A CONCEPTUALIZATION AND ANALYSIS OF INDIA'S INSIDER TRADING LAWS

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Abstract
Trading assets such as stocks, bonds, and stock options on the basis of knowledge that is not yet accessible to the general public is an example of illegal insider trading. Examples of insider trading include a top executive of a firm buying a significant number of shares in the same company after learning that the stock price is going up before the information is made public. This is an example of what is known as "buying the rumor and selling the news." Due to the fact that this action is seen as unfair to investors who do not have access to inside knowledge on a firm, it is first and foremost an act of malpractice as well as a criminal crime. The fact that it does not target specific individuals as its victims distinguishes it significantly from other types of fraudulent investment schemes. When it comes to investing, it is all about finding ways to obtain an unfair edge by utilizing the information that is accessible. As a result, rules and federal statutes are in place in nations to investigate and prosecute crimes related to securities fraud. In this instance, the research paper takes a comparative approach to discussing the rules and regulations governing insider trading in India and the United States.
Keywords: Insider Trading in India, Security Board Exchange of India, Stock Market and Companies Act.

Introduction

According to the Companies Act of 2013, insider trading is defined as any incident in which a director, management, or other employee of a corporation who knows knowledge that can effect the price of a company's bonds or securities buys, sells, subscribes to, or trades in those bonds or securities. This definition encompasses any situation in which the employee in question trades in the bonds or securities in question. Buying, selling, or otherwise trading with those bonds or securities falls under this category. If price-sensitive information were to become widely known, it may have a significant negative effect on the value of a company's shares; hence, this information must be kept strictly private. It is against the law to discuss corporate security documents or other secret information in private with the intent of getting some sort of personal

profit, since this would violate the law. It is against the law for workers of a company to participate in insider trading, as stated in Section 195 of the Companies Act of 2013, which was passed in 2013. This is done in order to protect the credibility of the principle of good governance.

The Securities and Exchange Board of India is responsible for putting into effect the Prohibition of Insider trading Regulation, which was published in 2015. Because of this legislation, the likelihood of persons engaging in insider trading is significantly increased. Any director who has worked for the company for at least six months and who has direct or indirect access to substantial non-public information that has the potential to cause a material non-public price change falls under the purview of Regulation 2(d)(i). This legislation applies to directors who have access to this information either directly or indirectly, regardless of how they obtained such access. According to Rule 2(g)(i), the relatives of a company's senior executives and board members are automatically considered to be "insiders" in the company. This research is based on a study that investigates the factors that lead to insider trading, as well as its effects, the regulations that have been imposed by SEBI, and the current discussions over the practice.

Discussion

No one is ever harmed as a result of illegal trade. It is reasonable to be concerned that a seller will be taken advantage of if they sell business shares to someone who is affiliated with the same firm; nonetheless, it is essential to keep in mind that equities are designed to be sold regardless of the identity of the buyer2. Therefore, the insider's portion of the profit made from the transaction will not alter even if the insider purchases shares from the seller. Because the seller is certain to come out on top whenever they collaborate with an insider, it is reasonable to argue that insider selling never puts individuals or communities in jeopardy. On the other hand, insider trading is considered as a means through which individuals working within a corporation might communicate with one another. Because significant stock transactions can trigger a domino effect, which in turn assists investors and stakeholders in determining product pricing, this helps to forecast how the market will respond in the future.

However, it is up to the employees to ensure that they do not utilize this technology in a way that exposes any confidential information to the general public. A trader who is well-funded enough to purchase a significant number of shares in a firm has the ability to drive up the price of those shares. It is possible for the market to be influenced if the trader has access to significant information on the financial status of the linked company. Some industry professionals are of the opinion that engaging in insider trading might be beneficial for owners, provided that the knowledge that is utilized to engage in such trading is beneficial to the firm. If it is unlawful to sell inside information and there are restrictions on how much you may do so, the person who knows about the deal will strive to keep it a secret so they don't get in trouble. Therefore, more purchasers may be enticed to sell their shares at a high price, which would result in a significant loss of capital for those buyers. This demonstrates that the first person to obtain confidential knowledge has a distinct advantage over other individuals who obtain it at a later time. Even if the purchasers are working with someone who has a strong understanding of the market, they still might want some type of insurance to safeguard the investment they are making. Investors and traders are apprehensive of the stock market due to the fact that there is a significant amount of hidden trading and that there are a significant number of hazards involved.

Because of the practice of secret trading, the market will become less liquid, the value of capital

will increase, and the concentration of control will increase. This line of thinking is supported by empirical evidence which indicates that nations that do not have rules against insider trading have less liquid markets and higher stock prices than those that do have such regulations. Managers have the opportunity to profit from short-term price fluctuations through the use of covert trading. Because insiders stand to gain a significant amount of money regardless of the direction in which the stock price moves, the choices they make may place the firm in an awkward position. It is possible for the corporation to suffer financial losses if the shareholders vote against the company.

In the SEBI Act of 1992, Section 11 states that the primary responsibility of the SEBI is to "ensure the protection of investors' interests in the securities market." If a corporation or an individual is found to be guilty of engaging in secret commerce, they will be required to pay a fine of 23 crore Indian Rupees (INR) or three times the amount of profit they made, whichever is larger. According to Section 24 of the SEBI Act, those who infringe the law are subject to a fine or a ten-year suspension from the profession, whichever comes first. With the exception of a few prosecutions that were initiated after media allegations of insider trading, the Securities and Exchange Board of India (SEBI) has not been successful in preventing illegal insider trading despite the existence of a statute that prohibits such activity. In the past twenty years, there has not been a single person who has been found guilty of committing this crime. It is possible for a person to avoid more severe sanctions if they are suspected of engaging in insider trading and agree to a shorter trading ban. The majority of people who breach the law are simply required to pay a little fine and are not required to serve any time in jail at all. When people disobey the law in this manner, they decrease their chances of getting in problems with the authorities. When penalties and gifts of this nature are handed out, the legislation regarding the hidden trade does not function as effectively as it should.

This article takes a look at two aspects that demonstrate how the SEBI has been unable to put an end to unlawful trading. The chief executive officer of ABS Industries, Rakesh Agarwal, had some peculiar commercial dealings with Bayer AG. Rakesh made an agreement with Bayer so that they could hold 51% of the business. Rakesh purchased ABS shares from his brother-in-law before the transaction was announced to the public. The Securities and Exchange Board of India (SEBI) conducted an investigation and came to the conclusion that Rakesh had exploited information obtained from within the firm to trade ABS shares on the open market and make a significant amount of money. Rakesh was required to make restitution to the Investor Education & Protection Funds of the Stock Exchange Mumbai and the NSE after receiving a fine from SEBI in the amount of 340000 INR. Because he had acquired these shares in a lawful manner on the open market and the company's interests did not compete with his own, he decided to file an appeal against the judgment that was made by SEBI with the Securities Appellate Tribunal. He went on to claim that he had made an effort to purchase the shares, that he and his brother-in-law had intended to sell them to Bayer, and that he wished the firm would be acquired. He added that he hoped the company would be purchased.

However, the SAT panel stated that even while the rules do not require Mens Rea to be present for insider trading, it does not imply that investigators are precluded from attempting to determine what the accused was thinking. It is against the law for anyone who have knowledge that might have an effect on pricing to trade in private securities, according to the Securities and

Exchange Board of India (SEBI). The court determined that Rakesh's actions were in the best interest of the firm, and as a result, they ruled in his favor and invalidated SEBI's ruling.

Because of this, we now have the opportunity to consider Samir C. Arora's many additional legal issues. Samir was informed by SEBI that he would be prohibited from engaging in stock trading based on confidential information for a period of five years. Because Samir was prepared and understood in advance that the Securities and Exchange Board of India (SEBI) would be disclosing corporate data that had the potential to alter stock prices, he was able to save 23.57 crore. In addition to this, he was successful in overturning SEBI's verdict since the SAT was unable to locate any proof of insider trading.

There are very few incidents of individuals breaching the regulations, and the punishment is frequently not imposed because there isn't enough proof or a good investigation. Despite the fact that insider trading is illegal on the basis of corporate ethics and fairness, there are very few cases of people breaking the laws.

Critical Review

Criticism of SEBI that is based on research reveals that the organization is unable to implement significant anti-insider trading rules. The Securities and Exchange Board of India (SEBI) has been operational for many decades, yet it has never been able to successfully prosecute a case of insider trading. Even if the only consequence of an investigation is a fine, the norms and regulations of the SEBI nevertheless strongly imply jail time.

Given SEBI's inclination to resolve insider trading problems by consent orders, it is plausible to believe that insider trading is not in fact a criminal offense, and the probability of the accused being arrested and imprisoned is extremely low given SEBI's propensity to settle insider trading issues by consent orders. Within these parameters, insider trading is aggressively encouraged. When the offender is asked to sign the release form, he has the option of either admitting or denying his guilt. When wealthy and powerful people commit a crime that endangers the lives of others or threatens their wealth, they frequently adopt this tactic as a defense strategy.

The SEBI legislation only allows the authoritative body power in the event that they have reasonable grounds to accuse a person or media outlet of violating the act and rules. Unsuitable SEBI measures are restricting investors from investing money into the market. Because there is no provision or decision in Indian law that permits for preventative action to be taken against insider trading, the Securities and Exchange Board of India (SEBI) is powerless in the face of projected insider trading by any source. According to Section 26 of the SEBI Act, 1992, the courts shall not have jurisdiction over any criminal case until the SEBI has filed a complaint. This provision stipulates that the courts shall not have authority over any criminal matter. Investors do not have any recourse to safeguard their interests if they do not have access to the courts. Even if investors aren't the primary targets of insider trading, there's no way to protect them if there aren't any protections in place. This is a contradiction in words. Encouragement to pursue legal action against insider trading should be directed toward both investors and common people.

Despite SEBI's best efforts, certain of its own laws have rendered it hard to prosecute insider trading prosecutions. This is despite the fact that SEBI has good intentions. Despite the fact that the Central Government made a request, SEBI was not granted access to the suspect's phone data. Having the legal ability to spy on potential offenders is the only way to put an end to

insider trading and prevent it from happening in the future. It would be to everyone's advantage to utilize evidence to convince the person who is being charged. After listening in on Mr. Rajat Gupta's phone conversations, the United States authorities came to the conclusion that he had engaged in illegal insider trading.

Due in large part to the Securities and Exchange Board of India's (SEBI) reliance on hearsay and the absence of proof, insider trading in India has experienced an incredible growth in recent years. Even if they have access to information that might potentially move the market, professional traders have a better chance of avoiding investigation if they strictly adhere to the laws and regulations that govern their industry. If a price movement during trading exceeds certain criteria, an inquiry into possible insider trading is typically started. This can happen for a number of reasons. Because inside traders have access to price-sensitive information and may be able to anticipate whether or not an investigation will be able to be carried out, an inside trader's ability to properly forecast the future price of a stock is improved. Because of this, insiders have the ability to foresee and profit from an increase in stock prices before the prices hit a ceiling that has been fixed. Over the course of the previous several years, there has been a significant expansion of liquidity on the Indian market. Increases in market liquidity provide market insiders the ability to do business in a more covert manner. The bigger the number of daily transactions that take place, the lower the probability that insider traders will be found out. If things continue the way they are going, the authorities won't be able to differentiate between transactions that are honest and those that are dishonest.

Because of the lightning-fast pace of the market, circumstantial proof of illegal insider trading is of relatively little consequence. It is possible that the general public and investors would lose interest in the market if they believe that traders are using non-public knowledge in their transactions; this is one of the arguments that can be made against insider trading. When there are fewer individuals investing in a business, it is more difficult for that business to get capital. The closing of firms as a result of financial crises can have serious ramifications for the economics of national nations, as well as for inflation and monopolies. According to the codes of conduct that govern business, engaging in insider trading is unethical and detrimental to the whole economy.

When it comes to the enforcement of stringent sanctions for insider trading, the United States of America is, nevertheless, well ahead of the curve. In addition, the "Insider Trading Act" of 1984 provided the United States Securities and Exchange Commission with the authority to impose civil fines in addition to its ability to pursue criminal prosecution. In the United States, the primary legal authority for regulating activities involving insider trading comes from a collection of federal legislation. In the past, the federal agency known as the "Securities Exchange Commission" has taken legal action to ensure compliance with this statute.

- **Rule 10b-5**

In 1943, the Securities and Exchange Commission (SEC) released "Rule 10b-5," a "catch all" targeted anti-fraud regulation, in accordance with the power granted to it by section 10(b) of the "Securities Exchange Act of 1934" to make regulations that bar manipulative or deceptive devices and practices. This regulation was issued in accordance with the SEC's authority to establish such regulations. Even though the accusation is often not that anyone has lied, but rather that somebody had not revealed anything either, the rule has been successfully expanded to include behaviors that are known as insider trading. It is essential to keep in mind that

engaging in criminal activities in the United States, such as insider trading, is prohibited by laws such as the 10b-5 Prohibition on Insider Trading. As a result, "SEC Rule 10b-5" contributes to the prohibition of corporate officials, such as directors or other insider personnel, from trading on the company's shares while they are in possession of substantial nonpublic knowledge about the actions of the firm. It is not necessary to establish that an insider utilized immaterial knowledge when executing a contract in order to be in breach of this rule (as noted in "SEC Rule 10b5"). Because of this legislation, "tipping" confidential information about a company to a rival is far more difficult.

- **Rule 14e-3**

In accordance with the provisions of Section 14(e) of the Williams Act, fraudulent, manipulative, or misleading business practices, such as the submission of bid proposals, are now prohibited. In addition, it is often believed that the SEC came up with "Rule 14e3" in 1980 as a direct response to the Chiarella case. If sensitive information about a tender targeted offer is provided to a third party by the bidder, the primary target, their tipsters, or their insiders, those parties are now breaching the law and might face legal consequences. In the United States, there are two different sorts of punishments for insider trading, which is a crucial fact to keep in mind. A conviction for insider trading can have substantial ramifications for a person's legal status, including possible imprisonment and/or monetary fines. According to the statements made by the Securities and Exchange Commission, the maximum fine for anybody found guilty of engaging in insider trading in the United States is around $5 million, and they face the possibility of serving a jail sentence of more than 20 years15. Because of the "Insider Trading Sanction Act of 1984" and the "Insider Trading along with Securities Exchange Act of 1988," it is important to be aware that the potential penalties for engaging in insider trading might exceed three times the profits earned from such trading. As a result, the above illustration illustrates sufficiently how many restrictions and pieces of law there are against insider trading in both the United States and India.

Conclusion

Because of illegal insider trading, less people have faith in the stock market, which has contributed to a wider income disparity between the wealthy and the rest of society. Insider trading will, without fail, damage the reputation of a nation, despite the fact that the manner in which it does so might vary from one nation to the next. When a trader invests money in the market, they do so with the expectation that the market will function in a way that is both just and efficient. Any investor who is considering selling, purchasing, or holding onto a stock will first look at the price-sensitive information that the publicly listed firm has made available to the public. This information is made available by the company because it is important to investors. In recent years, a significant amount of additional capital has been invested in the stock market. Because of globalization, individuals from all walks of life now have access to a wider variety of investment opportunities. An investor has to be certain of the worth of an object before making a trade, and this certainty must be based on the price-sensitive information that is presented. Because it is essential for investors to have faith in the market and to have easy access to trading opportunities, the government should move swiftly to eliminate this risk and penalize those involved.

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