LSI Insight

Recent Noteworthy Rulings on Insider Trading
Table Of Contents

1. Background ........................................................................................................................................... 2
2. Noteworthy Rulings By SAT ............................................................................................................. 3
3. Noteworthy Rulings By SEBI ............................................................................................................ 7
4. Important News Updates ...................................................................................................................... 11
Recent Noteworthy Rulings on Insider Trading

**Background:**

The existence of a fair, vibrant and efficient securities market is one of the essential ingredients for economic growth of a country. To instill confidence, trust and integrity in the securities market, the market regulator needs to ensure fair market conduct and it can be ensured by prohibiting, preventing, detecting and punishing such market conduct which leads to market abuse. The primary object of SEBI (Prevention of Insider Trading) Regulations, 2015 (‘PIT regulations’) is to prohibit the trading in listed securities of a company based on its Unpublished Price Sensitive Information (UPSI) by those persons who are aware of the internal workings of the company, also known as ‘Insiders’ and ensuring adequate disclosures in the market place of price sensitive information relating to the company.

The year 2019 began with the vigilant Indian capital markets watchdog revamping PIT Regulations w.e.f. April 1, 2019, thereby establishing strict accountability on Corporates for preventing insider trading. However, in spite of the constant efforts of capital market regulators world over to curb the practice, Insider Trading remains a rampant problem in the wake of challenge faced in investigating and establishing cases of insider trading. Insider trading has been emerging to be one of the most prominently scrutinised cases of violations by SEBI. Data from SEBI’s Annual report indicate a multifold increase in the scrutiny of alleged cases of violations of insider trading regulations in FY2018-19.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Investigations Taken Up</th>
<th>Investigations Complated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market manipulation and price rigging</td>
<td>40</td>
<td>84</td>
</tr>
<tr>
<td>‘Insider’ related manipulation</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Insider Trading</td>
<td>10</td>
<td>70</td>
</tr>
<tr>
<td>Takeovers</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>60”</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>217</td>
<td>294</td>
</tr>
</tbody>
</table>

*Source: SEBI Annual Report 2018-19*

In FY18 and FY19, SEBI took up 85 cases of insider trading violations for investigations, but was able to complete less than half of those probes. In some instances, the Securities Appellate Tribunal (‘SAT’) has overturned the regulator’s punitive action. For instance, in May 2019, SAT allowed Piramal Enterprises Ltd.’s appeal and converted the penalty imposed by SEBI for failure to close trading window, into a warning. In a recent case, SAT set aside SEBI’s ex-parte interim order directing impounding of Rs. 3.83 Cr. from a Company’s CEO for violating insider trading norms on finding that there was no ‘extreme urgency’ for passing such order.

Another development in the recent past, has been the SEBI orders in the ‘WhatsApp leak’ saga that has been in the news since November 2017. SEBI examined the WhatsApp chats extracted from some seized devices and it was found that earnings data and other financial information of around 12 companies including companies like Bajaj Auto Ltd., Wipro Ltd., Mindtree Ltd. were leaked through WhatsApp messages before being prior to the announcement made by the said companies.

In this context, listed below are a bunch of noteworthy rulings recently rendered by SAT and SEBI with regards to insider trading violations along with a few important developments on the regulatory front.

---

### Recent Noteworthy Rulings on Insider Trading

**Noteworthy Rulings by SAT**

<table>
<thead>
<tr>
<th>1. SAT: Notes Piramal’s ‘Spotless’ image, ‘in-substance’ compliance of PIT regulations, quashes penalty [LSI-219-SAT-2019(MUM)]</th>
<th>2. SAT: Upholds Rs. 2 Cr. penalty on NDTV for non-disclosure of tax demand having “material impact” [LSI-423-SAT-2019(MUM)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAT allows Piramal Enterprises Ltd.’s (‘PEL’) appeal, holds penalty for violation of PIT regulations regarding handling of unpublished price sensitive information (UPSI) as unsustainable while converting penalty for failure to close trading window, into warning; Regarding failure to handle UPSI, SAT notes that the information was shared with Mr. Anand Piramal who was a promoter and a deemed to be connected person under 2(h)(viii) of PIT Regulations, holds that penalty imposed in this regard was unsustainable, observing that information was shared on ‘need to know’ basis as provided in PIT Regulations; With respect to the second charge regarding failure to close trading window, SAT dismisses PEL’s contention, elucidates that “the purpose of closing the trading window...is to ensure that trading is restricted during the period in question and pre-clearance requests can only be sanctioned as per the existing Model Code of Conduct.”; Noting that “...UPSI at all times was preserved and there was no misuse of UPSI.”, holds violation to be of technical nature; Concluding that PEL being a blue chip Company, the imposition of penalty, even though meagre, will leave an ‘indelible mark’ on PEL’s spotless image, opines that “remedial measures should be taken in the first instance and not punitive measures”; Thus in absence of clinching evidence of insider trading/ UPSI misuse, holds that the penalty imposed by SEBI is unwarranted and disproportionate, and converts the imposition of penalty into one of warning to PEL.</td>
<td>SAT upholds penalty of Rs. 2 Cr. imposed by SEBI on NDTV and its Directors, for violation of Clause 36 of Listing Agreement and certain provisions of PIT Regulations, holding that the penalty imposed was just and fair, and was neither arbitrary nor unreasonable; Notes that NDTV had failed to disclose to the stock exchanges about a tax demand of Rs. 450 Cr. and considering that the company’s net worth was Rs. 365 Cr., SAT opines that “Such demand which eats away the networth of the company is...a material event and the assessment order had a “material impact” which the company was required to report to the Exchange “promptly” and which was required to be made public “immediately”. Further observes that it was justified in the circumstances of the case especially when the decision not to disclose the tax demand was a conscious decision taken by the management of NDTV, and thus holds that the imposition of Rs. 2 lakh upon the Compliance Officer for violation of Clause 36 of the Listing Agreement was unjustified; Stating that “...the Compliance Officer is only an employee of the Company and works on the dictates and directions of the management of the Company.”, explicates that “...thus, when the entire management is being penalized, it was not open to the AO to also book the Compliance Officer for the said fault.” however, upholds penalty on the Compliance Officer to the extent it was imposed for not complying with disclosure norms under the PIT Regulations and the Code of Corporate Disclosure Practices for Prevention of Insider Trading”.</td>
</tr>
<tr>
<td>3. SAT: Upholds penalty imposed by SEBI on promoter, connected persons violating PIT Regulations [LSI-500-SAT-2019(MUM)]</td>
<td>4. SAT: Exonerates Ex-Chairman from insider trading charges, information not being price sensitive [LSI-640-SAT-2019(MUM)]</td>
</tr>
<tr>
<td>SAT upholds penalty of Rs. 40 Cr. imposed by SEBI on Appellants, for indulging in insider training based on UPSI in violation of Regulation 3 and 4 of PIT Regulations, however quashes penalty imposed for violation under Takeover Regulations; Rejects Appellant’s contention that information of it being lowest bidder of a contract would not amount to UPSI, observing that term “unpublished” as defined under Regulation 2(k) has a definite connotation and has to be construed strictly; However, quashes penalty for alleged violation of Takeover Regulations, affirming the contentions of Appellants 3 and 4 that they are not promoters of the Company and were not part of the promoter group, therefore, the shares pledged as collateral for loans availed by them could not have been disclosed under Regulation 8A of Takeover Regulation; Lastly, rejects SAT sets aside SEBI order holding ex-Chairman and Managing Director (‘Appellant’) of a Company liable for violation of PIT Regulations, for trading in Company’s shares on the basis of UPSI relating to cancellation of two shareholders agreements of the Company; Notes Appellant’s submission that due to his dire need to infuse funds in the Company under the master restructuring agreement to implement a CDR package as promoters’ contribution was necessary, he was required to sell the Company’s shares as well as other properties owned by him; Further notes that on investigation, SEBI had concluded that the Appellant sold Company’s shares based on UPSI about termination of the agreements, to avoid probable loss, as the information would have had an adverse impact on the share price of the Company;</td>
<td></td>
</tr>
</tbody>
</table>
Appellants’ plea that direction to pay penalty jointly and severally by Appellants was arbitrary, states that all Appellants were found to be ‘connected persons’ as defined under PIT Regulations and hence, were rightly held to be equally liable to pay penalty amount jointly and severally.

However, SAT observes that in a way, the termination of agreements could have been positive to shareholders, and opines that “Considering the minor proportion of the transaction to the turnover of GIPL… it cannot be termed as price sensitive information…even if it is assumed that the information was a price sensitive information, still the Appellant cannot be blamed of insider trading for…he did not trade “on the basis of the information”;

In conclusion, finding that SEBI had irrationally calculated certain figures in order to show that the Appellant had avoided the probable loss, thereby, allowing the appeal, SAT directs SEBI to take steps for refund of the amount already deposited by the Appellant.

5. SAT: Fines SEBI for unjustly penalizing Compliance Officer serving notice period [LSI-350-SAT-2019(MUM)]

SAT imposes cost of Rs. 50,000 on SEBI while quashing SEBI’s ‘wholly unjustified’ penalty imposition on Compliance Officer (‘Appellant’) of the Company for violation of PIT Regulations during her ongoing notice period; Notes that it had come on SEBI’s record that Appellant had tendered the resignation from the Company and she was serving the notice period, thereby wasn’t involved in the Board meeting wherein the price sensitive decision to cancel the proposed merger was taken; Opines that given the aforesaid ample evidence, confirmation by the Chairman of the Company about her non-involvement in the relevant Board Meeting as well as evidence regarding Appellant’s resignation, the question of imposition of penalty does not arise; Considering that the Appellant had to undergo this litigation and face harassment for almost 1.5 years, and taking note of substantial portion spent towards fee paid to an advocate for drafting the appeal, holds the Appellant entitled to costs from SEBI.

SEBI penalizes Compliance Officer (‘Noticee’) of a Company with Rs. 50,000, for violating Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (‘PIT Regulation’) r/w Clauses 2.1, 3.2 and 7(ii) of Schedule of the Code of Corporate Disclosure Practices (‘CCDP’) for PIT; Notes that the Company did not disclose to the stock exchange the price sensitive information on its decision to cancel the proposed merger which was taken during a Board meeting; Observes Noticee’s submission that she was serving notice period while the said meeting was held, however, finds that she was a Compliance Officer at the relevant date when disclosures were required to be filed on continuous and immediate basis to stock exchanges; Also observes that the Noticee was not involved in the said Board meeting, therefore gives benefit of doubt to the Noticee, however opines that in terms of CCDP for PIT, Noticee was required to make relevant disclosures, irrespective of the fact that she was serving a notice period; On observing no unfair advantage taken by the Noticee/ loss suffered by any investor due to violation by the Noticee, takes lenient view w.r.t. quantum of penalty.

6. SAT: SEBI’s ex-parte interim order in insider trading case unwarranted, absent “extreme urgency” [LSI-508-SAT-2020(MUM)]

SAT quashes SEBI’s ex-parte interim order directing impounding of Rs. 3.83 Cr. from a Company’s CEO (‘Appellant’) for violating insider trading norms, holds that no case of extreme urgency was made out here for SEBI to pass such an order merely on arriving at the prima-facie conclusion that the Appellant was an “insider”, without considering the balance of convenience or irreparable injury; Opining that SEBI’s justification for passing the impugned order is patentely erroneous, and unsustainable, SAT observes that while on one hand, the matter wasn’t adjudicated on merits by SEBI, on the other, the Appellant

SEBI passes an ex-parte ad-interim order directing impounding of Rs. 3.83 Cr. being the notional loss avoided on account of trades carried out while being in possession of the UPSI relating to Company’s financial results, from a Company’s CEO & MD (‘Noticee’), on opining...
was directed to deposit the possible disgorgement amount in advance; Tribunal remarks, “...no amount towards disgorgement can be directed to be deposited in advance unless it is adjudicated and quantified unless there is some evidence to show and justify the action taken. An order of the like nature can only be passed during the pendency of the proceedings and such orders cannot be passed at the time of initiation of the proceedings.”; Tribunal concludes that in absence of any finding that the Appellant would remove or dispose of all the property or delay/obstruct the proceedings, “...the ex-parte interim order cannot be sustained especially when... there is no evidence to show that the appellant was trying to divert the alleged notional gain/loss.”, relies extensively on its ruling in North End Foods in this regard.

SAT reduces the penalty imposed by SEBI on ICICI Bank for non-disclosure of its Binding Agreement for amalgamation with Bank of Rajasthan, to Rs.10 lakh, condemns SEBI for inordinate delay in issuing SCN to ICICI Bank, and remarks that, “Several years’ delay in show-causing and concluding proceedings in such known incidence of violation / alleged violations is a failure in effectively performing the behavior modification function of a market regulator”; However, rejecting Appellant’s contention that the Binding Agreement was premature for disclosure as it was only a contingent contract, SAT elucidates that, “...disclosure regulations and the provisions of the Contract Act stand on different footing. While certainty is paramount for a contract, materiality of an event is what is tested in disclosure; if the event does not fructify disclose that as well with reasons explained.”, and thus upholds SEBI’s observation in this respect; SAT further expounds that, “The purpose and spirit of disclosure in a disclosure-based regulatory regime is simple and clear - disclose all material and price sensitive events/information and disclose even when one is in doubt. It does not have to be tested with finer legal examination, hairsplitting arguments or semantics.”; However, at the same time, SAT upholds Appellant’s contention that there was an inordinate delay on SEBI’s part in issuing the SCN, even when it had noticed the disclosure violations much earlier, and rules, given that a violation committed at an early stage of an organizational life cycle, which was known to the Regulator, cannot be invoked to punish it several years down the line when the organization has reached a different stature and position; Thus, while highlighting that corrective actions relating to market violations need to be taken by the Regulator at the earliest, as after all in this case, the charge against Appellant was only 1 trading day’s delay in disclosure, but the delay on SEBI’s part to show cause was 2955 days, SAT concludes that there is prima facie violation of PIT Regulations by the Noticee; Pursuant to an investigation into possible insider trading in Company’s shares for a particular period, SEBI found that – (i) the Noticee was in possession of UPSI relating to decline quarterly financial results for a particular period, (ii) Noticee sold 51,000 shares before the announcement of the said results; Holds that the Noticee being an “insider” and having traded on the basis of UPSI and during the UPSI period, avoided loss on account of the aforesaid fall in price of the shares; Lastly noting the possibility of Noticee diverting the notional gain which may result in defeating the effective implementation of the direction of disgorgement, finds it imperative to take urgent steps of impounding and retaining the proceeds of notional loss avoided by the Noticee, by way of an interim measure.

SAT: Reduces penalty for non-disclosure of amalgamation-related information; Raps SEBI for inordinate delay [LSI-567-SAT-2020(MUM)]

SEBI imposes a penalty to the tune of Rs. 12 lakh on ICICI Bank and its compliance officer, for delay of 1 trading day in disclosing information regarding signing of a binding agreement with Bank of Rajasthan (‘BoR’) in respect of amalgamation with BoR; Rejects ICICI Bank’s contention that the said agreement was not for amalgamation, remarking that “the Binding agreement was a proper formalized legal agreement and a crucial step to effect the amalgamation of BoR with ICICI Bank”; Further, highlighting that the amalgamation of BoR with ICICI Bank was going to have a significant bearing on the operations/performace of both the Banks, and referring to Regulation 2(ha)(v) of the PIT Regulations, SEBI holds that here, the signing of the Binding agreement is a Price Sensitive Information (‘PSI’); Remarking that as a listed company, “it is the responsibility of ICICI Bank to promptly disclose all the price sensitive information”, SEBI adds that the compliance officer of the Bank “who is responsible for the implementation of the code of conduct under the overall supervision of the Board of the listed company” also failed to ensure that ICICI Bank complied with the disclosure requirements; In conclusion, rules that “When a listed company fails in complying with such provisions of Listing Agreement, it opens opportunities for insiders to take fraudulent advantage at the cost of other investors.” and hence deems it essential to impose commensurate penalty.

SEBI: Penalizes ICICI Bank, compliance officer for 1-day delay in disclosing amalgamation related agreement [LSI-543- SEBI-2019(MUM)]
concludes, "...undue delay in initiating the proceedings by the respondent by itself causes prejudice and would ultimately attach a stigma pursuant to any adverse order that may be passed."
**Noteworthy Rulings by SEBI**

<table>
<thead>
<tr>
<th>1. SEBI: Directs CS to disgorge unlawful gains made while in possession of UPSI</th>
<th>2. SEBI: Bars ex-Diageo official for 7 years for insider trading in United Spirits scrip</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEBI directs Company Secretary (‘CS’)/Compliance Officer of Jagran Prakashan Ltd. (‘Company’/‘JPL’) and his wife (collectively - `Noticees’) to disgorge amount gained unlawfully, by trading in JPL’s shares while in possession of Unpublished Price Sensitive Information (‘UPSI’); Notes that the CS was involved in the - (i) preparation and circulation of the agenda of a Board meeting, which had declaration of interim dividend as one of its items, and (ii) preparation of minutes of an associate Company’s Board meeting in which it was resolved to sell JPL’s shares; Rejects Noticees’ contention that since the shares to be sold were less than 2% of the Company’s paid-up share capital, the information would not constitute PSI, observes that “The SAST and PIT Regulations do not state that trades below 2% will not be PSI”; On perusal of Regulation 2(ha) of SEBI (Prohibition of insider trading) Regulations, 1992 (‘PIT Regulations’) notes that as per the definition of the term ‘price sensitive information’, intended declaration of dividends, both interim and final is deemed to be PSI; Specifies that when a person is an ‘insider’ and has dealt in securities ‘when in possession’ of UPSI, Regulation 3(i) of PIT Regulations gets attracted.</td>
<td>SEBI bars an ex-Diageo official, along with three of his close relatives, from securities market, for trading in the scrip of United Spirits Ltd. based on UPSI for a period of 7 years and restrains them from associating with any listed public/ public company which intends to raise public money, also directs the relatives to disgorge wrongful gains of over Rs. 1 Cr. made by them; SEBI notes that Mr. Nishat (the ex-Diageo official) was a part of the global team who was representing Diageo in the transaction to consolidate shareholding of Relay, in United Spirits and was guiding the team since the beginning of the transaction lifecycle; Observes that the fact that Mr. Nishat was the Global Business Development Manager (M&amp;A) at Diageo, “…puts him the position where he is reasonably expected to have access to unpublished price sensitive information in relation to that company…Therefore, Shri Nishat falls within the definition of connected person and was an insider in terms of Regulation 2(e)(i) of PIT Regulations.”; Thus concludes that Mr. Nishat and his relatives traded in United Spirits scrip when they were in possession of UPSI, based on the “close family relationship” between them, and higher degree of preponderance of probability of the circumstantial evidence gathered from the timing of the trades in close proximity of the UPSI period.</td>
</tr>
<tr>
<td>3. SEBI: Fines Unitech Promoter and Director for flouting insider trading norms</td>
<td>4. SEBI: Impounds insider trading gains from Divi’s Labs CFO and his relatives</td>
</tr>
</tbody>
</table>
| SEBI imposes monetary penalty of Rs. 2 lakhs on Noticee (Promoter and Director of Unitech Ltd.) for violation of PIT Regulations; Notes that the Noticee failed to make disclosures with regard to change in his shareholding exceeding 25000 shares; Opines that PIT Regulations “seek to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control”; In this regard relies on observations made by the Appellate Tribunal in Milan Mahendra Securities Pvt. Ltd. Case wherein it was held that the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market; At the same time, observes that since the change percentage of change in Noticee’s shareholding was 0.04% of the company’s total share capital, the Noticee had not violated provisions of SAST Regulations. | SEBI impounds alleged unlawful gains to the tune of Rs. 96.68 lakh from Divi’s Laboratories CFO and his relatives on account of trading in the scrip of the Company, while in possession of UPSI, in contravention of PIT Regulations; Observes that the information about lifting of the US FDA import restrictions leading to the Corporate Announcement “…falls within the definition of UPSI…” and notes that the UPSI came into existence when a Director of the Co. made an email about the lifting of the import alert from the regulatory counsel of the Co.; Observing that until the information was communicated to the stock exchange, certain insiders, including the CFO who reported directly to the Chairman, had traded in its shares, SEBI remarks, “…the UPSI had filtered down to the manager level in the organization before announcement on the stock exchange platform.”; Further, SEBI affirms that the CFO and his relatives, being insiders, had knowledge of the UPSI and holds that the insiders made unlawful gains by trading in the Co.’s shares during the UPSI period; Therefore, elucidates that, “It…becomes necessary for SEBI to take urgent steps of impounding and retaining the proceeds.
Recent Noteworthy Rulings on Insider Trading

<table>
<thead>
<tr>
<th>5. SEBI: Penalizes Noticees for circulating Bajaj Auto’s quarterly results through WhatsApp prior to announcement</th>
<th>6. SEBI: Penalizes Noticees for communicating UPSI about Wipro, Mindtree’s financial results via Whatsapp</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEBI imposes a penalty of Rs. 15 lakh each on 2 Noticees for communicating UPSI relating to quarterly results of Bajaj Auto Ltd., to other persons through WhatsApp messages prior to announcement by the Company, thereby violating provisions of SEBI Act and Regulation 3(1) of PIT Regulations; Apprises that pursuant to news reports, SEBI conducted an examination wherein a number of devices were seized and it was found that earnings data and other financial information w.r.t. 12 Companies got leaked on WhatsApp, out of which Bajaj Auto Ltd.’s quarterly financial results for the 4th quarter of FY 2016-17 closely matched with the messages circulated in WhatsApp chats; Rejects Noticees’ contention that the said information was in the nature of Heard on Street and not UPSI observing that the information was neither claimed as arising from the market research nor was it the estimates/predictions of Noticees themselves; Observing that both the Noticees fell under the definition of ‘insider’ and neither of the Noticees were required to share such information as a part of their job description prior to the announcement of result, opines that “the disclosure of this information violates the rule of parity of information and perpetuated information asymmetry.”; Lastly remarks that “in order to safeguard the interest of the investors and the integrity of the securities market, one cannot import a liberal interpretation...so as to warrant the Noticees, who have been involved in the circulation of UPSI on a routine basis over the WhatsApp, with a benefit of doubt.”.</td>
<td>SEBI penalizes Noticee 1 with Rs. 15 lakh each for communicating UPSI relating to financial results of Wipro Ltd. and Mindtree Ltd., to other persons through WhatsApp messages prior to announcement by the Company, thereby violating provisions of SEBI Act and Regulation 3(1) of PIT Regulations, also penalizes Noticee 2 for similar violation w.r.t. Wipro’s results; Pursuant to news reports, SEBI conducted an examination whereby it was found that earnings data and other financial information w.r.t. scrips of certain Companies got leaked on WhatsApp prior to announcement by Company, out of which Wipro and Mindtree were 2 companies whose revenue and PBIT figures were found to be circulated by Noticee 1 (member of market chatter group) on Whatsapp chat which matched with the actual results announced later; Considering the fact that the shared information matched exactly with the subsequently published financial results, rejects Noticees’ submission that such information was in the nature of ‘heard on street’ (‘HOS’); Further finds that neither of the Noticees were required to share such information to various other unconnected entities as a part of their job prior to the announcement of results, thus opines that “In view of the gravity of consequences arising out of such sharing of information among the closed groups through WhatsApp or social media platform, I am not inclined to give any benefit of doubt in favour of the Noticees by treating the information as HOS...”. Lastly remarks that Noticees being associated with securities market, it was well within a reasonable expectation out of them to trigger an alarm when the information being circulated through WhatsApp messages so accurately matched with subsequently announced actual figures of the company, however the Noticees allowed themselves to continue to be an instrument in the chain of communication of such UPSI through WhatsApp messages, making them guilty of insider trading.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. SEBI: Penalizes Edelweiss’s Compliance Officer for failure to close trading window during UPSI existence</th>
<th>8. SEBI: Penalizes SpiceJet official, brother for violating insider trading norms</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEBI imposes a penalty of Rs. 5 lakh on Edelweiss Financial Services Ltd.’s ‘EFSL’ Compliance Officer (‘Noticee’) for failure to close the trading window during the existence of UPSI, in violation of SEBI Act and Regulation 3(1) of PIT Regulations; Notes that – (i) Noticee 1 (General Manager, Financial Planning Analysis and Treasury) bought shares of the Company during the investigation period, and was handling the financial information and holds that he was an insider when he purchased the shares, and (ii) Noticee 2 (Compliance Officer) was involved in the circulation of UPSI on a routine basis, with a benefit of doubt.”.</td>
<td>SEBI imposes a total penalty of Rs. 25 lakh on a SpiceJet Ltd. official and his brother, for trading in the scrip of the Company, while in possession of UPSI relating to the Company’s financial results, in violation of SEBI PIT Regulations; Notes that – (i) Noticee 1 (General Manager, Financial Planning Analysis and Treasury) bought shares of the Company during the investigation period, and was handling the financial information and holds that he was an insider when he purchased the shares, and (ii) Noticee 2 was involved in the circulation of UPSI on a routine basis, with a benefit of doubt.”.</td>
</tr>
</tbody>
</table>
Recent Noteworthy Rulings on Insider Trading

of PIT Regulations; Notes that – (i) EFSL’s wholly owned subsidiary had acquired a fintech company on April 5, 2017, which was disclosed to NSE and BSE on the same day, (ii) this acquisition was a price sensitive information which had come into existence on January 25, 2017 upon signing of Term Sheet; Observes from the announcement made by EFSL that the said acquisition would boost its fixed income advisory business, thus having direct impact on the revenue and profit of EFSL; Further w.r.t. Noticee’s contention that the acquisition was in the ordinary course of business and did not warrant any classification as UPSI as it had no impact at the industry level, while remarking that “The object is to see whether the announcement will have any impact on the security to which it relates to. The announcement may or may not have any impact at an industry level.”, SEBI holds that acquisition of a company cannot be said to be in ordinary course of business; Lastly finds that the term-sheet was binding in nature and thus, opines that “the UPSI had come into existence on the day of signing of Term Sheet itself.”, however clarifies that as the allegation in this matter is non–closure of trading window, it seldom matters when the UPSI had actually begun.

9. SEBI: Penalizes Noticee for violating insider trading norms based on strong preponderance of probability [LSI-510- SEBI-2020(MUM)]

SEBI imposes a penalty of Rs. 1.3 Cr. on Noticee for repeatedly trading in Company’s scrip and making unfair gain while being in possession of UPSI pertaining to the public announcement of open offer for acquisition of 26% of Company’s share capital, in violation of insider trading Regulations; Notes that – (i) the price sensitive information came into existence on March 12, which was published when the corporate announcement of the open offer was made to the exchanges on April 15, 2014, (ii) the Global Business Development Manager of one of the acquirers (Noticee’s son-in-law) was privy to the said information; Observes that the son-in-law was an ‘insider’ as defined under SEBI PIT Regulations and that he was in possession of the UPSI which he had communicated to the Noticee who had traded in the scrip of Company based on the UPSI and made unfair gains; Based on the higher degree of preponderance of probability of the circumstantial evidence gathered from the timing of the trades in close proximation of the UPSI period, concentration of the trades in Company’s stock options, given that it was the Noticee’s son-in-law and movement of funds, SEBI concludes that Noticee traded in Company’s stock options while being in possession of UPSI; Lastly w.r.t. Noticee’s submission that SCN is silent on how and when the UPSI was communicated, SEBI remarks that “…in insider trading matters, direct evidence will not be available always. A reasonable inference has to be drawn from the circumstantial evidence and conduct of parties…Thus, even though SCN is silent…in the given facts

(Noticee 1’s real brother) who had traded in the company’s scrip while in possession of the UPSI, was a connected person being Noticee 1’s sibling, and opines that Noticee 2 was also an insider; Remarking that “…both the Noticees had traded in the aid and advice of each other, particularly given the fact that Noticee 2 did not hold shares of Spicejet earlier.”, SEBI holds that it can be reasonably construed that there was an implied communication/advice between the Noticees; Further, holding that in his official capacity, Noticee 1 had access to price sensitive information pertaining to the financial position and earnings of the company and communicated the same to his brother, to thereby trade in the company’s shares, SEBI states that the Noticees had violated Regulation 4(1) of PIT Regulations and certain SEBI Act provisions; Thus, highlighting that “It is a regulatory requirement that no insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company.” and that the KMP of all listed companies including the Board of Directors, must at all times strictly adhere to the statutory code on Insider Trading formulated by the Company, concludes that Noticee 1 had failed to abide by the same.

10. SEBI: Directs Noticee to disgorge gains made by insider trading in Aurobindo Pharma’s shares [LSI-535- SEBI-2020(MUM)]

SEBI orders Noticee Co. to disgorge illegal gains of Rs. 3.77 Cr. made by it, along with interest, for violating insider trading norms while dealing in the scrip of Aurobindo Pharma Ltd. (‘APL’), also restrains the Noticee from securities market for an year; Finds that – (i) APL issued a press release regarding certain licensing and supply agreements entered into by it with Pfizer Inc which was a price sensitive information, (ii) Noticee executed trades in APL’s scrip upon receipt of funds from Veritaz Health Care Ltd. who was an insider possessing such UPSI; Rejecting Noticee’s contention that there was no UPSI as the agreements with Pfizer were executed by APL in its ordinary course of business, SEBI remarks that “…Regulation 2(ha) clearly provides that any information pertaining to a company which if published would likely to materially affect the price of securities of the company, is a price sensitive information”; SEBI holds that “…the time of trades executed by it and the time of transfer of funds between Noticee no. 5 and 6, unequivocally lends strong credence to the finding that Noticee no. 5 was in possession of UPSI at the time of trade in the scrip of APL.”; Further opines that there is sufficient circumstantial evidence on record to establish that Noticee had access to UPSI regarding the agreements of APL with Pfizer Inc. and hence, was an ‘insider’ in terms of PIT
Recent Noteworthy Rulings on Insider Trading

| and circumstances of the case, it can be reasonably established and concluded that based on strong preponderance of probability, the UPSI was communicated...to the Noticee.”. |
| Regulations, lastly considering the extraordinary circumstances arisen due to COVID-19 and consequential lockdowns, states that the direction w.r.t. payment of Rs. 3.77 Cr. shall come into force on September 1, 2020 or on such date when the lockdown if extended beyond August 31, 2020, comes to an end. |

11. SEBI: Lifts corporate veil, directs Noticee to disgorge Rs. 2.3 Cr. for insider trading [LSI-553- SEBI-2020(MUM)]

SEBI lifts corporate veil, directs a company’s Promoter and MD (‘Noticee’) who was trading through the company’s account, to disgorge the unlawful gains made/loss avoided to the tune of Rs. 2.3 Cr., by dealing in shares of Ricoh India Ltd. (‘Ricoh’) while being in possession of UPSI relating to Ricoh’s misstated accounts, in violation of insider trading norms; Notes that – (i) the company and the Noticee were in a long business relationship with Ricoh and Noticee also had a personal relationship with Ricoh’s Senior Management, (ii) being the MD of the company, and given such relationship with Ricoh, the Noticee was not only reasonably expected to have access to the UPSI, but also was himself in possession of UPSI as he was involved in manipulation of Ricoh’s accounts; Affirms that the information w.r.t. misstated financials was ‘price sensitive’ and was unpublished till the date of announcement, finds that Noticee fell within the meaning of ‘connected persons’ under PIT Regulations and was an ‘insider’; Against Noticee’s contention that no action could be taken against him, as his company was undergoing CIRP, SEBI remarks that “…the liability of the Noticee in the present case stands established in his individual capacity. The fact of pending proceedings in IBC…will not absolve the liability of the Noticee”; In conclusion, elucidating that "Insider trading leads to loss of confidence of investors in securities market as they feel that market is rigged and only the few who have inside information get benefits and make profits…”, SEBI also bars the Noticee from accessing the securities market for 7 years.
**Important News Updates**

**SEBI: Mandates Directors to determine “legitimate purposes” for communication of UPSI under PIT**

SEBI requires Board of Directors of listed Companies to formulate a policy for determination of “legitimate purposes”, in furtherance of which an insider may communicate unpublished price sensitive information ('UPSI') vide amendment to the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations') w.e.f. April 1, 2019; Includes persons in receipt of UPSI pursuant to a “legitimate purpose” within the definition of the term “insider”, directs Companies to maintain a structured digital database, containing the names of such persons, with adequate internal controls; Requires Board of Directors or head(s) of every listed Company or intermediary who’s required to handle UPSI in the course of business, to formulate a code of conduct to regulate, monitor and report trading by their designated persons towards achieving compliance; Explains that the provision relating to code of conduct shall be applicable to all entities in possession of UPSI, including professional firms viz. accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks, assisting or advising listed Companies (called ‘fiduciaries’) and entities that normally operate outside the capital market; Mandates listed Companies to inter alia - (i) formulate written policies and procedures for inquiry in case of leak of UPSI, and (ii) have a whistle blower policy and make employees aware of such policy to enable them to report instances of leak of UPSI.

**SEBI: Proposes mechanism of Informant incentivisation and protection for early detection of Insider Trading**

SEBI releases Discussion Paper on amendment to the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations') to include provision for an Informant mechanism, for early detection of insider trading and better enforceability, solicits comments by July 1, 2019; Outlines the ingredients of an effective Informant mechanism, inter alia recommends - (i) submission of Voluntary Information Disclosure Form ('VIDF') by the Informant and mandatory disclosure of the source of information, (ii) establishment of office for Informant Protection ('OIP'), a medium of exchange between the Informant/legal representative and SEBI, and (iii) confidentiality w.r.t. Informant’s identity and information provided; Specifies that the concept of reward may be considered, in the form of a gratuitous monetary amount in case the information is provided in compliance with the Informant policy and monies are disgorged as a result of any action taken on the basis of information submitted, and leads to a disgorgement of atleast Rs. 5 Cr.; W.r.t. to the quantum of reward, proposes that the total amount of monetary reward be 10% of monies collected, which shall not exceed Rs. 1 Cr. or such higher amount as may be specified.

**SEBI: Standardizes format for reporting Code of Conduct violations under PIT Regulations**

SEBI standardizes the format for reporting of violations related to Code of Conduct under PIT Regulations in the wake of various references in this regard received from listed companies; States that many of such references provide inadequate details w.r.t. nature of violation, designation and functional role of designated persons who have committed the violations, and the frequency of such violations in the past; SEBI mandates all listed companies, intermediaries and fiduciaries to report such violations in a new standardized format; Also requires all these entities to maintain a database of the violations that would entail initiation of appropriate action against the designated persons and their immediate relatives; Through the new standardized format, the entities are to disclose details like whether the designated person is a promoter, name of the scrip in which transactions have been done and action taken by the entity against such violation.

**SEBI: Rationalizes FPI framework, announces Rs. 1 Cr. reward for whistleblowers on insider trading**

SEBI Board in its meeting held earlier today, simplifies and rationalizes the extant regulatory framework for FPIs and announces a maximum Rs. 1 Cr. reward for any person who voluntarily submits credible information on an act of insider trading; Apprises about the salient features of PIT Regulations, which apart from reward for an informant, provide for a hotline to be maintained by an Office of Informant Protection which is to be established by SEBI, to guide the informants; SEBI also allows Mutual Funds to invest in unlisted non-convertible debentures up to a maximum of 10% of the debt portfolio of the scheme.

**SEBI: Notifies provisions of Informant incentivisation mechanism under PIT Regulation**

SEBI inserts a new chapter on Informant incentivisation mechanism for early detection of Insider Trading, by notifying amendments to SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations'); Apprises that
Recent Noteworthy Rulings on Insider Trading

‘Informant’ i.e. individual(s) shall submit ‘Original Information’ by furnishing a Voluntary Information Disclosure Form (‘VIDF’/ Schedule D) relating to an alleged violation of insider trading laws to SEBI’s Office of Informant Protection, which shall thereafter communicate such information and evidence to SEBI’s relevant department for examination and necessary action; While laying down procedure for determination of reward amount, submission of Informant Reward Claim Form (Schedule E), states that reward (not exceeding Rs. 1 Cr.) shall be paid to the Informant at sole discretion of SEBI from the Investor Protection and Education Fund; Outlining the grounds on which claim for reward can be rejected, specifies that the confidentiality in respect of the identity and existence of the Informant shall be maintained throughout the process of investigation, inquiry and examination as well as during any SEBI proceedings; Elaborates on the functions of Informant Incentive Committee i.e High Powered Advisory Committee constituted by SEBI and provides for protection of any employee who files VIDF against any discharge, termination, demotion, suspension, threats, harassment, discrimination.

SEBI: Notifies procedure for submission of information to Office of Informant Protection

SEBI notifies an informant policy in relation to insider trading pursuant to amendments made to PIT Regulations, apprises that an Office of Informant Protection (‘OIP’) has been established as an independent office for receiving and processing Voluntarily Information Disclosure (‘VID’) forms; Elucidates that an informant may voluntarily submit original information pertaining to any violation of insider trading laws to OIP, through a VID Form, the said information may be submitted by the informant directly whereby his identity would be required to be revealed at the time of form submission; Further explains that the confidentiality regarding the identity of the informant would be protected through the OIP; Highlights that a reward would be given in case the information provided leads to a disgorgement of at least Rs. 1 Cr., in accordance with the PIT Regulations; Lastly, informs that VID Forms will be available for downloading on SEBI website from December 26, 2019 under the ‘Office of Informant Protection’ link.

SEBI: Mandates maintaining of digital database containing UPSI exchange details, for 8 years

SEBI requires the Board of Directors or head of the organisation or every person required to handle unpublished price sensitive information (‘UPSI’) to ensure that a structured digital database is maintained containing the nature of UPSI, names of persons who have shared the information and also the names of such persons with whom information is shared along with their PANs, accordingly amends PIT Regulations; Specifies that such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database; Further directs all concerned persons to confirm that the structured digital database is preserved for a period of not less than 8 years after completion of the relevant transactions and in the event of receipt of any information from SEBI regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till completion of such proceedings; Lastly provides that the amount collected as penalty for contravention of code of conduct by listed companies or intermediaries/fiduciaries under the PIT Regulations, shall be remitted to SEBI for credit to the Investor Protection and Education Fund administered under the SEBI Act.