



UNPUBLISHED PRICE SENSITIVE INFORMATION IN INDIA

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1.1 WHAT IS UPSI?

UPSI is defined as any knowledge, whether directly or indirectly, relevant to a business or its shares under Rule 2(n) of the SEBI PIT Regulations, 2015. This confidential data frequently include, but is not restricted to, specifics on the following: (i) cash flow; (ii) dividends; (iii) adjustments to the capital structure; (iv) business expansion, divestments, delisting, mergers, demergers, and other associated activities; (v) replacements of important senior personnel. However, the list above is illustrative and does not encompass all subjects that may be classified as UPSI.

According to Regulation 3(1), an insider who has UPSI is not allowed to divulge it to anybody unless it is necessary for legitimate purposes, job performance, or the fulfilment of a legal requirement. Similarly, it is forbidden under regulation 3(2) for anybody to acquire UPSI from an insider of any firm. When an insider possesses UPSI in their possession, Regulation 4 prevents them from transacting in the company's shares. One of the issues raised in the review of the charges is whether the accused individual traded while in control of the UPSI, prior the UPSI was established, or after the UPSI became public.¹

1.2 LANDMARK JUDGEMENTS

The cases under consideration dig into the complex problems that adjudicating authorities encounter as they attempt to present proven proof that the observed trading behaviour was really based on Unpublished Price Sensitive Information. There is a clear emphasis in this context on scrutinising trading patterns and detecting the flow of information, recognising these features as critical variables in the careful process of proving instances of insider trading. This examination highlights the complex interplay between market behaviours, informational dynamics, and the legal requirement to uncover and handle any insider trading violations.

¹ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

1.2.1 NOTABLE OBSERVATIONS

In the case of Mrs. Chandrakala vs. SEBI, the accused is the spouse of Popatlal Kothari's brother, Uttam Kumar Kothari, the promoter of Rasi Electrodes Ltd (REL). When the company's financial results and bonus issue were disclosed, she traded in the company's shares. Without a doubt, Ms Chandrakala was a "insider" at the time of the trade, and the financial results and bonus information were UPSI. Nonetheless, the defence put out on her behalf said that insider trading is only an offence when trading is conducted based on UPSI, not the mere possession of any UPSI.² When a person possesses UPSI, Regulation 3 forbids dealing in securities. If the individual trades, that is a violation of this clause as, absent proof to the contrary, it is assumed that they traded using UPSI. As such, it is the insider's duty to prove their innocence in this instance. According to SAT's view, the appellate tribunal, an insider cannot be punished under rule 3 if they can demonstrate that they have not traded based on UPSI. Given this assumption, Mrs. Chandrakala had to prove that her transactions weren't based on UPSI.

PVP Global Ventures and its promoter Prasad V. Potluri were fined Rs. 30 crore by SEBI in 2015 for insider trading. It is alleged that Mr. Potluri exchanged PVP Ventures shares on behalf of PVP Global Ventures while he was in charge of UPSI, omitting to report potentially serious negative financial effects. PVP's argument for the case was based on the ruling in Mrs. Chandrakala's case, which said that "an insider trades if the trading is in the opposite direction; there is no insider trading if the UPSI is positive." SEBI declined to acknowledge the contention.³

The CMD and former CFO of Polaris Software Lab Limited were charged with trading while purportedly in possession of UPSI. The lawsuit began in 2008, and in 2015, a show-cause notice and an interim order were issued. "...the investigation had failed to substantiate its charges that the noticees had traded in the company's scrip while being in possession of UPSI, as alleged in the interim order," the whole-time member said in the March 2018 final verdict. The issue of any unlawful notional gain or its impounding does not come up if there are no proven insider trading accusations against the noticees. In this instance, UPSI had no impact on the promoters' trading inside the trading window when it was allowed.⁴

In the case of Shruti Vora v. SEBI, a SAT ruling declared that "passing the information without any trading in the concerned company's scrips would not amount to violation of Insider Trading Regulations."⁵

One of the facts highlighted in the interim verdict in the matter of CNBC Awaaz and "Stock 20-20," a show co-hosted by Hemant Ghai, is that the defendants had a habit of buying firm stock the day before the show advised them. When they made the recommendation public, they sold their shares as soon as the market opened. This had occurred multiple times, and the case is significant because his trading technique helped construct an insider trading case that differed from UPSI's legal presumption. The legislation says nothing about whether a certain trading pattern leads to UPSI presumption. SAT subsequently noted that the

² Mrs. Chandrakala vs SEBI, Appeal No. 209 of 2011.

³ PVP Ventures v. SEBI, ADJUDICATION ORDER NO. ASK/AO/172-73/2014-15.

⁴ In the matter of Polaris Software Lab Limited, WTM/GM/EFD/109/2017-18.

⁵ Shruti Vora vs SEBI, ADJUDICATION ORDER No. Order/BD/VS/2020-21/7840.

combination of one family member trading on another's account and the advance knowledge of suggestions created a prima facie fraudulent scheme.⁶

1.2.2 TRADING ON THE BASIS OF UPSI

If an individual is recognised as an insider and is engaged in trading or transactions involving securities of a publicly traded corporation, the legal assumption is that such trading is based on UPSI, until evidence to the contrary is shown.⁷

In response to a question from HDFC Bank, the SEBI stated on July 25, 2016, through informal guidance, that portfolio managers are forbidden from trading in stocks of a firm for which they have UPSI whilst managing their customers' investments. Violation of this prohibition would result in the inference that the investment was affected by the insider's possession of UPSI, resulting in insider trading liability.

The Chandrakala ruling relied on Section 15G of the SEBI Act, 1992, claiming that establishing an insider trading accusation involves reliance on UPSI. Essentially, it means that insider transactions should be driven by the UPSI they hold. If an insider trades stocks of a publicly traded firm while holding UPSI, they are assumed to be engaged in the offence unless proof to the opposite, such as a lack of dependence on UPSI, is proven.

Even in cases where Regulation 4 has been modified to clarify that a person who is an insider is barred from handling in assets simply for being "in possession of" UPSI, regardless of whether he is not acting "on the basis" of such UPSI, a person must have dealt in securities "on the basis" of UPSI to be liable to the penalties under Section 15G(i) of the SEBI Act. In addition, while the Chandrakala case ruling affirmed the concept of acting "on the basis" of specific UPSI, numerous other insider trading cases have determined that obtaining UPSI alone is sufficient and that depending on the "on the basis of" assumption is unnecessary. Because of this, our courts must address a legal discrepancy that exists between the two sets of legislative regulations and earlier decisions.

1.2.3 PRICE SENSITIVITY

According to the Anil Harish v. SEBI decision, a material is not inherently UPSI if it must be supplied to a stock exchange in order for a listing agreement to be fulfilled. On the other hand, price sensitivity must only be assessed in relation to its impact on the price.⁸ Similarly, in the NRE Mineral case, it was found that, when executed out in the usual course of company operations, a divestment transaction has no impact on the market value of the business's stocks or similar information, despite the fact that it is important for the objective of dissemination to the stock market but not price-conscious.⁹

⁶ Confirmatory Order in the matter of CNBC Awaaz Stock 20-20 Show co-hosted by Mr. Hemant Ghai, WTM/MB/ISD/13305/2021-22.

⁷ Rajiv B. Gandhi v SEBI, Appeal No. 50 of 2007.

⁸ Anil Harish v SEBI, Appeal No. 217 of 2011.

⁹ In the matter of Gujarat NRE Coke Limited, ADJUDICATION ORDER NO. PB/A0/117-120/2010.

The magnitude and frequency of an incident were deemed to be crucial in the case of DSQ Biotech. If the publication of any information has a long-term impact on the price of shares, it is considered price sensitive. As a result, even early-stage negotiations about a rights problem were deemed price sensitive.¹⁰

In the Gujarat NRE Mineral Resources case, the SAT issued a finding that established certain guidelines for the scope of data that is sensitive to pricing. Specifically, the question is whether an investment business that is publicly traded's plan to sell off a portion of its assets falls under the definition of "price sensitive information" and needs to be disclosed to stock exchanges in compliance with the SEBI Insider Trading Regulations. It was determined that UPSI did not apply to the non-disclosure of the share disposal.

SAT claims that FCGL is an investing company that only makes investments in other firms' securities. Trading in securities that it owns as investments brings in money for the business. This is how an investment business operates normally. The price of the company's own securities is unaffected by its decision to buy or sell its investments. If such were the case, no investment business could operate as it would have to disclose all purchases and sales of securities it possessed to the stock exchange or exchanges where those securities are listed. We believe that an investment company's choices of this nature have no bearing on the market value of its assets," the decree states.

The ruling by SAT states that a company's regular business dealings won't get to the point where they have to be revealed to the market as information that is sensitive to pricing. In the context of investment, the same logic would apply to businesses that trade securities, such as brokerage firms or market makers.

On the whole, this SAT decision raises several questions about how insider trading is regulated in India. The SEBI regulations represent a tightening of the legislation over time, but enforcing it has proven to be difficult. Putative offenders are given a lot of leeway in their interpretation of the limits by courts and appellate bodies. This tendency may be observed in several significant cases from the early days of insider trading, when appellate bodies reversed SEBI findings for a variety of reasons.

1.2.4 GENERALLY AVAILABLE INFORMATION & HEARD ON STREET

The UPSI transferors used a variety of defenses in the lawsuit involving UPSI distribution WhatsApp messages, one of which was that the knowledge they shared was speculated market gossip based on broker valuations on Bloomberg. As a result, they claimed that it was generally publicly available data, rather than UPSI. To dispute these assertions, the authority in question went into considerable detail concerning what content may be regarded appropriate (and hence not UPSI) in communications delivered by market players to their clients. As a consequence, the scope of the inquiry was later extended to encompass scientific investigations.¹¹

The regulator in the Manappuram case investigated how and by what means UPSI may be made public, without bringing up GAI. It was determined that if UPSI is made publicly available through nondiscriminatory

¹⁰ Order Passed Against DSQ Holdings Ltd., C/ /2003/IES/IT.

¹¹ Adjudication order in respect of Ms. Shruti Vora in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Limited, SAT Appeal No.:310/2020; MA 348/2020.

media means, such as television, newspapers, and electronic media platforms (like Bloomberg), it forfeits its unpublished status. It is reasonable to assume that the UPSI is being rendered publicly if it is (a) debated and discussed on broadcasting networks such as CNBC TV-18, (b) printed in newspapers, or (c) posted on publicly accessible portals such as Bloomberg.

There are no limitations to utilizing an analyst's private estimates as GAI. Meanwhile, SEBI observes that brokerages frequently use a variety of elements to forecast results, such as financial projections, administration advice, outside variables, and talks with listed company management. It specifically states that regardless of whether these projections match formal comments made subsequently by publicly traded corporations, they are not UPSI.

In conclusion, research data must be restricted to GAI-based estimates or analyses. Publicly accessible content in the public domain is covered under GAI. This covers content from websites like Bloomberg as well as print and electronic media. Estimates from other parties that appear in a report ought to originate from data that is accessible to the public and be appropriately attributed. Furthermore, research reports should not be priced in a way that encourages exclusive access, and they should be disseminated equitably among all of the analyst's customers.

SEBI examined the type and quality of heard-on-the-street (HOS) estimates in the WhatsApp case. The content that the UPSI transferors disseminated was purportedly connected to HOS instead of UPSI. They said that HOS is a well-known and well-established practice in the financial sector whereby analysts make speculative (and usually incorrect) assumptions about the firms they cover, frequently through preview reports provided before earnings presentations. According to SEBI, if HOS were distributed consistently and without access differences, it would not be regarded as UPSI.

The UPSI transferors claimed in the WhatsApp Orders that their only role was as information conduits. Both the name of the tipster and the original source of the leak were unclear. The regulator came to the conclusion that UPSI's core values are its content rather than the identity of the leaker. As a result, any information that qualifies as insider trading and has the ability to significantly affect share price upon widespread dissemination is regarded as UPSI.

With the Manappuram and WhatsApp cases, SEBI showed that it was a diligent agency capable of managing UPSI transfers using contemporary technologies. It has demonstrated a responsible attitude towards individuals who rely their trading decisions on publicly available information, and it has thoroughly examined the idea of the public domain, expanding its definition to include Bloomberg, television, and newspapers. During the process, several clear standards for research reports were developed, the most important of which was the use of third-party estimations. Despite the regulation's caution to participants about selective circulation, HOS has been acknowledged as a valid research activity.

1.2.5 PRESUMING POSSESSION OF UPSI

Arun Jain was the company's promoter and CMD during the relevant time. As per rule 2(c)(i) of the PIT Regulations, he was considered a connected person and had access to the UPSI, Polaris Software Lab Limited, in the first instance. Meanwhile, R Srikanth was in charge of Polaris' finance department and was primarily responsible for its financial reporting. Because of his job at Polaris, he is believed to have UPSI.¹²

In the *Amalendu Mukherjee v. SEBI* case, MD Amalendu Mukherjee was believed to have access to UPSI due to his position inside the firm.¹³ The same was assumed in the instance of *Biocon Ltd* case, where it was agreed that, given his position within the company, it is fair to presume that the noticee possessed UPSI. In this instance, a lot of weight was placed on the noticee's position at the top of the *Biocon* organisation.¹⁴

Similar to this, in the case of *Kunal Ashok Kashyap and Allegro Capital Private Ltd v. Biocon Ltd*, it was clear that he had access to UPSI since he served as *Allegro Capital's* chairman and CEO and kept regular communication with *Biocon* employees.¹⁵

Additionally, the majority opinion in the *SRSR Holdings Private Limited v. SEBI* case concludes that a director is inherently an insider because they are related individuals.¹⁶

The aforementioned instructions lead to the conclusion that, in the event that an insider trading accusation is made against them, any individual in a position of responsibility inside a corporation who possesses access to UPSI may be deemed an insider or linked person and face charges.

1.2.6 INNOCENT TIPPEES & UPSI

Worldwide securities laws recognise the concept of an innocent tippee. With no reason to fear contamination, an innocent tippee gets UPSI and trades on its premises without looking for it. The *Sodhi* Committee report recommended that PIT 2015 include an innocent tippee defence. According to the report, "a bona fide recipient of that report should not be visited with the charge of insider trading when a person trades on the basis of content of a research report which later turns out to have contained UPSI illegally procured by the research analyst." Nevertheless, PIT 2015 omits this argument because to the implicit difficulties in identifying and proving the charges. In terms of operations, the regulator has cleared innocent tippees who made trades using mistakenly received UPSI and has emphasised that the integrity of UPSI is independent of the person who leaks it initially. The significance SEBI accords the *Sodhi* Committee Report in its deliberations is heartening. It is only to be hoped that this would bring in a new age of useful interpretation of PIT 2015 in adjudication proceedings. The *Manappuram* directives seem to align with the general conclusions of the *Sodhi* Committee, according to SEBI. According to the organisation, "an insider may prove his innocence in a case by demonstrating the comprehensive list of circumstances provided in the regulations, and it is up to the authority

¹² Order in the matter of *Polaris Software Lab Limited*, WTM/GM/EFD/109/2017-18.

¹³ In the matter of *Ricoh India Limited*, WTM/MPB/IVD-ID6/120/2020.

¹⁴ In the matter of *Biocon Ltd.*, WTM/MB/IVD/ID3/12407/2021-22.

¹⁵ Order in respect of Mr. *Kunal Kashyap and Allegro Capital Pvt. Ltd.* in the matter of *Biocon Ltd.*, WTM/MB/IVD/ID3/12494/2021-22.

¹⁶ *SRSR Holdings Private Limited vs SEBI*, CIVIL APPEAL NO.16805 of 2017.

adjudicating to consider it." As a result, each case's unique facts and circumstances would determine whether or not the tippee is innocent. The UPSI transferors said that they were not aware that UPSI was mentioned in the messages they received, using the innocent tippee argument in the WhatsApp instructions. In contrast to the Manappuram order, SEBI was not persuaded. It determined that because "the UPSI transferors had been involved in the equities and broking markets for a long time, they were unable to assert ignorance of the highly confidential nature of the information they had obtained." After rejecting the defense, the watchdog went another step. Individuals have a moral responsibility to notify authorities when they get UPSI from doubtful sources, as they are aware of the sensitive nature of that data. In practice, it appears that SEBI has tighter standards than PIT 2015 for market participants who actively or accidentally collect UPSI.

1.2.7 RECENT DEVELOPMENT

On May 18, 2023, the SEBI issued a consultation paper proposing changes to the description of UPSI under the SEBI (PIT) Regulations, 2015. The information needed by Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015—also known as the "LODR Regulations"—was suggested to be incorporated into the UPSI definition. This notion was sparked by SEBI's revelation that alarms from its monitoring system could not be probed further because listed companies refused to identify essential information as UPSI, impeding its efforts to avert insider trading. As a consequence, these enterprises were able to gain notional benefits, making SEBI's operations more challenging.

Item No. 6, "material events in accordance with the listing agreement," should be reverted to the UPSI criterion in this consultation paper, per SEBI's request. Despite being initially classified as UPSI, this item has been removed from that classification by the SEBI (PIT) (Amendment) Regulations 2018. The FMC Committee Report (2017) recommended eliminating Item No. 6 since it said that "all material events which are required to be disclosed as per Regulation 68 of the LODR Regulations may not necessarily be UPSI under the PIT Regulations." In summary, it argued that Item No. 6 shouldn't be classified as UPSI (i.e., material events as defined in the listing agreement) since it would contain non-UPSI information. Even Nevertheless, there was a widespread perception that corporations were the only ones categorising this type of data, even if UPSIs were specifically mentioned in the definition. In fact, there were two notable cases that the SEBI was able to pinpoint wherein occurrences that the companies failed to categorise as UPSI resulted in a significant 4-6% daily increase in share prices. To determine if these were unusual incidents, the SEBI evaluated over 1,100 news releases issued by the biggest 100 listed businesses in 2021 and 2022. Yet, just 1.64% (18) of these events were classed as UPSI by the public businesses, despite the fact that 20.65% (227) of the incidences had price fluctuations greater than 2%. To avoid such regulatory omissions, the SEBI advises restoring Item No. 6 into the UPSI criteria. The incidents listed in Schedule III of the LODR Regulations are regarded as significant events. These "material" incidents must be notified to the stock market. The release of this data is necessary to give investors with appropriate and precise information, allowing them to make educated decisions. An action may be classified as a significant or price-sensitive event for a number of reasons. Publicising occurrences is necessary to guarantee openness, and disclosing information that is price-sensitive is necessary to level the playing field. Information that can be price sensitive is not the same as what

a firm deems significant enough to discuss with its shareholders. Yes, there is some overlap, but only because this group includes events that are both significant and cost-sensitive. The decision in Mr. Anil Harish v. SEBI states that although orders over one hundred crores for an infrastructure company may be notable events, they cannot be seen as UPSI in the regular course of business.¹⁷ In a similar vein, decisions made by a manufacturing company regarding the sourcing of raw materials, or by an investment firm regarding the purchase or sale of investments, may take into account important developments without taking price-sensitive information into account. It was made evident in this instance that materiality is dependent on the facts and circumstances of the case and does not necessarily indicate price sensitivity of the information (Para 4). Not all information that is disclosed to the stock market about significant occurrences is price sensitive. Regulation 30 of the LODR Regulations lists 3 types of important events or information that listed firms are obligated to report to the stock exchanges. In a similar vein, decisions made by a manufacturing company regarding the sourcing of raw materials, or by an investment firm regarding the purchase or sale of investments, may take into account important developments without taking price-sensitive information into account. It was made evident in this instance that materiality is dependent on the particular facts and circumstances of the case and does not necessarily indicate price sensitivity of the information (Para 4). Not all information that is disclosed to the stock market about significant occurrences is price sensitive. Regulation 30 of the LODR Regulations lists three types of important events or information that listed firms are obligated to report to the stock exchanges.

SEBI's sudden move might result in an indefinite trading halt. Clause 4 of Schedule B of the PIT Regulations directs compliance officers to impose a restriction on people who are reasonably suspected of having UPSI. The PIT Regulations provide a list of people who can be identified as persons under Regulation 9(4). Insiders include top management, auditors, staff people 2 layers below the company's Board, and those appointed by the enforcement officer. When such price-responsive knowledge becomes readily accessible, the limited people's trading limitation period expires. If all major incidents are categorized as UPSI, the trading restrictions for particular individuals and others closely affiliated with them may never be lifted.

¹⁷ Mr Anil Harish vs SEBI, Appeal No. 217 of 2011.