

SCOPE AND APPLICABILITY OF THE TIPPER-TIPPEE THEORY OF INSIDER TRADING: A COMPARATIVE ANALYSIS IN INDIA AND UNITED STATES PERSPECTIVE

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Abstract:

Insider trading in India significantly differs from that of the USA. Insider trading, being the cornerstone of securities law, which has theories that delineates the obligations and liabilities of persons involved in the insider trading. In the USA, the jurisprudential aspects say the theories plays a pivotal role. Among all the theories, the tipper-tippee theory has evolved giving recognition to not only the insiders but also the other persons associated, who can be also be non-insiders. Though, originated in the USA, its features exhibit to be applied to every jurisdiction, thus aids in identifying the yardsticks such as forms of malpractice, personal benefit and breach of trust taking place within the corporations. The tippee trades with the ulterior aim to trade with the information received from the tipper, that results in a nefarious intent. Although the insider trading comes under the broader purview, merely one of the theories of insider trading liability is dealt by this study. The research delves through the lens of the tipper-tippee theory prevalent in the USA.

Keywords: *Tipper-tippee theory, Legal and Regulatory frameworks, Indian cases, Insider trading liability, USA, India.*

I. INTRODUCTION:

"Insider trading always let down the investor's confidence, where the exchange of confidential information for personal gain stands as a violation of basic sense of justice"

Traditionally the stock exchanges operated as a platform not-for-profit, further regulated by the brokers and dealers like a club, with lot of hindrances to entry. However, with the advent of national and international competitions, this monopoly was broken down and expanded the stock exchange, thereby traded publicly by companies for profit⁷¹². The concept of Insider trading plays a detrimental role in the stock exchange and is referred to as a malpractice wherein the insiders of the company have

access or in possession of non-public information trade in securities that can be viewed crucial for making investment decisions⁷¹³. Insider trading (also can be termed as insider dealing) is an access to confidential information, which is unauthorised and illegal with regard to trading on the stock exchange for one's own advantage. The unfair advantage gained by the someone with asymmetric access to markets trades securities, in terms of possessing the unpublished price sensitive information (hereinafter referred to as 'UPSI') is known as Insider trading⁷¹⁴. This concept is purely based on information asymmetry, wherein the one has better access to the

⁷¹²Andreas M. Fleckner, Stock Exchanges at The Crossroads, *Fordham Law Review*, Vol.74, pp.2541-2542

⁷¹³ The Economic Times, [What is Insider Trading? Definition of Insider Trading \(20 OCTOBER, 2023\)](#), [Insider Trading Meaning - The Economic Times \(indiatimes.com\)](#)

⁷¹⁴ [Juliette Overland](#), Corporate Liability for Insider Trading, (1ST EDITION, 11 MARCH 2019), [Corporate Liability for Insider Trading | Juliette Overland | Taylor & \(taylorfrancis.com\)](#)

information that is unpublished or non-public compared to another. These persons are denoted as 'Insiders'⁷¹⁵.

The Origin of Insider trading in India initially was incorporated in the 'Securities Exchange Board of India Act, 1992' (Hereinafter referred to as SEBI Act), where the preamble of SEBI Act states that "it aims to regulate the stock exchange and oversee the securities market's function and thereby ensuring the investor's protection and their interest"⁷¹⁶. The parent provision in the SEBI Act is applicable only to listed public companies⁷¹⁷. In the meanwhile, section 195⁷¹⁸ of the companies Act, 2013 deals with the insider trading and the applicability extended to all the companies. Thus, it was in existence only in 2013 and has no such prevalence in 'Companies Act, 1956'. In the subsequent years, the intention of the SEBI aimed to implement the regulatory frameworks in order to control the malpractices that takes place due to insider trading and as an effective result of which 'SEBI (Prohibition of Insider Trading) Regulations, 1992' was drafted under the Chairmanship of Former Chief Justice N. K. Sodhi. He made us to realize and stated that the insider trading is difficulty to prove and the initial burden to bring home a charge could be heavy⁷¹⁹. Subsequently the 1992 regulation was amended in 2002, when the Sarbanes-Oxley Act, 2002 (hereinafter referred to as SOX) also came into force in the USA. Even the SOX aims to protect investors by improving the accuracy and reliability of corporate disclosures⁷²⁰. Then the 'SEBI (Prohibition of Insider Trading) Regulations, 2015' [hereinafter referred to as PIT Regulations, 2015] came into force. Pursuant to the TK Viswanathan Committee recommendations, an amendment to PIT Regulations has been introduced in 2018, which has included the definition of UPSI. UPSI⁷²¹ is the information which has to be kept

confidential not only in the listed companies but also the unlisted companies which is referred to as "proposed to be listed" that is inserted under 'SEBI (PIT) (Amendment) Regulations, 2018'.

Insider trading in India differs significantly from that of the USA. In the USA, the origin is rooted from the securities exchange Act, 1934 and then comes the theories of insider trading liability from the Rule 10b-5. Thus, the liability theories emerged and the tipper-tippee theory plays a significant role. The ulterior aim of the tippee is to use the information derived from the tipper, trade with the information with respect to trade offers and securities with a nefarious intent. The tipper and tippees benefit from the illegal trading, they gain unethical earning in return, falling within the purview of unfair trade practices⁷²². This research study aims to analyse this concept by interpreting this tipper-tippee theory into the insider trading cases in the Indian regime.

Scheme of the study:

Part – I deal with Origin and scope of tipper-tippee theory of insider trading liability in the USA regime.

Part – II deals with the Legal and Regulatory frameworks governing the concept of tipper-tippee theory in the Indian regime.

Part – III deals with Application of tipper-tippee theory to the case laws of Indian landscape.

1. STATEMENT OF PROBLEM:

In India, despite the concept of insider trading is governed by the legislative and other regulatory frameworks, the insider trading of Indian landscape is not subjected to any theories to be interpreted with an aspect of jurisprudential idea. However, there are theories in India dealing with the concept of corporate governance, but not accurately in relevant to the insider trading liabilities. The SEBI Act 1992, the Companies Act 2013 and the SEBI regulations are merely the guidelines in place,

⁷¹⁵ SEBI (PIT) Regulations, 2015, Reg. 2(1)(g)

⁷¹⁶ [SEBI | About SEBI](https://www.sebi.gov.in/about-sebi)

⁷¹⁷ SEBI Act, 1992, Sec. 11(2)(g)

⁷¹⁸ The companies Act, 2013, Sec. 195 omitted vide the Companies (Amendment) Act 2017

⁷¹⁹ N. K. Sodhi, Committee Report on SEBI (PIT) Regulations, 1992, (December 7, 2013)

⁷²⁰ Public Law 107-204—July 30, 2002 116 Stat. 745

⁷²¹ SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 2(1)(n)

⁷²² Sparsh Saxena, Bhavya Pathania & Aditya Shenoy, Effectiveness of Insider Trading Laws in India: Identifying and Addressing Legal Lacunae, 3 INDIAN J. INTEGRATED RSCH. L. 1 (2023).

while it lacks the theoretical framework, therefore the absence paves way for ambiguity in determining what constitutes insider trading. In the USA jurisdiction, theories have been developed to address the insider trading and it aids to substantiate the legality or illegality of the trading, in which the insider within the corporation is engaged in. The theories also help in identifying the person involved in such illegal and unethical trading, as they take many forms of malpractice, undue advantage, personal benefit, breach of the source of information etc., this even can lead to prosecution of the insider and outside in exceptional cases. These theories of the USA are quoted in the Indian judgements by the name of tipper-tippee, at times to substantiate the liability arising out of insider trading. Consequently, a need for theoretical context in order to enhance the regulatory procedures, lead the market participants, foster transparency in the secondary market of India. The entirety of the research objective is to apply and interpret the tipper-tippee theory in the light of case-law in the Indian jurisdiction.

2. OBJECTIVES OF THE RESEARCH:

- i. To research how the theory of tipper-tippee of insider trading liability came into existence in the USA.
- ii. To evaluate and critique the notion of tipper-tippee theory in the USA.
- iii. To examine the legislative and regulatory frameworks governing the tipper-tippee theory in the Indian perspective.
- iv. To apply and interpret the technique of tipper-tippee approach in the Indian cases and circumstances.

3. RESEARCH QUESTIONS:

- a) How the tipper-tippee theory of insider trading liability originated in the USA and what is the scope of such theory?
- b) Whether there are provisions of legislative and regulatory frameworks governing the tipper-tippee theory in the Indian perspective?

- c) Whether the tipper-tippee approach, developed in the USA to address the insider trading liability, be applied and used to analyse and govern circumstances of cases in the Indian jurisdiction?

4. RESEARCH METHODOLOGY:

The researcher conducts the case study method, where the tipper-tippee theory of insider trading in the USA are applied and interpreted to the Indian cases. The study employs two common law countries, India and the USA and thereby carrying out a comparative study. The researcher adopts case study method by adopting an Empirical Legal Research method. This paper primarily relies on primary sources like statutes, regulations, Law commission reports, case laws and further an extensive study of secondary data collected from books and various published national and international journals, various websites, public domain, etc. The legal and theoretical frameworks governing insider trading in the USA and India are applied and analysed with the help of this case study research. The researcher has used Harvard Bluebook [20th Edition].

5. SCOPE AND LIMITATION OF THE STUDY:

The scope of the research is to study the Indian cases with regard to insider trading in view of tipper-tippee theory of the USA. In the USA, there developed few theories that have evolved over time. However, the research study is limited to the tipper-tippee theory. The research highlights the cases in the Indian jurisdiction. This study is purely for academic purposes and not for any other purposes.

II. REVIEW OF LITERATURE:

1. **Pranav Saraswat, (2020), Elements of Effective Insider Trading Regulations: A Comparative Analysis of India and U.S.A.⁷²³**

This article discusses the demarcation between the legal and unlawful trading which has been

⁷²³ Pranav Saraswat, Elements of Effective Insider Trading Regulations: A Comparative Analysis of India and U.S.A., 10 NIRMA U. L.J. 81 (2020).

blurred by the second circuit, two years priorly, where the author commenced to review preceding decisions pertaining to tipper-tippee theory. The article highlights this change by interpreting the term 'personal benefit'. The author made analyses of the anti-fraud provisions of insider trading and its negative repercussions. The author explores the line of cases with the mental state of the tipper. The article clearly states the insider trading regime in both Indian and US regime.

2. Aneta Spaic, Claire Angelique Nolasco, Lily Chi-Fang Tsai & Michael S. Vaughn, (2019), Does Insider Trading Pay? An Analysis of Trading and Tipping Activities in Insider Trading Litigation.⁷²⁴

This article emphasizes on the cases of insider trading including trading and tipping activity, where the federal courts rendered decisions appropriately. The author conducted a study with regard to the defendant, colleagues of the respective defendant, and family members and examines the motivations they earn by means of rational choice model through insider trading. The author evaluated the type of tippers or defendants, the categories of cases, and also how the case were considered as civil or criminal, through an empirical study.

3. Woody, Karen E., The New Insider Trading (October 1, 2019). 52 Arizona State Law Journal.⁷²⁵

This article discusses about the theories of insider trading where the personal benefit test is applied to the landmark cases in the USA which led to the development of this theory. through this article, the author tries to emphasize that the tipper with some personal benefit provides the information to the tippee, some kind of consideration which the tippee is also known at that time. The article examines the uncertainty

of the application of section 1348⁷²⁶ and evaluates whether the elements of Dirks test are satisfied under Rule 10b-5. The literature gap is that the article interpreted the theory to the cases in the USA, i.e., with its own jurisdiction. The author made a broad analysis of all the theories rather than focusing on one theory, as it results in ambiguous nature of insider trading prohibition.

4. Rajat Sethi, (2020), Misha Chandna & Aditi Agarwal, Insider Trading: Circumstantial Evidence Is Evidence Enough?⁷²⁷

This article explores the role of circumstantial evidence in proving the insider trading violations and the penalty for the same, particularly the ex-employee of Morgan Stanley India Company Private Limited, SEBI's recent order. The author relied solely on the tipper-tippee theory and clearly interpreted the United States of America v. Raj Rajaratnam case from the USA. The author tries to analyse the concept based on evidence, where the standard of proof originated. The article discusses the Indian framework and the challenged faced by SEBI in the insider trading cases. The article lacks the in-depth analysis, as single case doesn't clearly indicate the role of circumstantial evidence in proving the insider trading violations.

III. ORIGIN AND SCOPE OF TIPPER-TIPPEE THEORY IN THE USA

In the USA, the liabilities of the insider traders were turned into the theories to augment the circumstances of what eventually leads to fraud and which element constitutes fraudulent activity in insider trading. The crux of the civil and criminal insider trading law and the Rule 10b-5 of the Securities Exchange Act, all led Supreme court of the United States to lay down the three general theories of insider trading

⁷²⁴ Aneta Spaic, Claire Angelique Nolasco, Lily Chi-Fang Tsai & Michael S. Vaughn, Does Insider Trading Pay?: An Analysis of Trading and Tipping Activities in Insider Trading Litigation, 26 J. FIN. CRIME 647 (2019).

⁷²⁵ Woody, Karen E., The New Insider Trading (October 1, 2019). 52 Arizona State Law Journal 594, Washington & Lee Legal Studies Paper No. 2019-22

⁷²⁶ 18 U.S.C. § 1348 imposes criminal liability on anyone who "knowingly executes, or attempts to execute, a scheme or artifice" either (1) to defraud any person in connection with any commodity or any security of a registered issuer or (2) to obtain, by means of false or fraudulent instances, representations, or promises, any money or property in connection with the purchase or sale of any such commodity or security".

⁷²⁷ Rajat Sethi, Misha Chandna & Aditi Agarwal, Insider Trading: Circumstantial Evidence Is Evidence Enough? 32 NAT'L L. SCH. INDIA REV. 205 (2020).

liabilities. They are classical theory, misappropriation theory and tipper-tippee theory. The classical theory stands no longer relevant, since it was lacking to accomplish the two primary conditions such as elucidate the gist of the settled law and on the other hand provide with solutions for the unsettled law which is attractive in an intuitive way⁷²⁸. The reason for the failure of the classical theory was, it has its limitation, as it applies only to the corporate insiders, who come in contact with the corporate affairs in order to have access to the material non-public information (hereinafter referred to as 'MNPI'). This MNPI is confidential information and is not generally available information, so where the corporate insider having such information and trading on the stocks listed by their respective companies where they held the positions like employees, directors and key managerial personnel, thus gaining undue advantage is considered as liable for insider trading. These corporate insiders have the fiduciary duties are as follows:

- i. Duty towards source of information,
- ii. Duty towards the company,
- iii. Duty towards the shareholders,
- iv. Duty to maintain confidentiality, duty of care,
- v. Duty of good faith and
- vi. Duty of loyalty.

but eventually they breach these fiduciary duties and trade in possession of MNPI. Therefore, the classical theory restricts itself to that extent and when the question of dissemination of information arose, this theory had no convincing answer to take forward. In *Chiarella v. U.S.*⁷²⁹, the person who used to print comes in contact with the MNPI, where the company got printings from him, despite of concealing the company's name and such other details, he extracted the information relating to the corporate takeover bids and purchased stocks from such company and after the implementation of the said takeover

bid, he sold for enormous returns. Here, the printer is not an insider and no need of him establishing the duty towards the source of information. Then comes the case of *Dirks v. SEC*⁷³⁰, which brought the theory of tipper-tippee, where at that time the sole theory of insider trading liability that remained in existence was classical theory. In *Dirks* case, he had discovered a massive swindle. He didn't publicly disclose rather he made known to his clients, who were a group of Institutional investors, *Dirks*, in good faith aimed them to sell those stocks of equity funding instantly and get rid of the risks. Indeed, *Dirks* case being the first, which had a swift from fraud-based liability to agency-based approach, where not only corporate insiders, also other persons associate with those insiders occur in the liability. The tipper-tippee theory clearly addresses merely the agency-based issues and the tipping problems in question.

Basically, the tipper-tippee theory dealing with insider trading that adheres one to liability, when he/she satisfies the following four criteria:

1. The tipper has to breach the fiduciary duty towards the shareholders, this happens when the tipper discloses the material non-public information to the tippee.
2. The tippee ought to be aware that the tipper has made some kind of breach.
3. The tippee by making use of such material non-public information has to trade in securities listed in the stock exchange.
4. The tipper disseminates the information for a consideration, where he receives a personal benefit which is either directly or indirectly, it can be a pecuniary benefit or gain, reputational benefit (paves way for earnings in the future) and can also, say a gift in terms of friends or relatives who receive

⁷²⁸ Zachary J. Gubler, A Unified Theory of Insider Trading Law, Arizona State University, (Sep 30, 2016), [A Unified Theory of Insider Trading Law \(harvard.edu\)](https://www.harvard.edu)

⁷²⁹ *Chiarella v. U.S.*, 445 U.S. 222 (1980).

⁷³⁰ *Dirks v. Securities and Exchange Commission*, 1983 SCC OnLine US SC 165

confidential information in connection to trading.

Basically, gift does not fall under the category of consideration, as gift does not require quid quo pro. However, the personal benefit element is fulfilled when the relation among tipper and tippee specifies the information is disseminated for the purpose of gift. Thus, the tipper-tippee theory has its relevance in the USA and played a vital role in handling the transfer of information in nexus with the insider trading in its entirety.

IV. LEGAL AND REGULATORY FRAMEWORKS GOVERNING THE CONCEPT OF TIPPER-TIPPEE THEORY

1. INDIA LEGISLATION

A. SEBI Act, 1992:

- Section 11(2)(g) deals with “prohibiting insider trading in securities”
- Section 12A (e) states that no person shall deal in the securities on the basis of possession of UPSI, either directly or indirectly, such information is non-public and communication of such information is in contravention to the provisions of this Act or the rules or the regulations made thereunder.
- Section 15G deals with “Penalty for insider trading”, the provision states that
 - i) any person or anyone on behalf trade in the securities of a body corporate listed on the stock exchange with possession of UPSI; or
 - ii) communicates the UPSI with or without the concerned person’s request, except in the ordinary course of business; or
 - iii) Counsels or procures for any person any UPSI to deal in securities of a body corporate;

Shall be liable to penalty not less than ten lakh rupees but which may extend to twenty-five crore rupees (or) three times the amount of profits made out of insider trading, whichever is higher.

B. SEBI (Prohibition of Insider Trading) Regulation, 2015:

- Regulation 2(1)(d)(i) of the PIT Regulations 2015 defines Connected Persons means any person, who either directly or indirectly during the 6 months prior to the SEBI Act, has been associated with and who maintains frequent communication with the company and those officers, employees in contractual, fiduciary capacity or employment relationship, director, or holds a professional or business relationship between himself and the company, whether temporary or permanent, has reasonably expected to have possession of unpublished price sensitive information.
- Regulation 2(1)(g) of the PIT Regulations, 2015 defines Insider means any person, who is either the connected persons under regulation 2(d) or those who are in possession of the unpublished price sensitive information.
- Regulation 2(1)(n)(iii) of the Insider Trading Regulations 2015 defines ‘unpublished price sensitive information’ (“UPSI”) as is any information which is relating to the company and its securities and is not generally available to the public, either directly or indirectly. If such an information is made upon publicly available then it would materially affect the price of the securities when it comes to the public domain.
- Regulation 3(1) of the PIT Regulations, 2015 which deals with “Communication or procurement of unpublished price sensitive information”, where the regulation states that any UPSI in relation to listed or proposed to be listed companies, the insider shall not communicate, give access of such information to any other persons, though they are insider, except when there is a furtherance of legitimate purpose, or

otherwise the insiders can perform their legal obligations

- Regulation 4 which deals with “Trading when in possession of unpublished price sensitive information”, where the sub-regulation (1) states that any insider who trade on the basis of UPSI are considered as they are presumed to have motivated by the knowledge and awareness of such information. Sub-regulation (2) states in case of a connected persons, the onus is on them to prove that they were not in possession of UPSI.
- Regulation 7 deals with “disclosures by other connected persons”, where the Sub-regulation (3) the connected persons who make disclosures of holdings and trading about the securities of the company which is listed in the stock exchange and it ask those whom it must provide with UPSI.
- Explanation to Regulation 9 deals with Fiduciaries, “where Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks and the proassisting or advising listed companies shall be collectively referred to as fiduciaries”.

C. SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003:

- Regulation 4(2)(f) deals with “person who knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities”.
- Regulation 4(2)(k) deals with “disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities”.

2. USA LEGISLATION

A. Securities Exchange Act, 1943:

- Rule 10b-5 states it shall be illegal for a person
 - a) If they intend to defraud, by employing any device, scheme, or artifice; or
 - b) Make any material fact or neglect to state the material fact, which is of any untrue statement.
 - c) Engage in fraud in form of act, practice, or course of business, that operates as deceitful, in connection with the trade of the securities, say sale or purchase.

V. APPLICATION OF TIPPER-TIPPEE THEORY ON THE INDIAN INSIDER TRADING CASES

1. Cases relating to Associates, Friends and Relative:

A. Dilip S. Pendse v. SEBI⁷³¹

Background of the case:

In this case, Mr. Dilip S. Pendse was the Managing Director of Tata Finance Limited (hereinafter referred to as ‘TFL’) and also, he held the position of Director in the Niskalp, which is a subsidiary of TFL, which is an investment company where he was one of the members of the investment committee. Therefore, he was the corporate insider, who was in possession of the unpublished price sensitive information that the financial results of TFL for the quarter ending march 2001 was poor. This information, he derived from the finance department in the second or third week of march 2001 during the discussions with him. The wife of Mr. Dilip Pendse named Mrs. Anuradha S. Pendse, Nalini Properties Private Limited (NPPL) sold 10,000 and 30,000 shares of TFL respectively. Also, Mr. Pendse advised his friends, relatives and associates to sell the shares, thus a total 2,90,000 shares were sold causing loss to TFL.

⁷³¹ Dilip S. Pendse v. SEBI, 2009 SCC OnLine SEBI 205

Application of the theory:

- ✓ Tipper: Mr. Dilip S. Pendse was the tipper, who was possessing UPSI and disseminated information to his wife, friends, relatives and associates.
- ✓ Tippee: Mrs. Anuradha S. Pendse, Nalini Properties Private Limited (NPPL), Anjali Beke who was his associate, were the tippees because they were aware that Mr. Pendse had done some kind of breach. Thus, the tippees violated the regulations 3 and 4 of the SEBI (PIT) Regulations, 2015.
- ✓ MNPI: The tippees traded on the securities listed on the stock exchange from the material non-public information given by the tipper presuming that the stocks would have negative impact due to the poor financial result in the future. The MNPI was not yet published or made public, however the tippees come in contact with such sensitive informative information from the tipper which have impact on the price of the stocks of TFL.
- ✓ Fiduciary duty: The tipper being the corporate insider owes the fiduciary duty towards the shareholders of both the companies, TFL and Niskalp. He misused the information and facilitated backdated contracts to hide the insider trading.
- ✓ Personal gain: The tipper obviously benefitted the personal gain, as he transferred the MNPI to his relatives, friends and associates, say here the communicated information can also be considered as gift and in turn, they were too traded in possession of such information.

Held:

- SEBI Order: Mr. Dilip Pendse, Mrs. Anuradha S. Pendse, Nalini Properties Private Limited (NPPL) violated the Regulation 3 of PIT Regulations, 1992, thus

they were prohibited to trade, communicate, counsel, deal with the securities for a period of five years and three were found guilty of insider trading under Regulation 4 of PIT Regulations, 1992.

- SAT Order: SAT allowed the appeal and the three were not found guilty of insider trading, therefore acquitted of the charges. SAT disagreed with the finding of the whole-time members regarding the timing of sale of transaction, reason there was no sufficient evidence that the trade took place in March 2001.

B. V.K.Kaul v. SEBI⁷³²

Background of the case:

V.K.Kaul was the former non-executive independent director of Ranbaxy Laboratories Limited and he has close nexus with the current CEO and Managing Director of the company. The Ranbaxy being a parent company and has other subsidiary companies such as Solrex Pharmaceuticals Limited (Solrex), Rexcel Pharmaceutical Limited (Rexcel), and Solus Pharmaceutical Limited (Solus), where Solrex is a partnership firm between Solus and Rexcel. Solrex intended to invest in the stocks of the target company which is Orchid Chemicals and Pharmaceuticals Ltd. However, Mrs. Kaul traded in the securities of the target company priorly through the stock broker of Solrex, the Religare Securities Limited, before Solrex making significant investment. Eventually, she purchased 35,000 shares on 27th and 28th march of 2008 and sold on April 10, 2008.

Application of the theory:

- ✓ Tipper: The managing director was the tipper, who was in possession of MNPI, through whom the former employee Mr. Kaul received the information, and he was in close connection with the tipper. Mr. Kaul again acts as a tipper who communicates the information to his wife.

⁷³² V.K. Kaul v. SEBI, 2012 SCC OnLine SAT 203

- ✓ Tippee: Mrs. Kaul was the tippee, who traded knowingly that the information was MNPI and were aware that there was a breach of fiduciary duty. Here, Mrs. Kaul traded on behalf of Mr. Kaul.
- ✓ MNPI: The tippees traded on the securities listed on the stock exchange from the material non-public information given by the tipper with the intent that the Solrex's subsequent investments would significantly increase the value of the stocks, which made them to trade for profit.
- ✓ Fiduciary duty: The tipper being the former employee to the corporation owes the fiduciary duty towards the company as well as the shareholders. Also, he has the duty towards the source of information.
- ✓ Personal gain: The tipper has the personal gain, as he communicated the MNPI to his wife only, thus the information is misused for his personal benefit to gain undue advantage over it.

Held:

- SEBI Order: V. K. Kaul was held liable.
- SAT Order: SAT upheld the impugned order and dismissed the appeal.
- Supreme Court Judgement: SC ruled that SEBI and SAT may take into account the circumstantial evidence rather than relying solely on the direct evidence in order to prove the insider trading case.

C. Rajiv B. Gandhi v. SEBI⁷³³

Background of the case:

Rajiv B. Gandhi is the Company Secretary and Chief Financial Officer of the company "Wockhardt Limited" listed on the NSE and BSE. The mandatory requirement of the company is to furnish its unaudited financial results on a quarterly basis to the stock exchanges within a month from the end of the quarter. On January

21, 1999 a board meeting was held to consider the quarterly financial results for the quarter ending December 31, 1998, and to declare an interim dividend of 35 %. Amishi Gandhi, who is the sister of Gandhi sold 600 shares and Sandhya Gandhi, Gandhi's wife sold 1500 shares of the company on January 21, 1999. Whereas the quarterly results were disclosed to the BSE only on January 22, 1999, before the start of trading hours. They further sold additional shares on January 22, 1999, before the trading hours and the reason was that they intend to purchase later, the shares at a less price. Further, a board meeting conducted on April 22, 1999, to consider the quarterly results for the quarter ending March 31, 1999, and the demerger of the pharmaceutical business, meanwhile Amishi Gandhi sold more shares on April 21 and 22, 1999. On October 14, 1999, Sandhya Gandhi purchased shares, where a board meeting was held to consider the quarterly results for the quarter ending September 1999. Sandhya Gandhi purchased additional shares before the start of the board meeting.

Application of the theory:

- ✓ Tipper: The Rajiv B. Gandhi is the Company Secretary and Chief Financial Officer of Wockhardt Limited company was the tipper, who was in possession of MNPI, thereby disseminates the information to his wife and sister.
- ✓ Tippee: Sandhya Gandhi and Amishi Gandhi was the tippee, they traded through the information, they got from the tipper and had the knowledge that was MNPI and were aware that there was a breach of fiduciary duty.
- ✓ MNPI: The tippees traded on the securities listed on the stock exchange from the material non-public information given by the tipper with the intent to sell the stocks at high price and buy stocks at higher price.

⁷³³ Rajiv B. Gandhi v. SEBI, 2008 SCC OnLine SAT 78

- ✓ Fiduciary duty: The tipper being the CFO, key managerial personnel to the company owes to the fiduciary duty towards the company and also, fiduciary duty towards the shareholders. Also, he has the duty towards the source of information. He has breached his duty by disseminating the information to his wife and sister.
- ✓ Personal gain: The tipper has benefitted from the personal gain, as he communicated the MNPI to his wife and sister only, misused the information for his own personal benefit in order gain undue advantage over it. They traded in the scrip of the company before and after the meetings of the board of directors held to consider the financial results and traded on the basis of the price sensitive information which they had and which was not available to the investors in general.

Held:

- SEBI Order: The accused were found guilty of insider trading, they failed to explain or rebut to counter the presumption that they had motivations for their trading activities while in possession of UPSI.
- SAT Order: The Compelling reason defence was recognised in this case by SAT in 2007, where insiders were permitted with trade by stating a reason or demonstrate a plausible explanation. For instance, raising funds in case of medical emergency or for family matters. However, the SAT upheld the SEBI Order and imposed penalty, thereby dismissing the appeal.

D. Mr. Manoj Gaur v. SEBI⁷³⁴

Background of the case:

In this case, Mr. Manoj Gaur is the Executive Chairman of the company named Jaiprakash Associates Ltd., he was in possession of the UPSI which is in regard to the company's quarter financial results ending September 30, 2008. He was the corporate insider, being in a position, he communicated such information to his wife, Mrs. Urvashi Gaur and to his brother, Mr. Sameer Gaur. These wife and brother of Mr. Manoj Gaur is regarded as the deemed to be connected person under regulation 2 (h) of the PIT regulations, 1992. In the board meeting this information of financial results and via the stock exchange, the announcement was made by the company on October 11, 2008 that the scheduled board meeting to be held on October 21, 2008. However, the deemed to be connected persons obtained the UPSI from Mr. Manoj Gaur and traded on the securities of the said company, where October 14, 2008, Mrs. Urvashi Gaur bought 1000 shares, while on October 13, 14 and 16, 2008, Mr. Sameer Gaur purchased share of 7400 in total.

Application of the theory:

- ✓ Tipper: The Executive Chairman of the company, Mr. Manoj Gaur was the tipper, who was in possession of MNPI. He gained the information as being a corporate insider.
- ✓ Tippee: Mr. Manoj Gaur and Mr. Sameer Gaur were the tippees, who traded knowingly that the information was MNPI and were aware about the breach done by the tipper.
- ✓ MNPI: The tippees traded on the securities listed on the stock exchange from the material non-public information given by the tipper with the intent that they gain profits in the future and also the stock's price going to increase, so Mr.

⁷³⁴ Mr. Manoj Gaur v. SEBI, 2012 SCC OnLine SAT 176

Manoj Gaur advised them to trade on the shares of the respective company by purchasing for less price.

- ✓ Fiduciary duty: The tipper being the key managerial personnel to the corporation owes the fiduciary duty towards the company as well as the shareholders. Also, he has the duty towards the source of information. He has breached his duty by communicating the information to his wife and brother.
- ✓ Personal gain: The tipper has the personal gain, as he communicated the MNPI to his wife and brother only, thus he misused the information for his own personal benefit in order gain undue advantage over it.

Held:

- SEBI Order: SEBI charged insider trading allegations on the accused Mr. Manoj Gaur, Mrs. Urvashi Gaur and Mr. Sameer Gaur for trading in possession of UPSI under the PIT Regulations, 1992.
- SAT Order: SAT by setting aside the SEBI's Order, favoured the appellants and concluded that there was no evidence to prove the charges of insider trading against them.

E. Balram Garg v. SEBI⁷³⁵

On April 13, 2005, initially P. Chand Jeweller Pvt. Ltd. was incorporated as a Private Limited Company under the Companies Act, 1956. On July 5, 2011, the company was eventually converted into a Public Limited Company named as PC Jeweller Ltd. (hereinafter referred to as PCJ). P.C. Gupta, the Chairman of the company PCJ, and Balram Garg, the Managing Director, who is the brother of P.C. Gupta, both were insiders. SEBI accused the three family members, who were Sachin Gupta, Shivani Gupta, and Amit Garg. They traded in the shares of the company, who gained access to the UPSI through their proximity to P.C. Gupta and

Balram Garg, and claimed that both qualified as a "connected person" and "insider" Regulation 2(1)(d)(ii)(a) read with Regulation 2(1)(f) under the PIT Regulations, 2015. The trading of securities based on UPSI took place from April 1, 2018 to July 31, 2018. This proximity was established based on family relationships and shared residences. They were financially dependent on him or consulted him regarding trading decisions. Additionally, they were not merely family relationships, which as a result comes under sufficient grounds for insider trading allegations, particularly considering that the family had been partitioned in 2011. In addition, Sachin Gupta resigned from his post as President in Gold Manufacturing, due to the partition of the family on March 31, 2015. Since then neither Sachin nor his wife, Shivani involved in the operations of PCJ company.

Application of the theory:

- ✓ Tipper: P.C. Gupta and Balram Garg were the tipper, who was in possession of MNPI. They had access to the information of the private limited company going to be public, being a corporate insider.
- ✓ Tippee: The three family members, Sachin Gupta, Shivani Gupta, and Amit Garg were the tippees, who traded with privileged information which was not generally available and existence of such familial relation, they were much aware of the breach by the tipper.
- ✓ MNPI: The tippees traded on the securities of the newly listed public company through the material non-public information given by the tipper.
- ✓ Fiduciary duty: The tipper being the key managerial personnel to the corporation owes the fiduciary duty towards the company as well as the shareholders. Also, he has the duty towards the source of information. He has breached his duty by

⁷³⁵ Balram Garg v. SEBI, (2022) 9 SCC 425

communicating the information to the tippees.

- ✓ Personal gain: The tipper has the personal gain, as he communicated the MNPI to his proximity and family members, for a consideration, i.e., any other confidential knowledge in return from them.

Held:

- SEBI Order: SEBI charged insider trading allegations on the accused
- SAT Order: SAT by setting aside the SEBI's Order, favoured the appellants stating that insufficient evidence to support the allegations and the classification of the relatives as immediate relatives of the insider trading under Regulation 2(1)(g)(ii) of the Prohibition of Insider Trading (PIT) Regulations. SAT stating that circumstantial evidence alone did not suffice to establish guilt such as trading plans and timings.
- Supreme Court Judgement: SC set aside the impugned order of SAT and also criticized SAT which failed to independently assess the evidence on record.

2. Cases on Social media connections:

A. In the matter of Palred Technologies Limited⁷³⁶,

Background of the case:

Palred Technologies Limited (hereinafter referred to as "PTL"), the company listed its securities in the NSE and BSE. The PTL has two unpublished price sensitive information,

- On August 10, 2013, the company made an announcement with regard to the slump sale of its software solutions business to the Kewill group.
- On October 14, 2013, after the closure of the aforesaid sale transaction, the company declared a one-time special dividend.

The Chairman and Managing Director (hereinafter referred to as "CMD") named Palem Srikanth Reddy, other current and former employees of PTL and certain entities connected to CMD, also the Noticee, ha traded on the basis of UPSI. The CMD acquired the shares of the company from starting of discussion till it become public, and ceased to trade when it was made generally available. It was also alleged for disseminating the information either directly or indirectly to other entities, where they began to trade from June, 2013 to Aug 10, 2013 and bought about 4,25,615 shares in total. Here, the Noticee was in nexus relation with the Ameen Khwaja, one of the suspected entities through Facebook, as they were mutual friends. The Noticee in this case refers to Karna Ramanjula Reddy, one of the employees of PTL, he worked in the Finance Department. He was issued with Show Cause Notice on August 3, 2017, alleging the violations of insider trading. The scope of 'insiders' was expanded beyond immediate relatives in this case.

Application of the theory:

- ✓ Tipper: The CMD, Palem Srikanth Reddy, is considered as the tipper in this scenario, who disclosed material non-public information regarding the slump sale and special dividend of PTL.
- ✓ Tippee: The Noticee, an employee of PTL working in the Finance Department named Karna Ramanjula Reddy, was likely aware of the CMD's position and access to sensitive information of the company. Therefore, he would have been aware of the breach when receiving MNPI from the CMD or other sources.
- ✓ MNPI: The Noticee, allegedly traded in securities of PTL based on the MNPI received. This constitutes trading based on insider information, which is a violation of securities laws.

⁷³⁶ Palred Technologies Ltd., In re, 2021 SCC OnLine SEBI 864

- ✓ **Fiduciary Duty:** This circumstance has two breaches, one being the CMD, the insider communicated the MNPI to another insider, the tipper owes a fiduciary duty to the shareholders of the company, but it was breached; second, the tippee who further being an insider transferred the information to another entity, through mutual friends on Facebook, here there is breach of duty towards source of information.
- ✓ **Personal Benefit:** The allegation put forth the dissemination of MNPI to the tippee and potentially to other entities by the tipper, can be viewed as a personal benefit. The nexus between the Noticee and another suspected entity, Ameen Khwaja, by way of mutual friends on Facebook proposes a relationship. If the CMD provided MNPI to the Noticee in exchange for some benefit, whether the benefit is pecuniary or reputation, would satisfy the fourth condition.

Shruti Vora v. SEBI⁷³⁷ –WhatsApp case

Background of the facts:

In this case, the financial information of the company before its official disclosure was circulated through Whatsapp group. The case investigated in purview of publications in newspaper and alleged that UPSI relating to the quarterly financial results of several companies were being circulated in WhatsApp groups before their official disclosure. SEBI retrieved the whatsapp messages from the accused whatsapp account and found around 12 companies, which includes Bajaj Auto Ltd., Bata India Ltd., Ambuja Cements Ltd., Asian Paints Ltd., Wipro Ltd., and Mindtree Ltd., were affected. These financial results were later published and the whatsapp message and the published information are closely connected. The

whatsapp message stated as "Wipro revenue 13700 PBIT 2323 PBT 2758," here P stands for Profit, Before for B, Interest for I, Taxes for T; which closely matched the actual figures published later on. On the part of the company and further investigation done by SEBI, there is no such leakage of UPSI and there is no room for any evidence too. Lot of messages were in one line and merely "forwarded as received", therefore, this can be extinction of liability. However, it was claimed by the accused that they merely "forwarded the messages" and unable to point out the actual sender and identify the original source due to the lapse of time and encryption policies. Furthermore, they alleged that the communications were a speculation practice of the market and their financial outcomes before they are disclosed. Finally, SEBI targeted only those closely matching with actual results and imposed penalties. Also, there arises distinction between whatsapp groups, in which we don't know the source of information originated from and the forward-looking statement, where the company itself published anticipating the future.

Application of the theory:

- ✓ **Tipper:** In this case, those who have forwarded the messages through the WhatsApp in relevant to the financial results of the company, who had access to the UPSI were the tippers. They can be the employees, consultants, or other insiders who were aware of this information prior its official disclosure, however the financial results must be closely connected to the company's future disclosure.
- ✓ **Tippee:** The tippee would be those traded on the respective company on the basis of the UPSI.
- ✓ **MNPI:** The information being the financial results would definitely have impact on the prices of the securities, so they come within the scope of material non-public information.

⁷³⁷ Shruti Vora v. Securities and Exchange Board of India, 2020 SCC OnLine SAT 19

- ✓ **Fiduciary Duty:** If the tipper, insider to the company have the fiduciary duty towards the shareholders of the company. In that scenario, they have breached the fiduciary duty. Also, they also possess the duty towards the source of information. The tippee must be aware that the information they received was disclosed in breach of the tipper's fiduciary duty. In this case, the tippees, who received the WhatsApp messages, may or may not have been aware of the breach, depending on whether they knew the information was confidential and not yet disclosed to the public.
- ✓ **Personal Benefit:** The personal benefit of tipping in this case, obviously gaining information in return as consideration, so that the tipper would also in future, trade in possession of the MNPI. Therefore, the tipper also acts as tippee, in that situation.

Among the several defences raised by the UPSI disseminators, the claim was that the material forwarded was based on the speculative market rumours, which the broker evaluates the Bloomberg platforms. As a result, the contention was that it was not UPSI rather generally available information. It was held that merely the information is disseminated without being traded in the scrips on the basis of such UPSI of the respective company, would not qualify as insider trading violation.

Held:

- **SEBI Order:** SEBI charged insider trading allegations on the accused who forwarded the messages in the whatsapp regarding the financial information of six companies which is violative under Section 12 of the SEBI Act, 1992, read with Regulation 3(1) of the PIT Regulations and imposed penalty accordingly.

- **SAT Order:** SAT by setting aside the SEBI's Order, favoured the appellants and observed the respondents failed to establish, with a preponderance of probabilities.
- **Supreme Court Judgement:** SC upheld the SAT's Order.

3. Reputation Case:

A. Manappuram Finance Limited case⁷³⁸

Background of the case:

In this case, Kotak Mahindra Life Insurance Company Limited (hereinafter referred to as "Kotak"), accused of selling the shares of Manappuram Finance Ltd. (hereinafter referred to as "MFL") from March 1, 2013, to March 20, 2013, on basis of possession of UPSI, thereby violating the sections 12A(d) and 12A(e) of the SEBI Act and such other provisions in the PIT Regulations, 1992. The investigation initiated into allegations against Kotak, regarding the selective disclosure of UPSI by MFL. Kotak took stand on the research reports, which was publicly made available in the public domain, that consists of certain UPSI and the emphasis was kept on the knowledge, where they were not aware of any UPSI and were innocent recipients of the information.

Timeline of the case:

March 18, 2013:

- The meeting between Ambit analysts and MFL management was held at around 4 pm, in order to prepare the research reports with the aid and advice of the Research analysts, Ambit.
- By 7:15 p.m. – 9:00 p.m., the research report was prepared by the Ambit and eventually conducted the internal review.

March 19, 2013:

- Ambit notifies MFL management of the publication of the research report and recommends holding

⁷³⁸ Manappuram Finance Ltd., In re, 2022 SCC OnLine SEBI 732

a call with investors at around 8.30 pm.

- Then research report was distributed by Ambit via email to all clients.
- Ambit requests MFL management to hold a conference call with market participants around 10:00 a.m.
- In turn, Ambit was informed by MFL management that they are organizing a conference call through M/s Spark Capital. Further, the request for an investor call was reiterated by Ambit with MFL.
- Then, MFL management discloses expected losses during Q4FY13 during the conference call, in which Ambit participated.

Nature of UPSI to Public:

The case probed into the nature of UPSI, also found how the information may be made public, in what circumstances and through which media. The character of the UPSI is lost when the unpublished information is disseminated non-discriminatory to the public. Accordingly, if the information is published in

- i) if conversed, disputed and discussed on the Television channels like CNBC and TV-18; or
- ii) Published in newspapers; or
- iii) Presented to subscribers of Bloomberg platforms.

If any of the UPSI is published in any of the aforementioned media, platform or newspaper, then it is said to be generally available information.

Application of the theory:

- ✓ Tipper: MFL and its management team including Mr. Unnikrishnan, Executive Director and Deputy CEO, were the tipplers, they gave access to MNPI by

disclosing the expected losses of the Q4FY13 during the conference on March 19, 2013.

- ✓ Tippee: Ambit, the research firm, and its analysts, Mr. Saurabh Mukherjee and Mr. Pankaj Agarwal, can be considered the tippee. They got the UPSI from the tipper through the meeting held on March 18, 2013, and subsequently, they being the Institutional Investors disseminated this information to their clients through the research report.
- ✓ MNPI: The information was unpublished price sensitive information and the revelation of such information would result in the fluctuation of the prices of the securities. The MNPI is about as there is going to be expected losses in the financial year 2013.
- ✓ Fiduciary Duty: The Ambit disseminated the information to Ambit to prepare the research report, who breached the fiduciary duty towards their shareholders. Meanwhile Ambit, the Institutional Investors, circulated this information to their clients, the retail investors through the research report, to prevent them from loss. Thus, the Ambit had the fiduciary duty towards their retail investors.
- ✓ Personal benefit: Ambit, disclosed the MNPI, indirectly for the reputational benefit of their research firm and they in good motive, aimed to prevent their retail investors from loss, as the price of the security going to drop in future.

VI. CONCLUSION:

In conclusion, through the application of tipper-tippee theory, the researcher made a detailed analysis of cases in the Indian regime, the various aspects of insider trading include associates, friends and relatives; or, social media connections; or, reputational benefits; or speculative reporting. This proves that the insider trading violations extends beyond the financial gains, it correspondingly comprehends

the parameters of fiduciary duty, information and its communication, personal benefit and the knowledge of breach by those who trade in possession of UPSI. The legal and regulatory frameworks support in building the foundation for theoretical aspect more effectively. When the tipper-tippee theory is interpreted in the cases before the Adjudicating Authority, say SEBI, then it would assist SEBI in one or other way to decide and prosecute the offender, thus the theory acts as appreciable tool to address the insider violation and persons connected with or deemed to be connected with the insider.

In India there is no such legal provision defining the phrase “personal benefits”, not either deal with the concept, which is essential condition for determining the insider trading liability. The tipper-tippee theory serves as a significant feature, however the application requires deliberate scrutiny of the of the facts and circumstances of the case. When an unambiguous theory, clearly indicates the conditions to be met, then the number of insiders effort to abide by the theory, thereby defend themselves from liability. In India, there is neither such opportunities for them, thus they attempt to commit the insider trading, believing that they won’t be trapped. The view also lays down the privilege for SEBI to punish the tipper and tippee accordingly. As under section 10 (b) of the Securities Exchange Act 1934, in the USA, both the “tipper” and the “tippee” are held liable for insider trading violation. Therefore, the judgement stands on the fair, equity, justice manner and equal footing. The Newman ruling, though specific to insider trading law of USA, is predicted to have a tangential impact on Indian regulations. This is because Indian authorities such as SEBI and SAT progressively consider and follow U.S. court decisions in shaping their own jurisprudence. It is also notable that SEBI’s defence strategy resembles the approach to tippee liability seen in the USA insider trading jurisprudence.

SUGGESTIONS:

1. Indian regulators and court need to enhance the broadened scope of offence within the Indian framework, analogous to the USA, potentially influencing interpretation and enforcement of insider trading laws.
2. In India, there shall be criteria to outline the liability of a tippee, stressing that awareness of the tipper’s breach of fiduciary duty is key to establishing innocence.
3. The 2015 Regulation should be stringent in case of tippee liability, except for cases where limited damages may apply if the tippee reasonably believed that the received information was not UPSI after conducting a thorough due diligence.

RECOMMENDATIONS:

1. In India, there arises a need for implementing provisions with regard to the tipper’s liability and tippee’s liability separately, such framework would pave way to held liable both of them for the insider trading violations undertaken accordingly, as an outcome of which they are treated *pari passu*.
2. Legal provision for the phrase “personal benefits” in the context of insider trading would essentially provide the condition for determining the liability with respect to insider trading.

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