by Arjun Singh: SSRN

enterprise; and finally, substantial changes in the company's policies, strategies, or activities. Furthermore, Regulation 2(k) defines 'unpublished' information as information that is not particular in nature and is not released by the corporation or its representatives. Furthermore, the Regulation's Explanation clearly states that tentative reports in electronic or print media are not deemed "public information." Thus, the 2002 amendment attempted to eliminate the defence afforded by the original definition, namely any sort of data that is widely publicised through press or other means wise should not be regarded as undisclosed manipulative price data.

[7] Unpublished price sensitive data can be studied through a case involving a Giant company Hindustan Lever Ltd when it acquired major shares of another company Broke Bond Lipton Ltd. The securities board while investigating the deal charged HLL for using price manipulative data for getting the shares from UTI (Unit Trust of India) and termed it to be planned acquisition.

The Appellate Tribunal while hearing the case quashed the evidence as it declared that the merger of the companies was in the public domain through published news articles. The case brought a significant ramification in the rules of securities board which sought for closing the legal barriers to constitute an information from being categorized as an undisclosed price manipulative data.

The 2002 change to Regulation 2(k) made it clear that speculativereporting in electronic or print media would not be deemed "published" material.

SEBI'S INSIDER TRADING PERSPECTIVE CHANGES

To prohibit price manipulative dealings the securities board reviewed its old regulation and came up with a new framework in the year 2015 which provide a harsher and more concentrated regulatory structure, as well as a better legal and compliance framework to combat insider trading. With the implementation of these new laws, the two-decade-old precursor legislation was striked off.

[7] Insider Trading: Hindustan Lever Limited v. SEBI - Securities - India, mondaq

The following are the key provisions of the Regulations:

A. Definition Analysis:

1. **Insider** - The definition of an 'insider' is critical to the operation of an insidertrading rule. An 'insider' is defined in the Regulations as an individual that can be a relative, and who can acquire or has access to manipulative price determination data. [8]According to Regulations, everyone who is associated is an "insider." An outsider can be called an insider if he possesses the data which can be termed as a price manipulative data. While not significantly different from the 1992 Regulations, the Regulations have broadened the concept of whom an 'insider' is by enhancing the meaning of 'linked individual.' The authority leveling the charge has to prove that the individual who is trading has used manipulative price data for the transaction, The accussed can deny the charge by proving himself innocent.Insider is an individual who often has some special information regarding the price fluctuation of company's share.

1. [9]**Connected Person-** Every 'connected person' as defined by the Regulations is an insider. The qualifying requirement for whether or not a person is a connected person is if the individual is or has been linked with the corporation,directly or indirectly, in any manner in the six months preceding the relevant act. This definition has been totally modified. According to the 1992 Regulations, related people included directors and employees/officers. The term "director" is not mentioned in the definition of "connected person" in the 2015 Regulations. Also, unless otherwise established, close relatives, holding companies, associate companies, subsidiary companies, and so on are presumed to be related individuals under the 2015 Regulations. The definition is intended to include individuals not holding any kind of job in the organization and are associated to the officials of the organization. They also participate in the day to day working of the corporation.

WHITE BLACK LEGAL

[8] SEBI (Prohibition of Insider Trading) Regn, 2015

[9] SEBI (Prohibition of Insider Trading) Regn, 2015

2. [10]**Unpublished Price Sensitive Data & Publicly Available Data** – The Regulations

define UPSI as "any information pertaining to a company or its securities that is not generally available and, upon becoming available, is likely to substantively impact the price of the shares," which includes financialresults, dividend payments, changes in ownership structure, merger and acquisition, demergers, takeovers, de-listings, divestitures, and business expansion, and such other transactions.

The Regulations define 'generally available' as information that is open to thepublic on a nondiscriminatory basis. Price-sensitive material would remain 'unpublished' under the 1992 Regulations if it was not released by the corporation or its representatives.

However, under these Regulations, that idea has been eliminated.

As a result, the criterion for determining the composition of manipulative price data is that if the data is easily available in the public domain. Othersignificant modification in 1992 Regulations is the definition of price-sensitive data which formerly solely referred to a corporation. The UPSI definition will now include both a corporation and securities.

3. **Compliance Officer[11]-** This definition appears in the Regulations for the first time. The term "compliance officer" refers to any senior officer appointed under the Directors and is economically well versed with the laws and capacity of understanding law and regulatory obligations under the Regulations. Under the general supervision of the Board of Directors, he shall be responsible for policy and procedure compliance, record keeping, monitoring adherence to UPSI preservation rules, trade monitoring, and the application of codes provided in the Regulations. The 2015 Requirements, likethe 1992 Regulations, require every listed business to (i) develop internal rulesof conduct on insider trading and (ii) designate a compliance officer who is trained to comprehend and apply the regulations. Although individuals are liable for their noncompliance (if any), it is the compliance office's responsibility to monitor and supervise employee actions and guarantee that the firm is operated in accordance with the regulations.

4. **Trading[12]-** Trading is stated in the 2015 Regulations as "subscribing, purchasing, selling, trading, or agreeing to subscribe, buy, sell, or trade-in any securities." Despite this, the

[10] Clause (n) of sub-regn (1) of regn 2

[11] Clause (c) of sub-regulation (1) of regulation 2

[12] Clause (l) of sub-regulation (1) of regulation 2

Committee proposed that the term "trading" be narrowed to simply encompass the acquisition and disposition of equities. The scope of the guidelines is wide so that it can cover the transactions relating to the securities so that the act of sebi is taken into consideration, that forbids 'transacting' in shares based at substantial non-public data, among other aspects. As a result, even transactions such as the establishment of a security interest or pledging would be considered "trading" for the purposes of this Regulation.

Procurement of UPSI

The restriction on insider trading is comprised of three important components: (i) therestriction on conveying UPSI by an insider, (ii) the prohibition on other individuals obtaining UPSI, and (iii) the restriction on trading by an insider while in charge of UPSI.
As previously indicated, the Regulations, in sharp contrast to the 1992 Regulations, ban communication by UPSI insiders and outsiders of a business or its securities listed or intended to be listed. This section intended to impose a duty on all insiders inpossession of UPSI to treat such data with caution and to deal with information with them solely on a 'need-to-know' basis. SEBI's objective is for firms to build processesfor handling information in their possession based on 'need-to-know' criteria. The allegation of insider trading, however, will not apply if the communication or procurement is in support of legitimate aims, the performance of responsibilities, or the fulfilment of legal obligations. Concerning the accusation of 'trading while in possession of UPSI,' the Regulations specify the situations under which an insider may show his innocence.

B. Trading Plan- A 'Trading Strategy' is simply a plan that includes all of the possible price volatility, share liquidity, trading framework, trading risks, amount of cash to be exchanged, and so on. The establishment of a trading strategy is a new inclusion to the 2015 rules. According to the regulations, a trading strategy is a formulation created by an insider and provided to the company's Compliance Officer for approval. After getting authorization, the Compliance Officer may make the trade plan public through public disclosure, and transactions in accordance with the plans may be carried out. This provision is intended to provide people who may be in everlasting possession of unpublished price-sensitive data with an opportunity to trade in securities in a compliant way. This clause would allow an insider to create a trading strategy that would allow him to prepare for future transactions. As a result, the presence of unpublished price-sensitive data at the time a transaction in the plan for trading is actually performed would not preclude the execution of the dealings that the individual had alreaddecided even before the undisclosed manipulative price data comes in the existence.

SEBI has specified six specific requirements for the trading strategy. Once authorised,the trading plan is irrevocable, and insiders are required to follow it without the right to depart from it or trade in stocks beyond the boundaries of the trading plan. The requirement for a corporate compliance mechanism for insiders, as well as enhancedregulation of insider trading in the Indian stock market, necessitates the inclusion of such a provision.

C. Obligations To Disclose - The ongoing disclosures required for specific types of individuals in a corporation whose shares are listed on a stock market, as well as thefirm's public disclosure requirements:

The legislation requires the following disclosures[13]:

- **Provision for Transition**- Every promoter, key management staff, and director of every firm must declare to the company their holdings of the company's securities within 30 days of the 2015 Regulations coming intoforce.
- **Trigger for Preliminary Disclosure** - Every individual appointed as an Executive or director, or who becomes a promoter, must report his holdings ofthe company's securities as of the date of appointment to the organization within seven days of appointment or promotion.
- **Ongoing disclosures** - Under this regulatory framework, each promoter, employee, and director of each organisation is obligated to report about the quantity of equities bought and sold of the company by him within four months whose value exceeds rupees ten lakhs. This can happen through any dealing which may be in a series or one business activity. Every corporation must notify the stock market of the specifics of a such transaction within two trading days of receiving the disclosure or becoming aware of such data. The 1992 Regulations imposed continuous disclosure duty exclusively on the company's promoters, directors, and officials. But now the term "officer" has been changed to "employee" in the 2015 Regulations. This modification links all personnel of an organisation to the legislation.
- **Disclosure by a Connected Entity** -According to the regulation, an organisation may, at its prerogative, require any other connected individual tomake revelations of holdings and trading in the shares of a company to monitor compliance with the Rules.

[13] Sub-regulation (1) of regul 7

WHITE BLACK LEGAL

D. Fair Disclosure and Conduct Code - Every listed company's Board of Directors is expected to develop and publish a code of practise and guidelines that must be followed for fair declaration of UPSI in conformity with the guidelines outlined in a new Schedule "Schedule A" of the Regulations.

E. The Insider's Presumption of Guilt -The key distinction between the 1992 and 2015 legislation is the shift in the burden of evidence. Whereas in previous provisions, the presumption solely applied to any insider in possession being believed to have dealt on the basis of the obtained UPSI, it has now been modified to include any linked person presumed to have a connection to such UPSI. In the event of linked people, theonus of showing that they were not in access of unpublished price-sensitive data shall be on such connected personnel, and in other situations, the obligation would be on the Board, specifies in Regulation 4(2). Thus, while once possession was a duty that had to be fulfilled by the prosecuting/accusing body, it is now an assumption that maybe rebutted by the person accused of being a related person. In comparison to the previous system, this change has made it possible to combat the threat of insider trading both effectively and sternly.

F. Punishments - The Regulations are devoid of distinct punishments. However, reference is made to the punishment provisions of the SEBI Act of 1992, which wouldapply. Insider trading is punishable by a fine of INR 25 crores under the Act or three times the profit gained by insider trading, whichever is greater. SEBI may also restrictan insider from dealing in securities, which are deemed illegal transactions, invalid, and require the return of equity securities acquired or sold. Any person who violates, attempts to violate, or aids and abets the violation of the Act may be sentenced to imprisonment for a period of up to 10 years, fined up to INR 25 crores,or both. The Regulations also establish specific disciplinary consequences, such as salary freezes and suspensions, that corporations or financial intermediaries may useto ensure compliance with the Regulations.

WHITE BLACK LEGAL

REASONS FOR INADEQUATE INVESTIGATIVE FRAMEWORK

- Price manipulative dealing constitutes one of the most significant issues that India must address. There were instances where detecting fraud and prosecuting the accused proved challenging.This type of trading is not permissible as per the rules of the country.

I. INSUFFICIENT PERSONNEL

- There has been a paucity of resources and staff in Indian insider trading investigations. As a result, recognising Insider Trading Activity becomes challenging. A company's related individuals are more likely to be involved in such unfair practices. When there is an appropriate staff of at least one person monitoring one listed firm, there may be stringent surveillance of the company's operation.

II. NEED FOR PROFICIENT AND XPERIENCED WORKERS

- SEBI's fruitful authorisation actions might have the dual effect of penalising the wrongdoers from one perspective and creating a key impediment from another. However, for such impediment repercussions to be seen in India, SEBI must equip itself so that it may deftly amass proof with the purpose of "examine to contest." SEBImust assemble a team of data scientists, accountants, legal instructors with expertise in company law, programming architects, and academics.[14] People require the importance of learning in their specialised fields as well as broad abilities across all reasonable topics. Furthermore, SEBI should develop its market knowledge through a consistent review of measurable learning and reports from middle-person guides.

III. AUTHORITY TO TAP CALLS AND MESSAGES

- Proving incidents of insider trading is a challenge because the allegations are generally built on accidental confirmation. Often, call records and tapes are the only evidence available to show a link between people engaging in such illegal activity. SEBI does not have a vital intensity of investigation under its grasp, namely telephonecall tapping. The SEBI does not possess the authority to wiretap phones. In suspiciouscircumstances, it may request call information records. The Central Board of Direct Taxes are some financial institutions in India, which are authorized to wiretap telephones. Such competence can be the most significant in

[14] Kotak Committee Report, nfcg.in

WHITE BLACK LEGAL

proving acharge against the accused in an inquiry.[15]

IV. LIMITED SCOPE FOR CARRYING OUT INVESTIGATION

- In India, under Section 11B (3) of the SEBI Act, 1992, the investigating specialist may require only a mediator/ an individual who is affiliated with the equities market in other way to assemble data and create journals and enlists, different files, present to the market particpant or any individual authorised by it for the purpose.

V. LACK OF PREDICTIVE ACTION

- Under the SEBI Act, it has the authority to conduct an investigation only where any mediator or individual who has infringed the guidelines established by the governing body which is also affiliated with the equities market. The body has made the guidelines for every participant and everyone who is affiliated with the sytem has to obey such guidelines.[16]Regardless, there may be a situation in which SEBI becomes more acquainted with a couple of anticipated instances of market manipulation through testimony and attempts to keep a strategic distance from it. In any case, under Indian- law, an optimistic effort to block insider trading is not required, and just an investigation into the consequences of a leak of unpublished confidential material is permissible.

VI. INADEQUATE TIME FRAMEWORK

- The Code does not provide a reasonable time limit for concluding the interogation to price manipulative dealing instances. An abnormal lag in the completion of the examination may cause a damage of vital evidence data and offers the wrong doers the opportunity to impact the examination. They also lack a proper approach to carrying out the examination procedure. As a result of the previously described gaps, the Investigative Mechanism under the SEBI (Prohibition of Insider Trading) Regulation, 2015 anticipates adjustments to be obtained.

[15] The Economic Times- Insider trading is prevalent on Dalal Street

[16] Section 11 in the SEBI Act, 1992

WHITE BLACK LEGAL

VII. OTHER SHORTCOMINGS

- The supervision of insider management has proven to be the most difficult of the several challenges that the regulator of the securities markets in India must deal with. India is one of few countries that frequently enforces the existing insider trading laws. It is a genuine concern that the SEBI has done little beyond commencingtesting, and that this has happened all the time after the concerns have been reported by the media.

A CRITICAL ANALYSIS OF THE LEGAL SYSTEM REGARDING INSIDER TRADING IN USA AND INDIA

- Analysing the system of the two countries we note that the legal framework has grown significantly over the past eight decades, whereas India's regulatory framework is just approximately two decades old.
- To begin, the SEBI oversees the regulatory structure in place to combat insider trading in India. The Securities and Exchange Commission ['SEC'] is the Securities and Exchange Commission's equivalent in the United States of America. The regulatory bodies in both the countries are responsible for supervising in the processes of their respective jurisdiction. In India there are no special rules for regulation of price manipulative dealing, contrast to the American regulations which impose stringement punishments when violated.
- While studying the legal systems of the said countries we see that in USA there is a decline in the culpability for insider trading. One of the prominent matter that emphasised the concern for monetary infringement was a ruling of the Supreme Court in Chiarella v. the United States[17], in which the Court stated that no legislation regarding data governing the laws regarding securities should generate an overall duty to reveal material, non-private data to abstain in dealing between the trader and the government. The ruling of the Supreme Court in the Chiarella Case becameknown as the "classical theory" of insider trading.

[17] Chiarella v. United States: 445 U.S. 222 (1980): Justia US Supreme Court Center

- A similar shift away from the breach of the duty need to affix culpability has been noticed in the Indian framework, particularly since the 2008 modification. Prior to the2008 change to Regulation 2(e), the SAT made several noteworthy findings in the matter of **Rakesh Agrawal v. SEBI** about the fiduciary duty requirement.[18]

- The responsibility of a person who trades on the basis of pirated information is the next critical component of both regimes that must be analysed. Misappropriation theory regarding price manipulation is widely acknowledged in America, which states that an individual who misappropriates content non- public data with the intention of trading in breach of their obligation of trust or sense of duty, then under 10(b) section and 10b-5 rule is a crime.

- According to 2008 modifications the board in India has modified the rules stated in the theories of price manipulation in context to America. The SEBI has increased the obligation under Regulation 3 to any individual who may have received unpublished price-sensitive information by enacting Regulation 2(e)(ii). Thus, it appears that in India, not only a person who is accused of misappropriating data is held accountable for breakdown of trust. combined interpretation of Rules, states, an individual who possesses undisclosed price data and is involved in trading securities will be held guilty of price manipulative dealing, even if he hadnot broken any obligation to the firm or to the source of the information.

- Another important point of contention in both India's and the United States legal systems is the issue of 'possession,' or whether responsibility of price manipulative dealing is imposed when a transaction takes place and the said data was utilised in the transaction. In USA, It was decided that proving a causal link between pirated knowledge and trading in securities was not required. Dealing in securities "on the basis of" substantial non-public knowledge has been viewed as trading while"knowing."

- Regulation 3 of the Indian regime applies the 'possession' criteria, which prevents an insider from dealing in shares "while in control of" unpublished price-sensitive data.The precise status of the Indian government is unknown.

[18] Rakesh Agrawal vs Securities Exchange Board of India on 3 November 2003

- Both jurisdictions have a comparable liability framework in that they both allow for criminal responsibility. However, the legislation of the United States of America incorporates a variety of liability rules that are not contained in Indian law. Section 15G of the SEBI Rules in India permits a civil fine of 25 crore rupees or 3 times the value of profits earned through insider trading, whichever is greater. Section 24(1) provides for criminal charges for insider trading, with a maximum penalty of 10 yearsin jail, penalty of twenty-five crores rupees. It is stated an individual can be penalised utpto ten years if he doesn't settle the fine issued by officer in charge, no less than one month, and a penalty of up to twenty-five crores, or both under section 24(2).

- When the regulatory regimes of both the countries are compared, it can be seen that the Americas's mechanism is more efficient than India's mechanism as the system in India is in its early stages of development.

INSIDER TRADING WITH REFERENCE TO

BALRAM GARG VS SECURITIES AND EXCHANGE BOARD OF INDIA

(APRIL 19th, 2022)

WHITE BLACK LEGAL

FACTS OF THE CASE

- The suit involves PC Jewellers Ltd. ("PCJ"), a well-known jewellery establishment in India. The company PCJ was started by brothers, Amar Chand Garg, Balram Garg, and PC Gupta. The founder of the company was PC Gupta, the vice chairman of the company was Amar Chand Garg, and the managing director of the company at that time was Balram Garg. Amar Chand Garg left the company in the year 2011 through a settlement. The overall stake of Amar Chand's family in PC Jewellers was therefore limited to 0.70%. Amar Chand, PCJ's vicechairman, also resigned and completely detached himself from the firm.

- Following a family feud, PC Gupta's son Sachin Gupta and his spouse Shivani Gupta left the family enterprise in 2015. Following the split, Sachin Gupta and Shivani Gupta both resigned from their roles at PCJ (president, gold production, and senior assistant store manager, respectively). The parties agreed to a family arrangement in which Sachin Gupta was given 1 crore 60 lakhs equities by PC Gupta for acquiting his rights in the business. Both Shivani Gupta and Sachin Gupta on the other hand, were allowed to utilise PC Gupta's land for residential reasons alone; the property was a huge area of land with distinct houses built on it. PC Gupta and Sachin Gupta lived on different levels of the same building, however, Balram Garg and Amar Chand Garg’s son Amit Garg lived at different houses. The founder of the company PC Gupta passed away in 2019.[19]
- Around April 25, 2018, PCJ initiated negotiations about a share buyback. Following such negotiations and board approval, the firm informed the stock exchange on May 10, 2018, of its proposal to acquire 1,21,14,285 securities of rupees ten each for a value of Rs 350 each. Because the data regarding the acquisition of securities was not publicly available before May 10, 2018, the information concerning the buy-back during 25th April – 10th May 2018, qualified as Unpublished price sensitive information in the Prohibition of Insider Trading Rules. ("UPSI-1").

- As on 7th July 2018, SBI is the company’s key lender, declined to issue a no objection certificate ("NOC") for the buy-back. As a result, the board accepted the cancellation of the buy-back proposal on July 13, 2018, which was communicated to the exchange after trading sessions. As a result, during July 7, 2018,and July 13, 2018, the details relating to the cancellation of the buy-back offer qualified UPSI under the PIT Rules ("UPSI-2").

WHITE BLACK LEGAL

- Shivani Gupta sold certain PCJ shares after getting them as a result of a family arrangement during 2nd April 2018 – 31st July, 2018. (Dealing with 1st UPSI period and 2nd UPSI). The shares of Shivani Gupta were also exchanged by Sachin Gupta and Amit Garg(Amar Chand Garg’s son). Furthermore, Amit Garg and his wife's Quick Developers Private Limited ("QDPL") acquired short positions in PCJ shares right before UPSI-2 went public. SEBI began an inquiry into the trades they made during this time period.

[19] Vineet Saran and Aniruddha Bose JJ. Balram Garg Vs SEBI, 19 Apr. 2022

QUESTION OF LAW

- The expression "connected person" is defined extensively under Regulation 2(1)(d) ofthe PIT Regulations. It comprises corporate office bearers, those who often communicate with company office bearers, and people who have a business or professional relationship with the firm. Immediate relatives are also believed to be related people, although this is rebuttable.[20]

- The expression "immediate relative" comprises a partner and immediate blood relatives, offsprings of the partner, anyone who is monetarily reliant or consider individuals while making trading choices according to the rule 2(F) [21]
- Regulation 2(g) defined an "insider" as any linked individual or any other individual in charge of or providing a way to the unpublished price sensitive data. This legislation emphasised the burden of proving that a specific individual was in charge of or had the knowledge of the price sensitive information while trading, ndividual initiating said allegations, and the convicted individual may adequately oppose the allegations.

- Regulation 3(1) forbids any insiders from interacting with or granting access to anyUPSI to anyone else. Regulation 4(1) forbids all insiders from dealing in securities while holding the not published price data. This has been stated if any individual has traded in stocks while having the knowledge, the transaction will be influenced from UPSI data and conscious.[23]

ORDERS GIVEN BY SECURITIES APPELLATE TRIBUNAL & THE BOARD

SEBI determined that the transactions took place by Amit Garg, Shivani Gupta and as well as Sachin Gupta on 2nd April, 2018 and 31st July, 2018 who acted as the respresentatives of Shivani Gupta along with Quick Developers Pvt Ltd. with the composition of the company PC Jewellers.

[20] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regn. 2(1)*(d)(i)*.

21 SEBI (Prohibition of Insider Trading) Regulations, 2015, Regn. 2(1)(*f*).

[23] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation. 4(1).

The said transactions hence violated the provisons of the rules under the Probition of Insider Trading.The Authority that is the Securities Exchange Board of India concluded that both Shivani Gupta as well as Sachin Gupta were not linked individuals to the founder of the company i.e PC Gupta and the said party was neither monetarily reliant or sought his advice while dealing in securities. Furthermore, SEBI accepted that Amit Garg was not a linked person as he was only the paternal nephew to Balram Garg and PC Gupta, this didn't classify Amit Garg a "direct relative" and under the Prohibition of Insider Trading Rules were not classified a linked. As QDPL being founded by Amit Garg along with his spouse was also regarded as a separate entity and under the rules of insider trading was classified as not a linked person which did not had any connections or dealings with the company. Even though SEBI assessed that none of the suspected parties was related, it established that they were to be regarded as "insiders" as they had the knowledge of 1st UPSI & 2nd UPSI. The Board arrived at the conclusion that Amit Garg, Shivani and Sachin Gupta as well as Quick Developers Pvt Ltd had direct exposure to the unpublished price sensitive informations relating to the patterns of trading, timing of the trasanction along with the connection to Balram Garg and PC Gupta focussed on evidence which is circumstantial in nature other than actual proof. It was built on this notion that Sachin Gupta and his wife left the family company did not matter, according to SEBI, because there was no separation between the parties. Similar observations have been made about Amit Garg. The convicted individuals were living in the premises with Balram Garg as well as PC Gupta, albeit different houses, were considered important by SEBI. Based on the foregoing facts, SEBI determined that the Alleged Persons had access to UPSI-1 and UPSI-2when dealing in PCJ shares, and so violated the 4th rule of insider trading.

Furthermore, the Board decided Alleged Parties couldn't obtain the price sensitive informations other than Balram Garg & PC Gupta because of the strong ties. As a result, the Board determined that the Managing Director violated 3rd Regulation of the insider Trading Rules by communicating UPSI to Alleged Persons.

The accused filed an appeal with the Securities Appellate Tribunal ("SAT") after being dissatisfied with the above-mentioned SEBI ruling. However, SAT denied the appeal, ruling that the accused persons violated the PIT Regulations by a preponderance of the evidence. As a result, the Accused Persons filed an appeal withthe Supreme Court.

WHITE BLACK LEGAL

SUPREME COURT JUDGEMENT

- The Accused Persons' appeal was approved by the Court. The Court found that, while SAT admitted that there was no proof of any UPSI communication, it nonetheless decided by "preponderance of likelihood" that the UPSI was spread by the deceased PC Gupta and Balram Garg. The Court determined that SAT was faulty in evaluatingthe appellants' allegation of family alienation and in failing to determine the real nature of the parties' relationship. The Court concluded that when the 2 arrangementsare seen in their proper context, they amply illustrate a breakdown in the relationship between the parties.

- The Court further stated that it is the duty of the Board to establish that respondents possesed the price sensitive data even if they were connected as a family. The Supree Court ruled that Securities Appellate Tribunal erred in putting the charge onto the parties to demonstrate a total breakdown of connections. The legislative provisions to Regulation 2(1)(g)[25] clearly esatblish that it is the responsibility of the Board demonstrate that a person has any price sensitive information with him. Second, it ruled that the inferences reached by the Board and Tribunal relied on circumstantial proof that the Alleged Persons engaged in insider trading were incorrect. The Court emphasised the following:

a. Shivani Gupta sold the majority of the shares, 74,35,071 shares, prior to UPSI-1 at a value of INR 300 per share. However, because the price continued to decline, she terminated the transaction on April 24, 2018. She wouldn't have traded such a huge portion of her stock prior to UPSI-1 if she had known about it.

b. Shivani Gupta traded 1 Lakh shares before the UPSI-2 was established, i.e.before SBI's rejection of NOC. Shivani would have avoided any notional loss if she had traded on UPSI and waited for UPSI-2 before offloading the shares.

[25] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regn. 2(1)(*g*).

c. During the UPSI-2 time, Shivani Gupta traded just 15,00,000 shares and retained equities of the value amounting to 12,84.111. This would contradict SEBI's claim that the Alleged Persons sold a major portion of their stock before the value of the stock was projected to plummet dramatically. In reality, the data shows that there was norise in the price of shares even after the announcement of the buy-back offer. As a result, on July 13, 2018, the Accused Persons ceased selling shares.[26]

Considering the circumstances, not a single association was formed with the price sensitive data and the selling of shares. As a result, aforementioned judgments were completely private and business character.

The Judicial Authority ruled during the unavailability of any relevant proof demonstrating regular contact between the entities, SEBI incorrectly assumed thatBalram Garg transmitted the UPSI to the Accused Persons. The Court emphasisedthat PIT Regulation 3 does not generate any deeming fiction. As a result, only convincing documents (letters, emails, witnesses, etc.) may be used to verify the communication, rather than just assuming the communication occurred due to the parties near the vicinity. With these views, the Court overturned the SEBI and SAT rulings.[27]

CONCLUSION

Most financial rules must be updated on a regular basis to keep up with the ever-changing market dynamics. Insider trading is no exception. SEBI has overhauled the whole frameworkfor insider trading in India in order to eliminate the gaps and deficiencies of the 1992 Regulations. As a result, under the 2015 regulations, critical modifications such as broadening the scope of 'connected individuals,' tightening the definition of an 'insider,' rationalising disclosure events, and deleting superfluous requirements, among others, were implemented. Legislative remarks interspersed among sections, a distinctive feature of the Regulations, will be a valuable tool for future interpretation of these Laws.

[26]https://www.nishithdesai.com/SectionCategory/33/Research-and Articles/12/57/NDAHotline/6173/1.html

[27] Vineet Saran and Aniruddha Bose JJ. Balram Garg Vs SEBI, 19 Apr. 2022

It may also be noted that the board revised all the guidelines of price manipulative dealing , that can be viewed as a serious disadvantage within India, in order to create a competitive environment in the financial market and to protect the interests of investors. SEBI's action will provide theIndian stock market with a much-needed boost, allowing for continued economic growth.

However, delving further reveals that several of the suggested adjustments and new ideas proposed by the 2015 Rules and regs are unclear. As a result, it is expected that the new laws would be gradually construed by courts and authorities, with timely explanations made by the financial market regulator.

Thus, the difficulties in proving insider trading accusations are mostly connected to the lack of adequate evidence to prove conceptual motive and not exposure to disclosed price- sensitive data available under the circumstances and facts of a specific case. After conducting - research it is seen that India is not well developed in terms of regulatory framework for fighting price manipulative trading, this can be decided that the legal rules in the United States is far more efficient and stable than in India to fight price manipulative trading.

The judgement correctly decides that circumstantial evidence alone may not be sufficient to demonstrate UPSI communication. It must be proven, using sufficient evidence such as email messages, letters, and phone numbers, that the UPSI was transmitted to the accused by a linked person.

Though the court correctly supported the legislation, efforts should be made to educate investigative officers about the sort of proof necessary and the responsibility of proof in such circumstances. The commencement of the trial has serious consequences for the accused, such as the seizure of trading accounts, suspension of bankaccounts, a deposit of funds, and so on. This might constitute unwarranted harassment.

Interestingly, in view of the ever-increasing volumes witnessed in Indian stock markets, it has been stated that SEBI is spending heavily on technology to detect and combat insider trading. They are exploring the use of technology used by casino sites in Las Vegas for this purpose but customised for SEBI's special needs. While the use of such algorithms may assist the Board in identifying possible wrong doers relying onto factors such as anomalous trade activity, obstacles raised by technological advancement could not absolve the determination of evidence necessary in investigating the monetary frauds.

WHITE BLACK LEGAL

SUGGESTIONS

- Most financial rules must be updated on a regular basis to keep up with the ever-changing market dynamics.
- The scope of Regulation 2(e)(ii) of the Sebi Act has expanded beyond its intended boundaries following the changes, and this must be curtailed.
- It may also be noted that the Board has revised the system for the working of price manipulative dealings, which is seen as a serious obstacle in India, to create competitive environment in the financial market and protect the interests of investors.
- The circumstantial evidence alone may not be sufficient to demonstrate UPSI communication.
- The new legislation should be gradually construed by courts and authorities, andtimely explanations should be made by the financial market authority.