

APPENDIX - IV

In para 8-23 it says "unfair profit can, on occasions, be made in shares dealing by the use of confidential information not generally available to the investing public. There are existing statutory provisions which ensures that more knowledge is made available to shareholders about the transactions in the sale or purchase of shares in the company (Sections 307 and 308). This, however, does not help to solve the problem. An insider like a company's Director, Statutory Auditor, Cost Auditor, Financial Accountant, Financial Controller, Cost Accountant, Tax and Management Consultant or Adviser and whole time Legal Adviser or Solicitor, would generally have access to price sensitive informations not available to outsiders. It is often difficult to prove whether or not this material information has been used to put through what apprently is a normal transaction." We think that the law should provide that an insider belonging to any of the categories mentioned above should be prohibited from purchasing or selling shares of the company, either directly or indirectly two months prior to the closing of the accounting year of the company and for a period of two months thereafter. This is roughly the period when the confidential information would be available to the insider. We also think that the law should provide that where it is proved that a deal by an insider has resulted in one party taking advantage over the other by misusing the information relating to the company, he is liable at law to the other party,

the person with whom the insider had dealt ? The company in whose shares he has used in so doing. The law should confer a remedy on persons who can establish that by reason of misuse materially significant information they had suffer identifiable loss; in addition, an insider should be held to be accountable to the company for his profits, if unjustly made.

In para 8-25 it has recommended that the view that the provisions of this section, should apart from the directors who are already covered be extended to cover not only share - holdings of the directors, employees of the company drawings a remuneration of not less than three thousand per month, statutory auditor, cost accountant, cost auditor, financial accountants or financial controller, tax and management consultants or advisers, whole time legal adviser or solicitors, but also of their spouse and children as also the shareholdings of private companies, partnership firms, joint ventures or trust in which the above categories of persons have any pecuniary interest. The provisions of this section should be further extended to cover the shareholdings of public limited companies holding shares in the company in case any director, or any of the aforesaid persons alongwith his or her spouse or children holds shares amounting to not less than ten per cent of the paid up share capital of such a public limited company.

In para 8-26 it recommends that the above register should also contain details relating to purchase and sale of the shares of the company, its holding company and its subsidiary companies, by the above categories of persons.

APPENDIX

In para 8-28 the Committee's recommendations are two fold- One relating to fullest disclosure of transactions by those who have price sensitive information and another prohibition of transactions by such persons during certain specified period. Unless there are exceptional circumstances.

The Committee has recommended the following modification in Section 307 of the Act with a view to achieve the objectives mentioned above : -

- (i) Any Director, Statutory Auditor, Cost Auditor, Financial Controller, Cost Accountant, Tax and Management Consultant or Adviser and Whole Time Legal Adviser or Solicitor of the Company and any private company, partnership firm, joint venture or trust in which the above category persons have any pecuniary interest should prior to actual purchase or sale, notify in writing to the Board of Directors of the company his or their intention to buy or sell the shares of the company.
- (ii) Full disclosure as to the number of shares, price at which they are bought or sold shall be made by a persons mentioned at (i) above to the shareholders of the company by annexing a suitable statement to the published accounts.
- (iii) The requirement of (i) and (ii) above should apply to the spouse and dependent children of persons mentioned at (i) above.
- (iv) Any person mentioned at (i) above and any private company, partnership firm/joint venture or trust in which the above mentioned category of persons have any pecuniary interest,

desire to buy or sell the shares of the company within the prohibited period, he or they must give prior intimation in writing of the proposal to purchase or sell to the Board. If the Board does not, within the period of fifteen days from the date of receipt of such notice at the registered office of the company, refuse permission, the person concerned would be entitled to sell or purchase shares in the company within prescribed period as proposed.

(vi) The spouse and dependent children of the persons referred to at (i) above should also be subject to similar disability during the specified period.

(vii) In addition to the existing provisions of disclosure, we consider that it is necessary that all public companies should maintain a register disclosing dealings in shares of the company by the above category of persons or any private company, partnership firm/joint venture or trust in which above category of persons have any pecuniary interest. The said register should additionally disclose dealings in shares of the company by the spouses or dependent children of the above mentioned category of persons and also by those in full time employment of the company and drawing a salary of not less than three thousand rupees per month. This disclosure should be full and should include the number of shares, the price at which the share are sold or bought and the date of the transaction. It has also recommended that the information in a summarised form be published as a part of the publish Annual Report of the Company.

(viii) Suitable provision should be made for assuring a civil remedy to persons who can establish that by reasons of misuse of significant information by any of the above mentioned category of persons, they have suffered an identifiable loss, the remedy should be way of an application to the Company Law Board. Accountability should also be ensured by adequate provision. As per the recommendation the onus is on the complainant to prove insider dealing and misuse of informations.

RECOMMENDATION IN RESPECT OF SECTION 308

Section 308 which deals with the duty of directors and persons deemed to be directors to make disclosure of share-holdings is consequential of section 307. The Sachar Committee has also made certain recommendations in respect of this section. The Committee observed that section 308 cast a duty on directors to give notice of the transactions in the shares of the company, and of its subsidiaries. Informations contained therein will enable the company to maintain the register required to be maintained in pursuant to provisions of section 307. The provisions of section suffer from desirability in as much as there is no limit within which such a notice must be given. The Committee recommended in para 8-29 that :-

(i) Such notice must be given by all persons referred to in para 8-28 above i.e. Directors, Statutory Auditor, Cost Auditor, Financial Accountant, Financial Controller, Cost Accountant,

Tax and Management Consultant or Adviser, and Whole Time Legal Adviser or Solicitor of the Company.

(ii) Such notice must be given within fourteen days of conclusion of the relevant transaction or within fourteen days from the date when the concerned person has entered into a contract for such purchase or sale of shares of the company or of its subsidiaries companies.

(iii) Such notice should also contain the details relating to price that was actually paid or received from the shares and, if the shares were listed in any stock exchange; the rate quoted in the official list of the stock exchange for the shares on the date of transaction or the latest quotation that was available are the date of transaction.