

**“BALRAM GARG V. SEBI
[9 SCC 425, 2022]”**

*Ankita
UPES, Dehradun*

CASE DESCRIPTION

The Securities and Exchange Board of India (SEBI) requested the Supreme Court of India to decide what level of proof was necessary to prove an insider trading accusation in the case of Balram Garg v. SEBI¹. Allegations that three close relatives of a listed company's chairman and managing director participated in insider trading by buying and selling company shares based on unreleased price-sensitive information (UPSI) they had acquired from the chairman and managing director were at the centre of the case. The Chairman and Managing Director allegedly conveyed the UPSI in violation of the SEBI Act and the 2015 SEBI (Prohibition of Insider Trading) Regulations, according to SEBI.

The legal framework prohibits insiders from trading in stocks while in knowledge of substantial non-public price-sensitive information (UPSI), as well as from disclosing such information to other parties. Insiders are divided into two groups: connected individuals, who are assumed to have UPSI, and those who have access to or own UPSI. The same rules apply to treating close relatives as related people.

CASE NOTE

Legal Framework for Insider Trading: Insiders are prohibited from trading stocks while in possession of UPSI or disclosing such information to others under the SEBI Act and SEBI (Prohibition of Insider Trading) Regulations. Insiders are those with connections and close family members who must abide by these rules.

SEBI made allegations that the Chairman and Managing Director gave UPSI to their close relatives, who then traded business shares while in receipt of the information. The case featured two UPSI components: the company's choice to buy back its shares and the subsequent withdrawal of the buy-back offer because of the lead bank's failure to provide a no-objection certificate.

The onus of Proof fell on SEBI to demonstrate that the Chairman and Managing Director informed their family members about UPSI. For the relatives, SEBI had to provide proof that they were either close relatives or that they had traded while holding UPSI.

Decision of the Court: The Supreme Court ruled that the circumstantial evidence used by SEBI to support its allegations of guilt was inadequate. This evidence included trading patterns and timing. It was SEBI's responsibility to adduce verifiable proof of communication with and possession of UPSI, such as letters, emails, or witnesses.

¹ 9 SCC 425, 2022.

Immediate Relatives: Due to their distance from the Chairman and Managing Director, their resignation from the company, their financial independence, and the fact that they did not seek their advice before making trading decisions, the relatives in question were not regarded as immediate relatives.

CASE ANALYSIS

Due to its clarification of the burden of proof necessary in insider trading charges in India, the Balram Garg v. SEBI case is notable. These are the main conclusions to be drawn from this case:

The case is regarded as the development of a "new standard of proof" in insider trading cases. Simple inferences about culpability from things like trading patterns and timing might not be enough. The court anticipates further tangible proof, such as written correspondence or witnesses who can attest to UPSI's communication.

1. **Immediate relatives vs. linked Persons:** The judgement makes a distinction between linked people and immediate relatives. Immediate relatives receive the same treatment as related people and are assumed to have UPSI. However, SEBI must offer more convincing proof of contact and UPSI possession for those who do not meet the requirements for direct relations.
2. **Gathering Evidence Challenges:** The case raises concerns about SEBI's capacity to compile the necessary evidence in insider trading prosecutions. Obtaining substantial evidence, such as written communications or witnesses, might be difficult when there is a close relationship between the tipper (the person who provides UPSI) and the tippee (the recipient).
3. **Implications for Enforcement:** This ruling emphasises how crucial it is for SEBI to conduct in-depth investigations and establish strong evidence in insider trading cases. It also emphasises how important it is for regulatory agencies to have the resources and tools needed to properly discover insider trading operations.

In conclusion, although if this case increases the bar for proof in insider trading cases, it also raises questions about the difficulties in gathering the evidence needed in these situations, particularly when there is an intimate relationship between the parties. To satisfy this new standard, it would be crucial for SEBI and other regulatory organisations to modify their investigation procedures.

IMPLICATIONS FOR FUTURE CASES

The Balram Garg v. SEBI² case has several consequences for Indian regulation and upcoming insider trading cases, including:

Raising the Bar for Prosecution: The ruling establishes a precedent for insider trading prosecutions and makes it apparent that circumstantial evidence could not be enough to bring

² 9 SCC 425, 2022.

charges. To make a compelling case, regulators and law enforcement organisations will need to spend more time gathering tangible evidence, including documented communications or credible witnesses.

Increased Examination of Insider Relationships: In future instances, the nature of the connections between insiders and individuals accused of insider trading may be examined more closely. When evaluating whether a person is an immediate related or linked person, the courts may consider elements such as alienation, financial independence, and the lack of consultation in trading choices.

Balance between Fairness and Enforcement: While the ruling raises the bar for prosecution, it also emphasises the significance of upholding a just and fair legal system. It emphasises the requirement for a careful balance between implementing laws to prevent insider trading and making sure that people are not falsely charged based only on circumstantial evidence.

Need for Stronger Investigative Tools: To achieve the increased level of proof, regulatory agencies like SEBI may need to improve their investigative resources and skills. To obtain evidence in cross-border cases, this may entail utilising cutting-edge technology, doing in-depth financial research, and collaborating with overseas peers.

Effect of Deterrence: The higher burden of evidence may discourage insider trading since people may be less willing to leave physical signs of their communications concerning UPSI. This could result in fewer instances of insider trading.

Legal Issues: It's conceivable that situations in the future may face legal issues pertaining to the definition and application of the term "immediate relatives and connected persons." To establish uniformity in their use, courts may need to further define certain terms.

Public Perception: The choice may also affect how the public views the efficiency of regulatory bodies in preventing insider trading. Maintaining public confidence will depend on finding the correct balance between safeguarding market integrity and upholding the rights of people accused of insider trading.

In conclusion, a new standard of proof for insider trading charges in India has been established because of the Balram Garg v. SEBI case, emphasising the need of tangible proof. It acts as a reminder to regulatory authorities to modify their enforcement tactics to satisfy this requirement while respecting the concepts of justice and due process. This historic decision will probably have an impact on future cases as the legal system continues to develop in response to the difficulties in tackling insider trading operations.

CHALLENGES AND POTENTIAL SOLUTIONS

As the legal environment for insider trading cases changes considering the Balram Garg v. SEBI³ ruling, a few problems, and potential fixes manifest:

³ 9 SCC 425, 2022.

- **Obtaining Concrete Evidence:** The main obstacle is obtaining concrete proof of communication and UPSI ownership. Regulatory agencies like SEBI may need to adopt more advanced investigation methods to handle this. This can entail stepped-up monitoring, forensic examination of electronic communications, and collaboration with computer professionals.
- **Cross-Border Enforcement:** When there are international components to a case, communication with foreign regulatory and law enforcement organisations is essential. To find and prosecute anyone involved in cross-border insider trading, India's authorities may need to improve their international collaboration.
- **Whistleblower Protection:** Finding insider trading activity requires encouraging whistleblowers to come forward with information. Regulatory organisations should keep placing a high priority on protecting whistleblowers and providing ways for them to make anonymous reports of questionable activity.
- **Education and Awareness:** By spreading knowledge of insider trading rules and their repercussions, potential offenders might be discouraged. Regulatory agencies might launch public awareness efforts and advise industry players on compliance.
- **Strengthening the Legal Framework:** To strengthen the laws controlling insider trading, legislative measures may be required. Clarifying terms, defining evidence requirements, and giving regulatory agencies greater investigation authority might all be part of this.
- **Digital forensics:** This may be extremely useful in locating proof of insider trading in the age of internet communication. Regulators should spend money on technology and training to efficiently extract and analyse electronic records.
- **Continuous watching:** Regulators can spot odd trading patterns that can point to insider trading by continuously watching market activity. The early identification of suspicious behaviours may be improved by implementing advanced monitoring tools and algorithms.
- **Judicial training:** Judges can make more consistent and well-informed rulings if they have received the proper training on the nuances of insider trading cases. Judges may benefit from receiving specialised training to better appreciate the subtleties of certain instances.
- **Public Trust:** It's important to keep the public's faith in the regulatory system. Public trust may be increased and maintained by being transparent throughout investigations and enforcement actions, as well as by being open and honest about the thinking behind choices.
- **Enforcement-Based Deterrence:** Successful prosecutions and severe punishments for insider trading can have a significant deterrent effect. Regulators should be dedicated to enforcing laws when the evidence warrants it.
- In conclusion, the developing environment of insider trading cases, as informed by the Balram Garg v. SEBI judgement, offers regulators, law enforcement authorities, and the legal system with both difficulties and possibilities. To effectively prevent insider

trading and safeguard the integrity of financial markets, tackling these issues will necessitate a multidimensional strategy that includes cutting-edge investigative tools, regulatory reforms, education, and international collaboration.

INTERNATIONAL BEST PRACTICES

It might be helpful to look at global best practises to further strengthen the enforcement of insider trading laws in India and improve the efficiency of regulatory agencies like SEBI. Several nations have created effective procedures to combat insider trading. Consider the following important techniques:

- **Whistleblower Protection Laws:** Many nations have thorough whistleblower protection laws that encourage people to come forward and reveal securities fraud and insider trading without worrying about repercussions. India may adopt or improve these laws to offer more protection for informants.
- **Collaboration between Government Agencies:** Regulatory agencies, law enforcement agencies, and financial intelligence units must frequently work together for enforcement to be effective. India can set up procedures for effective communication and collaboration amongst these organisations.
- **Market Surveillance Technology:** Using cutting-edge market surveillance equipment, it is possible to spot suspicious trade patterns and odd market activity in real time. Modern surveillance equipment purchases can help with the early discovery of insider trading.
- **Leniency Programmes:** Some jurisdictions allow people who come forward with knowledge on insider trading and help with investigations with reduced fines or immunity. By implementing such programmes, collaboration and information exchange may be encouraged.
- **Specialized courts:** Establishing specialised courts or tribunals to handle instances involving insider trading helps speed up the legal process and guarantee that judges have knowledge of securities legislation.
- **Cross-Border collaboration:** Given that financial markets are global in scope, enhancing international collaboration is essential. Agreements and mutual legal assistance treaties (MLATs) with other nations can make it easier to share information and evidence in international legal disputes.
- **Market Education:** Promoting knowledge of insider trading regulations and ethical trading practises may be done by launching educational programmes for market players, such as firm executives, investors, and traders.
- **Timely Investigations:** Ensuring that investigations are carried out quickly helps guard against the loss or destruction of evidence and show the regulator's dedication to combating insider trading.
- **Harsher sanctions:** Consider toughening up insider trading sanctions. More severe punishments may serve as a more effective deterrence for potential offenders.

- **Periodic Regulatory Reviews:** Reviewing and revising insider trading laws on a regular basis can assist in addressing new issues and adjusting to shifting market conditions.
- **International Standards Compliance:** Observe international norms and agreements, such as those specified by the International Organisation of Securities Commissions (IOSCO), to ensure that India's insider trading laws are in accordance with them.
- **Data Analysis and AI:** Utilise artificial intelligence (AI) and data analysis technologies to analyse enormous volumes of trade data and spot suspicious trends, which will speed up investigations.
- India's capacity to successfully prevent insider trading, improve market integrity, and foster investor trust may be strengthened by implementing these global best practises into its regulatory structure and enforcement approach. India may also harmonise its practises with developing worldwide norms in the fight against insider trading by maintaining constant communication with overseas peers.