

INSIDER TRADING LAWS IN INDIA – STATUS BEFORE AND AFTER THE ENACTMENT OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATION, 2015

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I. INTRODUCTION

Stock market forms the backbone of any financial system across the world as it aids in stimulating growth and investment by bringing together companies and people who invest in them. While on the one side, it has been considered by the common investor, both national and international, as an avenue for investing their surplus in the economy, on the other it facilitates the corporate entities in utilizing public money in their undertaking. However, an efficient dispensation of above function can only be assured by a stable capital market. The stability of the capital market will maintain only if the average investor preserves his confidence in the operation of stock market. Such confidence is hurt by a number of stock market malpractices hampering the growth of market amongst which 'insider trading' is the most rampant, noteworthy and significant.

To introduce the concept to the uninitiated, insider trading can be described as purchase and sale of securities of corporation by person with access to confidential information about corporation that can materially affect the value of securities and which is not

known by the shareholders or the general public¹. The central feature of conduct which could be characterised as insider trading, beyond the obvious requirement of purchase or sale of security, is the possession by the trader of the information that is in some sense material to the value of the securities traded, and is not, information already publicly known, or more specifically known to other people in the market². The phenomenon insider trading can be also be understood as situations where a person deals with securities on the basis of price sensitive information, which he or she possesses because of his / her connection with the corporation and at the time of the dealing, the information is likely and materially to affect the price of the securities being traded.³

The founder of law and economics discipline, **Henry G. Manne** defined it as:

“Insider trading generally refers to the practice of corporate agents buying or selling their corporation securities without disclosing to the public significant information which is known to them but which has not affected the price of the security⁴.”

In India, **Patel Committee**⁵ in its report explained it as:

“Insider trading generally means trading in shares of a company by the persons who are in management of the company or are too close to them, on the basis of undisclosed price sensitive information, regarding the working of company which they possess but are not available to others.⁶”

Thus, the chief characteristics of insider trading are: (1) Insider possess the inside information which is not available to the general public; (2) Insider uses confidential information for his own benefit either by making gain or avoiding loss; (3) Information is

¹ Lubinisha Saha, “Insider Trading: SEBI Regulation” 50 *Corporate Law Adviser* 76 (2002).

² M.P. Dooley, “Enforcement of Insider Trading Restriction” 66 *Virginia Law Review* 1(1980).

³ I.B. Lee, “Fairness and Insider Trading” 2 *Columbia Business Law Review* 119 (2002).

⁴ Henry G. Manne, “Definition of Insider Trading” in Fred S. McChesney (ed.) *The Collected Works of Henry G. Manne* 364 (2009).

⁵ Government of India, Report: High Powered Committee on Stock Exchange Reforms (Ministry of Company Law and Administration, 1986).

⁶ *Id.*, Para 7.25.

used to the detriment of persons who do not have that information; (4) Information is material⁷.

The practice of insider trading is frowned at for the effect it casts which can be elucidated in the following terms:

1. Insider trading is not based on a level playing field and proves injurious to the interests of the shareholders of the company as their interest at large is completely neglected in light of the insider's self-interest.
2. It discourages the general public from participating/investing in the capital market as it deteriorates their confidence in the integrity of the system.
3. It symbolizes misappropriation of corporate valuable information that is essentially the sole property of the issuer company and thus hurts their exclusive proprietary right to it.
4. It gives rise to potential conflicts of interests in which the company's best interest may wrongfully take second place to the insider's self-interest⁸.
5. It corrodes the trust of the investors in the market, the primary victim of insider trading. When investors are driven from the market, the market becomes less liquid, and thus less able to fuel the expanding capital demands of free enterprise⁹.
6. In today's international capital market, if insider trading in a particular state's markets occurs frequently, that market will be less attractive for foreign investors¹⁰

⁷ Chandravijay Shah, "Importunate Need to Check Insider Trading" 19 *Chartered Secretary* 641 (1989).

⁸ Christopher L Ryan, *Company Directors'- Liabilities, Rights & Duties* 213 (CCH New Law, 2nd edn., 1987).

⁹ Barbara S. Thomas, Commissioner U.S. Securities and Exchange Commission in Securities and Exchange Commission Conference of the International Faculty for Corporate and Capital Market Law, Paris, France, March 11, 1983 on "Insider Trading: An Internal Problem with International Implications" online available at <https://www.sec.gov/news/speech/1983/031183thomas.pdf>.

¹⁰ Kimberly Anne McCoy and Philip Summe, "Insider Trading Regulation: a Developing State's Perspective" 5 *Journal of Financial Crime* 329 (1998).

ultimately leading to disinvestment in it because of which the reputation of the market suffers internationally.

7. All this could harm the economy as a whole.

II. INSIDER TRADING IN INDIA

In India, instances of insider trading have been and continue to be persistent form of market evil since many decades now. Such instances were first reported in 1940s when directors, promoter, agents and other officers of the companies were found to be using inside information for profitably speculating in the securities of their own companies¹¹. The **President of Bombay Stock Exchange**¹², cited instances of leading companies not disclosing swiftly and publically the issue of bonus shares and declaration of dividend. However, during the decade of 1940s, insider trading did not attract much public fury because of the lack of public alertness about the truth that the profits made by insiders were pulled out from the innocent public's share. It was unchecked till late decade of 1970s when it was finally recognized as unfair as its instances came into the limelight in the Indian stock market. The first case that was discovered was that of **Garware Nylon** sometimes in early 1970s when all of a sudden a rumor hit the market that the company is about to propose a bonus issue and thus the share price of the company began to rise. However the chairperson of the company soon denied the authenticity of such information which led to fall and final stabilization of price of shares at lower level. However, the price of the shares again started rising after which the company announced bonus issue of shares. Newspaper reports suspected that the boom in price for the second time was because of heavy buy order from the Garware headquarters. Another instance was the case of **Great Eastern Shipping Company** whose shares value was around Rs. 34 at a point of time but suddenly rose to Rs. 72 in 1982. It was contemplated that the

¹¹ Government of India, Report on the Regulation of Stock Exchanges in India (1948) available at <http://www.sebi.gov.in/History/HistoryReport1948.pdf> (Thomas Committee Report).

¹² In his speech on 14th June, 1947.

company's management leaked news about issue of bonus shares to a big brokerage firm which started buying the shares of the company and seeing that the other brokerage firms also started the same. During all this, the company's management sold a major mass of their holdings. When the news of issue of bonus shares did not turn up to be true, the prices of the shares fell down sharply and finally the market of its share collapsed because of the panic wave all started selling the shares of the company¹³. Thereafter, the instance of **Hindustan Motors Company** emerged up. It had last issued bonus in 1971 and till 1985 there was accumulation of reserves but no issue of bonus was granted. The shareholders pressed for bonus at the AGM in August 1985 but the Chairman denied its possibility in the near future displeased with which the shareholders started selling off the shares of the company. It is alleged that the brokers bought them on spree and thereafter the company announced a liberal bonus¹⁴.

Time and again various Committees were established by Government of India to recommend and look into the regulatory framework for insider trading. In the year 1948, the **Thomas Committee**¹⁵ gave recommendation for strengthening of disclosure mechanism under Company Law in line with similar recommendation of Cohen Committee in United Kingdom. In the month of June, 1977, the **Sachar Committee** opined that Section 307 and 308 of Companies Act, 1956 was insufficient to curb the malaise of insider dealing and recommended fuller disclosure of transactions by those who have price sensitive information and prohibition of dealings by such persons during specific period. The Government of India constituted **Patel Committee**¹⁶ to make a comprehensive review of the functioning of stock exchanges and to make recommendations to the government on this matter. It recommended that insider trading

¹³ Editorial, "Insider Trading" *Fortune India*, Jan. 12, 1986.

¹⁴ *Ibid.*

¹⁵ Government of India, Report on the Regulation of Stock Exchanges in India (1948) available at <http://www.sebi.gov.in/History/HistoryReport1948.pdf>.

¹⁶ Government of India, Report on High Powered Committee on Stock Exchange Reforms (Ministry of Company Law and Administration, 1986).

should be regulated and declared as an offence having statutory prohibition and that to prevent such activities, stock exchange authorities should be empowered, by law, to take disciplinary action themselves and to file civil and criminal proceedings against offenders so that they do not go unpunished. Another recommendation made by it was that persons misusing inside information also be compelled by law to surrender to the stock exchanges, the profit that they may have made or the amount equivalent to the losses that they have averted¹⁷. **Abid Hussain Committee** in year 1989 was considered as gateway to the introduction of insider trading laws in India and recommended that it could be tackled to large extent by appropriate regulatory measures and thus proposed that insider trading be made an offence with both civil and criminal penalties. It stated that Securities and Exchange Board of India should formulate necessary legislation wherein it is empowered with the authority to enforce the provision.

III. REGULATION OF INSIDER TRADING IN INDIA

a) Securities and Exchange Board of India Act, 1992

Based on the suggestions of various Committees, the Government of India set up the **Securities and Exchange Board of India (SEBI)** as the first statutory regulatory body to regulate the securities markets post the reforms of 1991. A notification was issued on 12th April, 1988 and SEBI was constituted as an interim administrative body to function under the overall supervision of Ministry of Finance, Government of India. However soon a need for an enactment of legislation supporting it arose for: (1) giving SEBI powers to issue Regulations for the sector and to supervise based on the Regulation so formulated; (2) authorizing to carry out investigation, adjudicate and impose fines and other penalties; (3) enforcing credibility of the regulatory process of SEBI by placing appeals processes by courts that have specialized domain knowledge to review regulatory action

¹⁷ *Id.*, Para 7.107.

(Securities Appellate Tribunals)¹⁸. All this called for a special enabling and empowering legislation that catered to all the above needs and thus SEBI was made statutory body in 1992 by enactment of **Securities and Exchange Board of India Act, 1992** w.e.f 30th January, 1992.

Section 11 of the Securities and Exchange Board of India Act, 1992 describes the power and functions of the Board. Under Section 11 (1) of the Act, it is the duty of SEBI to protect the interest of the investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit. Under Section 11 (2) (g), prevention of insider trading has been specifically mentioned as one of its duties.

After the Amendment of 2002, **Section 12-A** of the Securities and Exchange Board of India Act, 1992 explicitly prohibits insider trading in securities of companies listed in stock exchanges¹⁹. **Section 12-A** of the Act reads:

“No person shall directly or indirectly –

(a) Engage in insider trading;

(b) Deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder”

Violation of Section 12-A attracts civil penalty under **Section 15-G** of the Act upto twenty-five crore or three times the amount of profits made out of insider trading, whichever is higher. Insider trading is also a punishable criminal offence under **Section 24** of the Act 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.

Under **Section 11 C** of the Act, SEBI is empowered to undertake an investigation where the Board has reasonable ground to believe that the transactions in securities are being

¹⁸ Dharmishta Raval, “Improving the Legal Process in Enforcement at SEBI”, online available at <http://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf>.

¹⁹ Chapter VA inserted by SEBI (Amendment) Act, 2002 w.e.f. 29th October, 2002.

dealt with in a manner detrimental to the investors or the securities market or any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the Regulations made or directions issued by the Board under it. In respect of public companies about to be listed on stock exchanges, the Board may under **Section 11 (2A)** of the Act undertake investigation of books and records etc. if it believes that the company has been indulging in insider trading.

b) SEBI (Prohibition of Insider Trading) Regulation, 1992

The increased instances of insider trading in a rapidly advancing securities market in India required a more comprehensive legislation to regulate insider trading. **Section 30** of the SEBI Act, 1992 empowers SEBI to make Regulations consistent with the Act and Rules made there under to carry out the purposes of the Act, by notification to be published in the Official Gazette of India. In exercise of this power, SEBI framed the SEBI (Insider Trading) Regulations, 1992²⁰. The Report on whose recommendations the **SEBI (Prohibition of Insider Trading) Regulation, 1992** was introduced, was the Abid Hussain Committee Report in 1989 which suggested that SEBI should formulate Regulations and governing codes to prevent unfair dealings. The Securities Appellate Tribunal in **Alpha Hi-Tech Fuel Ltd. v. SEBI**²¹ summarized the intention of these Regulations as follows:

“The primary object of the regulations is to ensure that no person trades in the securities market while in possession of unpublished price sensitive information which may give him an extra advantage over the other investors. In other words, the regulations ensure to provide a level playing field to all the investors who come to trade in the securities market²².”

The Regulation of 1992 comprised of 4 Chapters and 3 Schedules encompassing the 15 Regulations relating to insider trading. **Chapter I** dealt with definitions of terminologies

²⁰ Published in the Gazette of India, Extraordinary in Part III, Section 4 on 19th November, 1992.

²¹ Appeal No. 142 of 2009; Date of decision: 4th December, 2009.

²² *Id.* at 3.

used in the Regulations like connected persons, deemed person, insider, price sensitive information, etc²³. **Chapter II** provided for prohibition on dealing, communicating or counseling by insider as defined in the Regulation²⁴. **Chapter III** narrated the investigative power of SEBI under the Regulation and enumerates the prohibitory orders or directions that it can issue against the guilty and in the interest of capital market regulation²⁵. **Chapter IV** dealt with the code of internal procedures and conduct to be followed by listed companies and other entities, disclosure requirements to be followed by company directors, officers and substantial shareholders and the appeal provision which an aggrieved may like to follow against the order of SEBI²⁶.

c) High Level Sodhi Committee²⁷

Since the enactment of SEBI (Prohibition of Insider Trading) Regulation, 1992, SEBI's efforts have been persistently focused on development and regulation of the Indian capital market to boost the investors' confidence. In November, 2014, India's market capitalization crossed USD 1.6 trillion, making it world's ninth largest economy by market capitalization²⁸. Though the laws relating to insider trading had undergone much evolution by way of amendments, the requirement of introducing a new set of Regulations could be attributed to the fact that more than 23 years had passed since SEBI issued the Regulation in 1992. It was noticeably turning inadequate with regard to drafting, interpretation, and over time. More importantly, since the year 1992, the listed companies had endured changes in India as had the stock markets and the Indian economy as a whole. The lacunae emerging in the Regulation of 1992 in light of these changes had a harmful effect on the rights of shareholders, corporate governance norms

²³ SEBI (Prohibition of Insider Trading) Regulations, 1992, Regs. 1 to 2.

²⁴ *Id.*, Reg. 3 to 4.

²⁵ *Id.*, Reg. 4A to 11A.

²⁶ *Id.*, Reg. 12 to 15.

²⁷ Government of India: High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 (Ministry of Corporate Affairs, 2013).

²⁸ Samie Modak, "India's market capitalisation cross 100 trillion" *Business Standard*, Nov. 28, 2014.

and thus injured the overall confidence in Indian financial markets. Thus SEBI thought it was needful that a new legal regime be introduced to plug the loopholes in the legal framework and also limit the misconduct practiced in the stock market.

To ensure this, a systematic review of the existing law was called for and SEBI, therefore, constituted the High Level Sodhi Committee to undertake a comprehensive review of the existing Regulations. SEBI, in order to modify the law on insider trading, constituted an 18 member High Level Committee under the Chairmanship of Justice N. K. Sodhi, former Chief Justice of the High Courts of Kerala and Karnataka and Former Presiding Officer of Securities Appellate Tribunal, to review the existing Regulations with its first sitting on 12th April, 2013. At the outset, the Committee decided to invite public comments on any and every aspect of the Regulation which enabled a review of all aspects of the SEBI (Prohibition of Insider Trading) Regulations, 1992 including those where it was felt the provisions are inadequate. The Committee released its recommendations in a comprehensive report dated 7th December, 2013 along with a draft of the proposed Regulations. Its Report attempted to line up Insider Trading Regulations in India with international best practices while adapting the same to Indian conditions and keeping in mind the requirements of the Indian capital market and its investors. While making its suggestions, it stressed on making this arena of regulatory intervention more predictable, accurate, unambiguous and clear by recommending a combination of principles based regulations and rules backed by principles.

The Committee Report in **Part I** outlined the salient feature of the Proposed Regulations under the head: general aspects, charging provision, communication of information, due diligence, trading with possession of information, trading plan, disclosure obligation, code of disclosure and conduct. **Part II** of the Report dealt with key recommendations with deliberations and rationale on the heads like reach of Regulation, charging provisions, due diligence, valid defences, trading plan, disclosure of trades, code of

conduct, principles of fair disclosure, onus of proof, etc. **Part III** of the Report gave the draft of the Proposed Regulation.

d) SEBI (Prohibition of Insider Trading) Regulation, 2015

The Report of the Sodhi Committee was discussed and approved by the SEBI in its meeting held on 19th November, 2014 and formed the basis for introduction of the SEBI (Prohibition of Insider Trading) Regulations, 2015. Exercising its power under the SEBI Act, 1992, SEBI came up with the Regulation of 2015 on 15th January, 2015²⁹ which replaced the earlier Regulations governing insider trading in India. These Regulations came into force on 120th day of publication in the official Gazette i.e. 15th May, 2015. The Press Release that accompanied the 2015 Regulations stated that the primary objective for the introduction of the Regulation has been to strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions³⁰. It seek to (a) address the inadequacies of the Regulation of 1992; (b) establish a legal structure which conforms to global best practices; and (c) consolidate the changes effected by circulars, notifications, amendments of enactments and judicial precedents concerning securities laws in India since 1992.

The SEBI (Prohibition of Insider Trading) Regulation, 2015 comprises of Five Chapters, Two Schedules and 12 Regulations. **Chapter I** deals with the definitions. **Chapter II** deals with the Restriction on communications and trading by insiders. **Chapter III** talks about the disclosures to be made by the companies while trading its securities by insiders. **Chapter IV** prescribes a Code of Fair Disclosure and Conduct. **Chapter V** contains miscellaneous provisions.

²⁹ SEBI vide its Notification No. LAD-NRO/GN/2014-2015/21/85 dated 15th January, 2015 in the Gazette of India, Extra Ordinary Part III, Section 4 published by Authority, New Delhi.

³⁰ Press Release No. 130 of 2014 dated 19th November, 2014.

IV. COMPARISON OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATION, 2015 AND SEBI (PROHIBITION OF INSIDER TRADING) REGULATION, 1992

The Regulation of 2015 differs from that of 1992, on the following aspects:

a) Scope

While the Regulation of 1992 was applicable exclusively to listed companies only, the 2015 Regulations apply to listed companies as well as companies that are proposed to be listed on a stock exchange. The possible reason for the expansion may be to bring within its ambit those securities which are amenable to price discovery by interplay of market forces³¹.

b) Explanatory Notes

A novel model of giving note appended to many provisions to elucidate them has been set up as a noteworthy characteristic feature of Regulation of 2015 that throws light to the legislative intent behind the provision and what SEBI expects by way of complying with the Regulation. This laudable step would ensure that those who are entrusted with compliance of requirement of Regulation would properly understand the implication of the requirements³². Such a step would not only be of help to the corporate but also to the administrator in facilitating monitoring of compliance.

c) Compliance Officer

Both the Regulation of 1992 as well as 2015 mandate the appointment of Compliance Officer by listed companies and entities associated with it for the purpose of administering the Regulation. But while the term 'Compliance officer' was not defined

³¹ However, there is lack of clarity on the aspect as to which companies would fall in the category of 'proposed to be listed'.

³² T.V. Narayaswamy, "SEBI (Prohibition of Insider Trading) Regulation, 2015- An Analysis" 125 *Corporate Law Adviser* 2 (2015).

in 1992 Regulations, it is defined in Regulation of 2015³³ according to which (s)he means any senior officer, designated so and reporting to the Board of Director or head of the organization, in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these Regulations and who shall be responsible for compliance of policies, procedure, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring trades and the implementation of codes specified in these Regulations under the overall supervision of Board of Directors of the listed company or the head of an organization, as the case may be. Duties of compliance officer under Regulation of 2015 include but are not limited to:

1. Approval and public disclosure of trading plan³⁴.
2. Monitoring compliance of public disclosure requirement under the Regulation³⁵.
3. Ensuring the formulation and publication of code of practices and procedure for fair disclosure by company³⁶.
4. Intimation of code of practices and procedure for fair disclosure to stock exchange where company's securities are listed³⁷.
5. Ensuring the formulation of code of conduct by company to regulate, monitor and report trading by employees and other connected person towards achieving compliance with the Regulation³⁸.
6. Administering the Code of Conduct so farmed by the above entities³⁹.

³³ SEBI (Prohibition of Insider Trading) Regulation, 2015, Reg. 2 (1) (c).

³⁴ *Id.*, Reg. 5(1) and 5 (3).

³⁵ *Id.*, Reg. 6.

³⁶ *Id.*, Reg. 8 (1).

³⁷ *Id.*, Reg. 8 (2).

³⁸ *Id.*, Reg. 9 (1).

³⁹ *Id.*, Reg. 9 (3).

7. Ensuring maintenance of record (containing disclosures made to the company) required under the Regulation⁴⁰.

Qualification criteria for Compliance Officer in the Regulation of 1992 was mere senior level employee, while for the Regulation of 2015, it is senior level employee who is financially literate and capable of appreciating requirement for legal and regulatory compliance. As regards reporting, the Compliance Officer under 1992 Regulations was to report to the Managing Director / Chief Executive Officer while under 2015 Regulation it is to the Board of Directors of the company or the Head of the Organization, as the case may be. Thus the reporting has been elevated from functional level to Board level. Moreover, an enhanced role has been conferred on the Compliance Officer under the Regulation of 2015. Additions include the reviewing and approval of trading plan, taking appropriate undertaking before giving any approval of trading plan, deferment of execution of trading plan, intimation to stock exchange after approval of trading plan, granting of relaxation from strict application of code of conduct, etc.

d) Connected Person

The definition of 'connected person' forming the basis of defining an 'insider' has been significantly widened under Regulation of 2015. The term now includes persons associated with the company in any capacity including (a) contractual, fiduciary or employment relationship; or (b) by being director, officer or employee, (c) by being in frequent communication with the company's officers; or (c) persons holding such position including a professional or business relationship between himself and the company that allows such persons, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access within the definition of a connected person⁴¹. This definition widens the definition under the 1992 Regulations, which was solely based on position and designation of persons in relation to the relevant

⁴⁰ *Id.*, Reg. 6 (4).

⁴¹ *Id.*, Reg. 2 (1) (d).

company. According to 1992 Regulation, 'connected person' (i) is a director, or is deemed to be a director 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 company⁴². The definition in 2015 Regulation intends to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It symbolizes migration from 'position based' insider to 'association based'.

e) Deemed to be Connected

The definition of connected person in Regulation of 2015 also includes 'person deemed to be connected'. This combines two separate definitions in Regulation of 1992⁴³. However, deemed to be connected person no longer includes companies under the same management or group as per Monopolies and Restrictive Trade Practices Act, 1969 but instead includes holding company, subsidiary company and associate company. As regards capital market intermediaries as per Section 12 of SEBI Act, while under 1992 Regulations only employees of it were treated as deemed to be connected person but under 2015 Regulation it covers directors of it as well. As regards mutual funds and asset management company, under 1992 Regulations, only its employees having fiduciary relation with the company were treated as deemed to be connected but under Regulation of 2015 condition of 'fiduciary relation' is dropped. Thus, all employees of mutual fund / asset management company are deemed to be connected person. As a novel addition to deemed to be connected category, Regulation of 2015 include 'immediate relative' of the connected person (as opposed to 'relative' under Regulation of 1992) provided they

⁴² SEBI (Prohibition of Insider Trading) Regulation, 1992, Reg. 2 (c).

⁴³ 'Connected person' is defined in Regulation 2 (c) and 'Deemed to be connected' under Regulation 2 (h).

are either financially dependent or if their trading decisions involve consultations with the connected person.

f) Generally Available Information

This was another novel concept introduced in the Regulations of 2015 defining it as information available to public on non-discriminatory basis⁴⁴. It was introduced to define 'unpublished price sensitive information' in a novel fashion. This term was absent in the Regulation of 1992. According to the **Note** to Regulation 2 (1) (e) of Regulation of 2015, the term has been defined to identify what is and what is not unpublished price sensitive information and formulates a test based on the fact that whether the information in question is accessible to public on a non-discriminatory basis.

The term 'non discrimination' has not been defined in the Regulation. Generally speaking, it implies absence of discrimination. Discrimination in Article 304 (a) of the Constitution implies an element of intentional and purposeful differentiation thereby creating economic barrier and involves element of unfavorable bias. It implies an unfair classification⁴⁵. Hence information published on stock exchange⁴⁶, news published in the national daily/ newspaper, conclusion based on research and analysis about the company or its script based on public information and which is meant for anybody either on payment or free of cost etc. would be considered as generally available information for public.

In order to understand the term 'non-discriminatory' access the **Sodhi Committee** has explained that a research report that is priced for purchase and is made available to all clients of a stock broker or any class of clients of broker having certain risk profile who may acquire that research report is available on non-discriminatory basis. It also pointed out that merely because the research is priced and needs to be purchase would by itself

⁴⁴ SEBI (Prohibition of Insider Trading) Regulation, 2015, Reg. 2 (1) (e).

⁴⁵ *Video Electronic Private Limited v. State of Punjab*, AIR 1990 SC 820, 832.

⁴⁶ SEBI (Prohibition of Insider Trading) Regulations, 2015, Note to Reg. 2 (1) (e).

mean that access to it is non discriminatory. However if someone finds that here is extraordinary and peculiar structure such as pricing the research report at a price not in line with the market practices such that only some identified persons may be able to acquire it and hope to rely on it by way of ostensible non discriminatory access, it would not be non discriminatory. Therefore whether some information is available on a non discriminatory basis would be a question of fact to be answered adopting the standard of reasonable man⁴⁷. Further information is capable of being accessed by any person without breach of any law would be considered as generally available. This can be understood by way of very interesting example such as “if one were to see the chief executive officer of a listed company who is also company’s alter ego collapse with a heart seizure at reception of a doctor’s clinic and were to call up the broker to sell up the shares, would the information be unpublished price sensitive information? The Sodhi Committee concluded that such information would indeed be considered generally available since the reception at the doctor’s clinic would be a public place and anyone who happens to be there could have seen it and could have reacted. On the other hand, if the same chief executive officer were to collapse with heart seizure in midst of corporate small meeting and his colleagues were to sell the shares before the news could reach the market, they would have been in possession of information owing to their presence at private meeting in the line of duty and the news of ill health would not be generally available information and would therefore be unpublished price sensitive information⁴⁸. Another example would be of a person legitimately watching and counting the movement of goods from factories of a company and making his / her own analysis and assessment without involving a breach of obligation under these regulations would be accessing information that is generally available. Such research would not render him to be in possession of unpublished price sensitive information. However a person who procures such information by breaking in the company’s systems or by reason of an

⁴⁷ Sodhi Committee Report, p. 21.

⁴⁸ *Id.* at 22.

insider passing on such information in breach of obligation to keep information confidential, would be regarded as having availed of publically inaccessible information⁴⁹.

g) Immediate Relative

This term has been introduced in the Regulation of 2015 as opposed to the term 'relative' of Regulation of 1992. Regulation 2 (1) (d) of Regulation of 2015 includes an immediate relative in the ambit of 'deemed to be connected person'. This is a change from the Regulation of 1992 whose Regulation 2 (h) (vi) extended the scope of deemed to be connected to not only immediate relative but also who are defined as 'relative' under Section 6 of Companies Act, 1956. Ambit of such 'relative' was very wide and practically it was not possible for person to have control on these individuals who are within the definition of the term. Keeping in mind this, the Regulation of 2015 defines the term 'immediate relative' on whom it is reasonably expected that connected person or insiders have direct control. A person covered under the definition of immediate relatives is presumed to be connected person, with a provision of right to challenge this presumption. In order to prove innocence, such immediate relative may prove beyond doubt that despite being in such a position, the immediate relative could not reasonably be expected to have access to unpublished price sensitive information. In past, SEBI has been facing difficulties in proving passing of unpublished price sensitive information to an immediate relative but with this the burden of proof has shifted on the immediate relative to prove that he or she did not hold unpublished price sensitive information before trading the securities.

h) Insider

The changed definition of 'connected persons' has lead to resultant widening of the definition of an 'insider'. The Regulation of 2015 implicate anyone in possession of

⁴⁹ *Ibid.*

unpublished price sensitive information as an insider unlike Regulation of 1992 which includes only such person who has had access or has received unpublished price sensitive information. The definition of 'insider' under 2015 Regulation includes both (a) connected persons (by virtue of their relationship with the company) and (b) those who are in possession of UPSI (by virtue of mere possession of unpublished price sensitive information)⁵⁰. Thus, the condition of 'connected person' and 'in possession of or having access to unpublished price sensitive information' is mutually exclusive. A connected person will be called insider even if he does not have any unpublished price sensitive information. Similarly, a person who possessed or has access to unpublished price sensitive information, even if he is not a connected person shall be an insider. In contrast, under the Regulation of 1992, the requirement of 'connected person' and 'reasonably expected to have access to UPSI' were connected and only on satisfaction of both conditions was a person be taken as 'insider'. Thus the ambit of persons who fall within the definition of 'insider' has been expanded by Regulation of 2015.

i) Securities

'Securities' was not defined in the Regulation of 1992 but has been defined in Regulation of 2015⁵¹ by reference to the Securities Contracts (Regulations) Act, 1956. The definition clearly suggests that the following will be covered: (i) shares, scrips, stock, bond, debenture, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; (ii) derivatives; (iii) units or other instrument issued by collective investment scheme to investors in such scheme; (iv) security receipts as defined under Section 2 (zg) as defined under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; (v) government securities; (vi) such other instrument as may be declared by Central

⁵⁰ SEBI (Prohibition of Insider Trading) Regulation, 2015, Reg. 2 (1) (g).

⁵¹ *Id.*, Reg. 2 (1) (i).

Government as securities; (vii) rights or interests in securities. Units of Mutual fund have been expressly excluded from the ambit of securities.

j) Trading

While the Regulation of 1992 used the term 'dealing in securities', the Regulation of 2015 uses the term 'trading' which is wider in ambit. Trading includes subscribing, buying, selling, dealing, agreeing to subscribe, buy, etc. and other actions like pledge of shares⁵². As per the **Note** to Regulation 2 (1) (i), definition is intended to cover transactions other than purchase and sale of securities, such as pledge. Thus, even transactions such as those creating security interest or pledging would come within the scope of 'trading' for the purpose of this Regulation.

k) Unpublished Price Sensitive Information

'Unpublished price sensitive information' has been defined under Regulation of 2015 as information not generally available and which may materially affect the price of securities on coming into public domain⁵³. The terms 'unpublished' and 'price sensitive information' were defined separately under the Regulation of 1992⁵⁴ but they have been combined under Regulation of 2015. Moreover, the Regulation of 2015 states that 'unpublished price sensitive information' includes but not restricted to information relating to the following: (i) financial results; (ii) dividends; (iii) change in capital structure; (iv) merger, demerger, acquisition, delisting, disposal and expansion of business and such other transactions; (v) changes in key managerial personnel; (vi) material events in accordance with listing agreement. Thus the Regulation of 2015 has two new entries as compared to the 1992 Regulations being 'change in key managerial personnel' and 'material events in accordance with the listing agreement'.

⁵² *Id.*, Reg. 2 (1) (l).

⁵³ *Id.*, Reg. 2 (1) (n).

⁵⁴ 'Price Sensitive Information' under Regulation 2 (ha) and 'Unpublished' under Regulation 2 (k).

The 1992 Regulations on insider trading interpreted the term 'unpublished' literally and stated that only information published by the company or its agents would be outside the ambit of unpublished price sensitive information. However, under the regime of 2015, this requirement for the company itself to publish or authenticate the information has been disposed off and there is no longer a specific requirement for the company itself to publish or authenticate the information for the information to fall outside the ambit of unpublished price sensitive information.

Another important change in the definition of price sensitive information from the 1992 Regulations was that the earlier Regulation had reference to a company only, while the definition of unpublished price sensitive information in 2015 Regulation extends to both a company and securities. Thus the definition of price sensitive information in 1992 Regulation only covered information which is related to securities of the company but the new definition covers all kinds of securities such as a derivative instrument which is not issued by the company but represent an interest in company, securities issued by mutual fund, collective investment scheme, etc.

l) Reference to other Acts and Regulations

A novel way of defining those terms that are not defined in the Regulation of 2015 has been introduced by the Regulation 2 (2) by stating that they shall have the same meaning as respectively assigned to them in the SEBI Act, 1992, Securities and Contract Regulation, 1956, Depositories Act, 1996, Companies Act, 2013. Such a provision did not find place in Regulation of 1992 and was a cause of concern as many terms like 'securities' was left undefined under the Act.

m) Prohibited Acts

In 2015 Regulations, mere communication of unpublished price sensitive information is punishable, however in Regulation of 1992, mere communication of unpublished price

sensitive information (without any dealing) could not be proceeded against⁵⁵. This rigorous provision has been enacted to ensure hygiene in the stock market by warranting that unpublished price sensitive information is not dealt with casually but only on need to know basis and in case of negligent dealing with it, leading to access to insider, it would tantamount to prohibited act under 2015 Regulations. Moreover, the restriction of prohibition on 'procure' as existed in 1992 Regulation was only limited to 'insider' while in the Regulation of 2015 the same act in another wordings as 'procure from or cause communication by any insider' is with respect to anyone.

n) Defences

Under the 1992 Regulations valid defences against the charge of insider trading was available only to companies under Regulation 3B in form of Chinese wall defence. But in 2015 Regulations, the use of valid defense has been extended to insiders / persons as well. The Regulation of 2015 provide a broad defence mechanism whereby an "insider may prove his innocence by demonstrating the circumstances including the following...⁵⁶". This implies that the defences as prescribed in the Regulations are not exhaustive and only an exemplary list and the court may consider defences outside its ambit and allow the insider to establish his innocence by indicating the other exonerating circumstances relating to the trade. **Sodhi Committee** recommended a number of defences of which the following three were incorporated in the **Proviso to Regulation 4 (1) of Regulations of 2015**:

- (i) **When there is parity of information between seller and buyer** - The parity of information defence is available under Proviso (i) to Regulation 4 (1) for inter-se transfers between promoters off the exchange, when such promoters are in possession of same unpublished price sensitive information without being in

⁵⁵ Dealing was a very critical part as reflected in the SEBI Press Release No. 43/2002 dated 22nd February, 2002 which categorically said that unless you deal with it, communicating is not an offense.

⁵⁶ SEBI (Prohibition of Insider Trading) Regulation, 2015, Proviso to Reg. 4 (1).

breach of Regulation 3 and both parties has made a conscious and informed decision. The Sodhi Committee had recommended the parity of information defence as a general clause but it was drastically altered in the Regulations and restricted only to off-market deals between promoters. The rationale for the above defence is that if two identically placed persons have knowledge of same set of information then transaction between them should not be treated as violation of insider trading⁵⁷.

(ii) When trading decision is taken by authorised person on behalf of organisation or company - Regulation provides defence to the charge of insider trading if the transaction is executed by the authorised person during the normal course of duties on behalf of a company without having any unpublished price sensitive information. Proviso (ii) of Regulation 4 (1) provides that the defence is available: a) where the trading decision is taken by individuals who were not in possession of such unpublished price sensitive information at the time of taking such decision; b) appropriate and adequate arrangements were in place to ensure that these Regulations were not violated and that no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions; and c) there is no such arrangements having been breached. The idea behind providing the above defence is based on the fact that in any business group comprising multiple entities discharging multiple roles, if it is possible to ring fence the person who are in possession of unpublished price sensitive information from those who are responsible for decision making necessary for the trades, the rationale underlying the prohibition of insider trading would not be attracted⁵⁸.

⁵⁷ Sodhi Committee Report, p. 32.

⁵⁸ *Id.* at 33.

(iii) **When trading is in accordance with the Trading Plan** - The concept of trading plan, which was introduced for the first time by the Regulation of 2015, acts as a affirmative defence to insider trading charge under Proviso (iii) to Regulation 4 (1). It allows the directors, officers and employees and other insiders who may come in possession of unpublished price sensitive information about a company or its securities to adopt trading plan.

o) Due diligence

As a significant development by the Regulation of 2015 over and above the Regulation of 1992, an exception has been carved out for due-diligence process in Regulation 3 (3) of Regulation of 2015. In order to facilitate legitimate business transaction, SEBI has legalized access to unpublished price sensitive information through the process of due-diligence but subject to appropriate safe guards reflecting upon its attitude to facilitate business rather than to impede it. This has made it simpler for private equity and strategic investors to access unpublished price sensitive information, without taking risk of being caught under the regulatory scrutiny, in case of impending merger or acquisition transactions. The exceptions are as follows:

(1) **Where there is an obligation to make an open offer** - Under the Regulation 3(3)(i), unpublished price sensitive information may be communicated, provided or allowed access to, or procured, in relation to transactions triggering open offer under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, provided that the board of the company is satisfied that the transaction is in the best interests of the company. In such cases, conduct of due diligence would facilitate the public shareholders to take informed decision about their investment based on information disclosed in letter of offer. In the absence of it, it becomes hard for the acquirer company to assess the risk involved in the proposed investment transaction. The **Note** attached to the sub regulation states that this

provision is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring unpublished price sensitive information for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment.

- (2) **Where there is no obligation to make open offer** – Regulation 3 (3)(ii) deals with cases where procurement, communication, provision or allowing access to price sensitive information for conducting due diligence is allowable even though there is no open offer to be proposed but conducting of due diligence is in the best interest of the company and the findings of the due diligence that constitute unpublished price sensitive information are to be disseminated and made available to everyone at least two trading days prior to the proposed transaction. The board of directors of the company is required to make public disclosures of such unpublished price sensitive information 2 days before the proposed transaction to exclude probability of information asymmetry within the market.

For achieving assistance in the conduct of due diligence and to protect misuse of unpublished price sensitive information in form of findings out of diligence, under Regulation 3 (4), the board of directors has an obligation to ensure that confidentiality and non-disclosure contracts are duly executed between the parties and that such parties ought to keep information received as confidential and they do not trade in securities of the company when in possession of the unpublished price sensitive information.

p) Trading Plan

One of the novel defence to the charge of insider trading in the Regulation of 2015 is for trades made pursuant to a pre-existing trading plan formulated in accordance with the Regulation⁵⁹. There are certain classes of persons such as promoters, persons in senior management, etc. who may perpetually be in possession of unpublished price sensitive

⁵⁹ SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 4 (1) Proviso (iii).

information. By this defence, such insiders, who are likely to possess unpublished price sensitive information at most of the time during the year, are allowed to devise trading plans for themselves but with appropriate safeguards mandated by law. Permission is granted to every such insider to make a pre scheduled planning for his trade or devise trade plan for trades to be executed in future in a manner as specified in the section and get the same disclosed to the public through stock exchange before execution of such trade. The **Note** appended to the Regulation 5 (1) states that this provision intends to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner.

Although the concept of trading plan is new in India but it has already become increasingly popular in foreign jurisdictions⁶⁰ such as U.S. and U.K. where the regulatory authority allow large shareholders, directors, officers and other insiders who are perpetually in possession of material non public information but who want to trade in securities by adopting a written plan to trade, at the point of time when they are not in possession of such information. The motivation for SEBI to include concept of trading plan has been an analysis of various jurisdictions where it is already in use and evidence which leads for the same⁶¹. The Sodhi Committee suggested the provision of trading plan in line of United States where the concept of trading plan has already been available for reasonably long time and further improvements have already been made on basis of empirical evidence⁶².

Safeguards - There are certain safeguards introduced in the concept of trading plans to prevent its abuse. They are:

⁶⁰ Aditya Singh Rajput and Ashish Patel, "Revitalisation of Insider Trading Norms: An analysis of SEBI (Prohibition of Insider Trading) Regulations, 2015" 2 *Company Law Journal* 132 (2015).

⁶¹ Sodhi Committee Report, p. 34.

⁶² Umakanth Varottil, "Over hauling the Insider Trading Regulation", online available at http://indiacorplaw.blogspot.in/2013/12/overhauling-insider-trading-regulations_22.html.

1. **The trading plan should not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan⁶³:** As per the **Note** appended to the Regulation, it is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Such a period is considered reasonably long for unpublished price sensitive information that is in possession of the insider when formulating the trading plan, to become generally available⁶⁴ or time in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier⁶⁵.
2. **The trading plan should not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results⁶⁶:** This implies that no trading shall occur between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results. The **Note** appended to the Regulation states that since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price sensitive information, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate unpublished price sensitive information.
3. **The trading plan should entail trading for a period of not less than twelve months⁶⁷:** This safeguard indicates that trading plan should be for a reasonable period of 12 months diminishing chances of frequent formulation of number of trading plans all covering short period of time on the basis of unpublished price sensitive information. As per the **Note** appended to the Regulation, it would be

⁶³ SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 5 (2) (i).

⁶⁴ *Id.*, Note to Reg. 5 (2) (i).

⁶⁵ *Ibid.*

⁶⁶ *Id.*, Reg. 5 (2) (ii).

⁶⁷ *Id.*, Reg. 5 (2) (iii).

undesirable to have frequent announcements of trading plans for short periods of time rendering meaningless the defence of a reasonable time gap between the decision to trade and the actual trade. Hence it is felt that a reasonable time would be twelve months⁶⁸.

4. **The trading plan shall not entail overlap of any period for which another trading plan is already in existence⁶⁹:** As per the Note, it is intended that it would be undesirable to have multiple trading plans operating during the same time period. Since it would be possible for an insider to time the publication of the unpublished price sensitive information to make it generally available instead of timing the trades, it is important not to have the ability to initiate more than one plan covering the same time period⁷⁰.
5. **The trading plan shall set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected⁷¹:** As per the Note, it is intended that while Regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out⁷². The trading plan may set out the value of securities or the number of securities to be invested or divested⁷³. Specific dates or specific time intervals may be set out in the plan⁷⁴.

⁶⁸ *Id.*, Note to Reg. 5 (2) (iii).

⁶⁹ *Id.*, Reg. 5 (2) (iv).

⁷⁰ *Id.*, Note to Reg. 5 (2) (iv).

⁷¹ *Id.*, Reg. 5 (2) (v).

⁷² *Id.*, Note to Reg. 5 (2) (v).

⁷³ *Ibid.*

⁷⁴ *Ibid.*

6. **The trading plan shall not entail trading in securities for market abuse**⁷⁵: As per the **Note**, trading on the basis of such a trading plan would not grant absolute immunity from bringing proceedings for market abuse. For instance, in the event of manipulative timing of the release of unpublished price sensitive information to ensure that trading under a trading plan becomes lucrative in circumvention of Regulation 4 being detected, it would be open to initiate proceedings for alleged breach of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulation⁷⁶.

As per **Regulation 5 (3)**, the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan. As per the **Note** to this sub regulation, it is intended that the compliance officer would have to review and approve the plan. For doing so, he may need the insider to declare that he is not in possession of unpublished price sensitive information or that he would ensure that any unpublished price sensitive information in his possession becomes generally available before he commences executing his trades⁷⁷. Once satisfied, he may approve the trading plan, which would then have to be implemented in accordance with these Regulations⁷⁸.

As per **Regulation 5 (4)**, the trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the

⁷⁵ *Id.*, Reg. 5 (2)(vi).

⁷⁶ *Id.*, Note to Reg. 5 (3).

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid violation of Regulation 4 (1).

As per **Regulation 5 (5)**, upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed. As per the **Note**, it is intended that a trading plan is required to be publicly disseminated. Investors in the market at large would also factor the potential pointers in the trading plan in their own assessment of the securities and price discovery for them on the premise of how the insiders perceive the prospects or approach the securities in their trading plan⁷⁹.

q) Investigation and Prosecution

Under the Regulation of 2015, there is no mention of appointment of Investigation Authority and SEBI has to take action as per the SEBI Act, 1992 if there is any contravention of this Regulation⁸⁰. However, under the Regulation of 1992, SEBI may appoint one or more officers to inspect the books and records of insiders on suspicion of insider trading and procedure for investigation was mentioned in Chapter III⁸¹.

r) Penalties

Under the Regulation of 2015, no separate penalties have been prescribed under the Regulations. Reference is made however to the penalty provisions under the SEBI Act, 1992 which makes insider trading punishable with a penalty of Rs. 25 crores or 3 times the profit made out of insider trading, whichever is higher⁸². However under Regulation of 1992, Regulation 11 mentions a variety of orders that can be passed against the insider

⁷⁹ *Id.*, Note to Reg. 5 (5).

⁸⁰ Under Section 11 C of the SEBI Act, 1992.

⁸¹ SEBI (Prohibition of Insider Trading) Regulation, 1992, Reg. 4A to 11A.

⁸² SEBI Act, 1992, s. 15 G.

or such other person as follows: (a) directing not to deal in securities in any particular manner; (b) prohibiting disposing of any of the securities acquired in violation of the Regulations; (c) restraining the communication or counsel any person to deal in securities; (d) declaring the transaction(s) in securities as null and void; (e) directing the one who acquired the securities in violation of the Regulations to deliver the securities back 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 Recognized Stock Exchange.

s) Onus

The Regulation of 2015 has also tightened the strap around the insiders by placing the onus of establishing their innocence on them. What needs to be demonstrated to bring a charge against a person is that he traded when in possession of unpublished price sensitive information⁸³ after which his trades would be presumed to have been motivated by the knowledge of such information in his possession. In such case, it would be upon the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso⁸⁴. Regulation states that the onus lies on the alleged insider to prove that he was not motivated by unpublished price sensitive information to trade in securities of listed entity and if he fails to do so, he would be liable for violating the prohibition. Moreover, in case of connected person, the onus of establishing that they were not in possession of unpublished price sensitive information is on the connected person while in other cases it is on the Board⁸⁵. By shifting the burden of proof to the alleged offender, SEBI has strengthened its enforcement mechanism that has proven to be a major lacuna in the previous regime.

⁸³ SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 4 (1).

⁸⁴ *Id.*, Proviso to Reg. 4 (1).

⁸⁵ *Id.*, Reg. 4 (2).

V. CONCLUSION

India has put her best foot forward in making a move towards the enactment of the Regulation of 2015 with an aim to align its laws on insider trading with that of the developed countries. It is certainly a praiseworthy effort in course of renovating the legal regime to address challenges and deficiencies of Regulation of 1992. It introduces stricter and more determined provisions along with plethora of new concepts for improving the level of protection granted to the investors with an aim to change the deteriorating scenario. The Regulation seems to be headed towards making the stock market more business friendly, providing much-needed filip to Indian capital market and facilitating further economic buoyancy. It appears to be hopeful, more realistic, and based on the global approach to insider trading due to which it seems to be more equipped to ensure better compliance and enforcement. It seem to be effective on paper and seems that it shall achieve its intention of deteriorating the widespread insider trading activities; however the truth may not get revealed unless the case-law develops on it and till then it will be difficult to predict the practical implication of the Regulation as their viability would solely depend upon their implementation. Though it is sincerely hoped that the Regulations would change the deteriorating scenario, at the end of the day, only time can tell how the Regulation will work out.