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Analysis of the Judgement of Shruti Vora v. Securities and Exchange Board of India

Citation- Appeal (L) No. 28 of 2020

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META DESCRIPTION

In this particular blog the relevancy of the judgement of Shruti Vora v. Securities and Exchange Board of India with relevance to insider trading has been discussed and what are the various facets related to constitute insider trading has also been discussed with respect to this particular judgement.

In this landmark judgement the order of SEBI was set aside by the Securities Appellate Tribunal against various individuals who forwarded Whatsapp messages allegedly containing unpublished price-sensitive information (UPSI) of a company which they had received from other sources.

This blog is particularly related to the aspect that whether such an action would amount to insider trading or not and the Securities Appellate Tribunal has clearly clarified this aspect in this particular judgement and this particular context of Corporate law has been discussed in detail in this present blog.

INTRODUCTION

This particular blog is on the subject matter that whether forwarding of Company's financials on Whatsapp as received from other sources would amount to insider trading or not and such an action was held to be in the realm of 'insider trading' by the Securities and Exchange Board of India and the concerned individuals were said to be liable of the same but the Securities Appellate Tribunal set aside this order of the Securities and Exchange Board of India in the judgement of Shruti Vora v. Securities and Exchange Board of India and this particular judgement makes the subject matter of this particular blog that what were the various aspects

involved in this present case and what was the basic reasoning given by the Tribunal for setting aside the order of Securities and Exchange Board of India.

This blog contains the various aspects of 'insider trading' and its various contents and what all amounts to this offence under the realm of corporate law and the action of forwarding a Company's financials on Whatsapp as received from other sources would amount to Insider Trading or not has been clarified in the judgement of the Securities Appellate Tribunal which forms the subject matter of this particular blog and all the relevant details in relation to this aspect have been dealt in detail in this particular blog.

Tags/ Keywords associated with the article:

- Company Law.
- Securities and Exchange Board of India.
- Insider Trading.
- Securities Appellate Tribunal.
- Setting aside of a judgement of SEBI.
- Shruti Vora v. SEBI.
- Unpublished price-sensitive information.

MAIN BLOG

An introduction to the concept of Insider Trading:

The concept of insider trading refers to the buying, selling or trading of shares or other securities (like- bonds or stocks) of a listed company using **unpublished price-sensitive information (UPSI)** which which has not been disclosed yet i.e. made available to the public at large via it getting published in the public domain and has a clear and substantial effect on the price of that particular stock which has not been disclosed till date.

Insider in the concept of Insider Trading:

Securities and Exchange Board of India defines an 'insider' as a person who has access to the price-sensitive information about the shares or securities of a particular company. Any person who has been associated with the company in some or the other manner during the six months

prior to the date of insider trade can fall in the category of an ‘insider.’

Such a person can either be an employee, a director, a relative, legal counsel or banker of that specific company or even a person who is an official of the stock exchange, trustee, employee of an Asset Management Company (AMC) that has worked with that particular corporate entity.

Such insiders who are in possession of confidential and exclusive information about the issuer of the particular stock benefit by buying or selling the undisclosed securities before there is a fluctuation in the price of such securities.

Unpublished price-sensitive information in the concept of Insider trading:

Unpublished price-sensitive information is a piece of substantial and exclusive information with respect to a company’s stock price, quarterly results, acquisition deals, mergers or any other sensitive activities that have not yet been shared in the public domain. When the insiders are having access to the unpublished price-sensitive information they illegally conduct dealings in trade for their personal gains.

Example of such a case can be: the director of a company informs a relative of his about a deal which is yet to be declared and the latter gives that piece of information to his colleagues who on the basis of this information buy the stocks of that company. In this case the director, his relative and his relative’s colleagues will be liable to be booked by SEBI for the violation of the **Prohibition of Insider Trading Regulations**.

In the Indian context, such insider trades are regulated by the SEBI under the Insider Trading Regulations, 2015. In this context, if the market regulator i.e. SEBI has the power to impose fines and also prohibit the individuals or entities from trading in the capital market if it finds them violating these rules.

Penalties for the offence of Insider Trading:

If any insider either on his own or on behalf of any other individual deals in the securities of a corporate which is listed on the stock exchange on the basis of an information which falls in the category of unpublished price-sensitive information

OR

communicates any unpublished price sensitive information to any person, with or without the

permission of that particular individual except as required in the ordinary course of business or under any law

OR

a particular person procures for any other entity a particular information which falls in the category of unpublished price-sensitive information so that particular entity can deal in any securities of a particular corporate

In all the above scenarios such a person shall be held liable to pay a penalty by the Securities and Exchange Board of India and will be declared to commit an offence of 'insider trading.'

Analysis of the judgement of Shruti Vora v. Securities and Exchange Board of India¹:

The main content of this blog focuses on the analysis of this particular judgement in the context of Insider Trading as in this case the Securities Appellate Tribunal set aside the ruling of Securities and Exchange Board of India and held that **Forwarding of a Company's financials on Whatsapp as received from other sources would not amount to insider trading.**

This particular understanding of the Tribunal has been discussed in detail below as the subject matter of this particular blog.

In this landmark ruling of the Securities Appellate Tribunal, the tribunal had set aside the charges of insider trading held by Securities Exchange Board of India against persons who had forwarded Whatsapp messages which allegedly contained unpublished price-sensitive information (UPSI).

The market regulator i.e. SEBI had initiated a crackdown during the period of which the operations of search and seizure were conducted against 26 entities of a Whatsapp group and in these operations about 190 records and devices, among others were seized by the authority. As per the SEBI, the data of earnings and other financial information of nearly 12 companies were leaked through the medium of messages via Whatsapp.

¹ Appeal (L) No. 28 of 2020

Main question before the Securities Appellate Tribunal was-

Whether a Whatsapp message which is **'forwarded as received'** on a Whatsapp group with regards to the quarterly financial results of a Company which closely matches with the vital statistics, shortly after the period of in-house finalization of these financial results by the particular company and shortly before the disclosure or publication of the same by the same company, would fall in the category of unpublished price-sensitive information under the provisions of SEBI (Prohibition of Insider Trading) Regulations of 2015 or not ?

The Adjudicating Officer had answered this question in the affirmative and had imposed a penalty of the amount of Rs. 15,00,000 on the appellants.

The reasoning given by the Adjudicating Officer was that as the message was a piece of information which was relating to the financial results and as it also closely matched with the financial results which were published subsequently, the message amounted to an unpublished price-sensitive information.

Later, when the appeal was filed the Securities Appellate Tribunal came to the observation that there was no information which could be recovered by the Securities Exchange Board of India (respondent) in order to find out the source of this particular information from the financial, legal or the audit team of the respective corporates. Hence, the impugned order showed that the learned Adjudicating Officer had expressed an inability in this regard.

The definitions of the concepts of 'unpublished price-sensitive information' and 'insider' would establish that **an information which is generally available would not amount to unpublished price-sensitive information.**

So in this judgement the Securities Appellate Tribunal set aside the reasoning of the Adjudicating Officer, over ruled the order passed by SEBI and held that an information can be branded as an unpublished price-sensitive information only in the case when **'the person who had received the information had knowledge that the particular piece of information was unpublished price-sensitive information.'**

Even though knowledge is the state of mind of a person, the same can be proved on the preponderance of probabilities on attendant circumstances. In the present case, there are no

other attendant circumstances except the possibilities enumerated by the Adjudicating Officer. The proximity of time and the similarity between the information were the only two factors that were on the side of the Adjudicating Officer to brand that piece of information as unpublished price-sensitive information.

The Securities Appellate Tribunal in the present case relied on an earlier judgement namely, **Samir Arora v. SEBI² [2005] 59 SCL 96 (SAT- Mumbai)**, in that case the Tribunal had rejected SEBI's arguments that **there is no need for linkage between the potential source of the unpublished price-sensitive information and the person allegedly in possession of the alleged unpublished price-sensitive information.**

So the understanding which can be inferred by this particular judgement is that-

For an information to be held as unpublished price-sensitive information and to make a person liable for the offence of insider trading the following criteria need to be fulfilled:

- A particular piece of information can be branded as unpublished price-sensitive information only in the case when the person who is receiving that piece of information has knowledge that it is unpublished price-sensitive information.
- There should be linkage between the potential source of the unpublished price-sensitive information and the person who is alleged to be in possession of the alleged unpublished price-sensitive information.
- An information which is generally available will not amount to an unpublished price-sensitive information.

² [2005] 59 SCL 96 (SAT- Mumbai)

CONCLUSION

In this blog the concept of insider trading along with the concept of unpublished-price sensitive information have been dealt in detail and the main subject matter of this blog is the analysis of the judgement of **Shruti Vora v. Securities and Exchange Board of India** and with the help of the reasoning given in this judgement the situation when a person will be held liable for the offence of insider trading and whether or not **‘forwarding of Company’s financials on Whatsapp as received from other sources would amount to insider trading’** have been dealt in detail covering the various aspects of both the concepts along with the detailed presentation of this particular judgement.

This particular blog would help the readers to analyze that **why in such a situation an offence of insider trading is not attracted** and it will also enlighten the readers on the various aspects of both the concepts of **‘insider trading’** and **‘unpublished price-sensitive information’** as all these things have been dealt in depth in this particular blog and at the end of this blog the understanding which can be inferred by this particular judgement has also been mentioned comprising of the most relevant points of the judgement.

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