INSIDER TRADING IN INDIA

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Dear Friends,

Belated happy new year to all…

A Few days back I was going through some news articles (past dated) and found one interesting article saying **"SEBI barred POLARIS Chairman and M.D for 2 years on charges of *INSIDER TRADING*".**

Before getting in to the case, let us understand what insider trading is all about….

As per the SEBI's Prohibition of Insider Trading Regulations rules, 1992 an insider means a person who

"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with the company or is deemed to have been connected with the Company and is reasonably expected to have access to unpublished price sensitive Information in respect of securities of a company",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

"Has received or has had access to such unpublished price sensitive information"

In simple words insider traders are those persons who use the price sensitive information for their financial benefits. i.e., these persons who have sensitive information about the company, try to fluctuate the price of the securities and get the benefits out of them.

This is a Financial Crime in India and SEBI being the sole regulatory body of all the securities listed in India has come out with rules named "Prohibition of Insider Trading Regulations rules, 1992". These rules were amended to stringent the rules when necessary. The main provisions of the rules are as follows:

For companies Listed with SEBI:

- Every Listed company has to appoint a ***Compliance officer*** (usually the company secretary of the company) who shall report to M.D/ C.E.O.
- He shall be responsible for drafting & implementation of policies, rules, procedures for the preservation of "price sensitive information".
- He shall maintain a record of Designated Employees (directors & employees) of the company.
- All the Price sensitive information relating to the company should be kept secured and to be communicated only to those persons within the company to discharge their respective duties.
- The company will specify a period called "Trading Window" during which the designated employees are supposed to trade the securities. Before the

information mentioned in Para 3.2.3 of SEBI's "Prohibition of Insider Trading Regulations rules, 1992" (occurrences like declaration of financial results, declaration of dividends, amalgamations, bonus issue, etc. - which have a direct impact on price of share in the market), the company shall close the Trading period which will be reopened 24 hours after the information mentioned in Para 3.2.3 of SEBI's "Prohibition of Insider Trading Regulations rules, 1992" are made public.

- Exception to the above rule is that Exercise of ESOP can be made but Sale of the same is restricted by SEBI's rules.
- If any designated employee (including their dependants) intends to trade the securities of the company above ₹ 2, 00, 000 per trade should pre-clear the transaction from the Compliance officer who in turn gets the clearance from M.D/W.T.D.
- All the designated employees who entered pre-cleared transactions shall not enter in to opposite transactions (e.g. If one sells the securities he should not buy the securities again) during the next 6 months of the transaction.
- If it is found by the compliance officer that there is contravention of code of conduct prescribed by SEBI, company may levy penalty and take appropriate action which cannot be enough ground for SEBI for not taking any further actions.

B. For Entities registered with SEBI:

For entities registered with SEBI, the code prescribed is similar to the code prescribed for Companies registered with SEBI except for the following:

- To prevent the misuse of confidential information, the company may adopt ***Chinese wall*** methodology in which the information relating to company is divided in to two areas called as "Inside Areas" and "Public Areas" having access to confidential data and routine data respectively.
- The company may also separate both the categories of employees physically if needed and supply the information of INSIDE to those in PUBLIC only on
- In order to monitor Chinese wall procedures and trading in client securities based on inside information, the company shall restrict trading in certain securities and designate such list as ***RESTRICTED OR GREY LIST*** which can be maintained by compliance officer to be highly confidential.

In the above case of Polaris, the facts of the case are as follows:

Arun Jain, the Chairman of Polaris Software Lab Ltd dealt with15080 shares of the company on behalf of PHPL (Polaris holding Pvt. Ltd) on the basis of unpublished price sensitive information.

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SEBI started investigating the matter following media reports that Polaris, which had called off its plan to acquire US-based Data Inc., informed the stock exchanges after a delay. During that period, SEBI noted that a Chennai-based broking firm dealt in Polaris shares on behalf of Polaris Holding.

Agarwal, member of SEBI noted in his order that there was a decline in the shares of the company after the information was disclosed to stock exchanges on 30 September, 2000. The order said the shares dropped from Rs595 on 29 September, 2000, to a low of Rs390 on 23 October, 2000.

Later, Arun Jain agreed during the investigation that he had instructed his chartered accountant to sell around 15000 shares at a price of Rs.700 per share to purchase of a plot in Gurgaon.

Conclusion:

Despite of voluminous rules made by SEBI, to my opinion it is very difficult to determine the practice of Insider Trading because it involves extreme dog watching of trading the securities. The practice of insider trading can be avoided only by adopting Fair ethical practices at all levels of management.

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