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INSIDER TRADING AND THE ROLE OF SEBI: ANALYSING THE INDIAN PERSPECTIVE- Archana Kumari¹**ABSTRACT**

For the development of capital market, corporate governance and transparency are of utmost essentials. Another essential pre condition for efficient functioning of capital markets is that all confidential and unpublished information of the company should be equally available to all market participants at the same time so that it could result in legal trading by the different investors. With the aim to prohibit and penalize those activities of an insider who trades in unpublished and confidential information related to the company to an outsider for earning illegal profits, different countries have made various rules and regulations that prohibit the act of illegal insider trading.

Insider trading in India is also prohibited and considered as an offence under the SEBI Act, 1992. The SEBI in India manages and regulates the laws regarding illegal trading in the Indian stock markets. Insider trading has been deeply rooted in the Indian market and thus there is a need to enforce more stricter actions against such offences.

The present paper is an attempt to discuss in detail about the illegal insider trading in India. Further, it will also highlight the role and importance of SEBI in handling the offence of insider trading in India. It will also come up with some suitable suggestions that can be of importance to SEBI in handling cases of illegal trading in a better way.

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Introduction:

Insider trading means sharing of confidential information by the insiders in the securities of a company to some other outsider which is not published or not yet come in the public domain and which is termed as ‘unpublished price sensitive information’. Therefore, this unpublished price sensitive information is obtained through a fiduciary relationship to make illegal profit by dealing in securities of that company. It is an act done deliberately for the purpose of exploitation of the value of securities. The term ‘insider’ includes insiders like corporate officers, directors, shareholders and any person who have access to or having information of a non public nature on which trading is based for a company as per the SEBI Act, 1992.² Therefore, insider trading is mainly a breach of fiduciary duties of the insider towards the company in order to earn illegal profit.³ The past several decades have witnessed an increase in insider trading. To discourage trading on material non-public information, corporate insiders face several restrictions on their trading.

The prohibition of insider trading is necessary to make the securities market fair and transparent. In most countries, trading by corporate insiders may be legal, if it is done in a way that does not take advantage of non-public information. Therefore, insider trading can be legal as well as illegal depending on the condition that whether any price sensitive information has been violated. When a corporate insider trades by adhering to all the regulations, it is called legal insider trading, and any violation of that amounts to illegal insider trading. Therefore, to monitor insider trading activities, they are required to disclose their legal trades to SEBI in a timely manner. Different countries have adopted different enactments to deal with the ill practice of insider trading.⁴ Amongst all those countries, the US has been the most successful in prohibiting insider trading. It became the first country in the world to penalize the practice of insider trading in securities market.⁵ Therefore, for making the securities market strong and transparent, the practice of insider trading has been penalized in almost every country. To the Indian context,

² Sneha Suman ‘ Role of SEBI’ at <http://www.legalservicesindia.com/article/1948/Role-of-Securities-Exchange-Board-of-India.html>.

³ Prerna chopra “Insider trading laws in India” available at <http://www.legalservicesindia.com/article/1421/Insider-trading-laws-in-India.html>

⁴ Ibid.

⁵ Ibid.

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SEBI Act, 1992 strictly prohibits the ill practice of insider trading and make it punishable and for which huge penalty can be imposed.

Insider Trading Laws In India :

In India, to deal with the menace of insider trading, the government has established the Securities and Exchange Board of India (SEBI) which is a statutory and regulatory body and is entrusted with the responsibility of regulating the Indian capital and securities markets. It basically manages and regulates the securities market in India and also protects the interests of the investors by enforcing certain rules and regulations. In 1979, the Sachar Committee recognized the need for amendment of the Companies Act, 1956 as employees having company's information can misuse them and manipulate stock prices. In 1986, Patel committee recommended that the Securities contracts (Regulations) Act, 1956 be amended to make exchanges reduce Insider Trading.

Therefore, on the basis of these recommendations, on April 12, 1992, SEBI was established under the SEBI Act, 1992. The main objective of SEBI is to ensure that the Indian capital market works in a systematic and transparent manner. To put it in more simple words, the primary reason for setting up SEBI was to prevent malpractices in the capital market of India and therefore promote the development of the capital markets.⁶

Insider trading is an ill- practice that is of immense danger to the investors. It is defined under Explanation (a) of section 195(1) of Companies Act, 2013. It refers to the dealings by the insiders who are aware of certain private and price-sensitive information about the company.⁷ As a result of sharing such confidential information, it can deeply harm the interests of other innocent investors who do not have the knowledge to such information and therefore, it puts them in disadvantageous situation. Insider trading is the violation of a fiduciary relation that is shared between the company and the person with access to the non-public information.⁸

⁶ Sneha Suman, ' Role of SEBI' at <http://www.legalservicesindia.com/article/1948/Role-of-Securities-Exchange-Board-of-India.html>

⁷ Ibid.

⁸ Apporva Satapathy, 'Insider trading in India: how is it regulated' at <https://lexisnexusindia.wordpress.com/2018/04/03/insider-trading-in-india-how-is-it-regulated/>

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Insider trading in India is basically governed by SEBI laws, i.e., Securities Exchange Board of India which governs the whole trading in stock exchanges. The main aim of this law is to give guarantee and protection to the traders that no one should be illegally gained by trading unpublished information. In India, SEBI (Insider Trading) Regulations, 1992 under section 11 of the SEBI Act 1992 intends to curb and prevent the menace of insider trading in securities. Before the SEBI Act, India has other legislations to prohibit the practice of insider trading. Earlier, to deal with this ill practice, there were mainly two Acts namely Capital Issues Control Act, 1947 and Securities Contract Regulation Act, 1956 that penalizes the offence of insider trading in India. Later on, in the year 1948, India took its first step towards restricting and penalizing this insider trading by constituting a committee which would recommend suitable suggestions. The companies Act, 2013, under section 195 strictly prohibits the practice of insider trading. But in the year 2015, SEBI replaced the 1992 regulations with SEBI (prohibition of insider trading) Regulations, 2015 in order to revamp the existing capital market structure.⁹ Insider trading, which has become the most common malpractice of stock markets, is deeply rooted in Indian markets. In the presence of SEBI's existence, we have succeed in prohibiting this ill practice in stock markets but still there are challenges in completely curbing this activity in the Indian stock market.

The penalties for insider trading in India as per section 15 of the SEBI Act, is that if any insider has dealt on behalf of his company any unpublished information then he may be fined with Rs. 25 crores or 3 times the profit made, whichever is higher. Such a huge amount of penalty would be imposed so that the practice of insider trading can be prevented.¹⁰

- **Unpublished Price Sensitive Information :**

Any information which refers to the internal and confidential matters of the company and normally which should not be disclosed by the company in the regular course of business. If such information is leaked, it affects the price of the securities of the company in the stock market. Therefore, insider trading relates to that unpublished price sensitive information which is not yet

⁹ Sneha Suman , ' Role of SEBI' at <http://www.legalservicesindia.com/article/1948/Role-of-Securities-Exchange-Board-of-India.html>.

¹⁰ Ibid.

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in the public domain and that has been leaked by the insiders of the company to make illegal profit.

There have been many lacunae in the SEBI Insider Trading Regulations that have been observed over the years, eventually making it tough for the investors to repose their confidence in the laws designed to safeguard their rights and interests against the practice of insider trading.¹¹ SEBI has time and again encountered difficulties in establishing and proving a case (beyond reasonable doubts in case of criminal proceedings) to convict the persons accused of insider trading, substantially owing to the lack of evidence.¹²

- **Cases Decided As Insider Trading in India :**

There have been many instances of insider trading in India. However, certain cases have become landmark for bringing in huge changes to the SEBI's rules and regulations in prevention of this malpractice. But the famous of them were the famous *Hindustan lever limited case*¹³ and *TISCO case*¹⁴ wherein due to lack of proper laws on insider trading, the SEBI has not made proper investigations required in these cases.¹⁵ The after effects of these cases resulted into certain amendments in the SEBI Regulations, 2002 and thus SEBI by the SEBI (Insider Trading) Amendment Regulations, 2002 amended the definition under Section 2(k) of the SEBI Act.

By the same Amendment Act, SEBI also introduced a new provision, Section 2(ha) which defined "price sensitive information" to include any information relating to an amalgamation, merger or takeover as 'deemed price sensitive information', regardless of whether such information actually has any affect the price of the securities in the market.¹⁶With these cases, it can be said that the SEBI is trying to make amendments in the regulations from time to time. SEBI has enacted the SEBI (Prohibition of Insider Trading) Amendment Regulations, 2012 and

¹¹ Ibid.

¹² Kumar Gaurav, 'Role of SEBI in curbing insider trading in India- An Analysis' at <https://blog.ipleaders.in/sebi-insider-trading-offences/>

¹³ (1998) 18 SCL 311 MOF

¹⁴ (1992) 21 SCL 511

¹⁵ Ankoosh Mehta, 'Insider Trading: Hindustan Lever Limited v. SEBI' at <https://corporate.cyrilamarchandblogs.com/2017/10/insider-trading-hindustan-lever-limited-v-sebi/>

¹⁶ Ibid.

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the regulation is truly nothing but a silver line for the small and poor investors of India.¹⁷ Insider Trading is quite dangerous as it raises many questions on the credibility of the securities market as it is disadvantageous to the honest investors. It also misuses the fiduciary relationship between the company and the insider.

Conclusion:

The above discussion led to the conclusion that the ill practice of insider trading is deeply rooted in the Indian stock markets. Although SEBI has strictly dealt with the practice of insider trading by imposing heavier penalties on the defaulters, still it lacks clarity and transparency in the insider laws. SEBI needs to utilize its power in a more efficient way as it has earlier failed in many investigations due to various factors. Therefore, SEBI should welcome new technologies and steps that could ensure in reducing the cases of insider trading and encourage people not to breach any unpublished information that could affect the company's securities value. It has to impose huge penalties on those who violate the law. Practically, the unethical practice of insider trading cannot be ended completely, but an effort can be made to limit it to a great extent.

¹⁷ Ibid.

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