



## ERGO

*Analysing developments impacting business*

### SEBI DIRECTS IMPOUNDING OF NOTIONAL GAINS IN INSIDER TRADING CASE

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The Securities and Exchange Board of India (SEBI) has recently passed an ad interim ex parte order impounding notional gains made and losses avoided by, amongst others, promoters of PC Jeweller Limited (Company) for having executed trades based on unpublished price sensitive information of the Company (UPSI).

#### Background

The SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) prohibits: (a) disclosure or communication of UPSI (other than in certain prescribed circumstances such as, for legitimate purpose, discharge of legal obligations); and (b) trading in securities of a listed company while in possession of UPSI.

In the instant case, promoters of the Company (occupying the office of Managing Director and Chairman of the Company) allegedly communicated to their related entities, information in relation to the Company's buyback offer and its subsequent withdrawal, and such promoters and their related entities traded in securities of the Company while in possession of such information.

To determine whether the above actions were in violation of the PIT Regulations, SEBI conducted an investigation and analysed various data points including, amongst others:

- *Fluctuation of market price:* To determine if information relating to the proposed buyback and its subsequent withdrawal constitutes UPSI, SEBI analysed the chronology of events in relation to the generation of such information, along with the impact of the public announcements of the buyback offer and its withdrawal on the market price of the equity shares of the Company. The intent behind this analysis was to determine whether information related to the buyback 'materially affected' the price of the securities upon coming into the public domain.
- *Trading by suspected entities:* SEBI analysed the trades undertaken by the promoters and their related entities (or on behalf of them) in the Company's equity shares and derivatives, as well as any related transfer of funds.
- *Relationship between the suspected entities:* SEBI also analysed the relationship between the promoters and their related entities to determine if UPSI in relation to the Company's buyback offer could have been communicated.

Basis its investigation, SEBI's *prima facie* observations/ findings were:

- information pertaining to the Company's buyback offer and its subsequent withdrawal constituted UPSI under the PIT Regulations;
- the promoters disclosed such UPSI to their related entities, who executed trades on the Company's scrip based on such UPSI leading to wrongful notional gains/ avoidance of loss; and
- the promoters and the related entities are *prima facie* in contravention with the SEBI Act, 1992 and the PIT Regulations.

SEBI computed wrongful notional gains made, and losses avoided by the related entities during the period of investigation. Additionally, SEBI also calculated interest at the rate of 12% (twelve per cent) per annum on such notional gains/ avoided losses.

### SEBI's order

Pursuant to its investigation, SEBI passed an ad interim ex parte order *inter alia* impounding notional gains made and losses avoided by the promoters and their related entities by trading in the scrip of the Company based on UPSI. The sums specified are required to be transferred to an escrow account.

### Comment

SEBI's proactive and structured approach indicates the regulator's intent of cracking down heavily on entities engaging in contravention of the PIT Regulations. This case is a classic example of SEBI's ability to undertake in-depth analysis of data including market price fluctuations, fund movement and *inter-se* relations between insiders and trading entities.

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