Insider Trading: Possession of UPSI may raise a presumption - but the presumption is rebuttable

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The Supreme Court's order in
Securities and Exchange Board of India v. Rajeev Vasant Sheth & Ors. dated August 11, 2026
has stated that Rajeev Sheth and Ors engaged in insider trading and pursuant to that narrative which is getting spread is - if you hold UPSI and trade it is violation of insider trading, however on deeper study some more things reveal.

There are situations where insider has to take trade for some bigger causes [even though he may be in possession of UPSI e.g. as part of CDR scheme or as part of some court / arbitration order etc] **and when two things loggerhead which one will / should prevail?**

Note to Regulation 4(1) of SEBI PIT

- where a person trades while in possession of Unpublished Price Sensitive Information (UPSI), such trades are **presumed** to have been motivated by the knowledge and awareness of that UPSI.
- The purposes for which the proceeds are employed is an **irrelevant consideration.**
- It would be open to the insider to **prove his innocence** by demonstrating the circumstances mentioned in the proviso.
- The six defenses mentioned in Reg. 4(1) are **inclusive and not exhaustive.**

The Prevailing jurisprudence indicates that the **surrounding circumstances** and **the purpose** behind the **transaction** remain relevant:

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SEBI Adjudication order in the matter of Abhishek Jalan dt: January 24, 2020:

SEBI alleged Abhishek Jalan traded in Pantaloon Retail DVR futures while in possession of UPSI as senior management. He proved it was a bona fide error he mistakenly sold PRIL futures instead of GMR futures and squared off in 3 minutes at a loss of Rs 350, so SEBI disposed the proceedings.

Shreehas Tambe v. SEBI – June 9, 2026:

The charge of insider trading was set aside where the person was able to demonstrate that the transaction was undertaken to discharge an obligation which could not be postponed, rather than to derive an undue advantage from UPSI.

SEBI v. Abhijit Rajan – September 19, 2022:

The Court considered the commercial circumstances surrounding the sale of shares and observed that the timing of the transaction could constitute a prudent commercial decision, particularly where funds were required to be infused into the company.

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The **key takeaway**

Where such a trade is questioned, the concerned person should be in a position to substantiate before SEBI, the adjudicating authority or the Court:

- **why** the transaction was undertaken;

- whether there existed an **independent commercial or financial necessity;** and

- whether the transaction would have occurred **irrespective of the UPSI.**

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EVERY **presumption** is **rebuttable.**

As stated in note to Reg. 4(1) this presumption is **rebuttable**.

If the insider is able to prove the purpose of the transaction to SEBI or appellate authorities based on above questions and more and if you are successful in challenging presumption, it can be **rebutted.**

For directors, promoters, KMPs and other designated persons, **documenting the circumstances and necessity** surrounding such transactions may consequently become **as important as the transaction itself.**