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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

MOTIVE AS A PRE-CONDITION FOR INSIDER TRADING

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Insider trading is defined as a malpractice wherein the trade of a company's securities is undertaken by people who, by their work, have access to otherwise non-public information, which can be crucial for making investment decisions.¹ One must refer to the SEBI (Prohibition of Insider Trading) Regulations, 2015 (the "PIT Regulations") to comprehend the definition of "insider trading" and its fundamental components. According to a basic review of the PIT Regulations, the following conditions must be met for trade to be classified as "insider trading": The information in question should be "price sensitive" and "undisclosed," meaning that upon revelation, it may materially affect the price of the company's stocks; the trader was an "insider." Additionally, the word "insider" has two parts: connected persons possessing or having access to UPSI.

The Supreme Court's emphasis on taking "motive" into account when assessing insider trading cases in the case of SEBI v. Abijith Rajan marks a substantial shift from earlier legal interpretations. A more sophisticated interpretation of insider trading is highlighted by the court's judgement that the mere possession of Unpublished Price Sensitive Information (UPS I) during trade does not inevitably constitute insider trading. Rather, the court emphasised how crucial it is to prove that the accused had a purpose to profit unfairly from such knowledge and any ensuing gains. The Securities and Exchange Board of India (SEBI) in particular will be significantly impacted by this nuanced approach in the prosecution and decision-making of insider trading cases. Enforcing laws and regulations pertaining

¹The Economic Times, <https://economictimes.indiatimes.com/definition/insider-trading>, (last visited Feb 20, 2024).

to insider trading is the responsibility of SEBI, the main regulatory organisation in charge of the Indian securities markets. The instruction from the Supreme Court to take motive into account complicates SEBI's enforcement work.

It might now be necessary for SEBI to carry out additional in-depth inquiries into the driving forces behind trading operations involving UPSI. This may entail looking into the accused's financial and personal situation as well as any indication that they intended to use privileged knowledge for their own benefit. Furthermore, SEBI might have to obtain proof that the accused actually profited excessively from trading based on UPSI. The ruling issued by the Supreme Court also affects insider trading cases that are currently ongoing with regulatory bodies. Given the increased emphasis on motive, cases that were previously only concerned with proving possession of UPSI may now need to have their evidence reevaluated. Regulatory bodies might have to reevaluate how they handle ongoing investigations and legal actions in order to follow the court's order.

Furthermore, depending on the Supreme Court's decision, SEBI's action against insider trading may differ in intensity. Penalties in cases with strong proof of motive and undue profit may be harsher, whereas less strong evidence may lead to a different course of action. This emphasises how crucial it is to use rigorous thought and analysis when implementing laws against insider trading. All things considered, the emphasis the Supreme Court has placed on motive in cases involving insider trading marks a major advancement for Indian securities legislation. It emphasises the complexity of regulating insider trading activity and the necessity for a more comprehensive approach to establishing responsibility. Regulatory bodies such as SEBI will have to modify their enforcement tactics in order to maintain equitable and efficient supervision of the securities markets.

The case between the Securities and Exchange Board of India (SEBI) and Abhijit Rajan revolves around allegations of insider trading and unlawful gains from Rajan about Gammon Infrastructure Projects Limited (GIPL). SEBI had issued a show cause notice to Rajan, Consolidated Infrastructure Company Private Limited, and its Directors, following which the WTM passed an order holding Rajan guilty of insider trading and directing him to disgorge Rs. 1.09 crores of unlawful gains.

Rajan challenged this order before the Securities Appellate Tribunal, which allowed his appeal on three main grounds:

1. The information about the termination of two shareholders' agreements was not considered price-sensitive as it constituted a small percentage of GIPL's order book value and turnover.
2. Rajan's sale of shares was necessitated by the urgent need to raise funds for a Corporate Debt Restructuring (CDR) package rather than trading based on insider information.
3. SEBI's failure to consider the last trade price on a specific date raised questions about the basis for determining unlawful gains.

The Tribunal's decision to set aside SEBI's order was based on these factors, highlighting discrepancies in SEBI's treatment of Rajan compared to Consolidated Infrastructure Company Private Limited. SEBI's acceptance of the reasons behind Rajan's share sale for the CDR package and the dismissal of the company on similar grounds raised concerns about the inconsistent application of rules. The Supreme Court judgment in Civil Appeal No.563 of 2020 addressed SEBI's appeal against the Tribunal's decision. The Court heard arguments from legal counsels representing SEBI and Rajan, ultimately upholding the Tribunal's decision to set aside the order for Rajan to disgorge unlawful gains. The case looks into complex issues surrounding insider trading, price-sensitive information, the necessity of share sales for financial restructuring, and SEBI's application of regulatory standards. It underscores the importance of consistent and fair enforcement of securities laws to maintain market integrity and investor confidence.

Price-sensitive information

It is essential to mention the SEBI (Prohibition of Insider Trading) Regulations, 1992, which were in force when this case started, have been superseded by the SEBI (Prohibition of Insider Trading) Regulations, 2015. The main point of contention in the first case concerned the 1992 regulations' definition of "price-sensitive information," which is as follows:

“2(ha) “price sensitive information” means any information which relates directly or indirectly to a company and which, if published, is likely to affect the price of securities of the company materially.

Explanation- the following shall be deemed to be price-sensitive information:-

- i) Periodic financial results of the company;

- ii) Intended declaration of dividends (both interim and final);
- iii) Issue or securities or buy-back of securities;
- iv) Any major expansion plans or execution of new projects;
- v) Amalgamation, mergers or takeovers;
- vi) Disposal of the whole or substantial part of the undertaking; and
- vii) Significant changes in the company's policies, plans or operations".²

Unpublished Price Sensitive Information

Unpublished price Sensitive Information means any information regarding a company or its securities which is not 'generally available', i.e. not accessible to the public on a non-discriminatory basis, which if made available, is capable of materially affecting the price of the securities.³

In the case of **Chandrakala v. SEBI**⁴, The accused in this case, Mrs. Chandrakala, is the spouse of Popatlal Kothari's brother and promoter of Rasi Electrodes Ltd. (REL), Uttam Kumar Kothari. When the information about the bonus issue and the financial results were UPSI, she traded in the company's shares. Without a doubt, Mrs. Chandrakala was a "insider" at the time of the trading, and UPSI provided the information on bonus issuing and financial performance. However, it was claimed on her behalf that merely possessing any UPSI will not amount to insider trading; rather, an offence of insider trading will only be committed if the transaction is done based on UPSI.

Trading in securities while in possession of UPSI is forbidden by Regulation 3. If the individual trades, they violate this clause as, unless they can provide evidence to the contrary, it is assumed that they traded using UPSI. This implies that the insider has the responsibility of demonstrating their innocence in this circumstance. According to SAT, the appeal tribunal, an insider who can demonstrate that they haven't made any trades based on UPSI is exempt from punishment under Rule 3 of the Insider Trading Regulations. Mrs. Chandrakala had to prove that her trades were not based on UPSI in accordance with this premise.

² IndiaCorpLaw, <https://indiacorplaw.in/2022/09/supreme-coourt-on-motive-as-a-precondition-for-insider-trading.html>, (last visited Feb 20, 2024).

³ Praveen Kumar, Insider Trading and Price Sensitive Information, KHALEIDOSCOPE, June 2019.

⁴ Mrs. Chandrakala v SEBI, Appeal No. 209 of 2011, [Microsoft Word - 209-11%20-%20final\[1\] \(indiacorplaw.in\)](#)

In **PVP Ventures v. SEBI**⁵ of 2015, PVP Global Ventures and its promoter Prasad V. Potluri were fined Rs. 30 crore by SEBI for insider trading. Allegedly, while in control of UPSI, Mr. Potluri traded in PVP Ventures shares on behalf of PVP Global Ventures, failing to disclose material adverse financial results. PVP based their argument on the ruling in Mrs. Chandrakala's case, which said that "there is no insider trading if the trading is in the opposite direction; an insider buys if the UPSI is positive and sells if the UPSI is negative." SEBI declined to acknowledge the contention.

Arun Jain, the company's chairman and managing director (CMD), and R Srikanth, the company's former CFO, were charged with trading while purportedly in possession of UPSI in **Polaris Software Lab Limited**⁶. The case dates back to 2008, and in 2015 an interim order and a show because notice were issued. "...the investigation had failed to substantiate its charges that the noticees had traded in the company's scrip while being in possession of UPSI, as alleged in the interim order," the full time member noted in the March 2018 final order. The issue of any unlawful notional gain or its impounding does not come up if there are no proven insider trading accusations against the noticees. In this instance, UPSI had no bearing on the promoters' decision to trade within the trading window when it was allowed.

The facts mentioned in the interim ruling in the matter of **CNBC Awaaz and "Stock 20-20," a programme co-hosted by Hemant Ghai**⁷, were that the accused individuals had frequently purchased business shares one day before to the show's recommendation of them. On the day they broadcasted the recommendation, they sold the shares as soon as the market opened. This had occurred often, and the case is significant since his trading pattern led to the discovery of insider trading, which deviates from the legal presumption of UPSI. Regarding the question of whether a specific trading pattern results in UPSI assumption, the law remains mute. SAT later noted that the combination of one family member trading on another's account and the knowledge of suggestions ahead of time created a prima facie fraudulent conspiracy.

⁵ Adjudication Order against Prasad V Potluri and PVP Energy Pvt. Ltd. in the matter of PVP Ventures Limited, ASK/AO-172/2014-15, [SEBI | Adjudication Order against Prasad V Potluri and PVP Energy Pvt. Ltd. in the matter of PVP Ventures Limited](#)

⁶ In the matter of Polaris Software Lab Limited, WTM/GM/EFD/109/2017-18, https://www.sebi.gov.in/sebi_data/attachdocs/mar-2018/1521805297251.pdf

⁷ Confirmatory Order in the matter of CNBC Awaaz Stock 20-20 Show co-hosted by Mr. Hemant Ghai, WTM/MB/ISD/13305/2021-22, https://www.sebi.gov.in/enforcement/orders/sep-2021/confirmatory-order-in-the-matter-of-cnbc-awaaz-stock-20-20-show-co-hosted-by-mr-hemant-ghai_52343.html

‘Motive’ as an essential element in violating the sebi act 1992

In judicial procedures, motive is a highly relevant factor that is frequently utilised to establish the culpability of particular offences. Evaluating motive becomes crucial in evaluating responsibility, especially in insider trading instances. As the highest court in the land, the Supreme Court is essential to understanding and applying the law. In an insider trading issue that came up recently, the Supreme Court had to decide if the actions were considered insider trading and what kind of information qualified as Unpublished Price Sensitive Information (UPSI).

In most cases, the respondent would have been found guilty of insider trading misconduct given the circumstances. The Supreme Court's strategy, meanwhile, deviated from the traditional and strict reading of the law. The court looked more closely at motive than just whether or whether the respondent had UPSI and was involved in insider trading.

The Supreme Court departed from the usual and carefully considered whether there was a reason for pursuing illegitimate gain. This divergence from conventional legal thinking offered new insights into the ongoing discussion over liability and guilt. The court sought to understand the complexities of the case and determine the true intent guiding the respondent's behaviour by closely examining the motivation underlying the actions.

This change in viewpoint highlights how the legal discourse is developing and how motive concerns are becoming more and more important in comprehending the intricacies of human behaviour and decision-making. The Supreme Court has demonstrated a readiness to accept broader conceptual frameworks in its pursuit of justice, as evidenced by its methodology, rather than merely depending on strict interpretations of the law and technical definitions.

To sum up, the Supreme Court's investigation into purpose in the context of insider trading not only adds to the body of legal knowledge but also emphasises how crucial it is to take the underlying motives and intentions of illegal conduct into account. The court hopes to guarantee a more thorough and impartial administration of justice by exploring purpose, which goes beyond strict obedience to legal requirements and explores the complexities of human behaviour and intent.

Thus, the court broadened the meaning of "like to materially affect the price," as stated in regulation 2(ha). It held that the intention to mint profit by engaging in trade based on such information is more important than the actual profit made to determine whether or not an individual is guilty of insider trading.

Based on this logic, the court determined that the respondent had no real intention of making a criminal gain because the information he had on hand would have caused the price of GIPL to skyrocket in the regular course of business. Instead of selling the share before the information was made public, he could have made more money by waiting for the market to reveal it. The Supreme Court found the respondent not guilty of insider trading, which upheld the appeal tribunal's ruling.

Similarly, in *Rakesh Agrawal v. SEBI*⁸, SAT stated, "It is true that the regulation does not specifically bring in mens rea as an ingredient of insider trading. But that does not mean that the motive needs to be ignored". This case presents a nuanced situation where the motive behind insider trading plays a crucial role in determining culpability. While SEBI Insider trading regulations may not explicitly require proof of motive or intention behind insider trading, the case analysis suggests that the appellant's motive is being scrutinised. The argument revolves around whether the trading was conducted for personal gain or the company's and its stakeholders' benefit. The case highlights the importance of considering motives in assessing insider trading cases to ensure fair and just outcomes.

Actus reus

The idea of actus reus, or the guilty act, is a cornerstone of criminal responsibility in legal systems worldwide. This idea is essential to understanding whether someone has engaged in illegal trading based on material nonpublic information (UPSI) and so committed a crime in the context of insider trading. Nonetheless, a delicate balance within the legal system is required to discern between behaviour that justifies criminal liability and the simple possession of UPSI.

The primary actus reus of insider trading is, first and foremost, the unapproved purchase or sale of shares by those in violation of securities laws or their fiduciary duties, who have access to material

⁸ Rakesh Agarwal v. SEBI, https://www.sebi.gov.in/enforcement/orders/nov-2003/rakesh-agrawal-vs-sebi_16029.html , (last visited 20 Feb, 2024)

nonpublic information. This act establishes criminal responsibility when combined with the necessary intent (*mens rea*). On the other hand, simply having UPSI does not always equate to illegal activity. Many people frequently come into possession of sensitive information as part of their professional tasks, especially those who work for corporations or financial organisations. Merely having the info might not be enough to prove criminal responsibility if nothing else is done, like trading it or publicly exposing it without authorization. Consequently, the judge is essential in distinguishing lawful and unlawful behaviour regarding the innocent possession of UPSI. Often, this entails taking into account several variables, including the person's role, duties, and access to information, as well as their behaviours in connection to that information. Courts have the authority to investigate whether the defendant violated any obligations of confidence or trust in the securities trading industry, whether they took actions to profit personally from the information, and whether their actions compromised the integrity of the financial markets.

The judiciary must also consider how its rulings on insider trading may affect society. It is crucial to strike the correct balance between preventing illegal activity and guaranteeing equity and efficiency in the financial markets. Interpretations of insider trading regulations that are too liberal may discourage lawful market activity and impede the exchange of information essential to maintaining market efficiency. On the other hand, excessively lax interpretations could weaken investor confidence and the financial system's integrity.

One way to achieve this equilibrium is to make either the pursuit of profit or the absence of profit a prerequisite. Cases involving insider trading operate under the presumption that the offender(s) knew the information they were leaking was price-sensitive and that their actions were intended to profit from the leak or redirect loss, and that there is a reasonable suspicion that the information will be used to unlawfully benefit the tipper or the tippee, making it a deliberate criminal.

Insider trading shares characteristics with fraud in that it is willing to use unethical ways to obtain an illegal profit. Therefore, the connection between *actus reus* and purpose in insider trading instances suggests a violation of a civil or legal duty and a criminal culpability similar to fraud. The author thinks that rather than prohibiting people from utilising UPSI to engage in trade to make money, the law is more concerned with policing business information by ignoring the motive factor.

Conclusion

The SEBI v. Abijith Rajan case provides insightful information about how India's insider trading laws should be applied and interpreted. Fundamentally, the case highlights the significance of investigating trading motives and the possibility of possessing secret price-sensitive information. This more expansive view of insider trading culpability expands the scope of accountability beyond simple financial gains by acknowledging that the intent to profit illegally is a significant component in assessing guilt.

In this case, the Supreme Court's decision highlights how India's enforcement of securities laws is changing. The court indicates a shift from a purely transactional approach to insider trading allegations by underscoring the importance of motive. Instead, it recognises the intricate interaction of variables that could impact a person's choice to trade on confidential information. This complex approach is consistent with worldwide securities regulation trends, emphasising the significance of considering subjective factors like purpose and motive when determining guilt.

The decision also emphasises the importance of applying insider trading laws fairly and consistently to preserve investor trust and market integrity. By extending the culpability to include both criminal intent and financial advantages, the court makes it abundantly evident that strict enforcement of securities laws will be used to prevent misbehaviour and protect investors' interests. To guarantee that market participants know the repercussions of breaking insider trading regulations and that cases identical to yours are handled fairly by the law, enforcement measures must be consistent.

The case also emphasises how regulatory bodies such as SEBI must carefully consider each case to balance the necessity for strict enforcement and issues of consistency and fairness. Regulatory agencies must follow the law when investigating potential violations and take enforcement action against those who may have violated the law. To arrive at fair and just conclusions, this calls for a meticulous evaluation of all pertinent facts and circumstances, including the motivations behind the in-issue trading conduct.

In summary, SEBI v. Abijith Rajan represents a critical turning point in developing India's laws against insider trading. The decision by the Supreme Court highlights the difficulties in regulating the securities markets by emphasising the role that motive plays in evaluating guilt and expanding the

reach of responsibility. In the future, maintaining market integrity and investor trust will depend on the continuous and equitable implementation of insider trading prohibitions. To this end, regulatory agencies must be cautious and selective in their enforcement actions.

References

The Economic Times, <https://economictimes.indiatimes.com/definition/insider-trading>, (last visited Feb 20, 2024).

SEBI V. Abijith Rajan, 2022 SCC OnLine SC 1241.

Rakesh Agarwal v. SEBI, https://www.sebi.gov.in/enforcement/orders/nov-2003/rakesh-agrawal-vs-sebi_16029.html , (last visited 20 Feb, 2024)

IndiaCorpLaw, <https://indiacorplaw.in/2022/09/supreme-coart-on-motive-as-a-precondition-for-insider-trading.html> , (last visited Feb 20, 2024).

Praveen Kumar, Insider Trading and Price Sensitive Information, KHALEIDOSCOPE, June 2019.



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