

## INSIDER TRADING WITH SPECIAL REFERENCE TO THE SATYAM SAGA

*S. Harish\**

### ABSTRACT

*The outflow of crucial information diminishes the confidence of the investor in the fairness and security of capital market. Insider trading specifically refers to such outflow. This research paper traces the evolution of Insider Trading and in the light of the facts presented analytically ruminates whether the Satyam saga has an insider trading chapter to it. This paper primarily focuses on the trading of Satyam stocks between 23<sup>rd</sup> December, 2008 and 5<sup>th</sup> January, 2009 i.e. a week before the Rama Linga Raju's public revelation. The alleged trading activity has been chronologically presented and inferences from the same have been drawn. What is price sensitive information? What would constitute publication such information? Whether information allegedly leaked was unpublished price sensitive information? The paper seeks to answer such intriguing questions and thereby delve deeper into the investigation of the matter. No official complaint has yet been filed by the SEBI. The regulator is still waiting*

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\*S. Harish is a fourth-year student at Gujarat National Law University, Gandhinagar. The author may be reached at harishiyer718@gmail.com.

*for fool proof evidences to hold that the promoters did indulge in insider trading. Media reports, which seem to be confident on Insider trading, have been elaborately discussed. Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations 1992 has been elucidated to determine whether the said transactions fall within the contours of Insider Trading. The possible justifications that the institutional investors may give for losing their confidence in Satyam resulting in such massive trading have also been deliberated. As a conclusion a SWOT analysis has been done to check the adequacy of the assumption made in the research paper.*

## I. INTRODUCTION

*If stock market experts were so expert, they would be buying stock, not selling advice.*

*Norman Augustine<sup>1</sup>*

In times of war, massacres destroy human resource while in times of peace they obliterate economy. One's perception of life is relevant in determining whether the astounding disclosure of Raju could be termed a massacre or not. What happened on the 7<sup>th</sup> of January 2009 will surely in future be known as an event which destroyed investor confidence, crimsoned India's IT visage and brutally assassinated the assets of many inflicting excruciating pain. It would be known as a massacre that hit all and wounded many. The fluctuating nature of the

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<sup>1</sup>(March 04, 2009), <http://www.quotationspage.com/quote/36807.html>.

market does not allow one to predict any present or future trends with stamping confidence, as they involve a plethora of risks. But such risks have umpteen numbers of takers. As a result, economies in the last two decades, due to investment and rampant growth, have been introduced to an unimaginable size of the capital market. From \$ 4.7 trillion in 1980 to \$ 27.5 trillion in 1998 the world stock capitalization lets the numbers speak for itself.<sup>2</sup> But no growth is independent of lacunas and side effects. With the massive size of the markets, issues of fraud have silently crept up the ladder. One such grave issue is insider trading.

Insider trading is the trading of a company's stock or other securities (e.g. bonds or stock options) by individuals who have access to information of the Company which is not present in the public domain. Insider trading has twin facets to it, legal and illegal. When the above trading is done by people such as corporate insiders like officers, directors or employees of the company then it is a legal trading. But when insider trading results as a breach of fiduciary duty or relationship of trust and confidence while in possession of material, non-public information about the security, it is the illegal form of insider trading.<sup>3</sup> Insider trading may also be used to refer to a practice whereby an insider or related party trades the shares of the company on the basis of important information which he had obtained during his nexus with the company as an insider. "Tipping"<sup>4</sup> information, securities that have been traded by person "tipped" and securities trading by those who misappropriate such information are all different

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<sup>2</sup>R.N. Agarwal, Capital Market Development, Corporate financing Pattern and economic growth in India (Mar. 4, 2009), [http://www.ieg.nic.in/dis\\_rna\\_20.pdf](http://www.ieg.nic.in/dis_rna_20.pdf).

<sup>3</sup> Insider Trading, U.S. Securities Exchange Commission (Mar. 04, 2009), <http://www.sec.gov/answers/insider.htm>. See also Shapiro, Susan P., *Wayward Capitalists: Targets of the SEC.*, NEW HAVEN, CONN.: Yale University Press, 1984.

<sup>4</sup>The act of providing material non-public information about a publically traded company to a person who is not authorized to have the information is called tipping (Mar. 04 2009), <http://www.investopedia.com/terms/t/tipping.asp>.

aspects of insider trading violations.<sup>5</sup> Such misuse of confidential information is unethical amounting to breach of fiduciary position of trust and confidence. Being *au fait* is the primary requirement of a capital market and that is why transparent flow of information becomes indispensable. Insider trading obstructs this flow and diverts it in another direction. Having traversed this long path when the information reaches the investors there remains a very little chance for effectuating damage control. The outflow of crucial information diminishes the confidence of the investor in the fairness and security of capital market. Therefore adequate restrictions are placed by law so as to check this activity which buttresses the beliefs of people that the markets are a fair arena for transacting stock trades. By prohibiting individuals who have material, price-sensitive information from trading, insider trading restrictions attempt to neutralize the advantage of being an "insider" and, thus, invite participation by outsiders who would not trade if they thought the market was rigged against them.<sup>6</sup>

This paper seeks to bring forth the laws in force in India regarding Insider Trading, amendments to them and deliberate upon their application in the present context of a suspected insider trading in the Satyam Scandal.

## II. EVOLUTION OF INSIDER TRADING LAWS IN INDIA

*"He that worketh deceit shall not dwell within my house: he that telleth lies shall not tarry in my sight"*

*Bible*<sup>7</sup>

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<sup>5</sup>R. Chandrate, Evils of Insider Trading, 4 CORPORATE LAW CASES 245 (2001).

<sup>6</sup> Nancy Reichman, Insider Trading, Beyond the Law: Crime in Complex Organizations, 18 CR. & JUS., 55-96, (Mar. 07 2009), <http://www.jstor.org/stable/1147654>.

<sup>7</sup> Bible quotes, (Mar. 15, 2009), <http://thinkexist.com/quotation/he-that-worketh-deceit-shall-not-dwell-within-my/277429.html>.

The bible has it and so, must all laws. Deceit of any form should be curtailed and crushed so that the *Love Thy Neighbour* philosophy remains strong and omnipresent. 125 years into history stock markets in India have flourished, diminished, kept stable and undergone reforms of path breaking nature. The deceit i.e. insider trading was an unregulated part of this network. It was in 1970s that for the first time it was considered to be a practice fatal to the economy and investor confidence. Before the strict regulatory framework came into existence there were certain significant contributions of preceding committees.<sup>8</sup> On the basis of the recommendation made by the Abid Hussain Committee wherein it was suggested that SEBI should formulate legislations so as to empower itself while dealing with such frauds, the Securities and Exchange Board of India (Insider Trading) Regulations 1992 were formulated. The regulations have prohibited this fraudulent practice and a person convicted of this offence is punishable under S. 24 and S. 15G of the SEBI Act 1992. The 1992 Regulations were short with just 12 clauses, divided into three chapters, “Preliminary”, “Prohibition on Dealing, Communicating or Counseling” and “Investigation”. The Regulations were later amended exhaustively in 2002 and renamed as SEBI (Prohibition of Insider Trading) Regulations 1992 (hereinafter referred to as the “SEBI Regulations”) bringing these in line with the parent SEBI Act. Two Schedules were added, the first having two parts, Part A, a model code of conduct for prevention of insider trading for listed companies, and Part B, a similar code for other entities; the second, a model code of corporate disclosure practices for prevention of insider trading. The prime basis of such a drastic amendment was the case of *Hindustan Lever Ltd. v. S.E.B.I.*<sup>9</sup> wherein major loopholes of the 1992 Regulations were brought to the floor. The definitions of “insider”,<sup>10</sup>

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<sup>8</sup> The Sachar Committee of 1979; Patel Committee 1986; the Abid Hussain Committee 1989.

<sup>9</sup> *Hindustan Lever Ltd. v. S.E.B.I.*, (1998) S.C.L. 311 (S.C.).

<sup>10</sup> Regulation 2 (e) of The SEBI Regulations.

“price-sensitive information”,<sup>11</sup> “unpublished”<sup>12</sup> were further armoured to make law free from ambiguity and check the escapist tendency of the corporates whose use such ambiguity for their benefits. Addition of regulation 3A is also an aftermath of the HLL case. The 2008 amendment to the same has increased the scope of the word “insider” without making any additions or deletions in the previous definition but by just deleting a comma from the same and by breaking the definition up into two paragraphs.

### III. INSIDER TRADING DISSECTED

Like a coin even insider trading has flip side. It is not totally negative in nature. Empirical studies have shown that the direction of price can be traced from insider trading.<sup>13</sup> This can lead to accurate valuation of market trend and thereby control the loss that is inevitable. Say for example the officials of a company ‘A’ have inside information as to probable fall in the stock prices in future. As they begin selling shares on this premise the market is guided towards thinking in the same direction as money is being moved out of the company. The investors can react fast and affect at least the quantum of their losses.

But this is probably the only advantage without too many conflicts as the other advantages of insider trading in a way prove to be disastrous from the perspective of the small shareholders. For example it is considered that the large shareholders who can suffer massively because of the price fluctuations can benefit from insider trading<sup>14</sup> by selling or buying at relevant stages and also that such money does not

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<sup>11</sup>Regulation 2 (ha) of The SEBI Regulations.

<sup>12</sup>Regulation 2(k) of The SEBI Regulations.

<sup>13</sup>Lisa K. Meulbroek, An Empirical Analysis of Illegal Insider Trading, *J47 J. OF FINANCE*, 1661–1699(1992):

<sup>14</sup>Harold Demsetz, Corporate Control, Insider Trading, and Rates of Return, *76 AMERICAN ECONOMIC REV.* 313–316(1986):

come from the corporate profits comes in handy.<sup>15</sup> But such benefit can be translated into diversion of wealth from the small to the big shareholders arbitrarily thereby creating conflicts between the two.<sup>16</sup> Insider trading as monetary remuneration for managers for innovation are seen as advantages but it has its own lacunas. Money may have to be paid for mere access of information, rather than its production.<sup>17</sup> Insider trading may also serve as cushion for corporate disasters by increasing tolerance for possible failures<sup>18</sup> but all such advantages can fall upside down if the insider has intentions to profits totally to themselves rather than directing market trends.

Thus, in order to comprehend the true nature of insider trading we need to look at the factors that determine whether such illegal activity has been perpetrated or not. In the course of such deliberations we must consider the following basic tenets regarding Insider Trading.

Following are the basic elements of Insider Trading:

- A. **Materiality:** The duty to disclose or abstain from disclosing “insider information” is both incidentally and intrinsically connected to the aspect of materiality of information. When a public issuer or one of its insiders is in possession of undisclosed material information, the issuer or insider must either disclose the material information before trading in the issuer’s securities or abstain from trading in the issuer’s

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<sup>15</sup>Jie Hu & Thomas H. Noe, The Insider Trading Debate, Federal Reserve Bank of 82 ATLANTA ECONOMIC REV. 34–45 (4th Quarter 1997):

<sup>16</sup> Maug, Ernst., Insider Trading Legislation and Corporate Governance, 46 EUROPEAN ECO. REV. 1569–159 (2002).

<sup>17</sup> David R. Henderson, Concise Encyclopaedia on Economics, Stanislav Dolgoplov, Insider Trading, (Mar. 15, 2009), 276–281, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1305210](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1305210).

<sup>18</sup>James D. Cox, Insider Trading and Contracting: A Critical Response to the ‘Chicago School’, DUKE LAW J. 628–659 (1986).

securities.<sup>19</sup> The following factors are used to determine materiality:

1. Significance of Information with the alleged perpetrators
2. Market reactions at the disclosure of such information or when it becomes generally.
3. In the cases tippee<sup>20</sup> trading, source of information assumes momentousness
4. The specificity of the tip is another important factor.

**B. Inside Information:** Any information which is price sensitive in nature and can affect the trade of shares of the company can be termed as Inside Information. The word “insider” has been covered under regulation 2(e) of the SEBI Prohibition of the Insider trading regulation, 1992. As per the U.K. Law<sup>21</sup> the information must relate to particular security or particular issue and not in general. Furthermore, the information must not have been made public.

**C. When Information becomes Public:** Information becomes public when it is made known to an investing community at large through the dissemination of the information. If a reasonable number of people have knowledge of the information, then any trade in the stocks of the company would not come under the purview of Insider Trading. But if that is not the case, then the trade in stock would come in the purview of Insider trading.

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<sup>19</sup>John Macleod Heminway, Materiality Guidance in the Context of Insider Trading: Call For Action (Mar. 07 2009), <http://www.wcl.american.edu/journal/lawrev/52/heminway.pdf?rd=1>.

<sup>20</sup>Tippee is a person who with the knowledge of the disclosed information received through a company insider, makes a trade out of it thereby breach his/her fiduciary duty.

<sup>21</sup>Criminal Justice Act, §56 (1993).



**D. Unfavourable News:** The price of the securities of a corporation might be adversely hit because of any news having adverse financial impact upon the corporation or any impending change in the management of the company. The SEBI regulations consider both favourable and unfavourable news as constituting “price sensitive information” provided it is likely to materially affect the price of the securities.

Now that we have a fair idea of how these laws in India have evolved and what are the elements which need to be reckoned for detecting insider trading in a company/corporate we must refer to the detailed facts of the Satyam issue. We shall then test such facts on the above laws and deliberate whether Satyam falls within the ambit of insider trading or not.

#### IV. THE SATYAM MASSACRE

*You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time.*

*Phineas T. Barnum*<sup>22</sup>

Satyam Computer Services Ltd. (hereinafter referred as SCSL) was undoubtedly not oblivious to the aforementioned fact. In their bid to fool all the people all the time they ended up shocking the entire world, ridiculing themselves and denting India’s corporate image. For most of the part of their existence as IT giants, who not only found a place in the BSE but also in the NYSE, SCSL have breached multitudinous laws<sup>23</sup> of our country. The following are the allegations that SCSL faces today:

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<sup>22</sup>(Mar. 10 2009), <http://www.worldofquotes.com/topic/Deceit/index.html>.

<sup>23</sup>Companies Act, §§ 205A, 207, 297, 299, 300, 372A.

1. Inflation of financial position fallaciously to the tune of over Rs. 5,000-6000 crore by falsifying account books.
2. Faking Public Financial Statements by mutilating banks and cash balance.<sup>24</sup>
3. Utilization of capital receipt for revenue payment like dividend, managerial remuneration and other cash outflow which are usually done out of profits.
4. Insider trading.

This paper focuses in its entirety on the aspect of Insider Trading.

## V. DID THEY?: PECULIAR FACTS ON THE TABLE

Preliminary investigations have disclosed that there has been major off-loading of the shares of the company by Institutional Investors days before the Satyam massacre happened. Institutional investors like DSP Merrill Lynch, DSP Blackrock, ILFS Financial Services and Deutsche Bank had offloaded their Satyam shares before Ramalinga Raju's startling revelation of fudging the accounts of the company to the tune of over Rs 7800 crores.<sup>25</sup> This has led to grave suspicions regarding insider trading in the Satyam arena. These sales took place after Satyam's bid to acquire Maytas proved disastrous. This could have been a reason for the loss of confidence of the Institutional Investors in the SCSL resulting in the said off-loading. But when we delve deeper into the issue certain dates emerge as of massive significance. The sales made between 23<sup>rd</sup> December 2008 to 5<sup>th</sup> January 2009 have been under the scanner as a mammoth trading of

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<sup>24</sup>The report said that there may have been window-dressing of published financial statements with an intention to allure investors, resulting in false value of shares appreciating in the stock exchanges. Press Trust of India, RoC Reports hint at Insider trading, (Mar. 10, 2009), <http://economictimes.indiatimes.com/articleshow/4003328.cms>.

<sup>25</sup> Initial probe into insider trading, (Mar. 10 2009), <http://www.deccanherald.com/CONTENT/Jan152009/business20090114112538>.

2.5 crore shares of the company had taken place. The trading involved pledged shares of the Raju Family with various entities. A trust Company namely IL&FS Trust Company facilitated these transactions for the above debenture holders as well as lenders. The trading can be presented chronologically as follows<sup>26</sup>:

### **December 23<sup>rd</sup> 2008**

DSP Merrill Lynch sells 39 lakh shares. Average Price per share on NSE was Rs. 146.80.

### **December 23<sup>rd</sup> and 24<sup>th</sup> 2008**

DSP Blackrock sells a little over 74 lakh shares. On 24<sup>th</sup> December, though the price averaged quite below the previous day at Rs. 125.88 per share.

### **December 29<sup>th</sup> and 30<sup>th</sup> 2008**

Deutsche Bank sells over 47 lakh shares. The average price per share had bounced back and was even higher than what it ended at in the previous week being Rs. 146.66 and Rs. 156.72 respectively.

### **January 2<sup>nd</sup> 2009**

HDFC Mutual Fund offloads 50 lakh shares. By now the prices had got even higher being averaged at Rs. 177.10 per share.

### **January 5<sup>th</sup> 2009**

ILFS financial services trades 35 lakh shares and opts out too. Prices average at Rs. 168.22 much higher than what it became later on the

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<sup>26</sup>The facts have been derived from Doval, Pankaj; Diwakar, Government Suspects Insider Trade in Satyam scam (Mar. 10 2009), <http://economictimes.indiatimes.com/articleshow/3975169.cms>.

9<sup>th</sup> of January when it touched all time lows for the first time at Rs. 6.30.

### **January 7<sup>th</sup> 2009**

Raju's heart trenching confession.

In addition to these there have are media reports that suggest that the newly appointed CEO of Satyam Mr. A. S. Murthy sold 40,000 shares before Satyam's attempt to acquire Maytas failed.<sup>27</sup> But Murthy's case does not seem to as severe as the ones chronologically suggested because he is believed to have sold the shares in his personal capacity and also the fact SEBI had the knowledge of such sales made by him before they appointed him as the CEO favours his side.<sup>28</sup> All these may be independent events but if they are viewed as a chain of events then there is certainly a hint of a mass fraud. Let us examine whether these events could be encompassed within the scope of insider trading provided under the SEBI regulations.

## **VI. ANALYSIS**

Regulation 3 of the SEBI Regulations categorically provides that:

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<sup>27</sup>Satyam CEO could come under SEBI scanner for insider trading, INTERNATIONAL BUSINESS TIMES, (Mar. 13, 2009), [http://www.ibtimes.co.in/articles/20090209/satyam-ceo-murthy-could-come-under-sebi-scanner-insider-trading\\_3.htm](http://www.ibtimes.co.in/articles/20090209/satyam-ceo-murthy-could-come-under-sebi-scanner-insider-trading_3.htm).

<sup>28</sup>Murthy sold Satyam shares before plunge, THE INDIAN EXPRESS(Mar. 13, 2009), <http://www.indianexpress.com/news/murthy-sold-satyam-shares-before-plunge/419988/>.

1. An insider cannot deal in securities neither on his own behalf nor on behalf of the any other person while he is in possession of any<sup>29</sup> unpublished price sensitive information.
2. An insider also cannot communicate, counsel or procure directly or indirectly the above information to another person who while in possession of such information shall not deal in securities.

Regulation 3A on the other hand puts a direct bar on companies and restrains them from dealing in securities of another company or it's associate while it is in the said information.

In order to determine whether charges of insider trading can be imputed on SCSL we must scrutinize Regulation 3 read with other regulations and test them on the facts of the matter at hand.

*A. Whether Information Leaked was Unpublished Price Sensitive Information*

“Price Sensitive Information” (hereinafter referred as to as “PSI”) has been defined under Regulation 2 (ha) of the SEBI Regulations as any information which relates directly or indirectly to a company which if published could materially alter the price of the securities of the company. The explanation appended to 2 (ha) does not cover what has instant situation. But the explanation is not exhaustive of the

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<sup>29</sup>“While in possession of” was not originally present in the SEBI Regulations but is a consequence of the Amendment of 2002. The major reason for bringing about this change was that in the HLL case the fact that the decision to purchase the share was not “on the basis” of any unpublished price sensitive information as was required under regulation 3 but was based on general policy of Uniliver was used by HLL to escape the allegation placed on it. The burden of proving that the perpetrator had acted “on the basis” of the information was too large and had to be brought down so that such loopholes in law could not be used to escape from frauds committed. What is shocking is that even after the amendment, 15G of the SEBI Act, 1992 retains the words “on the basis of” and no substitution as in the above case has happened.

aforementioned regulation. It only suggests that conditions contained in regulations from 2 (ha) (i) to (vii) shall be deemed to be PSI. In this scenario the only question that needs to be answered is that whether the information which was brought to the public forum, by the no more sacrosanct Ramalinga Raju on the 7<sup>th</sup> of January 2009, was fatal enough to paralyse the economic front of the company. As expected the answer is not something out of the dreaded books of derivative mathematics or physics, it is *res ipsa loquitur*. The Satyam fiasco suggests that the information that got divulged was sensitive enough to bring down shares trading in the 150's to an abysmal single digit low of around Rs. 6.30 per share.

In order to deliberate further the definition of “unpublished” is also crucial. Regulation 2 (k) as amended by the 2002 amendment Act has been curtailed and the term “unpublished” now means information which is not published by the company or its agents and is not specific in nature. The explanation appended to the regulation very cautiously eliminates speculative reports in print or electronic media from the ambit of published information thereby strengthening the definition further. It previously contained the words “generally known” because of which the term “unpublished” became meaningless as even trivial speculative newspaper columns could be presented as evidence by the perpetrators. It is therefore abundantly clear that the information if divulged before 7<sup>th</sup> of January was unpublished prior to the said date. Since on the said date Raju had as an agent of the company disclosed information in front of live media and therefore such reports cannot be said to be “speculative reports” hence information published post 7<sup>th</sup> January is published information.

Since it has been previously established that the information tendered by Ramalinga Raju was price sensitive information and knowledge of such information prior to its publishing could fall strictly within the contours of regulations 3 and 3A as there have been blatant dealings

in securities (chronologically suggested) while in possession of such an information. Consequently in accordance with regulation 4 of the SEBI Regulations the above act can be called Insider Trading and the punishment for the same has been prescribed under section 15G of the SEBI Act.

## VII. FURTHER STEPS

No official complaint has yet been filed by the SEBI. The regulator is still waiting for fool proof evidences to hold that the promoters did indulge in insider trading. Media reports though seem to be rather confident on their stand. The HINDU had published an article namely '*Insider Trading in Satyam established*'<sup>30</sup> which sought to put forth the view that insider trading is prima facie visible in the Satyam episode. **Then why is the regulator not taking necessary steps?** The precise reason being, that SEBI is not sure of the source of insider trading. Currently SEBI has been investigating about the possible fraud that could have been committed. In pursuance of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the "SEBI Act"), the SEBI has powers to investigate<sup>31</sup> any intermediary or person associated with the securities market if it has reasonable grounds to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or when such persons have violated the SEBI Act or rules or regulations made or directions issued by the SEBI. Under section 11C (2) the managers, managing directors, officers, employees and every intermediary or every person associated with the securities market have to assist the investigating authority by

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<sup>30</sup>N. Rahul, Insider Trading in Satyam established, THE HINDU, (March 14, 2009), <http://www.hindu.com/2009/01/31/stories/2009013159921500.htm>.

<sup>31</sup>Section 11 inserted by the 2002 Amendment to the SEBI Act, 1992 provides powers regarding investigation. (Section 11C (1)).

preserving and producing books, registers, documents, records of the company or the intermediary or such person, or relating to the company or intermediary or such person.<sup>32</sup> By virtue of such powers the Board has acted rather swiftly by ordering investigation and sending its officials to Hyderabad as soon as the news of the scam came to light.<sup>33</sup> The process though has not been smooth. When SEBI sought to investigate it was not allowed as Ramalinga Raju had already surrendered to the Hyderabad Police. SEBI moved a petition to the city court of Hyderabad for investigating him but to no avail as the 6<sup>th</sup> Additional Chief Metropolitan Magistrate rejected its plea along with the petition of the Serious Fraud Investigating Office (hereinafter referred to as "SFIO) holding for the Board that it was not an investigating agency and it did not have the permission from the chairman of SEBI<sup>34</sup> and for the SFIO that the petition was not filed within the relevant provisions. The holding of the trial court with respect to the Board seems to be prima facie contrary to section 11C of the SEBI Act. The SEBI then approached the High Court through a writ petition wherein the High Court adjourned the proceedings on Friday, January 30<sup>th</sup> 2009 and posted it February 9<sup>th</sup> 2009.<sup>35</sup> Considering the urgency of the matter the SEBI approached the Supreme Court. The apex court deliberated over the arguments of Mr. Goolam E. Vahanvati, the advocate for SEBI and solicitor General

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<sup>32</sup>SEBI Act, § 12.

<sup>33</sup>Anupama Katakam, Off SEBI Hook?, FRONTLINE (Feb. 13, 2009) 14-15.

<sup>34</sup>Court rejects SEBI, SFIO pleas to quiz Raju's, THE TIMES OF INDIA (Mar. 14, 2009),

[http://timesofindia.indiatimes.com/Business/India\\_Business/Court\\_rejects\\_SEBI\\_SFIO\\_pleas\\_to\\_quiz\\_Rajus/articleshow/4022334.cms](http://timesofindia.indiatimes.com/Business/India_Business/Court_rejects_SEBI_SFIO_pleas_to_quiz_Rajus/articleshow/4022334.cms). See also, SEBI plea to quiz Ramalinga Raju Rejected, THE HINDU (Mar. 14, 2009),

<http://www.thehindubusinessline.com/2009/01/24/stories/2009012451780100.htm>.

<sup>35</sup>SEBI's Plea to quiz Raju's posted for February 9<sup>th</sup>, THE HINDU (Mar.14, 2009), <http://www.blonnet.com/2009/01/31/stories/2009013151741400.htm>. See also AP High Court adjourns hearing on SEBI petition, THE ECONOMIC TIMES (Mar. 14, 2009),

[http://www1.economictimes.indiatimes.com/Infotech/Software/AP\\_High\\_Court\\_adjourns\\_hearing\\_on\\_SEBI\\_petition/articleshow/4049820.cms](http://www1.economictimes.indiatimes.com/Infotech/Software/AP_High_Court_adjourns_hearing_on_SEBI_petition/articleshow/4049820.cms).



and granted permission to interrogate the Rajus.<sup>36</sup> The Board questioned the Rajus as soon as the above order was pronounced. Concrete findings are yet to be produced as to Insider trading as SEBI seems to be waiting for clear evidence on the indulgence of the promoters in the leak and use of the unpublished price sensitive information.

### VIII. CONCLUSION

*“The evil that men do lives after them; the good is oft interred with their bones.”*

*William Shakespeare*<sup>37</sup>

Written in 1599 this statement still stands tall. Ramalinga Raju was Andhra’s poster boy, people made huge money, many got jobs and thousands flourished but still the question remains, **Will the world remember him for what he was and the hopes that he gave?** The answer most blatantly is no. The Satyam saga will be embedded in the hearts of all those who lost and they are the ones who are going to tell the future tales. Insider trading allegations if proved will serve as another a scar not only in the face of Satyam but also in the face of corporate India. The aborted deal with the Maytas and the World Bank bar on Satyam for 8 years could be used as the scapegoat by all the institutional investors for having lost their confidence in the Satyam. The preferable argument from their side can be that their

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<sup>36</sup>Venkatesan J., SC allows SEBI to quiz Raju brothers for 3 days, THE HINDU (Mar. 14, 2009), <http://www.thehindubusinessline.com/2009/02/04/stories/2009020452150100.htm>.

<sup>37</sup>From the Speech of Mark Antony on Caesar’s Funeral in the Play Julius Caesar by Shakespeare. Julius Caesar quotes, (Mar. 14, 2009), <http://thinkexist.com/quotation/the-evil-men-do-lives-after-them-the-good-is-oft/589518.html>.

greatest fears came true when the 7<sup>th</sup> January incident happened. It was something they had sensed and therefore wanted to move out of the sinking ship though not like rats but like wise men with extra boats. It is for the investigation to reveal whether this was the actual reason or whether there was trading within the walls of Satyam prohibited by law. Considering Satyam's background the evidence in favour of insider trading would not come as a shock. But the discovery regarding Satyam cannot be called the final destination. They may still be others with same tales to unfold. One fish generally spoils the pond but who knows how many such fishes are ready to unleash their ravenous jaws. Satyam was an alarm bell for the market regulator. Prevention has always been regarded as better than cure. It is time SEBI realizes this and makes arrangements for effective implementation of laws. The laws in India have generally been very strong but what they lack is implementation. SEBI may in the course of time crack the case and do justice to all and sundry but is that all we want? As Germany grew in the 1920's under nose of Chamberlain and later desecrated the peace of the World by giving Hitler and World War II to it, what will be remembered is that Satyam grew under the nose of SEBI and SEBI never knew. The RoC though has been vigilant enough in signalling to the Board about the transactions that happened between 23<sup>rd</sup> December 2008 and 5<sup>th</sup> January 2009 and the Board has taken necessary steps by investigating the Rajus. Yet, till date the fact remains that no concrete findings have been arrived at. Practical problems do arise and investigation is not as easy as it seems in a half hour long detective TV show but still we cannot be left waiting for ages.

Market investigating agencies like SEBI and SFIO should be further empowered by law to avoid such situations. Had SEBI tracked the fraud rather than the public confession that brought forth the news, the story would have scripted differently. The time wasted for deciding whether Rajus could be interrogated would have been surely used by the perpetrators for destruction of evidence. In the light of the

fact that in such cases direct evidences are not always available and the case invariably depends circumstantial evidences, the time lost may prove fatal. Insider trading may never be found in the light of the time wasted. The ramifications of this are yet to be found. The trading pattern of the institutional investors must be considered. The pattern reveals that all the Institutional Investors sold their shares prior to the judgement day i.e. the 7<sup>th</sup>. The deal failed in the end of December and the offloading began and within two weeks huge numbers of shares were traded. There seems to be a chink in the armour. I wish to reserve my observation till any material evidence is produced by SEBI but am surely inclined towards there being an insider trading. Let us, for the sake of the capital market, hope that my inclination does not come true because if it does then SEBI will have to do more than just patch work and India will need more time to recuperate from yet another corporate governance scar. So whether insider trading happened in Satyam actually depends on the findings of SEBI

A SWOT analysis can probably throw more light on the present situation. This can be used both as means to know what is going on and recommendations for future.

### **Strengths**

The chronological order in which the shares were sold displays how fast transactions took place. Thus the institutional investors gained from the whole affair and none of them suffered losses. One failed deal cannot be the sole reason for losing trust in a flourishing company

### **Weaknesses**

The deal with Maytas had aborted disastrously so investors lost confidence and pulled out money. Also the World Bank had banned Satyam for 8 years so this could also serve as a reason for major

selling of shares. Thus offloading of shares was not due to leakage of unpublished price sensitive information.

### **Opportunities**

Information collected from the Rajus should be used and all transactions, including phone calls, messages, email id's should be checked for some source on the leak of this information.

### **Threats**

The time consumed in interrogating Rajus including the time wasted in taking permission for investigating may have resulted in loss of important information regarding insider trading.