CHAPTER – 7.

PROTECTION OF INVESTOR’S INTEREST FROM INSIDER TRADING

1. Introduction

In its publication released during the year 1991 and entitled “Securities and Exchange Board Of India- objectives, Functions and Activities” the SEBI stated: “Insider trading is one of the ills which plague our system today, and there is no legal provision to curb it. In absence of a regulatory framework, insider trading fuels illegitimate speculation in the Stock exchanges and places the average investor at a grate disadvantage. SEBI is working towards a separate legislation for dealing with insider trading.”

In December 1991, the SEBI issued a Consultative Paper containing Draft Insider Trading Regulations in which it suggested stringent measures to curb the practice of inside trading and deterrent punishment to those who would indulge in it.

Insider trading is the use for gain of secret information about publicly traded investments by those who are privy to that information and who should not be taking advantage of their knowledge of that information. The common investors are denied the same opportunities as the insider dealers to make profits because they do not have access to the information which the insiders have. It is easier to identify the beneficiaries of insider dealing than the persons who lose thereby. The extent of losses occurring is impossible to calculate. Insider dealing also leads to loss of confidence of investors in stock market as they feel that the market is rigged and only the few who have inside information benefit and make profits from their investments.

SEBI had framed the Insider Trading Regulations with the approval of the Central Government under the Securities and Exchange Board of India Act, 1992 which were notified in the Gazette of India, Extraordinary, Part III, Section 4 on 19th November 1992.

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233 Bharat’s SEBI Manual chapter 12, page no. 990, 4th edition
With a view to strengthening the existing Insider Trading Regulations and to create a framework for prevention of insider trading, a committee was constituted by SEBI under the Chairmanship of Shri Kumar Mangalam Birla. The recommendations of the Committee were considered by the SEBI Board and the amended regulations notified in the Gazette on 20th February 2002. Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the Regulations') seek to govern the conduct of the insiders, connected persons and persons who are deemed to be connected persons on matters relating to Insider Trading.

'Insider trading' is the buying or selling or dealing in the securities of a listed company by a director, officer, an employee of the firm or by any other person such as internal auditor, statutory auditor, agent, advisor, analyst, consultant, etc., who has knowledge of material 'inside' information not available to the general public. The dealing in securities by an 'insider' is illegal when it is predicated upon the utilization of 'insider' information to profit at the expense of other investors who do not have access to the same information. The prices of most securities reflect the available public information about those companies. Hence, any investor who acts on non-public information does so at the cost of public confidence in the securities market and in the process corrupts the 'level playing field'.

2. Historical background and Conceptual Framework

2.1 Pre SEBI Act Scenario

2.1.1 First legislative attempt to attack insider trading - In India, the first legislative attempt to curb inside trading was in the shape of a disclosure requirement regarding company director’s shareholdings. Sections 307 and 308 of the Companies Act, 1956 which corresponded to section 195 of the English Companies Act, 1948, were incorporated on the recommendation of the Committee. The committee’s recommendations are to be found in para 100 of its report.

2.1.1 Extension of disclosure requirement- Sections 307 and 308, as

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235 Company Law Committee (1952)
originally enacted applied only to directors. By the Companies (Amendment) Act, 1960, the scope of those sections was expanded by incorporating in section 307 a new sub section by which the provisions of both the sections were made applicable also to managing agents, secretaries, treasurers and managers in the same way as they applied to directors.

2.1.2 Sachar Committee’s recommendations—The high powered Expert Committee on Companies and MRTP Acts (Sachar Committee) constituted in June 1977 for reviews of the Companies Act and the MRTP Act recommended comprehensive amendments to sections 307 and 308 with a view to strengthening the provisions thereof. The Committee’s recommendations in this regard were two fold – one relating to fuller disclosure to transactions by those who have price sensitive information and another prohibition of transactions by such persons during certain specified period unless there are exceptional circumstances. However, none of the recommendations made by this Committee have so far been implemented.

2.1.3 Patel Committee’s recommendations—In May 1984 the Government of India constituted a High Powered Committee (Patel Committee) to make a comprehensive review of the functioning of the stock exchanges and to make recommendations to the Government in the matter. The Committee in its report inter-alia recommended measures to prohibit the practice of Insider trading and also suggested a draft legislation.

2.2 Post SEBI Scenario

2.2.1 Enactment of SEBI Act—The Securities and Exchange Board of India Act, 1992, which came into force on 30 January, 1992 and of which the objectives, as enshrined in its preamble, are to

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236 Sachar committee June 1972
protect the interests of investors in securities and to promote the development of, and to regulate, the securities market, cast upon the SEBI, by section 11 of the act, the duty of taking such measures as it would think fit with a view to achieving the aforesaid objectives, and one of such measures might be to provide for prohibiting insider trading in securities.

2.2.2 SEBI’s suggestion for Internal Code of Conduct- The Cohen Committee on company law reform in England had observed: “Even if legislation is not entirely successful in suppressing improper transactions, a high standard of conduct should be maintained, and it should be generally realised that a speculative profit made as a result of special knowledge not available to general body of shareholders in a company is improperly made.” In tune with the Cohen Committee’s stress on ‘high standard of conduct’ in regard to insider dealing, the SEBI, by its Press Release issued on 19 August, 1992, insisted on framing ‘internal code of conduct’ to check the practice of insider trading. In this context, SEBI has recently written to the banks, financial institutions, stock exchanges, mutual funds, merchant bankers and other intermediaries and professional bodies such as the Institute the Chartered Accountants of India, Institute of Companies of India, Institute of Const and Works Accountants of India and Chambers of Commerce about the desirability of evolving an internal code of conduct and setting up appropriate internal procedures and checks and balances in these institutions and among the members of the professional bodies, to ensure that their employees or members, as the case may be, who may from time to time be privy to unpublished price sensitive information regarding companies listed on the stock exchanges in the normal course of business, do not use such information for the purpose of trading in the securities of such companies or companies belonging to the same group for the purpose of personal profit or avoidance of loss. SEBI has suggested that companies may be advised to work out or
prescribe internal norms under advised to them.

1. Identification of types or information which could be considered to be price sensitive information in relation to the business of the company and its subsidiaries and associates companies, e.g.:-
   a) Earnings forecast or material changes therein;
   b) Proposal for mergers and acquisitions;
   c) Significant changes in investment plans
   d) Acquisition or loss of a significant contract
   e) Significant disputes with major suppliers, consumers or sub contractors;
   f) Significant decision effecting the product pricing, profitability, etc.

2. Identification of employees – officers or sections of employees/ officers of the company who are likely to have access to such information and considered as insiders.

3. Nominations of an officer or officers who would give clarifications to the employees of the company on their ability to deal with its shares without attracting the charges of insider trading.

4. The controls on handling the price sensitive information identified above and the publication of such information, where ever possible, so as to eliminate the non public character of such information.

5. The norms to be followed by all officers and employees of the company in dealing with the company’s own shares, such as prescribing time period (before and after the declaration of periodical financial results) in which the company employees and officers may not deal in the company’s share, the time period the company employees and officers must wait before dealing in the company’s shares after any price sensitive information has been made public, other Directors on the Board of Company, etc.

6. Declaration of purchase and sale of the company shares to
be obtained from employees and officers including transactions done by the relatives of employees and officers.

7. The procedure to be laid down for handling information which may affect the price of the securities of other companies in situations such as mergers, takeovers, etc.

The above items have been given only as illustrative and do not form any exhaustive list of items that made to be covered.

2.2.3 SEBI’s Anti – Insider Trading Regulations:- By the promulgations of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 (“the Regulations” for short), SEBI has attempted to give a concrete shape, by a legislative measure, to one of the specific functions which section 11 of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act” for short) requires SEBI to discharge.

The object of this measure is to prevent and curb the menace of insider trading in securities. To remedy the malady of insider trading, the Regulations provides for various measures. In particulars, Regulations render insider trading a criminal offence in certain circumstances, punishable under the SEBI Act.

3. Rationale Behind prohibition of Insider Trading-

3.1 What is “Insider Trading”? Broadly speaking, ‘Insider Trading’ or (‘Insider dealing’) denotes dealing in a Company’s securities on the basis of confidential information relating to the company, which is not published and not known to the public, use to make profit or avoid loss in the transactions in securities of the company. It is the illegal buying and selling of securities by persons acting on privilege information. Insider trading or Insider dealing is said to be the illegal practice of trading in the share of a listed company on stock exchange. By doing this, the insider is guilty of misappropriation of private information. In the US, the Securities and Exchange Commission (SEC) and in India the Securities and

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Exchange Board of India (SEBI) is responsible for checking that illegal trading is not taking place. Many different countries have introduced laws to stop insider trading, for example the Financial Services Act and the Markets Act in the UK and the Insider Trading Sanctions Act in the US.

Insider Trading generally means trading in the shares of a company by the persons who are in the management of the company or are close to them on the basis of undisclosed price sensitive information regarding the working of the company, which they possess but is not available to others.¹

"Insiders or persons connected with companies are in a position to take advantage of confidential, price-sensitive information before it becomes public and thereby make speculative profits for themselves to the detriment of uninformed public investor."²³⁸

3.2 Abuse of Confidential information - In Lord Lane’s view, the rationale behind the prohibition on insider trading is “the obvious and understandable concern…… about the damage to public confidence which insider dealing is likely to cause and the clear intention to prevent so far as possible what amounts to cheating when those with inside knowledge use that knowledge to make profit in their dealings with others.”²³⁹ The practice of insider trading needs to be checked to maintain investor confidence in the integrity of the securities market inasmuch as the use of inside price-sensitive information by insiders for their personal advantage is not only not conducive to good business ethics and morally wrong, but it dammages public confidence in the securities market. Those who advocate prohibition against inside trading on the ground of equity²⁴⁰ argue that the law should try to ensure that all individuals in the market are placed on an equal footing, in so far as that is possible.

3.3 Instances of misuse of price sensitive information – Some US, UK and China cases on Insider Trading- In Securities and Exchange Commission

Vs Texas gulf Sulphur Co²⁴¹ a test hole drilled by Texas Gulf Sulphur Company in Ontario indicated a high copper and zinc concentration.

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²³⁸ Patel Committee Report, para 7.25.
²⁴⁰ American Commentators call it the concept of “Market equalitarianism”
²⁴¹ (1968) 401 F 2n 833 (2nd cir 1968)
Several of company’s officials and employees who knew this discovery and their friends began to buy large quantities of the company’s stock and, thereupon the company’s management issued a press note stating hat the rumours of the discovery were exaggerated and stated that they were possibly misleading. Subsequently the news about the success of the hoe drilling became widespread and the price of the stock soured to mere that double their price. The court of appeal held the directors and insiders were liable to refund to the company the profits made by them and they were also liable in damages to the parties who had suffered loss. In Diomond V Oreamuno a shareholder f Management Assistance Inc (MAI) filed a suit for an account of profits made by the directors and offices in breach of their fiduciary duty. He charged them of having used inside information acquired by them by virtue of their position in the company. It was alleged that the directors by taking advantage of their position and access to inside information made improper gains and the claim of the plaintiff against them was upheld. In Walton Vs V Morgan Stanley the Kennecott Copper Corporation was considering buying Olinkraft, a paper manufacturer. The investment banking house of Morgan Stanley began negotiations with Olinkraft on Kennecott’s behalf, but Kennecott changed its mind about the deal. Nevertheless, the close up view Morgan Stanley had dained of Olinkraft stock to capitalize on this possibility, John Mansville did indeed make a bid for Olinkraft, and Morgan Stanley reaped a handsome profit. A company called Joshep Stocks & Sons (Holdings) Limited was the object of a takeover bid. Mrs Titheridge was secretary t the chairman of the merchant bank which was advising he bidding company. She passed information to her husband who dealt in securities of Joshep Stocks in December 1980. Both Mr. and Mrs. Titheridge pleaded guilty to insider dealing and were convicted. They were each ordered to pay a 4,000 pound fine. In US three guys were prosecuted for insider trading. They have pocketing $34 million for 17 years. One was the student of law at New York University and he had

242 (1969) 248 NE 2d 910 (NYCA)
243 623 F. 2d 796 (2nd Cir 1980)
244 R Vs TittleTidge & Titheridge
access to confidential information about planned corporate mergers, thereafter he called his friends and made plan to deal in those securities\textsuperscript{245}. The recent publication of news under the headline \textbf{“China Insider Trading Thrives with Selective Data Leaks”}, on Saturday February 12, Shi read on an internet chat forum that January inflation would be lower than forecast 4.9%. Two friends had heard the same, says Shi, who set a strategy to sell shares into a rally he anticipated as the figure spread. Therefore, China must curb the leaks because they give an unfair advantage to investors who get the information first\textsuperscript{246}.

4. \textbf{Contemporary Law on Insider Trading}

\textbf{Laws in United States:} The first country to tackle it effectively was the United States of America. The Securities Exchange Act 1934 imposes statutory curves on insider trading, requiring public disclosure of insiders’ transactions in the shares of their companies and providing for recovery of ‘shortswing’ profits made by them. The Act provides remedial measures for protection of investors against sharp practices and fraudulent schemes by insiders in making short term, speculative profits. The quantum of compensation to the insured share holder is determined by the federal court. Apart from these legislative measures, in the USA, the Supreme Court and Courts of Appeal of every State have issued guidelines, on the subject, to maintain proper ‘fiduciary standards’, to ensure justice and equity with regard to insider trading and to protect the interests of investing public. Looking to the seriousness of the offences involved in the insider trading, the Securities and Exchange Commission has been empowered under the Insider Trading Sanctions Act, 1984 to seek imposition of civil penalties, in addition to criminal proceedings, upto 3 times the profits gained or losses avoided, in cases involving use of non published price sensitive information or material. Willful disclosure of protected Data by unauthorized persons in the US is a felony punishable by as much as 5 years imprisonment and a $ 250,000 fine. The late former Goldman Sachs Group Inc. senior economist John Youngdahl was sentenced to 33 months imprisonment in 2004 for passing on to Goldman

\textsuperscript{245} News under the headline “Inside the Insider Trading Ring” Economic Times 18.04.2011, page investor guide

\textsuperscript{246} The Economic Times 11.04.2011, under the heading China Insider Trading Thrives with Selective Data Leaks, page 12 markets
traders advance information in October 2001 that government planned to stop selling 30 years bond\textsuperscript{247}.

Law in United Kingdom :- In United Kingdom, the first effective legislative measure to curb insider trading was made in 1980 by inserting in the Companies Act provisions to make insider trading a criminal offence in certain eventualities and the Council of the Stock Exchange in 1981 issued a model code with regard to transaction by directors and their relatives and employees of the listed companies. Under Part V of the Companies Act, 1980 insider dealing became in certain circumstances criminal offence. These provisions were shifted in 1985 to a separate piece of legislation, namely, the Company Securities (Insider Dealing) Act, 1985 in its part X contain provisions regarding share dealings by directors and their families. Since 1973 their exists a non statutory model code relating to directors’ share dealings, namely, ‘the Stock Exchange Model Code for Securities Transaction by Directors of Listed Companies’. The City Code on Takeover and Mergers is concerned with insider dealing in the context of takeover bids and mergers. This code attempts to deal with insider dealing in three ways, namely, by emphasizing secrecy before announcement, by prohibiting dealings and by requiring public announcements.

Law in EEC countries :- Germany is still to comply with the European Economic Community's directive in 1989. Netherlands, Belgium and Ireland are stated to have implemented the directive in 1989 and Portugal in 1991 while Norway and Sweden had introduced necessary legislation in 1985. Denmark in 1986, Luxembourg and Switzerland in 1987 and Greece and Spain in 1988. The first French law was adopted in 1970 and gradually strengthened in 1983, 1988, 1989 and 1990. The French law mandates civil or criminal penalties of upto 10 million francs or 10 times the realised profits and jail terms ranging from 2 months to 2 years.\textsuperscript{248} Germany and UK have taken steps in recent years to reduce the chances of leaks. Germany’s labour agency last year reduced the number of people involved in compiling monthly unemployment statistics to stop data regularly appearing in newspapers an on

\textsuperscript{247} ibid
\textsuperscript{248} The Economic Times dated 11-04-2011, under the heading {China Insider Trading Thrives with Selective Data Leaks}, page 12 markets
agency wires ahead of the official publication time, said Ilona Mirtscin.

5. SEBI’s Insider Trading Regulations.

5.1 Source of SEBI’s Power - Chapter IV of SEBI Act, 1992 contains provisions regarding powers and functions of the SEBI. Clause (g) of Section 11(2) states: “Prohibiting insider trading practices”. In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board with the previous approval of the Central Government, hereby makes the following regulations, namely Securities and Exchange Board of India [Prohibition of] Insider Trading Regulations, 1992. These regulations were renamed as SEBI (Prohibition of Insider Trading) Regulations, 1992 by the SEBI (Insider Trading) (Amendment) regulations, 2002, w.e.f. 20-02-2002. Broadly speaking, the regulations are based on the United Kingdom’s the Company Securities (Insider Dealing) Act, 1985. The Regulations are applicable only to the dealings in securities of listed companies; these Regulations do not apply the dealings in securities of private and unlisted public companies.

5.2 Important definitions defined in Regulation :-

5.2.1 The Act :- As per regulation 2 (a) of these regulations “Act” means the Securities and Exchange Board of India Act, 1992.

5.2.2 Body corporate – According to clause (b) of regulations 2, the body corporate means a body corporate as defined in section 2 of the Companies Act, 1956. According to Section 2(7) of the companies Act- As per Companies Act, 1956, Body corporate means - Body corporate of corporation includes a company incorporated outside India but does not include- a) a corporation sole ; b) a co operative society registered under any law relating to cooperative societies ; and c) any other body corporate (not being a company as defined in this act), which the Central Government may, by notification in the

250 hereinafter referred to as the “UK Insider Dealing Act”
251 (15 of 1992)
252 Clause (b) of Regulation 2, of the Securities and Exchange Board of India Prohibition of Insider Trading Regulations, 1992.
official Gazette, specify in this behalf; In State Trading Corporation Vs Commercial Tax officer (1963) 33 comp case 1057(SC) : AIR 1963 SC 1811, Hidayatullah , J, defined the body corporate as :
Unlike an unincorporated company, which has no separate existence and which the law does not distinguished from its members, an incorporated company has a separate existence and the law recognizes it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the memorandum of association and other persons joining as member are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity.

5.2.3 Connected person- According to Regulation 2(c) connected person means any person who – (i) is a director\textsuperscript{253} of a company, or is deemed to be a director\textsuperscript{254} of that company or (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company. Any person who is a connected with company, six months prior to an act of insider trading. This definition is identical with that given in section 9 of the UK Insider Dealing Act. According to it, the following persons will be treated as connected persons: (a) a director of the company; (b) A shadow director of the company; (c) an officer of the company; (d) an employees of the company; (e) A person having professional or business relationship with a company, if he may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

Persons having professional and business relationship- The phrase “holds a position involving a professional or business relationship” is ambiguous but very wide in scope. Subject to the qualification

\textsuperscript{253} as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956),
\textsuperscript{254} by virtue of sub-clause 10) of section 307 of that Act
that such a position as aforesaid must be held in, with or in relation to the company, any person who has any kind of professional relationship or business association may be brought within the net of “connected person”. In nutshell, what is material is the relationship and accessibility to unpublished price sensitive information facilitated by such relationship. However, merely by reason of some professional and business relationship a person cannot be treated as “connected person” unless there is some evidence to establish nexus between the aforesaid two things.

5.2.4 Director – According to section 2(13) of the Companies Act, 1956 Director includes any person occupying the position of director, by whatever name called. A Director may have a contract of employment with the company. Such a director is described such as service, working, full time or executive director. Managing and whole time directors fall in this category.

5.2.5 Shadow Director – In the Companies Act, 1956, it is embodied in the definition of ‘officer’ as being any person in accordance with whose directions or instructions the Board of Directors is accustomed to act, but excluded from the definition the persons who give such directions or instructions in their professional capacities. As a matter of fact, these persons are sought to be roped not in the category of ‘Director’, but in the category of ‘officer’. A person who is not a director of a company but who gives instructions (rather than professional advice) according to which the directors are accustomed to Act is called a shadow director.

5.2.6 Officer of a company – According to clause (g) of regulation 2, “officer255 of a company” any person as defined in companies act including an auditor of the company. It includes any Director, Manager, or secretary or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. The following persons have been held to be officers for the purposes of the act:

255 clause (30) of section 2 of the Companies Act, 1956 (1 of 1956)
(a) Managing Director;
(b) Any Director;
(c) Liquidator;
(d) Secretary; assistant secretary, accountant and cashier of a bank;
(e) Marketing manager.

On the contrary, a Broker, a Solicitor and Banker who have nothing to do with the management of the company and may have no knowledge of what is being done inside the company’s office, cannot be classified as the officer of the company.

5.2.7 Compliance officer - means a senior level employee and generally it is the Company Secretary of the company for the purpose of monitoring and implementing the code for the prevention and prohibition of Insider Trading.

5.2.8 Close period means the prohibited period specified for trading and dealing in the securities of the company. The Regulations require that dealing in securities of a listed company be prohibited at the time of:-

a) Declaration of Financial results (quarterly, half-yearly and annual)
b) Declaration of dividends (interim and final)
c) Issue of securities by way of public/ rights / bonus etc.
d) Any major expansion plans or execution of new projectss
e) Amalgamation, mergers, take overs and buyback
f) Disposal of the whole or substantially whole of the undertaking
g) Any change in policies, plans or operations of the company.

The close period should continue upto 24 hours after the information referred to above is made public. The Close period could be commence from the time of announcement of the meeting of the Board of Directors of a company with respect to all price sensitive information and end 24 hour after the decision of the Board is made public. In case of matters which are not required to be dealt in the Board meeting, the close
period should be from the time the preliminary discussions in respect of the matters commence and end 24 hours after the information is made public.

5.2.9 Dealing in Securities- According to clause (d) of Regulation 2, “dealing in securities” means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in any securities by any person either as principal or agent.

(a) The subscription has been defined by the court in Government Stock and other Securities Investment Co. Ltd. Vs Chritopher\textsuperscript{256} Wynn- Parry J has held that the word “subscription” in the definition of “Prospectus” means taking or agreeing to take shares for cash. It imports that the person agreeing to take the shares puts himself under a liability to pay the nominal amount thereof in cash. He said : “In Murray’s Oxford Dictionary one of the meanings attributed to “subscription” is : A promise over one’s signature to pay a sum of money for shares in an undertaking.

(b) Meaning of Securities – The word securities is not defined in the Regulations. Securities has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 - as per section 2 of the SCRA, securities include- (i) Shares, scrips, stocks, bonds, debentures, debentures stock or other marketable securities of like nature in or of any incorporated company or other body corporate; (ii) Derivative; (iii) Units or any other instruments issued by any collective investment scheme to the investors in such schemes; (iv) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- As per clause 2 (zg) of SARFAESI Act , the security receipt means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer.

\textsuperscript{256}(1956)I ALL ER 490,
pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

5.2.10 Insider- Regulation 2 (e) defined the word “Insider”, ‘Insider’ means any person who-

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information. This definition has two parts. For easy understanding, the definition may be dissected and split as follows:

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<th>Part I of the definition:</th>
<th>Part II of the Definition:</th>
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| 1. Who is connected with the company; or | Insider means any person-
| 2. Who was connected with the company; or | • Who has received unpublished price sensitive information; or
| 3. Who is deemed to have been connected with the company, | • Who has had access to unpublished price sensitive information. |
| And who is reasonably expected to have access, to unpublished price sensitive information in respect of securities of the company. | |

The word “and” after item 3 in part I of the definition should be read as “and” and not as “or”. Therefore, each of the persons stated at 1,2 and 3 must be reasonably expected to have access, to unpublished price sensitive information in respect of securities of the company. In other words, none of those persons can be treated as an insider unless he is reasonably expected to have access, to unpublished price sensitive information in respect of securities of the company. In either case, even a person is not presently connected with the company but who was in the past connected with the company and
who, after his disconnection, dealt in securities of the company may be held liable as an insider. In short, the definition of “insider” is the pivot of insider trading; unless one is insider, there can be no inside trading and no applicability of SEBI Regulations. The two expression in the definition divide insiders in two categories, namely, (i) primary insider, and (ii) secondary insider. Both are connected with the company, but the former are connected directly, while the latter are connected indirectly. The primary insiders have, by reason of their proximity or nearness to the company, easier access to unpublished price sensitive information. On the other hand, in case of secondary insiders, they are placed in such a relationship with or against the company that although they are at a little distance, they have, or are expected to have, access to unpublished price sensitive information. The regulation by creating a legal fiction by the use of phrase “deemed to have been connected” contains the primary and secondary insiders. In U K secondary insider are called as “tippees” though the U K Insider Dealing Act does not have the term secondary insiders.

5.2.11 Person is deemed to be a connected person – According to clause (h) of Regulation 2 defined as –

5.2.11 a.) Companies under the same management – According to sub clause (i) of above mentioned regulations, a person is deemed to be a “connected person”, if such person is a company under the same management or group, or any subsidiary company thereof. In terms of the provisions of section 370 (IB) of the Companies Act, two bodies corporate shall be deemed to be under the same management in the following circumstances:

(1) If the managing director of A is managing director of B.

(2) If the manager of A is the manager of B.

257 within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be
(3) If a majority of the directors of A constitute (or at any time within six months immediately preceding constituted) a majority of the directors of B.

(4) If one third or more of the total voting power relating to each of A as well as B is exercised or controlled by the same body individual.

(5) If one third or more of the total voting power relating to each of A as well as B is exercised or controlled by the same body corporate.

(6) If the holding company of A is under the same management as B according to any of the above criteria.

(7) If one or more directors holds/hold (whether by themselves or together with their relatives) the majority of shares in A and B.

5.2.11. b). Securities market intermediaries– According to sub clause (ii) of clause (h), a person shall be deemed to connected with the company if such person is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation.

In sub section (I) and (IA) of section 12 of the Act, following persons are specified as intermediaries: a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser, depository, participant, custodian of securities, foreign institutional investor, credit rating agency any other intermediary associated with the securities market as the Board may by notification in this behalf specify.

5.2.11. c). Merchant Banker, share transfer agent etc. -According to sub clause (iii) of clause (h) of regulations a person shall be deemed to connected with the company if such person is a merchant banker, share transfer agent, registrar to an issue, debenture trustee,
broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

5.2.11.d). Director and employees of financial institutions- According to sub clause (iv) of clause (h) of regulations a person shall be deemed to connected with the company if such person is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

5.2.11.e). officer and employees of self regulatory organization - According to sub clause (v) of clause (h) of regulations a person shall be deemed to connected with the company if such person is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body. This sub clause seems to have lack of precision and clarity. This does not appear to be at present in existence any self regulatory organisation recognised or authorised by the SEBI. Perhaps this sub clause has been inserted to take care of the future. In any event, the expression “recognised or authorised by the Board of a regulatory body” is unclear.

5.2.11. f). Relative- According to sub clause (vi) of clause (h) of regulation a person shall be deemed to connected with the company if such person is a relative of any of the aforementioned persons. The relative is relevant only in the case of individuals or human beings; it cannot apply to companies, bodies corporate, firms, corporations etc. which are either artificial persons created by law or are associations of two or more individuals.

5.2.11 g). According to sub clause (vii) of clause (h) of regulation a person shall be deemed to connected with the company if such person is a banker of the company. As a matter of fact these persons can be said to have access to unpublished price-sensitive
information by virtue of their position in the banks vis-a-vis the concerned companies.

5.2.11 h). According to sub clause (viii) of clause (h) of regulation a person shall be deemed to connected with the company if such person relatives of the connected person. The term relative is to be taken as per the Companies Act. Which reads as follows: 6. Meaning of “relative”:- A person shall be deemed to be as relative of another if, and only if,-

(a) They are members of a Hindu undivided family; or
(b) they are husband and wife; or
(c) the one is related to the other in the manner indicated in

i). According to sub clause (viii) of clause (h) of regulation a person shall be deemed to connected with the company if such person is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;]

5.2.12 **Price Sensitive Information** – the “price sensitive information” 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 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 buy-back of securities;
iv. any major expansion plans or execution of new projects.
v. amalgamation, mergers or takeovers;
vii. disposal of the whole or substantial part of the undertaking;
vii. and significant changes in policies, plans or operations of the company;

258 Section 6 of the companies Act, 1956
259 clause (ha) of Regulation 2 of the SEBI (Prohibition of Insider Trading) Regulations, 1992
The information should, however, affect the price of securities materially, i.e. substantially, considerably, greatly, significantly, to a great extent. The effect of the information on the price should be ‘material’. Material fact means any important piece of information that a member of the company must disclose to the member to enable him to decide whether or not to vote on the resolution and which way to vote if he wishes to do so. In the case of Rakesh Aggarwal Vs SEBI\textsuperscript{260}, the court held that the information must be such that it is not generally known or published by the company, and it is likely to materially affect the price of the company’s securities. The word “deemed” is sometimes used in a statute to put beyond doubt a particular construction that might otherwise be uncertain or to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible\textsuperscript{261}.

5.3 Prohibition against Insider Trading.

Prohibition against dealing in securities - Regulation 3 (i) states as under:- No insider shall either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information. In the case of Rakesh Aggarwal V SEBI\textsuperscript{262}, the court held that the person who is prohibited is insider. What is prohibited is dealing in listed securities on the basis of any unpublished price sensitive information. Trading in the shares of a listed company by an insider is not prohibited – Prohibition is only on trading on the basis of any unpublished price sensitive information.

Prohibition against Communication, counseling and procuring Unpublished Price Sensitive Information- Regulation 3(ii) states that no person communicate, counsel or procure directly or indirectly any unpublished price sensitive information to any

\begin{footnotesize}
\begin{enumerate}
    \item\textsuperscript{260} (2004) 49 SCL 351; (2004) I Com LJ 193 (SAT)
    \item\textsuperscript{261} N S Bindra’s Interpretation of Statutes, 9\textsuperscript{th} edition, page 68
    \item\textsuperscript{262} (2004) 49 SCL 351; (2004) I Comp LJ (SAT),
\end{enumerate}
\end{footnotesize}
person who while in possession of such unpublished price sensitive information shall not deal in securities: **Provided** that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

5.3.2. (a) Communication denotes the act or action of imparting or transmitting. To communicate means to transmit, pass on, transfer, impart, convey, relay spread, disseminate, make known etc.

5.3.2.(b) To counsel means to advise somebody to do something; to give professional advice to somebody; recommend; give one’s opinion or suggestion.

5.3.2 (c) To procure means to obtain; to persuade or cause somebody to do something; to cause something to happen.

Communication/ counseling/ procurement/ may be written or verbal. The person to whom information is communicated/ counseled/ procured need not be an insider; consequently he need not be a ‘connected person’ or a ‘person who is deemed to be connected’ with the company within the scope of the definitions of those expressions. The recipient fo information who deals in securities while in possession of the information acquired by him will be liable for action, regardless of whether he is insider or not. The insider trading regulations do not provide for an exemption in the case of dealing in shares by a portfolio manager for and on account of an officer or employee of a listed company. Therefore, if a portfolio manager deals in the securities of he Company (either supplied by the employee or procured by the portfolio manager by virtue of his connection with the company), both will be guilty of contravention of the Insider Trading Regulations.

5.3.3 **Prohibition against dealing in securities by a company**

According to regulation 3A - No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive
5.4 Defences against charges of dealing in securities by a company\textsuperscript{263} - In a proceeding against a company in respect of regulation 3A, it shall be a defence to prove that it entered into a transaction in the securities of a listed company when the unpublished price sensitive information was in the possession of an officer or employee of the company, if:

(a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and

(b) such company has put in place such systems and procedures which demarcate the activities of the company in such a way that the person who enters into transaction in securities on behalf of the company cannot have access to information which is in possession of other officer or employee of the company; and

(c) it had in operation at that time, arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transactions or agreement was given to that person or any of those persons by that officer or employee; and

(d) the information was not so communicated and no such advice was so given.

In a proceeding against a company in respect of regulation 3A which is in possession of unpublished price sensitive information, it shall be defence to prove that acquisition of shares of a listed company was as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

\textsuperscript{263} Regulation 3B of the SEBI Insider Prohibition of Trading Regulation
5.5 Offences, penalties and punishment-

5.5.1 Violation of provisions relating to insider trading. According to Regulation 4 any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading. The regulations 3 and 3A have already been discussed in this chapter.

5.5.2 Penalty for insider trading and adjudication- Section 15 G of the SEBI Act prescribes penalty for insider trading, but it covers only insiders. It does not cover persons who have dealt in securities by using unpublished price sensitive information obtained by them from insider as contemplated in Regulation 3(ii). According to section 15G, if any insider indulges in any of the acts mentioned therein, he shall be liable to a penalty of Rs. 25 crore or three times the amount of profits made by the insider out of the act of insider trading, whichever higher.

5.5.3 Offences of Insider trading and punishment – Any contravention of the SEBI Regulations will be an offence under the SEBI Act and the person committing an offence will be, on conviction, punishable under section 24 of that Act which provides that whoever contravenes or attempts to contravene or abets the contravention of the provisions of the Act or any rules or any regulations made thereunder, shall be punishable with imprisonment for a term which may extend to ten years, or with fine which may extend to Rs. 25 Crore or with both.

5.6 Investigation – Chapter III of the Regulation provides Board’s power to make inquiries, inspection, right to investigate, procedure for investigation etc.

5.6.1 Power to make inquiries and inspection264 - If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (i) of sub-section (2) of section 11 as deemed fit, to form a \textit{prima facie} opinion as to whether there

\textsuperscript{264} Regulation 4A of the SEBI(Prohibition of Insider Trading) Regulations, 1992
is any violation of these regulations. The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of sub-section (2) of section 11 for the purpose inquiries and inspection.

5.6.2 Board’s right to investigate\textsuperscript{265} - Where the Board, is of prima facie opinion that it is necessary to investigate and inspect the books of account, either records and documents of an insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act for any of the purposes specified in sub-regulation (2), it may appoint an investigating authority for the said purpose. The purpose of investigation may be as follows:

(a) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading; and

(b) to investigate suo-motu upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations.

5.6.3 Procedure for investigation\textsuperscript{266} – Before undertaking any investigation under regulation 5, the Board shall give a reasonable notice to insider for that purpose. Where the Board is satisfied that in the interest of investors or in public interest no such notice should be given, it may by an order in writing direct that the investigation be taken up without such notice. On being empowered by the Board, the investigation authority shall undertake the investigation and inspection of books of account and the insider against whom an investigation is being carried out an insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act shall be bound to discharge his obligations as provided in regulation 7. Regulation 7 provides the obligations of insider on investigation.

\textsuperscript{265} Regulation 5 ibid
\textsuperscript{266} Regulation 6 ibid
by the Board in the following ways:

(1) It shall be the duty of every insider, who is being investigated or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act, to produce to the investigating authority such books, accounts and other documents in his custody or control and furnish the authority with the statements and information relating to the transactions in securities market within such time as the said authority may require.

(2) The insider or any other person mentioned in clause (i) of sub-section (2) of section 11 of the Act shall allow the investigating authority to have reasonable access to the premises occupied by such insider and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which in the opinion of the investigating authority are relevant.

(3) The investigating authority, in the course of investigation, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the insider or any other person mentioned in clause (i) of sub-section (2) of section 11 of the Act.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the insider to give to the investigating authority all assistance in connection with the investigation, which the insider [or any other person mentioned in clause (i) of sub-section (2) of section 11 of the Act may be reasonably expected to give.

The Supreme court in the case of Peerless General Finnance & Investment Co. Ltd. Vs Reserve Bank of India\(^{267}\), held that rules or regulations made under a statute must be treated, for all purposes of construction or obligation, exactly as if they were in that Act and are to the same effect as if they were contained in the Act and to be judicially noticed for all purposes of construction or obligations; they cannot be

\(^{267}\) (1992) 2 SCC 343
described or equated with administrative directions.

However, in the Case of State of Kerela Vs Abdulla\(^{268}\), the Supreme Court held that “when power to frame rules is conferred by act, that power must be exercised within the strict limits of the authority conferred. If in making a rule the Government transcend its authority, the rules will be invalid for statutory rules made in exercise of delegated authority conferred. Validity of a rule whether it is declared “to have effect as enacted in the Act” or otherwise is always open to challenge on the ground that it is unauthorized.”

In another case, Hukamchand Vs Union of India\(^{269}\), the Supreme Court has observed that the power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. This delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the act.

5.6.4 Submission of Report to the Board- The investigating authority shall, within reasonable time of the conclusion of the investigation, submit an investigation report to the Board.

5.6.5 Communications of findings, etc. - Board shall, after consideration of the investigation report communicate the findings to the person suspected to be involved in insider trading or violation of these regulations. The person to whom such findings has been communicated shall reply to the same within 21 days; and on receipt of such a reply or explanation, if any, from such person, the Board may take such measures as it deems fit to protect the interests of the investors and in the interests of the securities market and for the due compliance of the provisions of the Act, the regulations made thereunder including the issue of directions under regulation 11.

5.6.6 Appointment of Auditor - the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person mentioned in clause (i) of sub-section (1) of section 11.

\(^{268}\) AIR 1965 SC 1585
\(^{269}\) AIR 1972 SC 2427 : (1972) 2 SCC 601
of the Act. Provided that, the auditor so appointed shall have the same
powers of the inspecting authority as stated in regulation 5 and the
insider shall have the obligations specified in regulation 7.

5.6.7 **Directions by the Board**- The Board may without prejudice to its
right to initiate criminal prosecution under section 24 or any action
under Chapter VIA of the Act, to protect the interests of investor and in
the interests of the securities market and for due compliance with the
provisions of the Act, regulation made thereunder issue any or all of
the following order, namely:

(a) directing the insider or such person as mentioned in clause
(i) of sub-section (2) of section 11 of the Act not to deal in
securities in any particular manner;
(b) prohibiting the insider or such person as mentioned in clause
(i) of sub-section (2) of section 11 of the Act from disposing
of any of the securities acquired in violation of these
regulations;
(c) restraining the insider to communicate or counsel any
person to deal in securities;
(d) declaring the transaction(s) in securities as null and void;
(e) directing the person who acquired the securities in violation
of these regulations to deliver the securities back to the
seller: Provided that in case the buyer is not in a position
to deliver such securities, the market price prevailing at the
time of issuing of such directions or at the time of
transactions whichever is higher, shall be paid to the seller;
(f) Directing the person who has dealt in securities in violation
of these regulations to transfer an amount or proceeds
equivalent to the cost price or market price of securities,
whichever is higher to the investor protection fund of a
recognised stock exchange.

5.7 **Manner of service of summons and notice issued by the Board**- A
summons or notice issued by the Board under these regulations may be
served in the manner provided in regulation 22 of the Securities and
6. Code of internal procedures and conduct for listed companies and other entities for prevention of Insider trading\(^{270}\) – All listed companies and organisations associated with securities markets including:

i. the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds

ii. the self-regulatory organisations recognised or authorised by the Board;

iii. the recognised stock exchanges and clearing house or corporations;

iv. the public financial institutions as defined in section 4A of the Companies Act, 1956; and

v. the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

\(^{270}\) Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 1992
7. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company -

7.1 Initial Disclosure are – Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within [2 working days] of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be. Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

7.2 Continual disclosure are - Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

7.3 Disclosure by director- Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

7.4 Time limit for disclosure- The disclosure mentioned shall be made within two working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting
rights, as the case may be.

7.5 Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) [in the respective formats specified in Schedule III.

7.6 Disclosures through electronic filing - The disclosures required under this regulation may also be made through electronic filing in accordance with the system devised by the stock exchange.

8. Action in case of default. Without prejudice to the directions under regulation 11, if any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11B, 11D, Chapter VIA and Section 24 of the Act.

9. Appeal to the Securities Appellate Tribunal- Any person aggrieved by an order of the Board under these regulations may prefer an appeal to the Securities Appellate Tribunal.

10. Some cases of Insider Trading-

In Hindustan Lever Ltd Vs Securities and Exchange Board Of India271 (Appellate Authority – Central Government), HL and BB were both subsidiaries of the common parent company ‘U’. With the announcement of the merger of BB with HL to stock exchanges on 19-04-1996, there were allegations in the market regarding the leakage of information and insider trading. When this came to the notice of SEBI, it decided to investigate the matter. During course of investigations, it came to light that a core team consisting of common directors of HO And BB had been set up to consider modalities of amalgamation of both the companies. In the board meeting of HL, it was decided to buy 8 lakh shares of BB preferably through a public financial institution. The shares were purchased by HL from UTI for Rs. 350 per share by paying a premium of 19 per cent of the

271 (1998) 18 SCL 311
market price of around Rs. 318. From the investigations, SEBI concluded that HL as an Insider purchased 8 lakhs shares of BB on the basis of unpublished price sensitive information and had therefore, violated regulation 3(1) of the SEBI (Insider Trading) Regulations, 1992.

Order against Shri A.L. Shilotri in the matter of insider trading by Shri J.E. Talaulicar in the shares of M/s. Tata Finance Limited

Shri T. M. Nagarajan, Whole–time Member, Securities and Exchange Board of India (SEBI) has issued an order dated January 02, 2004 against Shri A.L. Shilotri in the matter of insider trading by Shri J.E. Talaulicar in the shares of M/s. Tata Finance Limited. In the said order, Shri Shilotri has been found guilty of violating Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 1992. Shri Shilotri has, accordingly, been directed to dissociate himself from the securities market and not to deal in securities henceforth for a period of 6 months.

Order against Shri Dilip S. Pendse in the matter of insider trading by Shri J.E. Talaulicar in the shares of M/s. Tata Finance Limited

Shri T. M. Nagarajan, Whole–time Member, Securities and Exchange Board of India (SEBI) has issued an order dated December 23, 2003 against Shri Dilip S. Pendse in the matter of insider trading by Shri J.E. Talaulicar in the shares of M/s. Tata Finance Limited. In the said order, Shri Pendse has been found guilty of violating Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 1992. Shri Pendse has, accordingly, been directed to dissociate himself from the securities market and not to deal in securities henceforth for a period of 6 months.

11. Conclusion: Besides the provision of insider trading in the Securities and Exchange of India Act, 1992, the SEBI in exercise of powers given in section 30 of the act has made regulation to stop insider trading. As the concept of insider trading is most dangerous to investor, who has no information of insider activities of company. While those have much information about price sensitive information can earn more, therefore, the leakage of inside

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272 January 06, 2004, PR No.02/2004
273 December 23, 2003, PR No.322/2003
274 SEBI (Prohibition of Insider Trading) Regulation, 1992
information can defeat the very purpose of object of SEBI to protect the interest of investor and shareholders. The SEBI under the regulation of Prohibition of insider trading, incorporated prohibition of dealing in securities by insider of the company, as they already have sensitive information. The board has very wide powers to deal insider trading by punishing them monetary as well as imprisonment. The board has also prescribed code of conduct for companies. It has made mandatory to companies, its directors, its officer to disclose their interests. In exercise of powers under regulations and Act, The SEBI has imposed monetary penalties on many persons and also filed complaint for criminal prosecutions. Therefore, under these regulations and provisions of Act, SEBI is going to achieve its primary objective to protect the interest of investors.

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