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With this thought, we hereby present to you

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THE ANALYSIS OF SEBI'S ACTIONS TO PROTECT INVESTOR INTERESTS IN THE CONTEXT OF INSIDER TRADING.

AUTHORED BY - SHUBHAM SAURABH

Abstract

“Securities Market is a place where lot of people meet for various purposes. One can go there to raise capital for their business while other may go there just for investing their money for growth. Reasons could be anything but one thing is necessary i.e., to secure the interest of all the stakeholders of this market that’s where the role of our regulator Securities Exchange Board of India comes into play. The primary purpose of this Board is to protect the interest of innocent investors in the market from market manipulator who are eyeing there only to make huge money at the loss of other. They use various tips and tricks for the same and one such method is the insider trading. The menace of insider trading in the initial days of securities market was huge where some use unpublished price sensitive information to make profit. The market regulator realise this problem and introduced one regulation prohibiting the insider trading by any member of the market. The real issue and challenge associated with insider trading is to prove before the appropriate authority that particular person has indulged in insider trading. It is also difficult to make an eye on every entity where insider trading is carried out by various stakeholders. The primary purpose of this research paper is to analyse the actions taken by the SEBI in order to reduce the instances of insider trading and key legal issues and challenges pertaining to the same. The research methodology that is used here is purely doctrinal in nature where secondary source of data has been used.”

Key Words: SEBI, Insider Trading, UPSI, SEBI (PIT) Regulation, 2015, Connected Persons.

1. INTRODUCTION

The growth of securities market in India gives an enormous opportunities for all the participant of market. The post liberalization period shows the exponential growth of securities market especially among small and retail investors in India. Indian Capital market is one of the most trusted and top spot for investment not only for domestic business but also for global powerhouses. This gives an economic stability in the economy overall. Generally people expect the best returns by investing their saving in these markets through a stock-exchange in the form of shares, debentures, bonds.¹ Thus protecting of their money in the market is most important task of a welfare government.

The “Securities and Exchange Board of India” (SEBI) had emerged as a non-statutory entity on April 12, 1988 via a government resolution.² The SEBI got its legal recognition as a statutory body in the year 1992 and the provisions of the “Securities and Exchange Board of India Act, 1992 (15 of 1992) came into force on January 30, 1992.”³ The very preamble of the SEBI Act, put the interest of investors in securities market paramount.⁴ Thus protection of investors is the first and foremost duty of this Board. For that the Board is empowered with lot of special powers enumerated in the SEBI Act, 1992.

Now the question arises who are investors in India. What are the characteristics of the investors? How can anyone be determined as an investors in India? The definition of an investors is not provided under the SEBI Act. The definition of an ‘investor’ can be found in one of the Regulations made by the SEBI itself. It is given under, “Securities and Exchange Board of India (Investors Protection and Education Fund) Regulations, 2009.”⁵ Regulation 2(f) defined the investors as, “investor means an investor in securities”.⁶ So SEBI consider that person as an investors who actually invest their money

¹ Anand Thapai, “History & Evolution of Stock Exchanges in India”, Academia, at 12-14, available at - (PDF) Chapter II History & Evolution of Stock Exchanges in India | Anand Thapai - Academia.edu.

² ‘SEBI | About SEBI’ <<https://www.sebi.gov.in/about-sebi.html>> accessed 5 February 2024.

³ *Ibid*

⁴ ‘SEBI | Securities and Exchange Board of India Act, 1992 (As Amended by the Finance Act, 2021 (13 of 2021) w.e.f. April 1, 2021)’ <<https://www.sebi.gov.in/legal/acts/jan-1992/securities-and-exchange-board-of-india-act-1992-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-3.html>> accessed 5 February 2024.

⁵ ‘SEBI | Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009 [Last Amended on October 23, 2023]’ <<https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-investor-protection-and-education-fund-regulations-2009-last-amended-on-october-23-2023-78920.html>> accessed 5 February 2024.

⁶ *Ibid*

in securities. And the term ‘securities’⁷ is defined under Securities Contracts (Regulation) Act, 1956 (42 of 1956).⁸

The legal framework of these Act’s and the active role played by the SEBI in protecting the retail investors in India is the main theme of the research paper. The main challenges faced by the SEBI in dealing with the protection of retail investors are the one aspect of this paper, then what are the way forwards for SEBI to curb those hurdles.

The Indian stock market creates a vibrant ecosystem which is fuelled with small but significant participants in millions as a retail investors. Regulating and protecting their interest is a complex task. This requires a huge research and initiatives from time to time to cater their interest. The ground works by regulators paying special attention to protect retail investors, whose exposur to the market either as a direct investors or through instruments issued by intermediaries like mutual funds and pension funds has been escalating.⁹ In those countries, the real difficulty is not so much the absence of the retail investors, but the often uninformed and at times contrarian and irrational behaviour of these investors.¹⁰

SEBI has also floated various guidelines for the protection of investors through “Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.” These guidelines have been issue by SEBI under Section 11 of SEBI Act. Apart from that some other Regulations of SEBI are “SEBI (Investors Protection and Education Fund) Regulations, 2009 in exercise of the power under Section 30 of SEBI Act, 1992.”

This research will analyse the actions taken by the Securities and Exchange Board of India (SEBI) to safeguard investor interests specifically concerning insider trading. It will explore the regulatory framework, enforcement mechanisms, and key cases to understand the effectiveness of SEBI's

⁷ SEBI | Securities Contracts (Regulation) Act, 1956 (As Amended by the Finance Act, 2021 (13 of 2021) w.e.f. April 1, 2021)’ <<https://www.sebi.gov.in/legal/acts/apr-2021/securities-contracts-regulation-act-1956-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-49750.html>> accessed 5 February 2024.

⁸ ‘SEBI | Securities Contracts (Regulation) Act, 1956 (As Amended by the Finance Act, 2021 (13 of 2021) w.e.f. April 1, 2021)’ <<https://www.sebi.gov.in/legal/acts/apr-2021/securities-contracts-regulation-act-1956-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-49750.html>> accessed 5 February 2024.

⁹ C.P. Chandarsekhar, Sarat Malik and Akriti, “The elusive retail investors: How deep can (and should) India’s stock markets be?” SEBI DRG study, < [elusiveretailinvestor.pdf \(sebi.gov.in\)](#)> accessed 5 February 2024

¹⁰ *Ibid*

measures in combating insider trading and ensuring fair market practices.

2. CONCEPT, HISTORY & EVOLUTION OF INSIDER TRADING IN INDIA

Insider Trading refers to transacting or dealing with a company's securities based upon some form of confidential data that is not accessible to the public, intending to make profits or avoid losses. It is a contravention of the obligations of insiders who is usually an employee/ officer of the company and they have a fiduciary duty to take actions that reflect the best interest of the investors. It is not only an economic crime but also a social one as a lot of investing is done by common folks in the hope of getting good returns on their investment and would like to be afforded a fair opportunity to make such profits in a company. Insider Trading is traceable as long as back to the origin of the securities market, having plagued the securities market for decades and it does not only have financial consequences but also social ones.

2.1 How did it start?

In India, the most number of the dealings made in securities firstly that were recorded could be traced to the transactions of East India Company's loan securities during the first half of the 1800s. During the 1830s Banks¹¹ like Chartered Bank, Oriental Bank, etc, were established that had shares of their own. Over the next decade, six stock exchanges recognized by the banks were functioning in Mumbai. The BSE formally known as the Association of Bombay got set up in 1875¹² and eventually, this became the first official stock exchange of India.

The then President of BSE in his speech in 1947 shed some light on the initial incidents of Insider Trading in the 1940s wherein the companies were not publicly announcing their dividends and bonus shares which led to a lot of loss for the general public as they invested in such companies and without any proper awareness about the matter and the lack of proper authority to regulate the market, they were helpless to get relief for such grievances. Many insiders took benefit of the unsupervised market and avoided any losses they had and made extra profits on top of that.

¹¹ *Supra* n. 1

¹² 'History and Milestones' <https://www.bseindia.com/static/about/History_Milestones.html> accessed 9 March 2024.

The Securities Contracts (Regulation) Act, 1956 (SCRA), which initially did not specifically address insider trading. However, the concept gained recognition through judicial interpretations as being violative of the principles of fairness and transparency in the securities market.

In 1992, the “Securities and Exchange Board of India (SEBI)” was established as the regulatory body for the securities market in India. SEBI introduced regulations to prohibit insider trading, starting with the “SEBI (Prohibition of Insider Trading) Regulations, 1992.” These regulations were later amended and replaced by the “SEBI (Prohibition of Insider Trading) Regulations, 2015”, which are the current regulations governing insider trading in India.

The regulations define insider trading, prescribe guidelines for the prevention of insider trading, and establish mechanisms for reporting and enforcement. SEBI has been actively enforcing these regulations through investigations, penalties, and enforcement actions against individuals and entities found to have engaged in insider trading.

3. COMPANIES ACT, 2013¹³ AND INSIDER TRADING

3.1 Section 195- “Prohibition on Insider Trading”¹⁴

Section – 195 of the CA, 2013 defined what act would amount to ‘Insider Trading’ and what information would be considered as ‘Public Sensitive Information’ along with also prescribing the punishment for an act of Insider Trading, with the act being punished with both fine and imprisonment. The Section prohibited committing Insider Trading and prescribed punishment for it. In 2017, through an Amendment Act, this Section was repealed from the Act by Section 65 of the Companies Amendment Act, 2017, but still definition and punishment laid down in the now repealed Section are of use in present times. It was felt by the Legislature that Insider Trading falls within the purview of SEBI and hence the SEBI (Prohibition of Insider Trading) Regulations, 2015 are better suited to address the issue of Insider Trading.

This was done by the Central Government using Section 458 of the Companies Act, 2013 to avoid

¹³ Companies Act, 2013, available at <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==> accessed 9 March 2024.

¹⁴ *Ibid* at S. 194

conflict of law between the SEBI Act, 1992 and CA 2013 as well as the fact that SEBI has more authority over the regulation of the security market and they should be making law regarding the same.

4. “SECURITIES EXCHANGE BOARD OF INDIA (PROHIBITION ON INSIDER TRADING) REGULATION 2015”¹⁵

The PIT Regulations were introduced by SEBI to prevent insider trading and promote fair and transparent trading practices in India. The regulations do not have a preamble as such, but the introduction of the regulations states their objectives and scope. The introduction of the PIT Regulations states that the regulations are aimed at preventing acts of insider trading and ensuring an equal opportunity for all investors in the market. The regulations seek to ensure that insiders do not take advantage of their privileged position to make profits or avoid losses at the expense of other investors.

PIT Regulations apply to all kinds of securities listed on any recognized stock exchanges and seek to regulate acts of insider trading done by insiders. Overall, the introduction to the PIT Regulations aims to provide a broad overview of the objectives and scope of the regulations and their importance in promoting fair and transparent trading practices. SEBI (PIT) Regulations were first enacted in 1992 and went through various amendments to keep in touch with the changing needs of the time.

4.1 Definitions clauses

Regulation – 2 d¹⁶: Connected Person

It refers to any individual who was associated with the company in some form whether directly or not, permanent or not, in any capacity that allows them to access “Unpublished Price Sensitive Information”¹⁷(UPSI).

¹⁵ ‘SEBI | Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 [Last Amended on November 24, 2022]’ <https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-november-24-2022_65864.html> accessed 9 March 2024.

¹⁶ Reg 2(d) of PIT Regulations, 2015

¹⁷ *Mr Neeraj Jain v SEBI*, AO Order No. PB/AO-16/2011

Regulation – 2 g¹⁸ : Insider

An Insider refers to an individual who can be classified as a connected Person or having the access to Unpublished Price Sensitive Information¹⁹.

Regulation – 2²⁰: Trading

Any act of “subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities” would be regarded as Trading.

Regulation – 2 n²¹: Unpublished Public Sensitive Information

It refers to sensitive information that concerns the functioning or management of a company or its securities, whether it has the potential to affect it directly or not, is known to very few who have access to it, and when published publicly has the power to influence the value of the securities and includes information like – dividends, financial results, change in a key managerial position or capital structure, etc.

4.2 Restrictions imposed on Insiders

Chapter II puts a prohibition on communication/ procurement of UPSI by an insider.²²

Regulation 3²³ states that “*no insider shall communicate, procure from or cause the communication provide, or allow access to UPSI to any person, relating to a company or securities listed or proposed to be listed, except where such communication is in furtherance of legitimate purposes*”²⁴.

Clause (3)²⁵ of the Regulation provides certain exceptions to this provision and allows the use of UPSI by insiders when –

- i) It is the duty to propose an open offer to comply with the conditions under the takeover regulations where the BOD is satisfied that it is to further the corporate interests of the company to assess a potential investment.
- ii) Such UPSI should be made accessible in public domain at least passing of 2 trading days

¹⁸ Reg 2(g) of PIT Regulations, 2015

¹⁹ *SEBI v Reliance Industries Ltd*, [2004] 63 CLA 252 (SAT - Mumbai)/[2004] 55 SCL 81 (SAT - Mumbai)[31-08-2004]

²⁰ Reg 2(l) of PIT Regulations, 2015

²¹ Reg 2(n) of PIT Regulations, 2015

²² Cha II of PIT Regulation 2015

²³ Reg 3 of PIT Regulations, 2015.

²⁴ *Mr. Naval Chaudhary v SEBI*, AO Order No. PB/AO-15/2011

²⁵ Reg 3(3) of PIT Regulations, 2015

before the deal comes into effect.

Clause (4)²⁶ of the Regulation mandates that the parties to the transaction should execute agreements of confidentiality and non – disclosure and the UPSI so received must be kept confidential and the party should not trade while in possession of the sensitive information.

4.3 Trading during Possession of UPSI (Exceptions)

Regulation 4²⁷ puts a prohibition on the Insider to not deal on the stock exchange if in possession of UPSI of a company that is listed or intends to list on it, the Explanation under this Regulation provides for a presumption that, such a trade by an Insider would be deemed to be made under the influence of the UPSI and the burden would be upon him to prove otherwise.

An Explanation Clause was added vide the 2018 Amendment that, “when a person who has traded in securities has been in possession of USPI, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession”.

The Regulation also provides give recourse to Insider(s) to establish his innocence by establishing existence of certain circumstances which are –

4.3.1 In case of Individual Insiders:

- Transaction was between Insiders in possession of same UPSI and was an off – market inter – se transaction between them which did not violate Regulation 3 and was informed to the company within 2 days of the transaction.
- Transaction was made in the block deal window process by the persons with UPSI without violating Regulation 3 unless the UPSI was obtained under Regulation 3(3).
- Transaction was made to abide by a legal or regulatory compulsion on the parties to execute a bonafide deal.
- Transaction was made under pre-determined price to exercise stock options which were in conformity with related provisions.

²⁶ Reg 3(4) of PIT Regulations, 2015

²⁷ Reg 4 of PIT Regulations, 2015

4.3.2 In case of Non-Individual Insiders:

- Transaction was made by a party who was not having access to UPSI and different to those who had access, when the decision to make the trade was made.
- There were sufficient preparations made to guarantee that none of the provisions were dishonoured and the UPSI was inaccessible to the parties who traded.

Insiders would also be exempted if the trade were made in pursuant to a Trading Plan made under Regulation 5.²⁸

4.4 Trading Plans

Regulation 5²⁹ defines the prospect of a Trading Plan which may be laid down by an Insider and subject to approval from the CO and after its disclosure publicly of such plan, trades may be made according to this Plan. This Provision empowers person(s) who have UPSI and provides them a way to deal in a manner acceptable under law. Further requirements have been given under the Regulation which is to be met in order for Insider to be able to deal in securities while having UPSI.

4.5 Restriction on Communication in Relation to and Trading by Insider in the Units of Mutual Funds.

Chapter-II A was added by SEBI in 2022 whose effect date is still not notified in the Official Gazettee. This chapter ranging from Regulation 5A to 5H solely dedicated to prohibition of insider in mutual funds.³⁰

4.6 Disclosures to be made by Insider for Trading

The intent behind Regulation 6 is to prevent abuse of trading in securities by person in possession of UPSI and hence it imposes a duty on person who has UPSI to disclose the trades they made in addition to the trades they made on behalf someone while having the special knowledge.³¹

²⁸ Reg 5 of PIT Regulations, 2015.

²⁹ *Ibid*

³⁰ 'SEBI | Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 [Last Amended on November 24, 2022]' <https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-november-24-2022_65864.html> accessed 9 March 2024.

³¹ Reg 6 of PIT Regulations, 2015

4.7 Disclosures Required by Certain Person(s)

Every Person who is appointed at a key managerial position in a company is under statutory duty on the date of appointment as promoter or within a week of such appointment to unveil their holdings in the company's securities. This provision basically allows the listed companies to ask information of securities holding from person(s) who are going to be allowed knowledge of UPSI.³²

4.8 Codes of Conduct & Fair Disclosure³³

Regulation 8 contained in the Chapter IV of the PIT Regulations puts a statutory duty upon the BOD of every listed company to create & issue code of practice & procedure for fair disclosure of UPSI that is to be adhered to by the company in order to conform to conditions in Schedule A. This condition intends to create a requirement on listed companies to create a framework that would make sure any event that affects the price of securities should be disclosed.

Under Regulation 9, the BOD of listed companies should create a Code of Conduct to moderate, supervise and report dealings made by designated persons or their relatives. The Code conforms to compliances under the Regulation and requirements under Schedule B (for Listed Company) and Schedule C (for intermediary) to the Regulations.

Moreover, under clause (2) of this Regulation, every person(s) having UPSI during the ordinary course of business should devise a similar Code meeting the requirements as mentioned above for trades by designated person and their relatives. This provision applies to person(s) other than the listed companies and its intermediaries.

4.9 Institutional Mechanism to Prevent Insider Trading³⁴

Under Regulation 9A of the PIT Regulations, an adequate and effective mechanism is to be established by the CEO or MD or such other responsible, to create internal control within the company to prevent commission of Insider Trading. It includes:

- Every employee with access to UPSI is to be known as a 'designated person',

³² Reg 7 of PIT Regulations, 2015

³³ Reg 8 of PIT Regulations, 2015

³⁴ Reg 9A of PIT Regulations, 2015

- UPSI is to be recognized & precautions must be made to maintain its confidentiality,
- Restrictions to be made on communication and procurement of UPSI,
- List of all person(s) with UPSI must be created and they must sign NDA.

Clause (5) of the Regulation 9A mandates every company that is listed to create a procedure and policy in case of a leak or potential one of UPSI and act accordingly in case of such an event and report it to SEBI. Also, there must be whistle blower policy which is for employees who wish to report a leak of UPSI under Clause (6).

5. JUDICIAL PRONOUNCEMENT RELATED TO INSIDER TRADING

Over the years, SEBI has taken a number of measures to prevent insider trading and to punish those who engage in it. These measures include strengthening the legal framework for insider trading, enhancing the surveillance and monitoring of trading activities, and imposing heavy penalties on those found guilty.

In India, there have also been high profile cases like the one filed against Reliance Industries Limited³⁵ (RIL) and its chairman Mukesh Ambani. In 2017, SEBI fined RIL and Mukesh Ambani a total of Rs. 447 crore for alleged insider trading in shares of Reliance Petroleum Limited (RPL) in 2007. SEBI found that RIL had sold shares of RPL based on insider information, and that Mukesh Ambani was involved in the decision-making process. The case was significant because it involved a major Indian corporation and one of India's richest men.

In 2018, SEBI punished HDFC Bank³⁶ with a fine of 10 lakh INR for non – disclosure of insider trading by one of its employees. In 2019, SEBI penalized two individuals, 8.36 crore INR for insider trading in the shares of Mindtree Limited³⁷.

³⁵ 'SEBI | Order in the Matter of Reliance Petroleum Limited <https://www.sebi.gov.in/enforcement/orders/mar-2017/order-in-the-matter-of-reliance-petroleum-limited_34432.html> accessed 9 March 2024.

³⁶ *SEBI v Ranish Harebhai*, Adjudication Order No. Order/BD/VS/2020 - 21/ 8849

³⁷ *SEBI v Mindtree*, Adjudication Order No. Order/PM/PA/2021 - 22/14587

Overall, SEBI's actions against insider trading in India have been seen as positive by market participants. The regulator has been praised for its efforts to crack down on insider trading and enforce strict penalties on those found guilty. However, there have also been concerns about the effectiveness of SEBI's enforcement efforts, particularly in cases where the alleged insider trading occurred several years ago. Some market participants have called for SEBI to be more proactive in detecting and preventing insider trading, rather than relying on after-the-fact enforcement actions.

5.1 Major Findings in the Landmark judgements

RAKESH AGARWAL V SEBI³⁸

SAT in the matter, defined the concept of insider trading as, *“inequitable and unfair practices such as insider trading, affect the integrity, fairness and efficiency of the securities market, and impair the confidence of investors. Insider trading takes place when insiders or other persons, who by virtue of their position in office or otherwise, have access UPSI relating to the affairs of a company, and deal in securities of such company or cause the trading of securities while in possession of such information or communicate such information to others who use it in connection with the purchase or sale of securities.”*³⁹

DSQ HOLDINGS LTD v SEBI⁴⁰

In this case, the Tribunal relying upon the ratio decendi in *Rakesh Agarwal v. SEBI*⁴¹, that a corporate insider while in possession of UPSI has to abstain from trading in securities and make such necessary disclosures as required by law to create investor confidence in the integrity and fairness of the market. It evolved the principle of disclose/ abstain in India and held that, *“the whole philosophy on which the securities regulation are based and have evolved all over the world, is to ensure availability of common information and fair play to the participants in the securities markets. Insider trading regulations also emanate from such obligations which prohibit trading in breach of fiduciary duty or other relationships of trust and confidence, while in possession of UPSI. This is also with a view to prevent an insider, which includes corporate insider, also from utilising the position of knowledge*

³⁸ *Rakesh Agarwal v SEBI*, SAT Appeal No 33 of 2001, SAT Mumbai

³⁹ *Ibid*

⁴⁰ *DSQ Holdings Ltd. v SEBI*, 60 SCL 156, 2005, SAT Mumbai

⁴¹ *Supra* at 30

and access of information to take unfair advantage of the uninformed stockholder."⁴²

SHRUTI VOHRA V SEBI⁴³

In the Whatsapp Message Case, the issue before the Tribunal was whether a message forwarded on the platform regarding financial results of a corporation before it is available in public domain would amount to an UPSI. The SAT was of the view that that any information will only be deemed to be UPSI if the receiver knows it to be as UPSI. There is a need to prove preponderance of probabilities that the impugned messages were unpublished and the accused were aware of such information, for the accused to be charged with the offence of Insider Trading.

MRS CHANDRAKALA V AO, SEBI⁴⁴

It was held that if an insider is able to prove that they did not trade by influence of UPSI and did the trading due to some other reason, he/she has not violated provisions of PIT Regulations. It was also declared that on the basis of declaration of financial results, dividends and bonus issues, if accused not only bought and sold their holdings during the time PSI was unpublished but also before and after that information becomes public, then accused could not be said to be an entity privy to UPSI and their trading pattern do not lead to inducement by UPSI.

6. EMERGING ISSUES OF INSIDER TRADING

Insider trading is a serious financial offence having the ability to damage the integrity & reliability of the securities market and negatively impact investor confidence. In recent years, there have been several emerging issues related to insider trading in India and SEBI has been actively investigating and prosecuting cases of insider trading, which has resulted in several high-profile convictions.

Proving insider trading can be a challenging task, as it involves establishing a connection between the insider's actions and the material non-public information they possessed during trading. Additionally,

⁴² *Supra* at 32 Para 6.4.18

⁴³ 'SEBI | Adjudication Order in Respect of Parthiv Dalal and Shruti Vora in the Matter of Circulation of UPSI through WhatsApp Messages with Respect to ITC Ltd.' <<https://www.sebi.gov.in/enforcement/orders/oct-2022/adjudication-order-in-respect-of-parthiv-dalal-and-shruti-vora-in-the-matter-of-circulation-of-upsi-through-whatsapp-messages-with-respect-to-itc-ltd-64514.html>> accessed 9 March 2024.

⁴⁴ 'SEBI | *In the Matter of Chandrakala Vs AO, SEBI*' <<https://www.sebi.gov.in/enforcement/orders/jan-2012/in-the-matter-of-chandrakala-vs-ao-sebi-27299.html>> accessed 9 March 2024.

the burden of proof rests with the prosecution, which can make it difficult to secure a conviction. India's current regime on insider trading has mostly been a step behind in being equipped to deal with the duty of preventing insider trading. There have been calls for stronger framework to prevent the commission of insider trading and protect the integrity and functioning of the securities market.

Also, there is a lack of awareness and education among investors and market participants about insider trading and its implications. This can make it difficult to detect and prevent insider trading, leading to a diminishing confidence of investors in the market. Hence, it remains a significant concern, and there is a need for stronger regulations, better education, and increased awareness to prevent this illegal activity and maintain the integrity of the securities market.

BALRAM GARG v. SEBI⁴⁵

In this case it was alleged by the Chairman and the Managing Director of the Company PC Jewellers, that their relatives who were shareholders of the company were involved in wrongdoing of insider trading. In the matter, the main types of information that could be considered as a UPSI were firstly, the information about buyback of securities, and secondly, the information of withdrawal of the buyback transaction because of refusal of consent by the bank. The SAT was of the opinion that the allegations made were correct and imposed fines on the guilty party who weren't content with the decision and filed an appeal in the Apex Court. The SC rejected the decision of SAT due to the reasons:-

- **Cogent Materials required to prove Communication of UPSI**

It was indicated by the Supreme Court that the trading patterns between parties cannot be presumed to be a communication of UPSI between them. There is an essential need to furnish materials documents or witnesses to show a relevant connection that can lead up to a determination of communication that existed and a presumption of communication of UPSI will be raised only if this material is available on record. Hence, it is a sine qua non that the communication be proved through adequate material on record.

⁴⁵ *Balram Garg v. SEBI*, 2022 SCC Online SC 472

- **Trading Pattern**

Supreme Court was of the opinion that the sale of shares that was made and the timing of it, by the alleged guilty party in the case were not due to any motivation caused by the knowledge of UPSI, it was merely a personal decision having commercial effects.

7. CONCLUSION

SEBI is a powerful institution having the responsibility to regulate the securities market in the interest of the investors and the general public. With the liberalization of the economy and the market-based growth assuming centre-stage, it is inevitable that an effective regulator take on the responsibility to ensure that the stock exchanges operate with trust and fairness especially when new financial instruments are brought into use to raise resources by multiple users of the securities market. It is indeed a complex and challenging job which demands expertise in a variety of disciplines and operations particularly in the context of changing policies of the government and of global market players. Given the impact of information-communication technologies and the anonymity it gives in facilitating fraudulent transactions, the Board has to keep an eye also on international developments in law and policy to be able to allow investment to grow while taking care that it happens according to the law and fair market practices.

Advancements in technology, information dissemination, and accessibility have given rise to novel forms of market manipulation. Consequently, legal principles surrounding insider trading have evolved to address these challenges, particularly in terms of detecting, investigating, and enforcing laws against such practices. In India, the jurisprudence around insider trading has developed significantly over the last three decades, drawing inspiration from various international legal frameworks.

It is highly unlikely that insider trading is to ever be fully eliminated, thus a combination of legal reforms, technological advancements, and cultural shifts may progress the efficiency of insider trading regime in order to reduce its occurrence and protect the investors as well as the securities market. Overall, improving insider trading laws in India will require a multifaceted approach involving the government, regulators, and market participants. By taking steps to strengthen enforcement mechanisms, increase penalties, and educate investors, India can create a more

transparent and fair securities market.

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