

WhatsApp Leak Case: SEBI's Order Sets A Challenging Precedent, Say Experts

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The Securities and Exchange Board of India has penalised two individuals for allegedly sharing unpublished price sensitive information relating to the scrips of three listed entities—[Wipro Ltd.](#), [Mindtree Ltd.](#) and [Asian Paints Ltd.](#)—in various Whatsapp groups ahead of official announcements.

Concluding its preliminary investigation, the SEBI imposed a penalty of Rs 45 lakh and Rs 15 lakh, respectively, on Shruti Vora and Parthiv Dalal—both of whom were working for the sales team of Antique Stock Broking. It found that these individuals violated the provisions of the SEBI Act, which prohibit insider trading and communication of non-public information to unauthorised persons.

The case pertains to November 2017, when media reports indicated that price sensitive information relating to as many as 12 companies was circulating on WhatsApp groups. During its inquiry, the market regulator seized multiple devices, records and sought details of employees having access to or involvement in the handling of earnings-related data.

SEBI found that the sensitive data relating to the third-quarter earnings of three listed entities in 2016 was leaked before its disclosure to the exchanges and general public. However, it couldn't trace the origin of the WhatsApp texts due to inherent technological limitations but found that the information circulated by Vora through the messenger were similar to official announcements later made by the listed companies.

'Heard On The Street' Argument

Vora countered the allegations in SEBI's show cause notice on the following grounds:

- There is no connection between her and the promoters or management of listed entities whose price sensitive information was circulated. The market regulator could not establish the leakage of information from the company's employees, auditors or other parties, who had access to such data.
- Information circulated by her was "heard on the street" news and does not emanate directly from the listed entity. "Heard on the street" is a common practice in the industry where unsubstantiated gossip is shared and understood as speculation. It is commonly shared through media, including WhatsApp and other channels.
- As the source of the leak couldn't be ascertained, the information shared by her couldn't be classified as unpublished price sensitive information. She merely forwarded the information received from others.
- There were many instances where the information shared by her did not match with the actual earnings. The matching of estimates with actual earnings was a "rare occurrence." However, the market regulator "cherry picked" a few instances to establish charges.
- SEBI failed to establish a definite pattern of accessing or sharing of price sensitive information. The notice did not allege "mens rea"—intentional wrongdoing and lastly, the sharing of information did not result in any insider trading.

UPSI Could Not Be Traced To Research, SEBI Says

The market regulator, however, dismissed Vora's arguments and said that:

- Circulated WhatsApp messages included information on revenue, profit before interest and profit after tax. These weren't approximations but definite amounts and exactly matched with the actual financial results.
- Determining whether information is unpublished information or not is a mixed question of law and fact.
- The shared information could not be claimed to be based on any market research or based on the estimations made by Vora. Sharing of sensitive information to a select few to the exclusion of others is against the investor's interest.

WhatsApp Groups Participants = Insiders?

Experts said that the order will have to withstand judicial scrutiny as there are several contentious conclusions drawn by the market regulator.

The order passed by SEBI establishes a new threshold of evidence, which is, passing of unpublished price sensitive information unknowingly without benefit to anyone—as a ground to implicate someone on insider trading charges, said Sumit Agrawal, partner at Regstreet Law Advisors, told BloombergQuint. One may not find such orders anywhere in the world, he said.

“It may also happen that a tipper passes on the unpublished price sensitive information on a WhatsApp group, which is further passed on to others,” Agrawal said. “However, no one trades on the basis of such information. Now when a regulator investigates such case, shouldn’t it at least establish the knowledge or benefit of the tipper-in-transit before imposing a penalty on him?”

Jabarati Chandra, partner at S&R Associates, said the SEBI regulations specifically prohibit communication of unpublished price sensitive information except when it’s done in furtherance of legitimate purpose or discharge of legal obligations. “It will be interesting to see the developments in courts on whether ‘heard on street’ will be considered as a valid defense,” she said.

SEBI’s order will also impact the sharing of earnings-related information through WhatsApp and the liability of the members who participate. While this order specifically deals with the sharing of the data, it can also impact persons utilizing such information for trading.

Chandra pointed out that the order is a timely reminder to market participants that insider trading regulations are applicable not just to the act of “trading” while in possession of unpublished price sensitive information but also to the act of communication of such details.

“Individuals that are part of WhatsApp groups may get classified as insiders and be subjected to strict restrictions on communication such as forwarding of messages and trading when in possession of unpublished price sensitive information,” Chandra said. “Overall, these SEBI orders are a step by the regulator to rein in unchecked communication of unpublished price sensitive information.”

Agrawal pointed out the other effects of the order. The position of SEBI, if unchallenged, is likely to have some severe unintended consequences including prohibition of freedom of speech and expression.

It’s likely individuals in the orders may opt for settlement on pragmatic considerations rather than appealing it, he said.