

- The e resource material is specifically with reference to my class lecture for B.com (H), 3 year section H and I
- Subject: Audit and Corporate Governance
- Topic : insider trading
- Prepared by : Anu Malhotra

## INSIDER TRADING

### INSIDERS

- As per SEBI insiders include all key managerial personnel , directors, direct or indirect beneficial owners having at least 10% holding in the company alone or in concert
- As per the concept of insider trading a director or an employee of the company for making or giving advice on investment decisions on securities shall not use or spread information, which is not available to the investing public through website, statements, memorandum, articles, prospectus

- 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

- The inside information may include:
  - Financial results
  - Buyback of shares
  - Joint ventures
  - Declaration of dividends
  - Acquisitions
  - Diversification of business
  - Amalgamations and takeovers

### CATEGORIES OF INSIDERS

- Classic insiders- employees, directors and large shareholders
- Constructive insiders- company's auditors, lawyers etc who become insiders by virtue of their fiduciary relationship
- Family members- who receive tips from the earlier two

### INSIDER TRADING

- Insider trading in the company bill passed by the Lok Sabha in December 2012 has been defined to mean:

- The facts of the case concerned the purchase by HLL of 8 lakh shares of BBLIL from the Unit Trust of India (UTI) on March 25, 1996. This purchase was made barely two weeks prior to a public announcement for a proposed merger of HLL with BBLIL.
- Upon investigation, SEBI by its Order dated March 11, 1998 (Order) found that, at the time of the purchase of shares of BBLIL from UTI, HLL was an "insider" as under Section 2(e) of the 1992 Regulations, the relevant extract of which describes an insider as any person who:
  - "(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access by virtue of such connection to unpublished price sensitive information in respect of securities of the company, or
  - (ii) has received or has had access to such unpublished price sensitive information."

- SEBI held that, since, HLL and BBLIL were subsidiaries of the same London based Unilever, and were effectively under the same management, HLL and its directors had prior knowledge of the merger. Thus HLL was covered under the definition of an insider as above defined.
- SEBI also held that HLL was in possession of UPSI as defined under Section 2(k) of the 1992 Regulations which includes any information in relation to amalgamation, merges and takeovers that "is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities of that company in the market". As per SEBI, the fact that the information about the merger was available with HLL was enough to satisfy the requirement of Section 2(k) above.

- The information must not be generally known or published by the company; and
- If published or known, is likely to materially affect the prices of securities of that company in the market. [*Emphasis supplied*]
- The Appellate Authority held that for information to be generally known, it is not required to be confirmed or authenticated by the company as it would otherwise fall under the category of information "published by the company". The Appellate Authority appreciated the evidence produced by HLL, including various news articles covering the merger, and concluded that the information of the merger was generally widely known to the public, and thus failed the first test to qualify as UPSI as per the abovementioned Section 2(k) of the 1992 Regulations.

- Subsequently, SEBI by the SEBI (Insider Trading) Amendment Regulations, 2002 amended the definition under Section 2(k) to the following:
  - "*unpublished*" means information which is not published by the company or its agents and is not specific in nature.
  - *Explanation.*—Speculative reports in print or electronic media shall not be considered as published information."

• Consequently, under the revised definition speculative reports in print media, as was the case in relation to the HLL and BBLIL merger, would not be considered as published information, and HLL's knowledge in relation to the merger would be considered as unpublished information. 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.