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ROLE OF SEBI IN CURBING INSIDER TRADING

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Abstract:

The Securities and Exchange Board of India serves as the securities market's watchdog and protects the rights of stock market investors. In a very significant way, the Indian stock market has evolved and contributed to the practice of insider trading. Insider trading means trading based on some proprietary information related to the selling and acquisition of a company's shares, and this information is not yet available. In order to discourage insider trading in businesses, the 1992 SEBI (Prohibition of Insider Trading) was implemented. An amendment was made to reinforce these laws in the same act, and a code of conduct was adopted in 2002 to discourage insider trading. The Sodhi Committee reviewed these regulations to ban insider trading, and the 2015 SEBI (Prohibition of Insider Trading) Regulations replaced the existing regulations.

Introduction:

Trade security is a crime because it is done by a person, who has access to non-public information solely because of their status, and that information is very important in investment-related decisions.

"The term Insider Trading has been defined by the Black Law Dictionary as" the use of non-public information in the sale of corporate securities by an insider or another debtor.

SEBI has established these regulations to restrict and penalize the use of non-disclosure of sensitive price information (UPSI) relating to company shares, based on a process that managers and executives are responsible for the company and should strive to improve rather than personal interests. The ban on internal trade is based on the principle of fairness against the use of non-public information as fraudulent and untrue due to the honest work owed by an insider to the average investor or due to improper access to internal information.

In order to avoid insider trading by abusing the market, the SEBI (Prohibition of Insider Trading) Rules, 1992, were enforced by SEBI. In order to reinforce these laws, an amendment was made and a code of conduct was adopted in 2002 to prohibit the crime of insider trading. The Sodhi Committee reviewed these regulations to curb insider trading, and the current regulations were replaced by the SEBI (Prohibition of Insider Trading) Regulations in 2015. An amendment was made to the new legislation in 2019.

Under section 195 of the Companies Act, 2013, the clause banning insider trading of shares was dealt with. But this clause has been omitted because of the Companies (Amendment) Act, 2017. The reason for this exclusion is that, in the absence of public interest in the discovery of the prices of their shares, all public and private companies that do not propose to list their securities will have restricted use of such limitations. A study of existing regulations therefore assumes extreme significance by looking at the competitive existence of the stock exchange so that the SEBI goals can be efficiently discharged.

Who can be called as Insider:

Under Regulation 2(e) of SEBI (Prohibition of Insider Trading) Regulations, 1992, the term 'insider' has been established. The word 'insider' can essentially be categorized into three broad categories, which are:

- Ø Persons who are related to the organisation,
- Ø Persons that were affiliated with the organisation,
- Ø Persons that are perceived to be related to the organization.

An individual has to fulfil three elements in order to become an insider, viz.; (i) A natural person or legal entity should be the person; (ii) The entity should be linked or considered to be connected; (iii) Acquisition of price-sensitive unpublished information by virtue of such a relation.

POWERS AND PENALTIES TO CURB INSIDER TRADING

The commission of insider trading is difficult to prove by the use of concrete evidence because of the very nature of the crime. An individual trading on the basis of UPSI or communicating UPSI or procuring UPSI will be punished or prosecuted in some instances on the basis of proof of a transaction-related situation.

SEBI was formed as a statutory agency operating under the 1992 Securities and Exchange Board of India. Under Section 11 of the SEBI Act, 1992, the various functions and powers of the SEBI are dealt with.

The main function of SEBI is to protect the protection of investors and to ensure fair trade and SEBI that if anyone violates the provisions of this Act, SEBI has established a committee to investigate.

The SEBI investigation may appoint officers to look into internal records and other communications. It is the responsibility of SEBI to inform the insider before initiating the investigation. The Board may also appoint an auditor to audit the books of account and internal affairs. It is an internal duty to provide the necessary documentation to the investigating officer. It does not, however, have the power to review the oath, nor does it have the same jurisdiction as that provided for in the case by the civil court under the Code of Civil Procedure of 1908. The

police officer must send a report, in accordance with SEBI Rules 1992, within one month after all inquiries. It also depends on the investigative investigator taking as long as he or she needs money that the job could not be completed within a reasonable period. After the final report has been submitted, SEBI must communicate the results to the insider and provide a reason for the disclosure within 21 days of receipt of an internal or other correspondence. Thereafter, the person whose disclosure of the findings was disclosed must respond to the notice within 21 days of receipt of the notice.

An insider is a related person who is directly or indirectly connected to a business. An important principle of defining the cost of internal trade is the term 'connected person'. Means a person who is a director of a listed company or who works for a listed company or employee. Connected people have access to company information that is not published sensitive to prices. It involves a person who has been in contact with the business prior to the introduction of the internal trading rules for six months.

In *N.Narayanan v. Adjudicating Officer, SEBI*, the Apex Court held that there is a need for a transparent capital market and stressed that SEBI, being a market regulator, must deal exclusively with directors and companies involved in insider trading, otherwise it would suggest that it has failed in its duty to promote healthy and orderly stock market growth. The nature and exercise of the power of SEBI to investigate has gained significance in this regard. Under the broad scope of powers given to it by the SEBI Act, SEBI is empowered to investigate certain transactions that are suspected of breaching insider trading standards. Section 11 of the SEBI Act, which deals with the duties of SEBI, provides that it has the power to take measures to prevent the insider trading of securities, to request information and records, to carry out inquiries, to audit the stock market and to investigate the persons or brokers involved in the stock market. Powers have been given to inspect any ledger, accounts, records or documents if it has legitimate grounds to believe that the firm only engages in insider trading when it is to be listed as a public company or a proposed company. Its powers concern the discovery, production and review of books and records of accounts, the summoning and compliance of a person's attendance, and the investigation of certain persons on oath.

Hindustan Lever Limited v. SEBI Limited (1996)

The case relates to the acquisition of 8 lakh shares by HLL of BBLIL on 25 March 1996 by 8 shares in Unit Trust of India. This discovery was made just two weeks before the official announcement of the planned merger of HLL and BBLIL. Upon inquiry, SEBI found out that at the time of purchase, HLL was an insider. During the investigation, SEBI found that HLL was a person under Section 2 (e) of the Regulations 1992 when BBLIL shares were purchased at UTI. Prior to the appeal, the HLL filed a complaint asking why they could not be named inside. However, the official was pleased with the evidence after hearing the HLL evidence, but it was not enough to prove it. The appellate officer found that the SEBI investigation was justified. The matter is still pending in the High Court.

Penalties for Inside Traders:

Penalties for committing insider trading have been defined under Chapter IV-A of the SEBI Act. The sanctions have been addressed below pursuant to the SEBI (Amendment) Act, 2002.

Section 15(G)(i)- If any unpublished information has been provided either on his own or on behalf of any person by an insider on behalf of his company, then he may be fined RS. 25 crores or 3 times the profit made, whichever is greater.

Section 15G(ii)- If an insider has generated some price-sensitive data, then he may be fined up to RS. 25 crores or 3 times the profit made.

Section 15G(iii)- If an insider has procured any other person to trade in the shares of any corporation, on the basis of published information, then he may be fined up to RS. 25 crores or 3 times the higher profit made.

Why is the rate of investigation of insider trading lower in India?

As shares are globally traded, international cooperation involves proper and efficient inspection and conviction. Such cooperation is important in order to help identify conspirators or to access some other material records. In curbing insider trade activities, US cooperation and agreements with foreign countries have proven to be a useful tool.

The 2015 SEBI (Insider Trading Prohibition) Regulations (such as the previous 1992 versions of the Regulations) aim to restrict insiders' right to sell shares in their companies, not to restrict them from owning shares or selling any stock in their companies. This seems reasonable - it can be very stubborn to block them, and it hurts foreign shareholders, and can encourage fraudulent practices. However, it is unclear whether this policy has worked; Internal trade continues to flourish in India, much to the chagrin of Indian and foreign investors.

The SEBI is not given the Basic powers which lead to low investigation rate, even the phone tapping power is also given in the recent amendment.

Identification of a crime is important. It is important to realize that the crime has been committed, only then will its investigation resume. How can one avoid it without thinking about its commission?

SEBI in India has not been provided the power to wiretap the calls, whereas in the US, the officers can access the phone calls.

SEBI has failed to use its power and penal provisions: SEBI has not used its power in several respects and has also asked the government to grant the body additional powers.

To conduct a thorough investigation, SEBI does not have the requisite human resources: SEBI has almost 800 old employees and does not have a proper department of human resources.

Two decades ago, an Indian stock market regulator is accused of failing to investigate and prosecute suspects operating internally. Punishment is often so severe that laws have lost any restraining effect they can have, even if violators have been caught and punished.

Conclusion:

As I mentioned above, under Section 11 of the SEBI Act 1992, cases of internal trade are defined. It has the right to investigate the news and check the company's accounts. Although there are laws, due to lack of various reasons, SEBI has the power to initiate criminal activity under Section 24 of the SEBI Act 1992. SEBI has failed in many investigations. Prior to the enactment of the SEBI Act, there was no such clause, but only after the various committees submitted their reports for the SEBI (Insider Trading Regulation) Act, 1992. The job is not accomplished by merely getting the laws into the books, unless fully enforced or performed to accomplish the purpose for which they were written, they are of nullity. It is high time for the government to seriously address this problem by reinforcing existing regulations and developing a new set of rules to ban the possibility of insider trading in the stock market. The process of investigation should be smoothed by making the required inspection resources accessible to the regulatory body. There are strict trade rules within developed countries, but in India, while there is a law under the SEBI Act, 1992, but for a number of reasons, the incidence of investigations is very low and the government should address this issue and pass a strong curfew.