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THE TECHNOLOGY NEWSLETTER

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SOLICITORS AND ADVOCATES

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INTRODUCTION

The Argus Technology Newsletter discusses recent developments in technological advances or milestones or events. As lawyers, we enjoy delving into the legal nuances and implications of technological changes and analysing their impact on our clients and their activities. It is said that law always lags behind technological advances and there could be some truth behind such statement, but there is no reason for lawyers to lag behind technological advances.

The Argus Technology Newsletter is not meant to be a substitute for your regular technology periodical. Instead, we hope and promise to offer a lawyer's insights into technological change and innovation.

Argus Partners has developed a strong and a robust technology and data privacy practice, which spans transactional advisory, corporate and regulatory advisory as well as contentious matters and disputes. Whilst physically the attorneys are based out of our Mumbai, Delhi & Bangalore offices, the team is servicing clients across the globe on Indian legal issues in technology and data privacy.

SEBI Cracks Whip on Stock Price Manipulation Through Telegram, WhatsApp Groups.

Contributed by Aishwarya Manjooran (Associate)



The Securities and Exchange Board of India (“SEBI”) on January 12, 2022, cracked down on a stock recommendation scam occurring on social media applications Telegram, Twitter, and WhatsApp. A Telegram channel and a WhatsApp group were used by 6 persons (“Noticees”), who were administrators of the said channels, to illegally inflate stock prices and make illegal profits. SEBI initiated an investigation and proceedings based on two undated complaints received by SEBI on July 30, 2021, and October 11, 2021. The complaints had alleged that certain individuals who are not registered with SEBI to function in the securities markets as intermediaries, were using social media platforms to artificially influence stock prices to make illegal profits.

After receiving the aforementioned complaints, the regulator investigated the same from January 1, 2021, to November 12, 2021 and gauged the group’s *modus operandi* and fraudulent activities.

The Noticees operated a Telegram Channel, "bullrun2017"/ " Bull Run Investment Educational Channel”, with around 50,000 subscribers. Additionally, they also had a WhatsApp group named "Stock Gujarati 3". The channel claimed to be run by a team of research analysts with a combined experience of 40 years and who claimed to be in the process of securing SEBI registration. Using the Telegram channel, the Noticees provided recommendations to its subscribers for trading in both cash as well as derivatives segments, for both intra-day as well as positional trades. The recommendations issued with respect to the cash segment were majorly focused on small cap scrips. The channel only provided for one-way communication, therefore, only allowing the administrators of the channel to send messages. The subscribers of the channel were only able to read messages and not respond.

The Noticees who were actively involved in the operation of the social media groups, would initially take a position by purchasing shares in small cap companies in bulk quantities. Following this, they would send baseless and fraudulent messages to said social media

channels insinuating that there would be an immediate price hike in such scrips which led to the subscribers/ members of said channel to take bullish position in those scrips, which would lead to a price hike, post which, the Noticees would take contrary positions and sell their previously acquired shares leading to quick and easy profits. The Noticees were found to have made a cumulative profit of Rs. 2.8 crore from this scam.

SEBI held that the profits made by the Noticees are *prima-facie*, unlawful/ wrongful gains, which would not have been possible without this scheme of theirs and hence the actions of the Noticees were in violation of provisions of the SEBI Act, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

The SEBI, thus, arrived at the following conclusion:

"...knowingly devised an imaginative scheme for defrauding innocent investors by engaging in such deceitful acts to induce thousands of gullible subscribers to their Telegram Channel and in this process to induce the other general investors as well, to deal in securities purely based upon misleading, specious and unsolicited stock tips about specific scrips recommended by the Noticees through their social media account in Telegram Channel, and such tips & recommendations were devoid of any fundamental analysis or supporting information and were purely speculative messages without any basis."

Acting in furtherance to this finding, SEBI impounded the Noticees' bank accounts for an amount of Rs. 2,84,29,948 and barred them from dealing in the securities market until further orders.

An interesting observation in this issue is how the social media platform Telegram has yet again surfaced as a haven for illegal activities. Telegram is a unique platform in that its encryption keys are secure to the extent where the entity does not share it with anyone, including governmental agencies in an attempt to keep its user's data completely private. In 2019, a petition was moved against Telegram in the Kerala High Court, petitioning to ban the social media app as it allegedly promotes child pornography and terrorism.

Unlike its competitors, such as WhatsApp, a Telegram user can hide their mobile number and use a 'User ID' instead which permits them to send messages, images, videos or files without disclosing their number. Since phone numbers are hidden, it is virtually impossible for law enforcement to track down the users. Its servers are positioned outside India, and they have not provided any subscriber details to the law enforcement agencies within the country. Moreover, even if Telegram receives requests from the government or any law enforcement agencies, it would not be able to provide data for end-to-end encrypted chats because the encryption keys are generated on each user's device and not the server. The shroud of anonymity and security offered by the app, which should have ideally been a huge data privacy symbol, has been misused by users around the world by exploiting the same to make into a platform that facilitates piracy, scams, pornography, and other illegalities of various kinds.

Please find a **copy** of SEBI's interim order, [here](#).

RBI's Fintech Department

Contributed by Rabia Rahim (Associate)



The Reserve Bank of India (“**RBI**”) has established a financial technology department (“**Fintech Department**”) which shall focus on and facilitate innovation in the Indian fintech sector.

In addition to identifying challenges and opportunities, the Fintech Department which became operational on January 4, 2022, will also oversee inter-regulatory and internal coordination matters in relation to the fintech world, create a framework for conducting/ commissioning research to aid policy interventions and address matters related to the facilitation of constructive innovations and incubations in the fintech sector if they have wider implications for the financial sector / markets and fall under the purview of the RBI.

In 2018, the RBI had set up a financial technology unit in the department of payment and settlement systems (DPSS) which has now been subsumed into the new Fintech Department. With the advent of the Fintech Department, we now anticipate a speedy release of the presently ‘mysterious’ Cryptocurrency and Regulation of Digital Currency Bill, 2019, in the public domain, and considerable progress and swiftness in the same coming into force.

The Fintech Department is expected to be headed by Mr. Ajay Kumar Choudhary, the Executive Director at the RBI.

Credit Information and Fintech Companies

Contributed by Rabia Rahim (Associate)



The Reserve Bank of India (“**RBI**”), on November 10, 2021, released certain amendments to the Credit Information Companies Regulations, 2006 (“**Credit Information Regulations**”), revoking the ban it had imposed in 2019, on the access to credit information (“**Credit Information**”) by financial technology (“**fintech**”) companies (or other unregulated entities). The aforesaid amendments came into effect on November 29, 2021 and, *inter-alia*, broaden the definition of ‘*specified user*’ by including the following as part of Regulation 3 of the Credit Information Regulations:

“(j) an entity engaged in the processing of information, for the support or benefit of credit institutions, and satisfying the criteria laid down by the Reserve Bank from time to time.”

The relevance of ‘*specified user*’ is in the context of Regulation 9 of the Credit Information Regulations, which enables the ‘*specified user*’ to access individual credit histories for specific purposes. The afore-detailed amendment will now allow more entities (whether regulated or not), including fintech companies to seek Credit Information from the credit bureaus, provided they are eligible as per the criteria laid down by RBI from time to time. The latest eligibility criteria for a ‘*specified user*’ was issued by the RBI on January 5, 2022, which requires a ‘*specified user*’ (which shall be *an entity engaged in processing of information for the support/benefit of credit institutions* as per Regulation 3(j) of the Credit Information Regulations), in addition to other requirements, to be a Indian-owned corporate entity with diversified ownership and a net worth of over Rs. 2 crore, certified for having a robust and secure information technology system in place, by the Cybersecurity and Infrastructure Security Agency (“**CISA**”).

Up until now, fintech companies have relied on alternative data such as social media footprint, utility bills, etc. to judge creditworthiness of an individual. With access to Credit Information of individuals directly from the credit bureaus, which are undoubtedly the most reliable source of Credit Information, fintech companies will now be able to tailor their products to the requirements of their customers and ensure access to credit to a wider range of customers.

However, not all fintech companies are celebrating these amendments, as the eligibility criteria by the RBI excludes fintech companies with any form of foreign funding (including from foreign venture capital / private equity funds) from the definition of a '*specified user*' and thereby from accessing Credit Information directly from the credit bureaus.

'*Specified users*' are not obligated to avail the customer consent before accessing the customer's Credit Information and are instead required to provide CISA auditor certification which guarantees protection of the customer's data by the '*specified user*'. Since fintech companies are not directly regulated, there are concerns relating to the maintenance of security and privacy of the Credit Information; experts fear that such Credit Information may be subject to misuse.

The solution would be for the RBI to issue Credit Information privacy and security regulations specific to the '*specified user*', or for the Government to bring into force the Personal Data Protection Bill, 2019 at the earliest with some specificities tailored to the role of a '*specified user*'.

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