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E: ISSN NO.: 2455-0817 Remarking An Analisation

Insider Trading: Comparison with UK, USA and Indian Laws

Abstract

'Insider Trading' has consistently been the stuff of contention and outrages, standing out as truly newsworthy everywhere throughout the market and wrecking notorieties. The demonstration of Insider exchanging has consistently been one of the main drivers of segregation as it gives a little, yet special minority, an uncalled for preferred position of having certain data that the other wide larger part does not. Ongoing patterns have demonstrated that there has been a tremendous increment in the instances of salaried or corporate violations. Insider Trading has now been perceived by the created nations over the most recent three decades as a wrongdoing and a foul play against the investors specifically and advertises by and large. In the authorization of government guidelines, it is in reality a 'Cheat' that is referred to that makes the lead unlawful and in that it is alluded to as Insider exchanging. Section 15G of the SEBI Act specifies a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, for insider trading.

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Keywords: Insider Trading, Market abuse, 'abuse of data', 'false, misdirecting impressions, market bending.

Introduction

'Insider Trading' has consistently been the stuff of contention and outrages, standing out as truly newsworthy everywhere throughout the market and wrecking notorieties. The demonstration of Insider exchanging has consistently been one of the main drivers of segregation as it gives a little, yet special minority, an uncalled for preferred position of having certain data that the other wide larger part does not. No balance is seen in dispersal of such data between the two gatherings. In the present day situation, corporate exercises influence the lives and day by day schedule of each person, either straightforwardly or in a roundabout way. After the widespread increment in privatization, fundamental civilities, for example, water, power and administrations, for example, Transportation, Information innovation and so on. Are currently pre-overwhelmingly gave to the natives through corporates. Such corporates guarantee social welfare to be their goal yet a definitive go for any entrepreneur is to gain benefit. Huge numbers of these associations raise their capital through sources, for example, issues of offers in open which is ordinarily named as Initial Public Offering (IPO) or open postings to create riches for the economy just as the investors of the organization. Presently, as effectively expressed, the principle go for each agent is to gain benefit, for which they resort to utilizing force and impact self-assertively, which thus increment the odds of bad behaviours in the market.

Ongoing patterns have demonstrated that there has been a tremendous increment in the instances of salaried or corporate violations. The absolute most regularly heard corporate violations include: Embezzlement, Money Laundering, Forgery, Frauds, Ponzi Schemes, Insider Trading and so forth. These corporate wrongdoings gravely affect the general public when contrasted with other road violations as a result of their propensity to hamper with the economy of a whole entire nation. It can likewise saw from the past occurrences of insider exchanging that numerous business people have conceived an approach to satisfy their consistently expanding yearn for expanding benefits.

Insider Trading is said as one of the most common forms of securities fraud, yet it remains one of the most controversial aspects of securities regulation among legal and economic scholars.[1]

Insider Trading has now been perceived by the created nations over the most recent three decades as a wrongdoing and a foul play against the investors specifically and advertises by and large. Yet, in the no

so distant past, this demonstration of having ownership of within data and acquiring benefits dependent on that data was perceived as a demonstration of accomplishing something of an incredible worth. The Sunday Times of the United Kingdom in 1973 begat the exemplary saying, 'the wrongdoing of being something in the city', to correctly portray this estimation, which implied that insider exchanging resembled a law against high accomplishment. It ought to be comprehended that not all demonstrations managing dependent on insider data is illicit, in certainty just a small amount of absolute insider exchanging is unlawful. The abnormal state the executives purchases and sells protections once a day, however not every one of them are demonstrations of insider exchanging.

Insider Trading infers purchasing, selling and managing in offers and protections of an organization by the administration of the organization or the Key Managerial Personnel of the Company based on that data which is commonly not accessible to other open. The exchanging happens when those favoured with private data about significant occasions, exploit that learning to procure benefits or stay away from misfortunes in the financial exchange, to the hindrance of the wellspring of the data and to the run of the mill speculators who arrangement in protections with no such advantage.

Routine with regards to such managing or the demonstration of Insider exchanging is something that can be directed falsely, as one tends to not satisfy the trustee obligation that is provided reason to feel ambiguous about them and bamboozle others in some criminal design. In the authorization of government guidelines, it is in reality a 'Cheat' that is referred to that makes the lead unlawful and in that it is alluded to as Insider exchanging.

Analysis of the Insider Trading Legislations

All the major global economies including the U.S.A, the U.K., and India have attempted to address the one of basic issues under their legal framework on insider trading is what is insider trading?

The research in this paper deals with the comparison of the Indian insider trading laws with the laws in the U.K. and the U.S.A, specifically in respect of the foregoing issues. The paper will discuss about the regulatory regimes in the said jurisdictions individually with respect to the abovementioned issues.

Insider Trading in U.S.A.

There is no specific definition of “insider trading” under the American Securities Law, although Insider Trading is regarded as an offence and is legally prohibited. Illegal insider trading generally refers to buying or selling of a security, while breaching a fiduciary duty or other relationship of trust and confidence, on the basis of material non-public information (equivalent to the Unpublished Price Sensitive Information) about the securities. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped," and securities trading by those who misappropriate such information[2].

The key provisions relating to insider trading under the American legislation are Rule 10 b-5 (anti-fraud rule), Rule 14 e-3 (relating to tender offers) and Section 16 (b) (recovery of short-swing profits) of the SEC Act, 1934. For the purposes of this research all these provisions shall be understood individually.

Rule 10b-5 framed under Section 10(b) of the Exchange Act is also known as the anti-fraud rule and empowers the SEC to enforce the prohibition on insider trading. The Rule provides that:

*“*It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(i) To employ any device, scheme, or artifice to defraud, or …

(ii) To engage in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security[3].”

It ought to be seen unequivocally that neither Section 10(b) of the SEC Act, nor Rule 10b-5, explicitly denies insider Trading. Principle 10b-5 just forbids the demonstrations and strategic policies that add up to extortion or duplicity on any individual, regarding the deal or buy of protections. Though, so as to set up misrepresentation or misdirection, the courts had depended on the guideline of trustee obligation with respect to the insider towards the organization or the investors, i.e., just if the guardian obligation existed for an insider, and if there was a break of such guardian obligation, the insider could be held at risk for extortion under this Rule. The weight of verification that trustee obligation existed was on the Regulator.

However, the American courts’ approach has recently moved towards the principle of parity of information, thus discarding the reliance on the fiduciary duty[4]

Guideline 14e-3

Aside from Rule 10b-5, explicit preclusion against insider exchanging during delicate offer is commanded under at Rule 14e-3 of the SEC Act, 1934, which precludes any individual who is in control of material non-open data identifying with the beginning of a delicate offer, straightforwardly or by implication, both of the bidder organization or the objective organization, from trading the protections of the objective organization. Under this segment, there is a finished boycott existing on insider trading and not at all like Rule 10b-5, there is no compelling reason to demonstrate presence of trustee obligation. Despite the fact that, there are sure special cases to the standard. Sub-section (1) to Rule 14e-3 prohibits buys by a merchant or by a specialist in the interest of an offering individual. This is intended to enable bidders to use outside dealers to make open market buys preceding the documenting necessity. The Rule does not ensure the people who buy the protections for the bidder's benefit dependent on the data got from the bidder, regardless of whether the bidder gave the data to propel his interests in the takeover fight.

Sub-section (2) gives that the deals by any individual to the bidder dependent on the data got

from the bidder are rejected from the 'go without or reveal' rule. Along these lines, an individual (for instance, a noteworthy investor of the objective organization) who gets material non-open data from the bidder and immediately, offers his offers to the bidder over the market cost does not damage the Rule. As the exchange happens with the dealer having no enlightening favourable position over the buyer, clearly, there is no motivation to make such exchanging unlawful. These exemptions are interesting, as they don't exist in India rather such exchanges are treated as infringement of the Insider Regulations.

Section 16(b)

Another noteworthy arrangement identifying with insider exchanging the U.S.A was the Section 16(b) of the SEC Act, which allowed the backers of protections to recuperate short-swing benefits from an insider. The Trading by corporate insiders in the U.S.A is managed by Section 16(b) of the SEC Act. Under this arrangement, the short swing benefit (i.e., benefits out of inverse exchanges inside a time of a half year) made by insiders is precluded. Ownership of non-open data is unimportant to set up infringement of this arrangement. A backer or an investor, under Section 16(b), has an option to recoup any benefits made by an official, chief, or controlling investor from buys and deals that happen inside a half year of one another. Risk is resolved exclusively if the contrary exchanges include occurred inside the statutory period. This was the main arrangement under the government protections law which had distinguished the classifications of insiders, for example, official, executive and controlling investor and the utilization of within data by these corporate insiders. In any case, the constrained limitations on insider exchanging under Section 16 (b) connected uniquely to exchanges falling inside the time of a half year, to people who are assigned in the rule or to the exchanges identifying with the enlisted protections.

The anti-fraud provision under Rule 10b-5 can be squarely applied to a corporate insider who secretly trades in his own company's stock while in possession of inside information because such behaviour fits within the traditional notion of fraud. Although, the Section 10(b) of the SEC Act and Rule 10b-5 do not expressly prohibit insider trading by a corporate "outsider", in 1961, the SEC gave a broad construction of these provisions and applied them to the corporate outsiders in the case of Cady Roberts & Co[5]. The SEC held that the duty or obligation of the corporate insiders could also attach to certain category of people outside the insiders' realm, in certain circumstances.

The present Insider Trading laws in the U.S.A is a creation of SEC's administrative actions and judicial opinions based on interpretation of the statutory language. After the Texas Gulf Sulphur Co.[6], any person who possessed material non-public information was required to disclose such information before trading or abstain from trading in the company's securities. The fiduciary duty of the insider towards the company precluded him from disclosing the information and therefore, abstention was the only option. Mere possession of non-public information was not sufficient. Thereafter, in Dirks Case[7], the court laid down that the liability could also be imposed on the persons who casually tip the material inside information without any intention to profit from such dissemination of information, because it is analogous to the situation in which the tipper trades on the basis of the information and then gives the profits to the tippee. However, the court did not prohibit the corporate insiders from selectively disclosing the information to certain category of people such as analysts, so long as there was a corporate purpose. Therefore, consequent to the decision in the Dirks Case, in 2000, the SEC had enacted the Regulation and formalised the principle of fair disclosure of information in the securities market.

Insider Trading in the U.K.

The key arrangements identifying with insider exchanging or insider managing under the U.K. law are found in Section 52 of the Criminal Justice Act, 1993 and the FSMA, 2000. The methodology embraced in the CJA, 1993 pursues the European Commission Insider Dealing Directive (IDD), which treats insider managing as a maltreatment of the market instead of as a rupture of the insider's guardian commitments to the organization. The insider exchanging the U.K., in accordance with the IDD, was directed under protections enactment instead of the organization law.

The offence of insider dealing is based upon the misuse of information which relates to securities. *'Information'* is defined as *'knowledge'* communicated concerning some particular fact, subject or event. The definition of *"insider dealing"* under Section 52 of the CJA, 1993 covers the following three offences:

(a) Dealing offence;
(b) Encouragement offence; and
(c) Disclosure offence.

"Insider dealing' as defined under Section 52 of CJA states as follows:

(1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3) he deals in securities that are price-affected securities in relation to the information.
(2) An individual who has information as an insider is also guilty of insider dealing if
(a) he encourages another person to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or
(b) he discloses information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.
(3) The circumstances referred to above are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary[8]."

The common ward of the FSA in regard of the offense of 'insider dealing', which structures some

portion of 'Market abuse, is contained in the FSMA, 2000. This is like the Rule 10b-5 of the SEC Act. The common locale of the FSA in regard of the offense of 'insider dealing', which structures some portion of market abuse', is contained in the FSMA, 2000. This is like the Rule 10b-5 of the U.S.A' Exchange Act, which manages both the control cases and the insider trading, under the single enemy of extortion rule. Segment 118 of the FSMA, 2000 characterizes and denies "market abuse." Market abuse is a more extensive term which spreads both market control and insider dealing too which in India are represented by the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, which is particular from SEBI (PIT) Regulations. This market abuse arrangement records three tests that ought to be fulfilled so as to decide if a specific conduct adds up to market misuse:

(i) That the conduct must happen regarding a passing speculation exchanged on a recommended market (i.e., perceived venture trade);
(ii) One or a greater amount of the accompanying components, 'abuse of data', 'false or misdirecting impressions', or 'market bending' ought to be available; and
(iii) The conduct must fall beneath the standard of conduct that an "ordinary client" of the market would sensibly expect of an individual in the situation of the individual being referred to. Conduct will add up to 'market abuse just on the off chance that it fulfils all the previous three tests. The particular part alluding to 'abuse of data' in test 2 above comprehensively covers the insider managing offense. So as to comprise an offense under this part, the individual would need to follow up on the data which isn't commonly accessible and which would be important to a speculator's dealings in a specific venture.

Section 119 of the FSMA, 2000 requires the FSA to issue a Code of Market Conduct (the "Code") that gives direction to figuring out what sort of conduct adds up to market misuse. The Code gives progressively broad clarification of the standard client test, conduct, and abuse of data, false or deluding impressions, bending, statutory special cases and the general extent of the system. The Code likewise gives instances of what does and does not add up to market misuse ('safe harbors'). Notwithstanding, the Code isn't comprehensive and it has the impact of systematizing the standards on market abuse.

The Code sets out in more detail the standards that should be observed by market participants. The FSA is also empowered for criminal prosecution of the insider trading offences under Section 402 of the FSMA, 2000.

Insider Trading in India

Indian securities law regulates insider trading under Section 12A (d) & (e)[9] of the SEBI Act read with the SEBI (PIT) Regulations, 2015 and Section 15G of the SEBI Act. However, none of these provisions or any other provision under the Indian securities law provides a specific definition of "insider trading." Section 15G is an enabling provision for SEBI to impose penalty in insider trading cases and the SEBI relies on the nature of the violation and description of the prohibited activities under this provision for imposing such penalties. The instances of violation are described within the provision itself. It says:

"SECTION 15G- "If any insider who, -

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher[10]."

Contrary to the above Section 15G, the Section 12A of the SEBI Act lists prohibited activities primarily including manipulative trades, insider trading activities and substantial acquisition of securities. The insider trading related activities under Section 12A are:

(i) Engaging in insider trading, and
(ii) Dealing in securities or communicating to any other person while in possession of material or non-public information to any other person in violation of the provisions of the SEBI Act or the rules and regulations thereunder.

Despite the fact that the term 'insider trading' has not been characterized explicitly, regulation 3 of the SEBI (PIT) Regulations, 2015 gives that Communication or acquirement of unpublished value delicate data adds up to the offense of insider exchanging. Under Regulation 3 of the Insider Regulations, an insider who manages the protections of a recorded organization, while possessing any unpublished value touchy data is said to be blameworthy of insider exchanging. It likewise forbids an insider from obtaining, directing and imparting UPSI to some other individual. Guideline 4 precludes the exchanging when ownership of unpublished value touchy data.

Therefore, the offence of 'insider trading' as provided under Regulation 3 read with Section 12A of the SEBI Act requires any of the following activities:

a. Dealing in securities, while in possession of UPSI;
b. By encouraging another person to deal;
c. By disclosing the UPSI to another person.

As per the existing provisions under SEBI (PIT) Regulations, 2015 the offence of insider trading is constituted if:

(i) Person is an 'insider' (Regulation 2(g));
(ii) there is a 'UPSI' in his possession relating to a listed company or security (Regulations 2(n)); and
(iii) the insider has dealt in securities or communicated, counselled or procured someone to have dealt in securities.

Comparative Analysis of the term 'Insider Trading' in the said Jurisdictions

India has sufficient provisions to explain the prohibited activities in securities transaction and the instances of insider trading. Under Section 15G of the SEBI Act, an insider who deals or counsels or communicates on the basis of price sensitive information, shall be liable for a penalty. The clause *'on the basis of'* was replaced with the words *'while in possession of'* by an amendment in Regulation 3 of the SEBI (PIT) Regulations in 2002. Earlier, the position was that an insider ought to have dealt in securities on the basis of UPSI. In the case of Hindustan Lever Limited[11] also, SEBI had held HLL liable for insider trading on the ground that HLL traded on the basis of the UPSI relating to the merger of HLL & BBLIL and the appellate authority also upheld SEBI's finding in this regard.

Be that as it may, ensuing to the HLL case, in 2002, SEBI had changed this arrangement, apparently to rearrange the weight of verification in the insider exchanging cases. Further, in the U.S.A additionally, the discussion among the circuit courts identifying with ownership use was settled by the SEC by changing the Rule 10b-5 of every 2000, wherein SEC explained that buy or closeout of a security of a backer is based on material non-open data if the individual making the buy or deal knew about the material non-open data when the individual made the buy or deal Therefore, realizing ownership turned into the standard in the U.S.A Notwithstanding the U.S.A and the Indian corrections, the words "based on UPSI" some way or another kept on staying in Section 15G.

Further, the Insider Regulations alteration of 2002 had presented noteworthy lucidity in the insider exchanging laws, and has made the Indian insider exchanging laws equivalent to the laws of the created nations. Albeit extensively secured under the Insider Regulations, most likely, an arrangement identified with insider exchanging delicate offer cases might be fused as a comparative arrangement in the U.S.A (Rule 14 e-3 of the SEC Act) has reinforced the lawful system on insider exchanging and has demonstrated to be successful.

If India had tender offer specific provisions and the exceptions, similar to the Rule 14 e-3, it is possible that many of the reported cases of insider trading violation in India such as the Rakesh Agarwal Case[12] would be interpreted liberally by the courts and had different outcome.

As examined in the past sections, it tends to be seen that various wards have surrounded satisfactory laws and guidelines to direct Insider Trading, the key test has been that of the compelling requirement of the laws and guidelines. Alongside the development of the worldwide value advertise seriousness, force and greatness of the issue of the insider exchanging is likewise expected to develop after some time. Controllers, notwithstanding all inborn issues inside themselves, will attempt to think of increasingly complete and principle based guidelines to battle this issues. These enactments have been changed now and again to address different circumstances in the dynamic markets, and the legal executive, the controllers, the business network, the scholarly specialists, the requirement offices and the media have been constantly observing the adequacy of the legitimate system and have been recommending proper alterations every once in a while, there is no finished answer for preclude insider exchanging.

Aim of Study

To analyse the regulatory infrastructure of the laws governing Insider Trading in the three jurisdictions, i.e. India, the United States of America and the United Kingdom (hereinafter referred to as the said Jurisdictions) by addressing the following issues-

- What is understood as the term *'Insider Trading'*?
- Who can be considered as an 'Insider'?
- What is deemed to be Inside Information/ Material Non-Public Price Sensitive Information?
- What are the Preventive measures to curb the practice of Insider Trading?

Conclusion

In spite of the fact that the Indian law on insider exchanging is generally new contrasted with the created markets and has received different highlights from the time and tried lawful structure in different nations, India is no special case as respects the requirement challenges. The vast majority related with protections exchanging believe this to be one of the key variables in charge of destabilizing the protections advertise in the nation. Despite the fact that insider exchanging is a worldwide wonder, its power is a lot higher in immature protections advertise, as occurred in the Satyam case, numerous other enormous organizations in India have created perplexing system of merchants, venture firms, syndicate of companions and partners through whom they lead insider exchanging and make favourable circumstances.

In this setting, to survey India's Insider Trading implementation system, one ought to break down the ampleness of India's insider exchanging laws, the historical backdrop of authorization, the controller's methodology and the hindrance or medicinal effect made in the market. Further, an examination of the key implementation systems in different wards would help with understanding whether India should consolidate any of those standards or encounters into the Indian authorization instrument.

The significance of policing Insider exchanging has accepted worldwide hugeness as abroad controllers endeavour to help the certainty of residential speculators and pull in the universal venture network. Effective market is useful for the economy from venture perspective as it supports the speculation certainty of the speculators and furthermore help in the value disclosure of the advantages. Controllers think that it's hard to check insider exchanging as the line among lawful and unlawful Insider Trading is dainty and it is likewise hard to separate among lawful and illicit direct.

The prior guidelines of 1992 resembled a dormant beast since they didn't give off an impression of being forcefully sought after or implemented. The

Insider Trading guidelines are fundamentally correctional in nature as in they depict what comprises Insider Trading and afterward look to rebuff this demonstration in different ways.

The SEBI has fortified the counter insider exchanging laws by the new Insider Trading guidelines that were presented in the year 2015. It had rearranged the errand of checking and finding the act of Insider Trading in various ways. With the extension of the space of the people going under the class of 'Insiders/Connected Persons', the guidelines have now given a superior knowledge concerning what classification of individuals are viewed as falling inside the ambit of this term. Strikingly, SEBI has tried to assign a large portion of the methods to the keep going stage on the total concerned and normally it will be dependent upon the substance to complete starting examination for the last accommodation to SEBI for taking reformatory activities. Such substances have been required to accommodate inside corrective estimates, for example, the stock trades, banks and so forth.

The 2015 guidelines on Insider Trading accommodate a lot of systems and set of accepted rules for those elements whose representatives; executives and proprietors are well on the way to be in a situation to exploit the insider data for an individual increase. They are independently endorsed for recorded organizations, showcase middle people and expert firms.

The exploration researcher has broken down the Insider Trading Regime in all the said Jurisdictions and has drawn out a similar between the enactments in India with the United States of America and India with the United Kingdom.

Comparative between India and U.S.A.

It is essential to keep in mind that the two regimes are in such different stages of their growth, the regime of the United States having evolved considerable over the eight decades, whereas in India, the regulatory regime is only about two decades old. Firstly, the regulatory mechanism to curb insider trading in India is under the supervision of the SEBI. The counterpart of SEBI in the United States of America is the Securities and Exchange Commission (SEC). The SEBI and the SEC both have supervisory and regulatory roles in the mechanisms of both legal systems. In India, there is no separate legislation to govern insider trading, which is governed by the SEBI (Prohibition of Insider Trading) Regulations, 2015 and certain provisions of the SEBI Act, 1992, whereas in the United States of America, the law governing insider trading is predominantly governed by the provisions of the Securities Exchange Act, 1934 which provides the substantive provisions the violation of which would give rise to penalty.[13]

Indian Insider Trading Regulations have been widely criticized although the plain text of the regulations may be strong. In fact, when compared to the SEC and its penalties, the SEBI Act envisages a 10 year imprisonment and penalty of 25 crore for any violation under the SEBI Act, rules or regulations.[14] The penalty for insider trading is 25 crore or 3 times the profit accrued by insider trading, whichever is higher[15]. However, in practice, the highest ever penalty imposed by SEBI is INR 60, 00,000 only.[16]

SEBI rulings have a number of times been overruled by SAT due to lack of evidence. SAT dictates that insider trading can be established by “clinching evidence” only.[17]

The lacuna is therefore not in the law but in its execution. SEBI has wide powers to call for inspection of all transactional documents and other relevant information. It can summon witnesses and make any directions it thinks fit for the general well-being of the securities market. However, SEBI is yet to fully stretch its wings and crackdown on mishaps in the market.

Comparative between India and U.K.

An insider under Indian law is the one, among other people, who has received or has had access to UPSI. Thus, definition of insider under the CJA is limited as compared to the Indian law, as the latter has extended it to any person who receives or has access to UPSI from any source whatsoever. However, UK’s FSMA defines insider widely and includes information which is obtained by other means and which he knows, or could reasonably be expected to know, is inside information. Thus, as far as civil liability is concerned the applicable insider definition is similar.[18]

Both the Indian and the UK laws have similar definition of price sensitive information. The information should be such that it would have substantial effect on the price of the security.

In India, the same statute applies for criminal and civil liability. However, in UK both the liabilities are dealt under different statutes; thus, requirements for criminal and civil liability are different.

Under the Indian statute, a person is liable as a connected person only if he has been a connected person for six months prior to the act of insider trading. No such time threshold is present under the UK regulations.

The Indian law is limited to dealings with the listed companies. No such restriction is placed under the UK law. Section 58 of the CJA gives a wide scope to information which can be considered public. Among other things, it includes information which can be acquired only by persons exercising diligence or expertise, is communicated to a section of the public and not to the public at large, can be acquired only by observation, is communicated only on payment of a fee or is published only outside the UK. Under the Indian regulation, only unpublished information is defined. Section 2(k) defines an information to be unpublished which is not published by the company or its agents and is not specific in nature. Thus, UK law is less stringent on this point. FSMA doesn’t define public information.

Under section 62 of the CJA, territorial connection to the UK is required for commission of insider dealing. No such requirement has been spelt out under the Indian regulation.

Under CJA, there is a requirement of motive as a person is liable only if he knows that the information is inside information. However, under the Indian regulation, there is no requirement of motive. In

Hindustan Lever Ltd. v. SEBI[19], the Appellate Authority supported the stand taken by the SEBI and clearly ruled out the requirement for a motive.[20] Neither do the Insider Trading Regulations provide for any requirement of motive in order to secure a conviction for insider trading.[21]

Section 15G of the SEBI Act specifies a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, for insider trading. Further under section 24 of the SEBI Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of the SEBI Act or of any rules or regulations made there under, he can be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. This section read with Regulation 3 of the Insider Trading Regulation makes insider trading a criminal offence. The maximum sentence for insider trading in UK is seven years.[22] Under section 123, FSA has the authority to impose a fine of such amount as it thinks appropriate.

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