

# CRITICAL ISSUES UNDER SEBI PIT REGULATIONS

**MANOJ BANTHIA**

**MKB & ASSOCIATES**

**SHANTINIKETAN, 5<sup>TH</sup> FLOOR, ROOM NO. 511**

**8 CAMAC STREET, KOLKATA-700017**

**E-MAIL : [mbanthia2010@gmail.com](mailto:mbanthia2010@gmail.com)**

**Securities and Exchange Board of India  
(Prohibition of Insider Trading) Regulations, 2015**

# INSIDER TRADING REGULATIONS - A SNAPSHOT

• Regulation 3	<ul style="list-style-type: none"> <li>• “Insider” prohibited from communicating, providing or allowing access to any Unpublished Price Sensitive Information” to any person including other insiders.</li> <li>• Prohibition also on Procuring from or causing the communication by any insider, of UPSI.</li> <li>• Communication/procuring possible only in furtherance of legitimate purposes, performance of duties or discharge of legal obligations</li> </ul>
• Regulation 4:	<ul style="list-style-type: none"> <li>• No insider shall trade in securities when in possession of UPSI</li> </ul>
• Regulation 5 :	<ul style="list-style-type: none"> <li>• An Insider entitled to formulate a trading plan pursuant to which trades may be carried out in accordance with such plan.</li> <li>• Deviation from plan not permitted</li> <li>• Plan to be notified to the SEs</li> </ul>
• Regulation 6 & 7	<ul style="list-style-type: none"> <li>• Public disclosures by certain persons. - promoters/KMP/directors</li> <li>• Initial disclosure/continual disclosure</li> </ul>
-Regulation 7A to 7M	<ul style="list-style-type: none"> <li>• Voluntary Information Disclosure and Rewards</li> </ul>
• Regulation 8 - Code of fair disclosure	<ul style="list-style-type: none"> <li>• Practices and Procedures for fair disclosure of UPSI</li> </ul>
• Regulation 9 - Code of Conduct	<ul style="list-style-type: none"> <li>• BOD of listed company and market intermediary required to formulate a code of conduct</li> <li>• Code to regulate, monitor and report trading <u>by its employees and connected persons.</u></li> <li>• Any other person who is handling UPSI also required to frame a Code of Conduct.</li> <li>• “Compliance officer” to be designated for administering the Code</li> </ul>
Schedule A	<ul style="list-style-type: none"> <li>• Principles on which Practices and procedure for fair disclosure of UPSI to be based.</li> </ul>
Schedule B	<ul style="list-style-type: none"> <li>• Minimum Standards for Code of Conduct to Regulate, monitor and report trading by Insiders.</li> </ul>

# INSIDER TRADING REGULATIONS - Important Definitions

- “Insider” (2(1)(g)) means a person who is:
  - a Connected person; or
  - in possession of or having access to Unpublished Price Sensitive Information (UPSI).
- The onus of showing that a certain person was in possession of or had access to UPSI would be on person levelling the charge.
- In case of Connected Person the onus of establishing that they were not in possession of UPSI shall be on Connected Person. (Regn 4(2))
- Any person in receipt of UPSI pursuant to “legitimate purpose” is an INSIDER. (New Regulation 3(2B))
- The accused may demonstrate that
  - he was not in possession of UPSI
  - he has not traded
  - he could not access
  - his trading when in possession of UPSI was under exonerating circumstances.

# INSIDER TRADING REGULATIONS - Important Definitions

- **“Connected Person”** (2(1)(d)) means any person
    - » who during six months prior to the event been associated with the company
    - » directly or indirectly
    - » in any capacity
    - » including by reason of frequent communication with its officers
    - » or by being in any contractual, fiduciary or employment relationship
    - » or by being a director, officer or employee of the company
    - » or holds any position
    - » including a professional or business relationship
    - » temporary or permanent
- that allows such person access to unpublished price sensitive information or is reasonably expected to allow such access.

# INSIDER TRADING REGULATIONS - Important Definitions

- **Deemed Connected Person:** Some persons are deemed to be “connected persons” unless the contrary is established.
  - an “immediate relative”
  - holding / associate / subsidiary company.
  - an Intermediary or an employee or director thereof.
  - an Investment company, trustee company, AMC or an employee or director thereof.
  - official of SEs or of clearing house or corporation.
  - member of Board of Trustees of Mutual fund or a director of AMC of mutual fund or employee thereof
  - Director or an employee of PFI
  - Official or employee of self regulatory organisations recognised or authorised by Board.
  - a banker of the company
  - a concern, firm, trust, HUF, company or AOP wherein the Director or his Immediate relative of banker of the company has more than 10% holding or interest.
- **“immediate relative”** (2(1)(f)) means spouse, parent, sibling and child of the person or spouse, any of who is financially dependent on such person or consults such person in taking decisions relating to trading in securities.

# DEFINITIONS

- **“Unpublished Price Sensitive Information”** - clause 2(1)(n) means
  - any information
  - relating to a company or its securities
  - that is not generally available
  - which upon becoming generally available is likely to materially affect the price of securities.
- Information relating to following an UPSI
  - financial results
  - dividends
  - change in capital structure
  - mergers, demergers, acquisitions, delistings, disposals and expansion of business and such other transactions.
  - changes in key managerial personnel
- » Explicit inclusion of “material events in accordance with listing agreement” in definition of UPSI removed.
- » Regulation 30 of LODR requires listed company to make disclosure of any event or information which is material. Para A events (part A of Sch III) are deemed to be material and Para B events are material based on guidelines for determining materiality.
- » The T K Vishwanathan Committee relied on Reg 68 which requires disclosure of (a) all events which are material, (b) all information which is price sensitive, having bearing on performance/operation of listed entity.

# DEFINITIONS

- **“trading”** - clause 2(1)(l) means “subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell, deal in any securities.”
- **“trading”** would include creation of pledge, invocation of pledge and revocation of pledge (FAQ 1)
- PIT regulations cover **“trading”** not only in Equity shares but in all securities. Securities shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956, which inter-alia covers shares, scrips, stocks, bonds, debentures, derivative, etc. except units of mutual funds. (FAQ 2)
- PIT regulations are also applicable on Transmission of shares (FAQ 4)



# Sharing of UPSI

- » No Insider shall communicate, provide or allow access to any UPSI to any person.
- » No person shall procure from or cause the communication by Insider of UPSI
- » UPSI can be shared, communicated, provided or allowed access to, by an Insider to any person:
  - » Only on a “Need to Know” basis.
  - » in furtherance of “legitimate purpose”.
  - » performance of duties.
  - » discharge of legal obligations.
- » BOD to make a Policy for determination of “legitimate purpose” as a part of Codes of Fair Disclosure and Conduct.
- » Sharing of UPSI by Insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, in ordinary course of business is “legitimate Purpose”, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.
- » Notice to be given to such Insiders to maintain confidentiality of such unpublished price sensitive information.

# Structured Digital Data Base (Regn 3(5))

- » BOD to ensure maintenance of structured digital data base of all such INSIDERS .
  - » Once UPSI is shared, Company loses control over its further use.
  - » It is prudent to have trail of information flows of such legitimately shared information.
  - » Data Base to contain nature of UPSI, names of person with whom or who shared UPSI and PAN of such persons.
- » Such Digital data base shall be maintained with adequate Internal controls and checks (time stamping/audit trails, etc)
- » Such Data Base to be preserved for not less than 8 years from completion of relevant transaction.
- » Companies required to maintain this structured digital database even when the information is shared only within the company. Irrespective of the fact that information is shared within or outside the Company, requisite records shall be updated in structured digital database as and when the information gets transmitted. (FAQ10)

# FAQs on Structured Digital Data Base (Regn 3(5))

»Listed Entity as well as Intermediary to maintain Structured Digital Data Base internally and cannot outsource the same.

»**Example:** (FAQ 6) The listed company (X) has appointed a Law firm or Merchant Banker (Y) in respect of fund raising activity and (A) from listed company has shared the said UPSI with (B) of Law firm or Merchant Banker. The structured digital database of (X) should capture the nature of UPSI shared, details of (A), (Y) and (B), along with their PAN or other unique identifier (in case PAN is not available).

The Law firm or the Merchant Banker (Y) shall in turn maintain another structured digital database internally capturing the nature of UPSI received/shared, details of (X), (A) and (B) along with their PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C.

»Databases/servers provided by third party vendors (amazon, google, etc) whether within India or outside India will be considered as outsourced. (FAQ7)

»A listed company can use software provided by third party vendors, wherein the server is of the vendor but requisite entries are made by the employees of the company only. The third party vendors are providing the services/software on login basis, where the server is maintained by the vendor. Therefore, the vendor may have access to such records which would be contrary to the regulations with respect to maintenance of structured digital database. (FAQ8)

# Trading during possession of UPSI

- » No “Insider” shall trade in securities when in possession of UPSI.
  - » If a person trades in securities while in possession of UPSI, his trade would be presumed to have been motivated by the knowledge and awareness of such information in his possession.
  - » The reasons for which he trades or the purposes for which the proceeds are applied are not intended to be relevant for determining breach of the Regulations.
  - » To bring a charge what is relevant is to demonstrate that an Insider traded when in possession of UPSI.
  - » Insider can prove his innocence by demonstrating circumstances provided in Proviso to regulation 4(1)
- » Even if a person is not classified as a designated person, having access to UPSI would make such a person an ‘insider’ and as per Regulation 4(1) of SEBI (PIT) Regulations, 2015, such “insider” is prohibited to trade while in possession of UPSI. (FAQ3)

# Trading during possession of UPSI

- » Circumstances in which an “insider” may demonstrate to prove his innocence:
  - » Off market inter-se transfer between “insiders” (promoters) in possession of UPSI and parties had made a conscious and informed trade decision
    - » Off market trades to be reported by insiders to the Company within two working days.
    - » Company to notify such trades to SE within two trading days from receipt of disclosure or becoming aware of such information.
  - » Block deal between persons in possession of UPSI.
  - » Transactions carried out pursuant to a statutory or regulatory obligation - new clause (iii) - say, to achieve minimum public shareholding.
  - » Transactions carried out pursuant to exercise of stock options in respect of which exercise price was pre determined - new clause (iv)
  - » In case of non individual Insiders, the individuals in possession of UPSI were different from individuals taking trading decisions, who were not in possession of UPSI.
  - » Trades were pursuant to a Trading Plan.

# Trading Plan

- » Insider entitled to formulate a trading plan. Regulation 5(1)
  - » An option to persons who may perpetually be in possession of UPSI
  - » Subsequent possession of UPSI would not prohibit execution of Trades as per Trading Plan
- » Restrictions on Trading plan :
  - » can be executed only after 6 (six) months from its public disclosure
  - » No trading allowed between 20th trading day prior to last day of any financial period and the second trading day after the disclosure of such financial results.
  - » should entail trading for a period of at least 12(twelve) months.
  - » No overlapping of period with another Trading Plan already in existence
  - » Shall set out the value of trades or number of securities, nature of trade, intervals or dates on which trade will be effected.
  - » not entail trading in securities for market abuse.
  - » is required to be disclosed to SEs prior to its implementation (actual trading)
  - » is irrevocable
  - » cannot be deviated from once disclosed.
- » Some sops given to make Trading plan popular:
  - » Pre clearance of trade will not be required for a trade executed as per trading plan.
  - » Trading window norms and restriction on Contra Trade shall not be applicable when trading is as per approved Trading Plan.

# Disclosure Requirements

Nature of Disclosure	By Whom	Of What	When	To Whom
Initial Regn 7(1)	Every person on appointment as KMP or a Director or upon becoming a Promoter or member of Promoter group	Disclosure of Shareholding as on the date of appointment or becoming a Promoter	Within Seven days of such appointment or becoming a Promoter	To the Company
Continuo us Regn 7(2)	Every Promoter Member of Promoter Group Designated Person Director of every company	Disclosure of securities acquired or disposed, if the value of securities traded over a calendar quarter, aggregates to more than Rs. 10 lakhs	Within two working days of such transaction	To the Company
	Company	Disclosure of trading made by Promoter/DP/Director	Within two trading days of receipt of Disclosure or becoming aware of such information	To the Stock Exchange

# Disclosure Requirements

1. Disclosure shall include those relating to trading by Person's immediate relatives or by any other person for whom such person takes trading decisions.
2. Disclosure of Trading in derivatives of securities and traded value of derivatives shall also be taken into account for the purposes of disclosures.
3. Disclosure should be made in specified Form.
4. Disclosures shall be maintained for a minimum period of five years.
5. If a designated person does not have PAN or a demat account number, then such a person cannot trade in the Indian securities market. Hence, system driven disclosures will not trigger for such a person.
6. In case of trades exceeding Rs. 10 Lacs in a quarter, the next disclosure will be due when the next Rs. 10 lacs limit is breached.
7. For the purpose of reporting trades, market rate should be considered



# CODE OF FAIR DISCLOSURE AND CONDUCT

Code of Practices and Procedures for fair Disclosure of UPSI

- The Code to set out practices and procedures for fair disclosure of UPSI.
- The framework and policy for fair disclosure of events and occurrences shall adhere to principles set out in Schedule A to the Regulations.
- Schedule A sets out principles such as equality of access to information, publication of policies on dividend, calls and meetings with analysts, publication of transcripts of such calls and meetings, etc

Code of Conduct

- Code of Conduct to be formed by listed company and every Intermediary.
- COC to be formulated by CEO or Managing Director of every listed company and Intermediary.
- Code to regulate, monitor and report trading by Designated persons and immediate relatives of designated persons
- Code to be approved by BOD of listed company or Head of organisation of every intermediary.
- Minimum standards as given in Schedule B and Schedule C to be adopted by Listed companies and Intermediaries respectively.
- BOD / Head of Organisation of every other person who is required to handle UPSI in the course of business operations also required to formulate a Code of Conduct.
- “Other persons” to Include “fiduciaries” i.e. Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc.

# Designated Persons

- » Code shall be applicable to “designated persons and immediate relatives of designated persons”.
- » BOD in consultation with Compliance Officer to specify the designated person to be covered by the Code.
- » Intermediaries and Fiduciaries shall also formulate Code of Conduct for their Designated persons and Immediate relatives.
- » Parameters on which such specification is to be based:
  - » Role and function of the person in the organisation.
  - » Access such Role and function would provide to UPSI
  - » Seniority and Professional designation.
- » The following persons are “designated persons”
  - » Employees (LE / Intermediary /Fiduciary) designated on the basis of their functional role or access to UPSI
  - » Employees of material subsidiaries on the basis of their functional role or access to UPSI
  - » All Promoters of listed Companies and Individual Promoters or Investment Companies for Intermediaries or fiduciaries.
  - » CEO and Employess upto two level below CEO (irrespective of their functional role or access to UPSI)
  - » Any Support Staff (IT staff or Secretarial staff), who have access to UPSI.

# MINIMUM STANDARDS FOR COC- SCHEDULE B

Sharing of Information	<ul style="list-style-type: none"><li>- Only on a Need to Know basis.</li><li>- No UPSI to be communicated except in</li><li>- furtherance of legitimate purpose</li><li>- performance of duties</li><li>- discharge of legal obligations.</li></ul>
Trading by Designated Persons	<ul style="list-style-type: none"><li>- Designated Persons and immediate relatives of designated persons shall be governed by an internal code of conduct governing dealing in securities.</li><li>- Designated persons may execute trades subject to the Regulations.</li><li>- Trading Window shall be used as an instrument of monitoring trading by designated persons.</li></ul>

# MINIMUM STANDARDS FOR COC

## Trading Window

- DP and their Immediate relatives shall not trade when the Trading window is closed.
- Trading window shall be closed when the Compliance Officer determines that a designated person can reasonably be expected to have possession of UPSI.
- Trading window shall be closed from end of every quarter till 48 hours after the declaration of financial results.
- Trading window restrictions **shall not apply** in respect of
  - off market inter se transfer between insiders.
  - transactions carried out through block deal between persons in possession of UPSI
  - transactions carried out pursuant to statutory or regulatory obligation
  - transactions undertaken pursuant to exercise of stock options
  - trades executed pursuant to trading plan.
- **Pledge of shares for bona fide purpose**
  - acquisition by conversion of warrants or debentures
  - subscribing to rights issue/ FPI / Preferential allotment or tendering in buy back or open offer or delisting offer.
- The reopening of trading window shall not be earlier than 48 hours after the information becomes generally available.

# MINIMUM STANDARDS FOR COC

Pre Clearance	<ul style="list-style-type: none"><li>- Trading by designated persons shall be subject to pre clearance by the Compliance officer, if the value of trade is above specified thresholds.</li><li>- Compliance officer to seek declaration that the applicant is not in possession of UPSI, before granting Pre Clearance.</li><li>- Pre Cleared trades to be executed within seven trading days, failing which fresh pre clearance would be needed.</li></ul>
Contra Trade	<ul style="list-style-type: none"><li>- Designated Persons shall not execute a contra trade within six months.</li><li>- Contra trade restriction not applicable for trades pursuant to exercise of stock options or Trading Plan.</li><li>- Compliance officer empowered to grant relaxation from strict application of contra trade restriction.</li><li>- If there is contra trade violation, profits from such trade to be disgorged and remitted to IPEF.</li></ul>

# Trading window/ Pre Clearance

- Trading window should be closed for every UPSI.
- The designated person cannot trade when the trading window is closed by the compliance officer.
- Any earlier pre-clearance obtained when the trading window was open, would be invalid once the trading window is closed.
- Grant of ESOP per se is not trading and accordingly can be made during trading window closure.
- No pre-clearance is required for exercise of stock options. However, sale of shares by employees obtained after exercise of options will require Pre Clearance.
- Off-market transfer of securities would require pre-clearance as per the code of conduct of the company.
- Trading window restrictions shall not apply in respect of trades pursuant to a trading plan.
- Trading window restrictions shall not apply in respect of trades carried out through the block deal window mechanism between insiders without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

# Contra Trade

- 1.If a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/purchase, without attracting contra trade restrictions.
- 2.Where a designated person purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/pledges (say on October 01, 2015) shares so acquired under ESOP, the sale will not be a contra trade but will be subject to other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.
- 3.Buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc. of a listed company are available to designated persons also, and restriction of 'contra-trade' shall not apply in respect of such matters.
- 4.If the first trade is an acquisition by way of rights issue/FPO, then subsequent sale of shares before 6 months from the date of acquisition would be considered as a contra trade.
- 5.Contra-trade restrictions (as mentioned in code of conduct) would be applicable to designated person and their immediate relatives collectively.
- 6.Contra trade restrictions are applicable on date wise. A Designated Person purchased 100 Shares on November 1, 2020 and then again 100 Shares on December 1, 2020. Since shares are last bought on December 01, 2020, the person cannot trade for a period of 6 months from December 01, 2020.
- 7.Contra trade restrictions would apply to debt securities.
- 8.Gifting shall be construed as dealing in shares.
- 9.Contra Trade restrictions are applicable on each and every trade irrespective of whether the trades are below or above the threshold limit of Pre Clearance.

# MINIMUM STANDARDS FOR COC

## Disclosure by Designated Persons

- » Designated Persons shall be required to disclose the following on annual basis and as & when information changes:
  - » Name of their relatives
  - » PAN or other Identifier of Immediate Relatives
  - » Names of persons with whom DP shares material financial relationship
  - » Phone/Mobile numbers used by such persons.
- » Designated Person to disclose on one time basis:
  - » Names of Educational Institution from which such DP has graduated.
  - » Names of their Past Employers.
- » Material Financial Relationship
  - » one person is recipient of any kind of payment from DP - loan or gift
  - » during the immediately preceding 12 months
  - » equivalent to atleast 25% of such payer's annual income
  - » excludes payments based on arms' length transactions.



# PLEDGE OF SHARES

- The term “Trading” as defined under Regulation 2 (1) (I) would include creation /invocation/revocation of pledge.
- Creation of pledge, revocation of pledge<sup>5</sup> or invocation of pledge is allowed when trading window is closed. However, the pledgor or pledgee may demonstrate that the creation/revocation of pledge or invocation of pledge was bona fide and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.
- For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered.
- Example : If the pledgor has availed a loan of Rs 10 Lacs against which he has pledged shares worth Rs 15 Lacs, the value of transaction would be considered as fifteen lakh rupees.
- When the lender sells the shares pledged by designated person, the transaction can be represented as invocation in Form C.

# Institutional Mechanism for Prevention of Insider Trading

- » New Regulation 9A introduced.
- » Chief Executive Officer/Managing Director shall put in place adequate and effective system of internal controls to ensure compliance with the requirements of the regulations to prevent insider trading.
- » The internal controls shall include the following:
  - » all employees who have access to UPSI are identified as designated employee;
  - » all the UPSI shall be identified and its confidentiality shall be maintained
  - » adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information
  - » lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained
  - » confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
  - » all other relevant requirements specified under these regulations shall be complied with;
  - » periodic process review to evaluate effectiveness of such internal controls.
- » BOD to ensure that CEO/MD ensures compliance with the Regulation 9 and 9A(1) & (2).
- » Audit Committee shall review compliance with the regulation 9A at least once a year and to verify that Internal controls are adequate and operating effectively.
- » Listed Company to formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company.
- » The listed company shall have a whistle-blower policy and make employees aware of such policy.

# Duties of Board of Directors

- » To make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.
- » To ensure that a structured digital database is maintained containing the names of such persons or entities as the case may be with whom information is shared along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available.
- » To ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons.
- » The Board of Directors shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.
- » To ensure that the Chief Executive Officer or the Managing Director ensures compliance with regulation 9 and sets up Institutional Mechanism for Insider Trading i.e adequate and effective system of internal controls.
- » To approve written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information.
- » To approve Whistle Blower Policy.
- » To set up a process how and when people are brought “inside” on sensitive transactions.

# INFORMAL GUIDANCE

# In the matter of KDDL Limited (13th September 2021)

## Facts:

The Company, KDDL Limited, had come out with a rights issue of 10,86,956 equity shares and issue closed on 7<sup>th</sup> May 2021.

The allotment of shares was completed on 17<sup>th</sup> May 2021.

Dream Digital Technology Private Limited [Buyer] is a member of the promoter group of the Company and holds 17,615 fully paid equity shares as on 16<sup>th</sup> July 2021 in the Company. This includes 2000 shares allotted pursuant to rights issue.

Mr Pranav Shankar Saboo [Seller] is a member of the promoter group of the Company and holds 8,10,851 fully paid equity shares as on 16<sup>th</sup> July 2021 in the Company. This includes 1,30,000 shares allotted pursuant to rights issue on May 17<sup>th</sup> 2021.

Both buyer and seller are named in the shareholding pattern filed by the company for more than three years.

The Buyer proposes to buy the equity shares of the Company from the seller through an inter se transfer of shares as per Regulation 10(1)(a)(ii) of the SAST Regulation 2011.

## Query:

1) Whether the proposed inter-se transfer of shares between insiders (Buyer and Seller) within a period of six months post the allotment of shares under Rights issue of the Company will violate provisions regarding contra trade of the SEBI PIT Regulations and attract any penal provisions?

2) Whether the Buyer who has sold shares of the Company on 15<sup>th</sup> February, 2021 through market transaction, can buy shares from Seller through inter-se transfer within 6 months from the above sale of shares?

## Informal Guidance:

1) Clause 10 of Schedule B under Regulation 9 of PIT Regulations places a restriction on contra trades, if the same is executed during a period not less than six months.

FAQ no. 40 [FAQ on PIT Regulations] clarifies that if the first trade is an acquisition by way of rights issue, then the subsequent sale of shares before 6 months from date of acquisition would be considered as contra trade.

In conclusion, the proposed transaction will attract the restriction on contra trade, however, the Compliance Officer of the Company may refer to the Company's Code of Conduct framed under PIT Regulations and act accordingly.

2) FAQ no. 43 [FAQ on PIT Regulations] clarifies that these restrictions are applicable date wise. Therefore, the proposed inter-se transfer before the completion of 6 months from 17<sup>th</sup> May, 2021 would attract contra trade restrictions

# In the matter of KCP Ltd (8th Feb 2021)

## Facts:

The Liquidator of Jeypore Sugar Company Limited ("JSCL") has approached KCP Limited ("KCPL") for clearance of sale of shares to promoter and CMD of KCPL during the closure of trading window in accordance with exemption provided in sub-regulation 3 of Regulation 4 of SEBI(PIT) Regulations, as off market transfer and inter-se sale between insiders.

JSCL and KCPL managements are related to each other and form part of promoter group.

KCPL in its letter had inter alia sought clarifications w.r.t

- (i) Can Promoter and CMD of KCPL acquire shares from the Liquidator of JSCL at market price, during the closure of trading window as off-market sale
- (ii) Can the compliance officer give clearance for sale of shares during the closing period of trading window

## Informal Guidance:

*Since both Dr. V. L. Indira Dutt (promoter and CMD of KCPL), and JSCL are insiders in terms of Regulation 2 (1) (g) of PIT Regulations, the transaction referred hereinbefore would be covered under Regulation 4 (1) (i) of PIT Regulations amounting to inter-se transaction between insiders, who were/are in possession of the same information (indicating no information asymmetry) as long as it is not in breach of Regulation 3 of PIT Regulations. Further, this transaction would be exempted from the trading window restrictions as per clause 4(3) of Schedule B of the PIT Regulations.*

*Hence, promoter and CMD of KCPL may buy/acquire equity shares of KCPL from the Liquidator of JSCL subject to pre-clearance by the compliance officer of KCPL in terms of Regulation 4(1) read with Clause 4(3) of Schedule B and Regulation 3 of the PIT Regulations.*

# In the matter of Raghav Commerical Ltd (7th Feb 2020)

## Facts:

Raghav Commercial Limited sought clarifications w.r.t applicability of contra trades and trading window restrictions and raised the following queries:

- a) Whether provision of contra-trade apply to trades made by an individual Promoter or whether the entire Promoter & Promoter Group is considered for the same?
- b) Assuming the proposed inter se transfer of certain number of shares of the company amongst the promoter & promoter group (between individual promoters and non individual promoters) by way of block deal executed on the stock exchange, is undertaken during the period wherein trading window restrictions are applicable, whether the trading restriction as stipulated in Clause 4 of Schedule B of SEBI(PIT) regulations would apply to the aforesaid proposed transaction by way of block deal executed on the stock exchange.

## Informal Guidance:

*a) Consequent to the provisions of regulation 9 of the PIT Regulations and clause 3 of Schedule B to the PIT Regulations, the contra trade restrictions apply to trades made by promoters individually and not the entire promoter group.*

*b) In the proposed transaction, there is an inter se transfer of shares from individual promoters to non-individual promoters through the block deal window mechanism while in possession of UPSI without being in breach of regulation 3 of the PIT Regulations and both parties make a conscious and informed trade decision. Hence, this proposed transaction shall be considered to fall within the meaning of transactions specified in regulation 4 (1) (ii) and the proposed transaction shall not attract trading window restrictions subject to the proviso to regulation 4 (1) and pre-clearance by the compliance officer.*

**Nevertheless, it may be noted that the circumstances (i) to (vi) of regulation 4 (1) of the PIT Regulations are for demonstrating innocence and not an exemption from the applicability of regulation 4 of the PIT Regulations.**

# In the matter of Nimish Upendra Bhai Patel (3rd Feb 2020)

## Facts:

Shri Dinesh Mills Limited (SDM) is a company are listed on BSE Limited.

SDM had allotted warrants to its promoters / promoter group on preferential basis.

As part of overall succession planning between the promoter families, it is desired by the Promoters / Promoter Group to transfer their current shareholding as well as all the shares received pursuant to conversion of warrants to their respective trusts.

The promoters / members of Promoter Group are proposing :

(a) Conversion of outstanding warrants into equity shares

(b) Off-market transfer of shares by way of gift between family members to Bharatbhai Patel and Nimishbhai Patel.

## Queries:

Whether the proposed inter-se off-market transfer of shares between insiders within a period of six months post receipt of shares by the same Promoters / members of the Promoter group pursuant to conversion of warrants will violate provisions regarding contra trade ?

If the Promoters / members of the Promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between Promoters / members of the Promoter group, wants to transfer shares to the Acquirer Trusts within 6 months, whether the proposed transfer to the Acquirer Trusts within 6 months would violate the provisions regarding contra trade?

## Informal Guidance:

*(a) In the instant case, the said promoters have option to convert warrants any time within 18 months from the date of allotment in one or more tranches. The subsequent sale within 6 months may attract the contra trade restrictions under the PIT Regulations.*

*(b) Likewise, if the promoters / members of the promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between promoters / members of the promoter group want to transfer shares to the acquirer trusts within six months, the proposed transfer to the acquirer trusts within 6 months may also attract the contra trade restrictions specified under the PIT Regulations.*



# In the matter of Gujarat State Petronet Ltd. (7th Jan 2020)

## Facts:

Gujarat State Petronet Ltd. had inter alia sought clarifications w.r.t Material Financial Relationship for multiple queries like -

(a) Whether only monetary transactions would construe to establish the Material Financial Relationship or even the non-monetary transactions would create a Material Financial Relationship,

(b) If Designated Person of a Company is making the payment of fees of his granddaughter and such amount of fees is exceeding 25% of the Designated Person's Annual Income, will it construe Material Financial Relationship?

(c) if Designated Person of a Company has gifted a small piece of land to her daughter on her birthday, the cost of which constitutes to be more than 25% of Designated Person's Annual Income, will it construe Material Financial Relationship?

(d) A Designated person has deposited an amount to the account of her niece for payment by her of the fees of the University for Higher Management Studies and such amount of fees is exceeding 25% of the Designated Person's Annual Income.

(e) A Designated Person's maternal uncle has sponsored foreign country trip of Designated Person which constitutes to be more than 25% of such Person's Annual Income.

(f) A Designated Person undertakes to repay financial obligations of a person exceeding 25% of his Annual Income in a year, wherein, the actual payment takes place in piecemeal over a period of more than two years.

## Informal Guidance:

### Reply:

*i. even non-monetary transactions would be construed to establish a material financial relationship.*

*ii. The designated person shall be required to disclose the name of the granddaughter and in case the grand daughter is a minor, the name of both the parents and guardian, if any, in addition to the minor granddaughter.*

*iii. The designated person is required to disclose the name of his daughter when disclosing the name of persons with whom he has a material financial relationship.*

*iv. The designated person is required to disclose the name of his niece when disclosing the name of persons with whom he has a material financial relationship.*

*v. The designated person is not required to disclose the name of his maternal uncle who sponsors his trip when disclosing the name of persons with whom he has a material financial relationship.*

*vi. The designated person is required to disclose the name of the person to whom the designated person makes payment for repaying his financial obligations.*

# In the matter of R S Software (India) Ltd. . (16th Dec 2019)

## *Facts:*

A Trust in the name of 'R S Software Employee Welfare Trust' ("the Trust") was instituted with the objective of providing assistance to the employees.

The Promoters/promoters Group, the Executive Director and Independent Directors of the applicant Company are desirous of acquiring the shares held by the Company's Employee Benefit Trust through Stock Market offering from the Trust to enable the company and the Trust to be in compliance with the provision of SEBI (SBEB) Regulations.

## *Queries:*

Whether these shares can be purchased by the Promoters & Promoters Group or Independent Directors by way of Block Deal and whether Regulation 5 of the SEBI(PIT)Regulations puts any restraint on this transaction ?

## *Informal Guidance:*

*a. The SEBI (SBEB) Regulations do not indicate any regulatory requirement for promoters / promoter group to purchase shares sold by an Employee Trust. It only provides that inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification (October 28, 2014) of the SEBI (SBEB) Regulations, subject to certain conditions.*

*b. In view of the above, the shares held by the Company's Employee Benefit Trust to be purchased by the promoters and promoters group by way of block deal cannot be regarded as regulatory compliance. Hence, all applicable legal requirements have to be complied with, if the trades are executed by way of block deal.*

# In the matter of In the matter of Arvind Ltd. (27th Nov 2019)

## Facts:

One of the promoters and director of Arvind Ltd (AL) is Mr. P, is holding shares of Arvind Ltd. under his PAN in the following capacity: in his personal capacity as an individual, in the capacity of trustee for the benefit of Mr. P's family, in the capacity of trustee for the benefit of the beneficiaries other than Mr. P's family and in the capacity of executor for various wills.

## Query:

- (i) Whether Mr. P will be considered a designated person for the shares held by him under his personal capacity alone or for all the shares held under all the capacities.
- (ii) In case he is considered a designated person for all the capacities, i.e., individual, trustee and executor, will the restrictions of contra-trade provided in Clause 10 of Schedule B of the PIT Regulations be applicable to all the shares held in all the capacities collectively or individually? For example, if Mr. P has sold shares in the capacity of executor of a will to distribute the assets to the legal heirs of the will, will he become barred from buying shares of Arvind Ltd. in his personal capacity?
- (iii) Whether the restrictions of contra-trade will be applicable to any shares held under a trust not under the PAN of Mr. P but under PAN of other trustees of the trust

## **Informal Guidance:**

- a. *Regulation 9 (4) of the PIT Regulations, inter alia, specifies the persons to be identified as 'designated person' on the basis of role and function in the organization and the access that such role and function would provide to the unpublished price sensitive information (UPSI).*
- b. *The term 'designated person' is wide enough to include any person having such role and function in the organization which would provide access to UPSI to such person in the opinion of the board of directors after consultation with the compliance officer.*
- c. *Once the determination of 'designated person' is done as per the provisions of regulation 9 (4) of the PIT Regulations, the restrictions of contra-trade given in Clause 10 of Schedule B and Clause 8 of Schedule C of the PIT Regulations would be applicable to the designated person irrespective of the capacities in which such person holds shares in the company.*
- c. *It may also be noted that as per SEBI's Circular MRD/DoP/Cir-09/06 dated July 20, 2006 issued by MRD, a person holding shares in different capacities is required to hold such shares under the PAN of respective entity.*
- d. *Thus with respect to query (i) and (ii) above, it is stated that if Mr. P is specified as a 'designated person' by the board of directors of Arvind Limited, the restrictions of contra-trade would be applicable to all shares held under the PAN of Mr. P irrespective of the capacities in which Mr. P holds shares in the company.*
- e. *With respect to query (iii) above, it is reiterated that restrictions of contra-trade given in Clause 10 of Schedule B and Clause 8 of Schedule C of the PIT Regulations will be applicable to shares held by any designated person. Thus, if a trustee holds shares under his own PAN, restrictions of contra-trade will be applicable if such trustee is a 'designated person' in terms of regulation 9 (4) of the PIT Regulations.*

# In the matter of Apollo Tricoat Tubes Limited (15th Oct 2019)

## Query:

- (a) whether a person who is merely continuing to be named as promoter owing to the provision of LODR but not acting as a promoter of the company and exercises no control, has no role in the management and not holding any position in the company will be identified as a 'non-designated persons' for the purpose of regulation 9 (4) of the SEBI(PIT) Regulations ?
- (b) if this non-designated person executes trade during trading window closure, whether it will tantamount to violation of clause 4 of the Schedule B of the SEBI(PIT) Regulations ?

## Informal Guidance:

- (a) The PIT Regulations identify promoters as designated persons. Hence, a person identified as a Promoter is required to comply with the code of conduct requirements as required by other designated persons.
- (b) Mr. Saket Agarwal, by virtue of being named as a Promoter and on account of continuing to hold greater than 10% of the total voting rights in ATTL shall be identified as a designated person for the purpose of compliance with ATTL's code of conduct.
- (c) Resultantly, any trade by Mr. Saket Agarwal during trading window closure would tantamount to violation of clause 4 of the Schedule B of the PIT Regulations.

# In the matter of M/s. Shreevatsaa Finance and Leasing Limited (21st January 2019)

## Facts:

Shri Praveen Kumar Arora (Applicant) is a shareholder and promoter group entity of the M/s. Shreevatsaa Finance and Leasing Limited (Target company).

He holds shares constituting 64.61% of paid up equity share capital of the target company.

Applicant is proposing to acquire 10.39% shareholding of the Target Company from the Promoter namely, Agarni Leasing and Finance Pvt. Ltd(ALFPL)

The entire shareholding of ALFPL, is held by brother and sister in law of the applicant.

Pursuant to the transaction, applicant's shareholding will increase from the existing 64.61% to 75% in the target company. However, there will not be any change in the aggregate shareholding of the promoter group and in control and management of the target company on account of inter se transfers amongst promoter group entities.

## Query:

(i) whether an off market inter-se transfer of shares between the promoters of the Target company would come under the exemption of Regulation (4)(1)(i) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 or a trading plan is required as stated in provisions of Regulation 5 of the SEBI(PIT) Regulations.

## Informal Guidance:

- Regulation 4(1) of the PIT Regulations prohibits an insider to trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI*
- proviso to the said regulation provide the insider an opportunity to prove his innocence by demonstrating the existence of certain circumstances at the time of execution of the said transactions. As per proviso (i) to Regulation 4(1) of the PIT Regulations, one such circumstance is when the transaction is an off-market inter se transfer between 'promoters' who were in possession of the same UPSI and that both the parties had made a conscious and informed trade decision.*
- The said proviso is not an exemption from complying with the provisions of Regulation 4 of the PIT Regulations but can only be used as a defense in case, an insider is charged for violating Regulation 4(1) of the PIT Regulations, 2015.*
- If an insider opts to have a trading plan as per the regulation, then it may act as a circumstance to prove an insider innocent for the trades executed in terms of the proviso (vi) to Regulation 4(1) of the PIT Regulations.*

# In the matter of Star Cement Ltd (22nd Mar 2018)

## Facts:

Star Cement Ltd sought interpretative letter for:

(a) Whether the inter-se transfer on the stock exchange platform between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market will violate any provision of the PIT Regulations, and

(b) subsequently, if the same promoter who had acquired shares from another promoter wants to sell shares in the open market within six months of the inter-se transfer, will the same violate the provisions regarding contra trade.

Clarification is also sought whether provisions of contra-trade apply to promoters individually or whether the entire promoter group is considered the same.

## Informal Guidance:

*(a) the proposed on-market inter-se transfer between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market, may not qualify to claim the defence as contemplated in clause (i) of the proviso to Regulation 4(1) of PIT Regulations, which otherwise would have been available in case of off-market inter-se transfer.*

*(b) Thus, as against an off-market inter-se transfer as contemplated in clause (i) of the proviso to Regulation 4(1), an on- market transaction may not qualify for grant of relaxation from strict applicability of provisions of contra-trade, from the Compliance Officer.*

*(c) since the second leg of the transaction itself would not sail through, the third leg of the transaction (i.e. the sale in open market, of those shares which are proposed to be acquired from the promoter in the second leg) becomes redundant and hence does not warrant a reply.*

*(d) Restrictions on contra trade as per clause 10 of Schedule B, do not apply to the promoter group per se. Such restrictions on contra-trade apply individually to persons, including promoters, who are identified as 'designated persons'.*

# In the matter of Kirloskar Chillers Pvt Ltd (2nd Dec 2016)

## Facts:

Kirloskar Chillers Pvt. Ltd. (KCPL) is a private limited company and Kirloskar Brothers Limited (KBL) is a public limited. KCPL is a part of the promoter group of KBL since KCPL is closely held by certain promoters of KBL. KCPL intends to acquire 50,000 equity shares, constituting 0.06% of the paid-up capital of KBL.

## Queries:

- (a) Whether KCPL requires a pre-clearance from KBL merely because it is a promoter, even though it has no role in the management of KBL or have any access whatsoever to UPSI
- (b) Whether a compliance officer has the power to reject pre-clearance request for reasons extraneous to the CoC and PIT Regulations

## Informal Guidance:

- *As per clause 6 of Schedule B of PIT Regulations, pre-clearance is required to be obtained only by " Designated persons" if the value of the proposed trades is above such thresholds as stipulated by the board of directors. Thus a promoter, if designated as a "designated person" by the board of directors in consultation with the compliance officer, will be required to obtain pre-clearance for trading.*
- *Schedule B of the PIT Regulations casts certain obligations on the Compliance Officer which has to be complied accordingly. The compliance officer may approve or reject a pre-clearance request after necessary assessment as per the PIT Regulations and the Code of Conduct. It may be stated that the compliance officer acts under the overall supervision of the board of directors or the audit committee. Any question with respect to the act of compliance officer whether or not extraneous to the powers so conferred according to the PIT Regulations and the Code of Conduct, may be referred to the board of directors and the audit committee for examination in accordance with the extant laws and the relevant facts of the case.*
- *It is reiterated that the basic intent of PIT Regulations is that no undue advantage accrue to certain category of investors on account of their access to UPSI, and it is assumed that in this regard, any actions of Compliance Officers, Board of Directors or other entities entrusted with ensuring adherence to these Regulations, should be to ensure compliance in letter and spirit to the PIT regulations and not for any ulterior motive.*

# RECENT SAT DECISIONS



# Abhijit Rajan Vs SEBI (8.11.2019) SAT

## Facts:

- Abhijit Rajan, the then Chairman and Managing Director of Gammon Infrastructure Projects Limited (hereinafter referred to as 'GIPL') sold 1,43,81,246 shares of GIPL on 22nd August, 2013 for Rs.8.28 crores.
- SEBI conducted investigation in the same and found that on the date of sale of the shares by the appellant he had unpublished information with him of cancellation of two shareholders agreement of GIPL with one Simplex Infrastructure Limited (hereinafter referred to as 'Simplex').
- The announcement of the cancellation was made by GIPL with the stock exchanges on 3rd September, 2013. It disclosed the said information on BSE website at 1.05 p.m. and NSE website at 2.40 p.m.
- SEBI held the appellant guilty for insider trading under the provisions of Section 19 read with Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (referred to hereinafter as 'PIT Regulations').

# Abhijit Rajan Vs SEBI (8.11.2019) SAT

Held:

1. In our view the information itself was not a price sensitive information.
  - The record would show that GIPL had invested only Rs.4.9 crores in the Simplex project in the said financial year. It represented only 0.05% of the GIPL's order book value at the end of August, 013 and only 0.7% of its turnover for the said financial year.
  - Further due to the termination of the agreement a large project worth Rs.1648 returned back to GIPL while the smaller project of Rs.940 crore remained with Simplex. In a way it could have been a positive information to the shareholders.
  - The Adjudicating Officer however has calculated the change in the order book value without assessing whether the change was positive or negative.
  - Considering the minor proportion of the transaction to the turnover of GIPL, in our view the information cannot be termed as price sensitive information. The Simplex had not even disclosed the said information to the stock exchanges.
2. The appellant cannot be blamed of insider trading for the reasons that he did not trade "on the basis of the information". The appellant was able to show his dire need to infuse fund in the entity under the master restructuring agreement to implement a CDR package. He was even required to sell his agricultural land and flat. In these circumstances he sold the shares.
3. In the case of Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of UPSI as they had a necessity to sell the shares. Similar is the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided by this Tribunal.
4. The appellant had contended that respondent SEBI had deliberately taken the closing price of September, 2013 when the price were around 30% lower than the closing price as on September 3, 2013. By adding this extra day SEBI had widened the gap between the selling price and the price found on 4<sup>th</sup> September, 2013. In fact the share closing price rose on September 3, 2013 i.e. on the date of disclosure of the information. However, according to the appellant, respondent SEBI only in order to show that the appellant had avoided the probable loss calculated the figures based on the last traded price of September 4, 2013. 18
4. It is already recorded that the information was disclosed to the BSE and NSE on September 3, 2012 at 1.05 p.m. and 2.40 p.m. respectively i.e. much before the closure of the market. There is no reason forwarded in the impugned order as to why the last traded price of September 3, 2013 is not taken into consideration by respondent SEBI.

For all these reasons in our view the order cannot be sustained.

# Utsav Pathak v SEBI (12.06.20)SAT

## ✓ Held:

- The appellant was a connected person and was an insider as per the PIT Regulations and was privy to the price sensitive information and was directly involved with the activities pertaining to the open offer.
- The appellant had close relationship with the Tippees.
- The trading pattern of the Tippees makes it apparently clear that the Tippees had prior information with regard to the open offer.
- The Tippees only traded in the shares of CRISIL and did not trade in any other shares.
- Tippee 2 had borrowed large amount [Rs. 1 cr] and sold off existing holdings etc to finance the buy orders of CRISIL shares which is a highly abnormal investment behavior.
- Purchase of large chunks of shares and selling it immediately after announcement of the open offer without any plausible cause is suspicious.
- The Tippees were also charged for insider trading and violation of the PIT Regulations. The Tippees filed a Settlement Application which was allowed on payment of an amount.
  
- From the aforesaid foundational facts, the circumstantial evidence or on a preponderance of probability by a logical process of reasoning from the totality of the attending facts and circumstances as stated aforesaid, an irresistible inference can be drawn that the appellant had passed on the price sensitive information regarding the open offer to the Tippees.
  
- In the light of the aforesaid, the decisions cited by the learned counsel for the appellant on the issue that a person cannot be held guilty only on the strength of proximity of relationship with the Tippee are distinguishable on facts and are not applicable in the instant case. We find from the record that there is ample evidence to draw a reasonable inference that the appellant had passed on the price sensitive information to the Tippees and, consequently, we are of the opinion that the order of the AO does not suffer from an error of law.

# Rajeev Vasanth Sheth v SEBI (19.04.22)SAT

- ✓RVS was the managing director of the company Tara Jewels Limited.
- ✓Appellant nos. 2 and 3 are the daughters of the appellant nos. 1 and were also the promoters of the company.
- ✓The company had incurred a loss of Rs. 166.80 crores during the quarter ended September 2017 as compared to net loss of Rs. 6.62 crores during the quarter ended June 2017.
- ✓The quarterly financial results of the company for quarter ended September 2017 was disclosed to the stock exchanges after closing of the market on November 29, 2017.
- ✓Further, the appellant nos. 1, being the chairman of the company was privy to the UPSI, namely, the financial results as he was in the supervision, control and management of the affairs of the company and that he was in possession of the UPSI from October 2, 2017 till the disclosure of the financial results on November 29, 2017.
- ✓The UPSI period was from October 2, 2017 to November 29, 2017.
- ✓During this UPSI period, the appellants had sold the shares of the company and thereby violated, inter alia, 'PIT Regulations'.
- ✓The WTM also concluded that the appellant nos. 1 had communicated the UPSI to his daughters, appellant nos. 2 and 3 who had also violated Regulation 3(1) of the PIT Regulations.
- ✓The WTM concluded that the appellant nos. 1, 2 and 3 have avoided the notional loss of Rs. 1,26,59,481.50, Rs.2,09,930.40 and Rs. 9,62,060.70 respectively.
- ✓The WTM further found that the appellants had not obtained pre-clearance for the trades executed by them during the investigation period and, consequently, violated the Model Code of Conduct and Regulation 9 of the PIT Regulations.

# Rajeev Vasanth Sheth v SEBI (19.04.22)SAT

## ✓Held:

- “.....The UPSI as provided under Regulation 2(n) means any information relating to a company or its security which is likely to materially affect the price of the securities and shall ordinarily include, namely, financial results, etc. It was urged that the word “ordinarily” does not mean that the financial results will always be considered as unpublished price sensitive information and would have to be considered on a case to case basis as to whether in the given circumstances the financial results were a price sensitive information or not. In this regard, we find that the losses had increased by 25 times from quarter ended June 2017 to quarter ended September 2017, the net loss increased from Rs. 6.62 crores to Rs. 166.80 crores which was a substantial jump and, therefore, in our opinion, the financial results for the quarter ended September 2017 was an UPSI which the appellants had in their possession.”
- Regulation 4 of the PIT Regulations prohibits any insider from trading in securities while in possession of UPSI. The proviso further provides the insider may prove his innocence by demonstrating the circumstances for trading in securities while in possession of UPSI.
- A perusal of the aforesaid Regulation indicates that no insider shall trade in securities when in possession of UPSI and a person who has traded in the securities while in possession of UPSI his trades would be presumed to have been motivated by the knowledge and awareness of the price sensitive information which was in his possession. The proviso however gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. The words “including” under the proviso to Regulation 4 is inclusive and is not exhaustive. It is not confined to the circumstances provided under Clause (i) to (vi) of the proviso to Regulation 4(1) of the PIT Regulations. There could be other circumstances on the basis of which the insider could prove his innocence.
- The finding of the WTM in paragraph no. 30 of the impugned order that the utilization of the sale proceeds by the appellants or the company is not a “permissible exonerating circumstances” is patently erroneous..... We find that this explanation demonstrated the circumstances for selling the shares of the company during the UPSI period in order to avoid the company from down-graded to a non-performing asset. In our view, such explanation given by the appellants which has not been considered by the WTM is sufficient to prove his innocence of trading while in possession of the UPSI. Such explanation will come within the purview of the proviso to Regulation 4(1) of the PIT Regulations and consequently, the appellants cannot be charged for violating Regulation 4(1) of the PIT Regulations.

# SUPREME COURT DECISIONS

# Chintalapati Srinivas Raju V SEBI (14.05.2018) SC

- ➔ Under the second part of Regulation 2(e)(i), the connected person must be “reasonably expected” to have access to unpublished price sensitive information. The expression “reasonably expected” cannot be a mere ipse dixit – there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information.
- ➔ Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company.
- ➔ We are of the view that from the mere fact that the appellant promoted two joint venture companies, one of which ultimately merged with SCSL, and the fact that he was a co-brother of B. Ramalinga Raju, without more, cannot be stated to be foundational facts from which an inference of reasonably being expected to be in the knowledge of confidential information can be formed.

# Balaram Garg Vs SEBI (19.04.2022) SC

## Facts:

- P.C. Gupta was the Chairman of PCJ during the relevant period and was a “connected person” in terms of Regulation 2(1)(d)(i) and an “insider” under Regulation 2(1)(g) of the “PIT Regulations”.
- Balaram Garg, who is the brother of P.C. Gupta and the Managing Director of PCJ is also a “connected person” in terms of Regulation 2(1)(d)(i) and an “insider” under Regulation 2(1)(g) of the PIT Regulations.
- Allegedly, Sachin Gupta, Smt. Shivani Gupta and Amit Garg traded on the basis of Unpublished Price Sensitive Information (for short “UPSI”) received by them on account of their alleged proximity to P.C. Gupta and Balaram Garg between the period from 01.04.2018 to 31.07.2018.
- The above proximity was alleged on the basis of the fact that Sachin Gupta and Smt. Shivani Gupta are the son and daughter in law of Balaram Garg’s deceased brother late P.C. Gupta. Moreover, Amit Garg is the son of Amar Garg, who was also the brother of Balaram Garg.
- It was also alleged that all the appellants shared the same residence.

## Facts highlighted by SC:

- ✓ Amar Chand Garg and his branch of the family exited the Company by entering into a family arrangement dated 01.07.2011 whereby their shareholding in the company was reduced to a meagre 0.70%.
- ✓ In September, 2011, Amar Chand Garg also resigned as the Vice Chairman of the company and disassociated himself from the company.
- ✓ Amit Garg was never associated with the company.
- ✓ On account of certain disputes that had arisen between Sachin Gupta and his parents P.C. Gupta and Smt. Krishna Devi, Sachin Gupta resigned from his position as President (Gold Manufacturing) of the Company and Mrs. Shivani Gupta (wife of Sachin Gupta) also resigned from her post of Senior Assistant Manager, Karol Bagh Store of PCJ.
- ✓ late P.C. Gupta and his son Sachin Gupta entered into another family arrangement dated 10.04.2015 whereby P.C. Gupta and his wife agreed to transfer at least 1,60,00,000 shares of the company to Sachin Gupta and his family, and in lieu thereof Sachin Gupta and his family agreed not to have any right whatsoever in the immovable and movable property of P.C. Gupta and his wife.
- ✓ Sachin Gupta and his wife Smt. Shivani Gupta inter alia, sold some shares of the company from 02.04.2018 to 13.07.2018.



# Balaram Garg Vs SEBI (19.04.2022) SC

**Whether the WTM and SAT rightly rejected the claim of estrangement of the appellants in namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg?**

Held :

“Hence, we are of the opinion that when the two family arrangements (dated 01.07.2011 and 10.04.2015) are considered in their right perspective, it adequately demonstrates that there was a breakdown of relations between the parties. Additionally, given the fact that the entire case against the appellants for the offence of insider trading was based on the nature of close relationship between the parties, once it has been rightly held by the WTM that the appellants are neither “connected persons” within the meaning of Regulation 2(1)(d) nor “immediate relatives” within the meaning of Regulation 2(1)(f) of PIT Regulation, the question of ipso facto relying on the nature of relationship between the parties to come to the conclusion that they were “in possession of or having access to UPSI” while trading with the shares of the company is legally unsustainable.”

“.....the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI.”

**Could the aforementioned appellants be rightly held to be “insiders” in terms of Regulation 2(1)(g)(ii) of the PIT Regulations, only and entirely on the basis of circumstantial evidence?**

Held:

In such view of the matter, we are of the opinion that there is no correlation between the UPSI and the sale of shares undertaken by the appellants in C.A. No.7590 of 2021. The said decisions of selling the shares and the timings thereof were purely a personal and commercial decision undertaken by them and nothing more can be read into those decisions.

We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg.

It is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.

The said appellants in..... were not “immediate relatives” and were completely financially independent of the appellant Balram Garg and had nothing to do with the said Balram Garg in any decision making process relating to securities or even otherwise.

Quick Developers Pvt. Ltd., the record clearly reveals that it is neither a “holding company” or an “associate company” or a “subsidiary company” of PCJ nor the appellant Balram Garg has ever been the Director of Quick Developers Pvt. Ltd. Therefore, Quick Developers Pvt. Ltd. cannot be held to be a “connected person” visàvis the appellant Balram Garg.

Thank  
You