

## Has SAT changed the insider-trader game?

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A recent ruling by the Securities and Appellate Tribunal (SAT) may allow those privy to insider information to continue trading in their company's stock.

And it would be up to the regulator to prove that they were attempting to profit from unpublished price-sensitive information and not merely trading in a routine fashion.

Insider trading is a term used to describe company officials or other entities with access to price-sensitive information taking a position in a firm's shares in order to benefit from news that is not available to the public.

For example, the directors of a company X buying its shares when they become aware of a proposal from a larger company to acquire it.

The Securities and Exchange Board of India (Sebi), which regulates stock markets, had passed an insider-trading order against Mrs Chandrakala, who was alleged to have traded in the scrip of BSE-listed Rasi Electrodes during 2007 based on the unpublished price sensitive information relating to financial results, dividend and bonus issue.

The appeal was heard in SAT, which ruled that trades are permissible so long as it is not on the basis of insider information, exonerating them of any wrongdoing.

"The prohibition apply only when an insider trades or deals in securities on the basis of any unpublished price-sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider," the SAT order passed on January 31 by PK Malhotra and SSN Moorthy said.

Thus, while such trades would be at first presumed to be on the basis of insider information, if an insider is able to prove otherwise, no violation can be said to have taken place, according to the order.

"If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 (which prohibits trading while in possession of price sensitive information) of the regulations," said the order.

Interestingly, SAT's position had been the law till 2002. In an amendment in 2002, the phrase 'on the basis of' insider information was changed to 'when in possession'.

This reversal would allow greater flexibility to insiders holding shares, said Prakash Shah, a securities market laws consultant.

"They would be less encumbered. This order ensures that people are not penalised merely for crossing a line, but only if there is a case of genuine unfair enrichment," he said.

The tribunal has established that the purpose of Regulation 3 of the Insider Trading Regulations is not to prohibit an insider from trading altogether but to restrain him from trading based on the unpublished price sensitive information, according to Vyapak Desai, head of the capital markets practice group at Nishith Desai Associates.

"By this order, it will have to be proved that trading by an insider was induced by the unpublished price sensitive information would now lie on Sebi," he said.

Trading history would play a crucial role in future judgments, according to Jayant Thakur, a chartered accountant at Mumbai-based Jayant M Thakur & Company. "If trading history shows that the transactions are in line with prior patterns, it would be favourable to the insider as was the case in the Chandrakala case," he said.

Any change would now have to come from a review petition to the tribunal or an appeal in the Supreme Court, according to lawyers.

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