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ANALYSIS OF SEBI & SAT ORDERS PASSED ON INSIDER TRADING MATTERS IN 2014

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2014 has been a dynamic year for the rulings by SEBI & SAT in case of Insider Trading . During the year both the authorities laid down precedents for interpreting various terms under SEBI (Prohibition of Insider Trading) Regulations, 1992 like: 'price sensitive information', 'connected person', 'insider', 'officer' etc. Also, both the authorities travelled beyond Regulations and interpreted phrases with a broader perspective.

The article is a compilation of analysis and summary of facts and decisions by SEBI/SAT in Insider trading cases during the year 2014.

Introduction

1. 2014 is said to be one of the most dynamic years for the rulings delivered by SEBI & SAT in Insider Trading cases. This year the capital market watchdog and the appellate authority were not confronted with vanilla cases, but with cases which required enormous analysis and interpretational skills to come to a conclusion whether a transaction amounts to 'insider trading' or not. In some cases, SEBI/SAT laid down precedent for interpreting terms under SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations). This article is an analytical compilation of orders passed by SEBI/SAT during the calendar year 2014, where terms like 'price sensitive information' (PSI), 'connected person', 'insider', 'officer' were interpreted under PIT Regulations:

KLG Capital Services Limited - "Who is connected person & Insider"

2. In March 2008, Awaita Properties Private Limited ('Awaita') announced an open offer for acquiring 20% stake in KLG Capital Services Ltd. ('KLG Capital') and in Feb. 2008 (just before, making the open offer), 3 entities traded in shares of KLG Capital. These 3 entities were connected to SKIL -a group company of Awaita ('Group Company'). Therefore, shares of KLG Capital were traded by persons connected to the Group Company.

SEBI held that the these were 'connected persons' to the KLG - target company, in which the trades had taken place and observed that the 3 entities had an access to Unpublished Price Sensitive Information (UPSI), *i.e.*, they were aware of proposed acquisition and following persons traded in shares of KLG Capital (Target Company)/passed on UPSI to other person:

- (i) President of SKIL, which was group company of acquirer, *i.e.*, Awaita;
- (ii) President of SKIL, communicated such UPSI to Executive Director ('ED') of SKIL;

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- (iii) ED of SKIL passed UPSI to his daughter who traded in KLG's shares;
- (iv) Deputy Chairman of SKIL communicated UPSI to his wife, who then traded in KLG's shares;

The President, ED and Deputy Chairman claimed that they were not connected to KLG Capital (target company), company in which insider trading took place. Also, they claimed that they did not occupy any position/had business relationship with KLG Capital, therefore could not be reasonably expected to have access to UPSI.

SEBI did not accept the above contentions and concluded that SKIL's President was 'connected person' to KLG Capital as he played key role in acquisition, was in touch with KLG's promoters/Lead Manager to the open offer, etc. SEBI termed this as temporary professional or business relationship with KLG Capital and that President had UPSI of impending open offer, SEBI termed him as an 'insider'. On the same lines, SEBI found ED, ED's relative, Deputy Chairman and Deputy Chairman's wife as 'insiders' in accordance with PIT Regulations.

SEBI through its order debarred a few 'insiders' and for others ordered disgorgement of unlawful gains to the tune of Rs. 3 crores.

Mr. Rajat Mathur, in the case of Wipro Ltd. - "Who is an Officer"

3. Noticee was Geography Head, Wipro Limited. He was responsible for sales and building country operations across Asia Pacific, Africa and Latin America. His major role was to get large local clients for company through sales team in countries of operation. Noticee had sold 6,000 shares of Wipro Limited in total (on three different dates) which resulted in change of shareholding by more than Rs. 5 lakh in value and, accordingly, SEBI, AO contended that Noticee was an 'Officer' of company and ought to have made disclosure under Reg. 13(4), read with Reg. 13(5) of PIT Regulations.

Noticee contended that he was neither 'director' nor 'officer' of company within meaning of PIT Regulations, read with Section 2(59) of the Companies Act, 2013 and, hence, claimed that PIT Regulations were not applicable.

SEBI, AO observed that Noticee was 'designated employee' of company and reported to CEO and had SBU heads for various vertical segments (like manufacturing, telecom, energy and utilities, etc.) who were P&L owners under him and other reportees of CEO were - Service line heads who were responsible for practice building, Geography heads who were responsible for sales and building country operations and Functional heads. SEBI observed that Noticee, occupying position of geography head, had major role to get large local clients through sales team in the countries of operation and had a total team of about 128 employees.

SEBI, AO relied on SAT's observation in *Sundaram Finance Ltd. v. SEBI* [2011] 3 taxmann.com 169 (SAT) which held that definition of 'Officer' was an inclusive

definition and would not exhaust all persons who otherwise came within its ambit or scope. SAT had held that the definition said that it included persons specified therein, it did not say who were all persons who would come within the term and held that 'officer' meant a person holding an appointment to an office which carried with it an authority to give directions to other employees. SAT also relied on Department of Company Affairs Letter, dated October 7, 1963.

SEBI, AO concluded that Noticee was an 'officer' and ought to have made requisite disclosures under Reg. 13(4), read with Reg. 13(5) of the PIT Regulations. SEBI, AO also rejected Noticee's contention, and held that compliance requirement under Company's Internal Code for PIT Regulations was a separate and independent obligation from compliance requirement under Reg. 13(4), read with Regulation 13(5), as both obligations were distinct in nature. Considering the facts, SEBI AO imposed penalty of Rs. 5,00,000 on Noticee.

Gurmeet Singh Dhingra v. SEBI - Interpreting Reg. 13(3) & (4) of the PIT Regulations

4. SEBI Investigation revealed that appellant was holding 8,29,900 shares in the company. His shareholding increased by acquiring 2,49,300 shares (*i.e.*, from 16.37% to 21.30%). SEBI contented that since appellant's shareholding increased by more than 5%, appellant was required to make necessary disclosures under Reg. 13(3), read with Reg. 13(4) and 13(5) of the SEBI (PIT) Regulations.

SAT observed that obligation to make disclosure under Reg. 13(3) was independent of obligation to make disclosure under Reg. 13(4) and stated that disclosure under Reg. 13(3) was required to be made in Form 'C', whereas disclosure under Reg. 13(4) ought to have been made in Form 'D'.

SAT correctly mentioned that Reg. 13(3) gets triggered when shareholding of *any person* holding more than 5% shares or voting rights in any listed company undergoes change in shareholding and such change exceeds 2% of total shareholding/voting rights in the company. Reg. 13(4) gets triggered when shareholding of a *person who is a Director/Officer* of listed company undergoes change from last disclosure made under SEBI Regulations and such change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding/voting rights, whichever is lower. SAT stated that obligation to make disclosure under Reg. 13(3) is independent of obligation to make disclosure under Reg. 13(4).

SAT further commented that expression 'any person' in Reg. 13(3) includes a director/officer referred to in Reg. 13(4) and cannot be a ground to infer that disclosure made under Reg. 13(4) would mean complying with Reg. 13(3). SAT stated that not only yardstick for triggering respective regulation is different, but format of disclosure under the regulations is different.

SAT rejected the appellant's argument that Reg. 13(4) is special regulation and Reg. 13(3) is a general provision and stated that it was not possible to apply the principle that special provision would prevail over general provision in case of conflict.

SAT went one step further and mentioned that Reg. 13(6) is clear that every company shall disclose to stock exchanges the information received under Reg. 13(3) & Reg. 13(4) in prescribed formats. It concluded that Reg. 13(3) & 13(4) require persons to make separate disclosures in separate formats, and disclosure made under Reg. 13(4) won't absolve appellant from making disclosure under Reg. 13(3). SAT upheld SEBI's order and stated that penalty of Rs. 5 lakh levied by SEBI was not excessive/arbitrary/unreasonable.

Shri Ashlesh Gunvantbhai Shah v. SEBI - Compliance of Reg. 13(3)

5. Appellant had disposed of 74,547 shares of Target Company which represented 6.2% of total shareholding. Since such disposal was in excess of prescribed limits under Reg. 13(3) of PIT Regulations and Reg. 29(2) of SAST Regulations, 2011, SEBI, AO held that it was obligatory to make disclosures under PIT Regulation and SAST Regulations. SEBI- AO imposed penalty of Rs.5 lakh upon appellant. Appellant filed an appeal with SAT to challenge order of SEBI, AO.

SAT observed that sale of shares that was reported on BSE's website in bulk deal data, would not absolve appellant from making disclosures under PIT Regulation and SAST Regulations. It also observed that, even though the company had made disclosures to stock exchanges, the same would not absolve appellant from making disclosures under respective regulations. SAT mentioned that, irrespective of such disclosures, obligation on appellant's part to make disclosures under respective regulations was mandatory. SAT dismissed the appeal and upheld SEBI AO's order.

Indsil Hydro-Power and Manganese Limited: - Interpreting Reg. 13 along with cl. 49 disclosures

6. SEBI, AO observed that one of the Directors ('Noticee') of Indsil Hydro-Power and Manganese Limited ('IHPML') was in possession of 7,08,200 shares (7.49%) and later on sold 58,500 shares, by which his shareholding decreased to 6,49,700 shares (6.88%). SEBI, AO stated that the Noticee was to disclose the same to the company in accordance with Reg. 13(4), read with Reg. 13(5).

SEBI, AO rejected the Noticee's contention that Formats (Form D) for disclosures were introduced only w.e.f. July 11, 2003 *vide* SEBI (Insider Trading) (Amendment) Regulations, 2003, while as sale of shares took place only on April 21, 2003. SEBI, AO stated that even if amendment to Form D was introduced in July, 2003, Noticee ought to have made the disclosures in the prescribed Format as it existed during relevant period.

SEBI, AO also rejected Noticee's contention that company had made requisite disclosures under cl. 49 of Listing Agreement and observed that such disclosure would not absolve Noticee from his duty to disclose under PIT Regulations. It also stated that requirements and compliance of clause 49 were separate/

independent and the same had nothing to do with PIT Regulations. SEBI imposed penalty of Rs. 2,00,000/- on Noticee for such non-compliance.

MAN Industries (India) Limited - What is PSI?

7. SEBI, AO observed that the Company & other individual Noticees (CMD, Vice-CMD, EDs, CS) had delayed disseminating Price Sensitive Information ('PSI') to stock exchanges regarding bagging of certain orders and also had not amended the Model Code of Conduct as specified in PIT Regulations. AO observed that the company had addressed to BSE & NSE, as corporate announcements, about bagging of orders of Rs. 1,340 crores from Middle East Company. Consequent to announcement, there was impact on stock price of the company. The AO observed that there was delay in disclosing PSI concerning the order amounting to violation of PIT Regulations which mandated prompt disclosure of PSI to exchanges and dissemination on a continuous and immediate basis.

The AO noted that PSI was a broad concept and two tests were needed to be applied:

- (i) Whether information directly or indirectly related to company; and,
- (ii) Whether information, if published, was likely to materially affect price of securities, irrespective of actual price witnessed post-disclosure of information.

The AO compared the order size with net sales & turnover of company and concluded that "order bagging" was price sensitive information and ought to have been promptly intimated to Stock Exchanges in accordance with PIT Regulations, whereas there was a delay of 59 days and 7 days (for two contracts signed on March 1, 2009 & April 22, 2009).

SEBI- AO observed that Noticee had traded in company's scrip and had not sought pre-clearance for certain trades and also noted that Model Code was not amended in tune with amendment in PIT Regulations which required Noticee to seek pre-clearance of the trades. AO stated that sending 'circular' to all branches of the company informing that 'Code of Conduct' for Insider Trading had been amended was not 'material' and 'effective' for amendment to 'Code of Conduct'.

SEBI, AO observed that there was a delay in intimating PSI to stock exchanges and also non-adoption of amended Model Code of Conduct by Board of Directors of the company and accordingly imposed penalty of Rs. 25,00,000 on Noticees.

Ex-CMD of Gammon Infrastructure Projects Limited - What is PSI?

8. SEBI passed an *Ad-Interim Ex-Parte* Order against Ex-CMD of Gammon Infrastructure Projects Limited ('GIPL'), restraining him from buying/selling/dealing in securities/accessing securities markets, either directly or indirectly, till further directions.

On August 9, 2013, Board of Directors of GIPL passed a resolution for termination of the Shareholders' Agreement. Termination agreements were signed on August 30, 2013. The same was intimated on September 3, 2013. Ex-CMD of GIPL sold approximately 1,43,000 shares for an aggregate value exceeding Rs. 10,27,000/-. His trade constituted approximately 98.92% of total market volume for the GIPL scrip. Such trade was made after the board's approval and before intimation to stock exchange, *i.e.*, on August 22, 2013.

SEBI observed that core activity of GIPL was participation in infrastructure projects and termination of Shareholders' Agreement for infrastructure projects was a significant change in plans/operations of GIPL and had a likelihood of affecting stock prices of GIPL. SEBI concluded that 'cancellation of shareholders agreement' was PSI in terms of SEBI (PIT) Regulations and observed that such information remained Unpublished PSI ('UPSI') till stock exchanges were intimated. Therefore, trade by Ex-CMD of company during the period, *i.e.*, from date of passing resolutions till date of intimation to Stock Exchanges amounted to insider trading. SEBI ordered Noticee to file reply within 21 days and avail of an opportunity of personal hearing at SEBI.

Conclusion

9. Company Secretary & Secretarial Dept. of any listed company also play the roles of the 'watchdog' within the company. Capital Market watchdog, SEBI, plays pivotal role by keeping check on malpractices in the primary and secondary markets ensuring that investors interest is protected. In the above cases SEBI/SAT have travelled beyond PIT Regulations and interpreted phrases with broader perspective. Also, Insider Trading Regulation gets more interesting as they are headed for an amendment after the SEBI Board's meeting held on November 19, 2014.

