

Supreme Court interpret 'price sensitive information', emphasises on 'motive' for enforcing PIT Regulations



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The SEBI (Prohibition of Insider Trading) Regulations is one of the shortest Regulations in securities laws, however, it has been the most debated and litigated regulations in the recent times. The reason for the increase in litigation in the SEBI (PIT) Regulations would be - evolution of 'innovative ways' on doing insider trading, ease of getting inside news from different social media platforms, increase in the use of technology by Regulator, etc. In my view, the success of effective implementation of SEBI (PIT) Regulations is upon the efficient enforcement of the regulations. The present case of *SEBI v. Abhijit Ranjan* [Civil Appeal No.563 of 2020, dated 19-9-2022] is quite interesting and has wide implications on subsequent insider trading probes. Depending upon, the facts of the said case, some observations of the Supreme Court would be relevant in some similar cases.

(A) Brief facts of the case: The facts of this case are quite unique. It is necessary to understand the chronology of events, which will ultimately help us in understanding the observations of the Supreme Court and its impact on on-going cases and interpreting SEBI (PIT) Regulations, 2015. The brief facts of the case are presented as follows:

- (1) Mr. Abhijit Ranjan ('Respondent') was the Chairman and Managing Director ('CMD') of Gammon Infrastructure Projects Limited ('GIPL') till September 20, 2013. Thereafter, he ceased to be the CMD, but continued to be a director of GIPL;
- (2) In the year 2012, GIPL was awarded a contract by NHAI. The total cost of the project was Rs. 1,648 crores. For the execution of the project, GIPL set-up special purpose vehicle - Vijayawada Gundugolanu Road Project Private Limited ('VGRPPL'). Another company -Simplex Infrastructure Limited ('SIL') was awarded a contract by NHAI in Jharkhand and West Bengal and the total cost of the project was Rs.940 crores. For the execution of project, SIL set-up a special purpose vehicle called Maa Durga Expressways Private Limited ('MDEPL');
- (3) GIPL entered into two shareholders agreements with SIL. Under these agreements, GIPL was to invest in MDEPL and SIL was to invest in VGRPPL for their respective projects. The mutual investments were to be tuned in such a manner that GIPL and SIL would hold 49% equity interest in each other's projects;
- (4) However, on August 9, 2013, the board of directors of GIPL passed a resolution authorizing termination of both shareholders agreements;
- (5) On August 22, 2013, the Respondent sold about 144 lakhs shares (approx.) held by him in GIPL, for an aggregate value of approximately Rs.10.28 crores;
- (6) On August 30, 2013, GIPL made a disclosure to NSE and BSE regarding the termination of two shareholders agreements;
- (7) Based on the inputs received from NSE, about aforesaid transaction and possibility of the trading having taken place on the basis of Unpublished Price Sensitive Information ('UPSI'), SEBI

conducted a preliminary enquiry. After completion of the preliminary enquiry, SEBI passed an *ex parte* interim order on July 17, 2014, holding *prima facie* that Respondent violated the provisions of SEBI Act and SEBI (PIT) Regulations and consequently restraining the Respondent from buying, selling or dealing in securities and accessing the security markets directly or indirectly. This *ex parte* interim order was also confirmed by confirmatory order dated March 23, 2015 passed after providing an opportunity of hearing to the respondent;

- (8) Challenging the said order of SEBI, the Respondent filed a statutory appeal before the Securities Appellate Tribunal ('SAT'). The appeal was allowed by SAT by order dated November 8, 2019 and it is against the said order that SEBI appealed in Supreme Court.

(B) Key Observations of SAT: The summary of reasons of SAT for allowing the appeal are as follows:

- (1) The information regarding termination of two shareholders agreements, was not actually a 'Price Sensitive Information', since the investment of GIPL in SIL, to the tune of Rs. 4.9 crores constituted only 0.05% of GIPL's order book value at the end of August, 2013 and only 0.7% of its turnover for the financial year;
- (2) At that time, the Respondent was in dire need to sell the shares for the purpose of Corporate Debt Restructuring ('CDR') package and hence he cannot be said to have indulged in trading on the basis of information within his knowledge; and
- (3) There was no reason why SEBI did not take into account the last trade price of September 3, 2013, but chose the price as on September 4, 2013.

(C) Questions before the SC: The questions before SC were as follows:

- (1) Whether information regarding decision of GIPL's board of directors to terminate the contracts can be characterized as 'price sensitive information' within the meaning of SEBI (PIT) Regulations 1992?
- (2) Whether sale by Respondent of equity shares held by him in GIPL, under peculiar and compelling circumstances in which he was placed, would fall within mischief of 'insider trading' in terms of SEBI (PIT) Regulation?
- (3) Whether SEBI should have taken into account the last traded price of the day on which information was disclosed instead of the trade price of the next day?

(D) Summary and analysis of SC observations: The Supreme Court has made observations on several points/regulations and the same are analysed as follows:

(1) Parameters for finding out if a person is guilty of violation of Regulation 3 of SEBI (PIT)

Regulations, 1992¹: To find out if a person is guilty of violation of the said provision, the Court should address itself to the following questions namely:

- (i) Whether the person is he an 'insider'?
- (ii) Did the person possess or have access to any information relating to the company?
- (iii) Whether such information was 'price sensitive'?
- (iv) Whether the information was 'unpublished'?
- (v) Whether he dealt in securities by subscribing, buying, selling or agreeing to do any of these things in any securities?

The above observations are under 1992 Regulations. Taking into consideration the SEBI (PIT) Regulations, 2015, in my view, the following questions should be addressed to find out if a person is guilty of violation of the corresponding provisions:

- (i) Whether the person is he an 'insider'²?
- (ii) Whether such information was 'unpublished price sensitive information'³?

- (iii) Whether the person communicated or provided access to any UPSI or dealt in securities by subscribing, buying, selling or agreeing to do any of these things in any securities?

One of the parameters under SEBI (PIT) Regulations, 1992 that 'did the person possess or have access to any information relating to the company?' is now not relevant under SEBI (PIT) Regulations, 2015 as the condition is now part of the definition of 'insider'.

The parameters - 'Whether the information was price sensitive' and 'Whether the information was unpublished'- these conditions need to be clubbed as the SEBI PIT Regulation, 2015 does not independently define 'price sensitive information' but defines 'UPSI'.

(2) Price sensitive information under SEBI (PIT) Regulations, 1992 vs. UPSI under SEBI (PIT) Regulations, 2015: Regulation 2(ha) of the SEBI (PIT) Regulations, 1992 defined 'Price Sensitive Information' as it means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. The explanation to the said provision states that the following shall be deemed to be price sensitive information: (i) Periodical financial results of the company, (ii) Intended declaration of dividends (both interim and final), (iii) Issue of securities or buyback of securities, (iv) Any major expansion plans or execution of new projects, (v) Amalgamation, mergers or takeovers, (vi) Disposal of the whole or substantial part of the undertaking, and (vii) Significant changes in policies, plans or operations of the company.

The Explanation under Regulation 2(ha) of SEBI (PIT) Regulations, 1992 creates a deeming fiction and it makes 7 items of information listed thereunder as price sensitive information. It may be interesting to note that out of the 7 items of information listed under the Explanation, all the others except Item No.(vii) are likely to have an impact directly upon the financial strength of the company. Item No.(vii) stands apart, in that it is very broad and general in nature. On this aspect, the Supreme Court observed that "*.... while dealing with a case falling under Explanation (vii) of Regulation 2(ha), one may have to see whether there was any likelihood of the said information materially affecting the price of the securities of the company. Additionally, the activity in which the insider was involved also determines his culpability for violation of Regulation*"

SEBI (PIT) Regulations, 2015 defines 'UPSI but not 'Price sensitive information'. UPSI is defined in Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015 as it means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: (i) Financial results, (ii) Dividends, (iii) Change in capital structure, (iv) Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions, (v) Changes in key managerial personnel. The definition of UPSI is inclusive in nature, of which first four are having an impact on the financial statements of the company and the last point does not have any specific financial impact on the decision of the company. As mentioned in the Note to the said clause, the said matters have been listed to give illustrative guidance of UPSI. Therefore, the definition is 'inclusive definition'.

(3) SC's observations on the price sensitivity of an information: On the price sensitivity of the information, the Supreme Court observed that "*..... the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant.*" These observations are relevant and important for even the on-going cases under SEBI (PIT) Regulations, 2015.

(4) Actual gain or loss is immaterial, but the motive for making a gain is essential: After discussing the definition of insider, price sensitive information, correlation of price sensitive information to

materiality, the Supreme Court makes a very interesting observation w.r.t. the motive for making gain from insider trading. The Supreme Court gives an examples and observes as follows "*..... For instance, the sale by a person at a time when the price of the securities is likely to shoot up on account of price sensitive information coming into the public domain or the purchase by a person at a time when the price of the shares is likely to go downward due to price sensitive information getting published, cannot come under the category of insider trading. While it is true that the actual gaining of profit or sufferance of loss in the transaction, may not provide an escape route for an insider against the charge of violation of Regulation 3, one cannot ignore normal human conduct. If a person enters into a transaction which is surely likely to result in loss, he cannot be accused of insider trading. In other words, the actual gain or loss is immaterial, but the motive for making a gain is essential.*"

Probably, for the first time, the Supreme Court has taken into consideration the 'normal human conduct' and observed that motive of making a gain is an essential factor for charges under SEBI (PIT) Regulations. In my view, these observations are quite relevant to the cases under SEBI (PIT) Regulations, 2015. However, the same would only in case of trading of securities and not for the other non-compliances under the SEBI (PIT) Regulations, 2015.

Referring to the present case (i.e. of Mr. Abhijit Ranjan), the Supreme Court noted that the acquisition by GIPL, of an equity interest in SIL's project was worth Rs. 460 crores (approximately) and similarly, the acquisition by SIL, of the equity interest in GIPL's project was worth Rs. 807.52 crores. Therefore, the cancellation of the shareholders Agreements resulted in GIPL gaining very hugely in terms of order book value. The Supreme Court observed that "*In such circumstances an ordinary man of prudence would expect an increase in the value of the shares of GIPL and would wait for the market trend to show itself up, if he actually desired to indulge in insider trading. But the respondent did not wait for the information about the market trend, after the information became public. The reason given by him, which is also accepted by the WTM and the Tribunal is that he had to dispose of his shares as well as certain other properties for the purpose of honouring a CDR package. It is on record that if the CDR package had not gone through successfully, the parent company of GIPL namely, Gammon India Ltd., could have gone for bankruptcy.*" The Supreme Court observed that therefore SAT was right in observing that the respondent had no motive or intention to make undeserved gains by encashing on the UPSI that he possessed.

(5) Attempt to encash the benefit of information vs. Mens rea: On the comparison of both the parameters, the Supreme Court observed that "*But an attempt by the insider to encash the benefit of the information is not exactly the same as mens rea. Therefore, the Court can always test whether the act of the insider in dealing with the securities, was an attempt to take advantage of or encash the benefit of the information in his possession. This is the test we have applied to the case on hand.*" The Supreme Court has now introduced another parameter for determining violation of SEBI (PIT) Regulations i.e. whether the act of the insider in dealing with the securities, was an attempt to take advantage of or encash the benefit of the information in his possession. In the present case of Mr. Rajan, the shares were sold with an intention to avoid bankruptcy of the parent company. Therefore, the Supreme Court observed that he did not encash the benefit of the information in his possession.

(E) Concluding remarks: Primarily, the Supreme Court decision is on two important issues: (i) What constitutes 'price sensitive information' and (ii) What is the motive behind the trade. Generally, a person will not do insider trading in securities with an intention to make a loss. The present case is quite unique on this aspect. As discussed above, the case becomes relevant when the insider actually trades in securities when in possession of UPSI. This judgment on Supreme Court cannot be applied when there are other non-compliances under the SEBI (PIT) Regulations (e.g. non-disclosure of information to stock exchanges, non-maintenance of structured digital database, non-closure of trading window, etc.). In my view, this judgment of the Supreme Court will have an impact on the on-going insider trading cases and SEBI would have to change the nature of probes and introduce 'motive' at the time of scrutiny of such non-compliance under SEBI (PIT) Regulations.



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1. Relating to 'Prohibition on dealing, communicating or counselling on matters relating to insider trading'.
 2. As defined under Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015.
 3. As defined under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015.