

## A STUDY ON PROHIBITION OF INSIDER TRADING UNDER COMPANIES ACT 2013

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### ABSTRACT:

In India Regulation 3 of the SEBI Regulations seeks to prohibit dealing, communication and counseling on matters relating to, insider trading. Regulation 3 provides that no insider shall either on his own behalf of any other person deal in securities of a company when in possession of any unpublished price sensitive information on communicate, counsel or procure, directly or indirectly any unpublished price sensitive information to any person, who while in possession of such unpublished price sensitive information shall not deal in securities. However, these restrictions are not applicable to any communication required ordinary, course of business or profession or employment or any law. Further 3 A prohibits any company from dealing in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information. This paper is check whether Companies Act protect insiders from insider trading.

**KEYWORDS:** Insider trading, SEBI ACT, companies act

### OBJECTIVES:

- To focus about the prohibition of insider trading.
- To analyse the insider trading under companies act.

Primary sources: survey, interviews, filed work.

### METHODOLOGY:

The researcher has used descriptive and narrative methodology to complete this research.

Limitations:

- Availability of primary source is limited.

- Due to time constraints the researchers referred more secondary sources than the primary source. Sources of Study: The researcher has referred Newspapers; research Articles, and unpublished thesis and E-sources as the part of secondary sources for the writing of the project.

### **INTRODUCTION:**

Insider trading is a term subject to many definitions and connotations and it encompasses both legal and prohibited activity. Insider trading takes place legally every day, when corporate insiders' officers, directors or employees buy or sell stock in their own companies within the confines of company policy and the regulations governing this trading. In simple terms 'insider trading' buying or selling a security, in breach of a fiduciary duty or other relationship of trust, and confidence, while in possession of material, nonpublic information about the security. Thus, in nutshell, insider trading is the buying, selling or dealing in securities of a listed company by a director, member of management, employee of the company, or by any other person such as internal auditor, advisor, consultant, analyst etc, who has knowledge of material inside information which is not available to general public.

Prohibition of Insider Trading:

Section 12A of the SEBI Act, 1992 and section 195 of the Companies Act, 2013 prohibits Insider Trading. Further, as per SEBI (Prohibition of Insider Trading) Regulations, 2015, no insider shall trade securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

Adjudication and penalty for Insider Trading:

Section 15G of SEBI Act, 1992 prescribes penalty for Insider Trading. Any person guilty of Insider Trading shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Provisions under the Companies Act, 2013

A company is incorporated under the Companies Act and on being listed with a Stock Exchange after executing the listing agreement the SEBI (Prohibition of Insider Trading) Regulations, 2015 apply from 15/5/2015. It is important to know S 195 of the Companies Act, 2013.

No person including any director or key managerial personnel of a company shall enter into insider trading. Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or any other law.

If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider

trading, whichever is higher, or with both Further, section 24 of the same act provides for prosecution. Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Insider Trading' as per S 195 of the Companies Act,2013

The Act of 2013 prohibits insider trading and any insider as defined in the Act if found guilty of insider trading will be subject to penalty which provides for jail term upto five years and/or monetary penalty. The Act defines insider trading( S 195(1)(a) and 'Price Sensitive Information', (S 195(1)(b)). The Act of 1956 did not have any provision against insider trading. The SEBI Regulations on Insider Trading monitored such activity which was in place from 1992. The provision included in S 195 deals with actions of directors, key managerial persons, any other person or their agents dealing with securities or their agents based on 'non-public price sensitive information' directly or indirectly.

The Companies Act,2013 in S 2 ( 77) defines 'relative' to mean with 'reference to any person, means any one who is related to another, if –

(i) they are members of a Hindu Undivided Family'

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed.'Insider Trading' as per the SEBI ( Prohibition of Insider Trading) Regulation,2015 compared to the Companies Act,2013.

The Regulation defines 'Insider' in a different manner and includes any person who is connected with the company having access to unpublished price sensitive information. So the definitions of 'insider' differs.

The Companies Act,2013 states about 'non-public price sensitive information' and the Regulation states about ' unpublished price sensitive information.'

The Act of 2013 refers to Directors, Key Managerial Persons and any other person of their agents acting directly or indirectly who could be booked for violation of S 195.

The Regulation refers to 'connected persons' who could be charged with an act of insider trading.

The Regulation in R 2 (f) defines an ' immediate relative.' So a relative within the provisions of the Regulations may not be a relative within the meaning of the Act of 2013.

As per the Regulations any connected person found guilty of insider trading within the meaning of the current Regulations will be subject to the following penalty:

S 15 G of the SEBI Act, 1992 as amended lays down that if any insider :

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) Communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any person to deal in any securities or any body corporate on the basis of unpublished price sensitive information, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. The Act of 2013 provides for jail term upto five years if any person contravenes the provisions of S 195. There is no jail term under S 15G of the SEBI Act, 1992 as amended.

#### Penalties

Following penalties /punishments can be imposed in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

SEBI may impose a penalty of not Rs 25 Crores or three times the amount of profit made out of insider trading; whichever is higher.

SEBI may initiate criminal prosecution.

SEBI may issue orders declaring transactions in securities based on unpublished price sensitive information.

SEBI may issue orders prohibiting an insider or refraining an insider from dealing in the securities of the company.

#### CONCLUSION

The new 2002 regulations in India have further fortified the 1992 regulations and have increased the list of persons that are deemed to be connected to Insiders. Listed companies and other entities are now required to frame internal policies and guidelines to preclude insider trading by directors, employees, partners, etc. In the past, it has been observed that insider trading legislation is ineffective and difficult to enforce and has little impact on securities markets. Low enforcement rates and few convictions against insiders have been cited as evidence of this ineffectiveness. Irrespective of whether or not the SEBI was bestowed with wide ranging powers, it has been a clear failure when it came to the task of administering

thelaw. The importance of policing insider trading has also assumed international significance as overseas regulators attempt to boost the confidence of domestic investors and attract the international investment community. So, SEBI now should take the role of a regulator only. Special Courts could be set up for faster and efficacious disposal of cases.

**REFERENCES:**

1. <http://www.studynama.com>
2. <http://www.scribd.com>
3. <http://www.jstor.com>.
4. <http://study.com>
5. <https://www.lawnotes.in>
6. <https://blog.ipleaders.in>
7. <https://uppreparelaw.com>
8. <https://libertyfund.org>
9. <https://books.goolge.com>
10. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
11. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

