

- **Section 38 of companies act 2013**

Punishment for personation for acquisition, etc., of securities

(1) Any person who—

(a) Makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) Makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) Otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

Defenses

(a) Withdrawal of consent

A director, etc. is not liable if he withdrew his consent before the issue of the prospectus and it was issued without his consent or authority.

(b) Absence of consent

Where a prospectus was issued without the directors, etc. knowledge or consent, and on becoming aware of its issue, he forthwith gave reasonable public notice of that fact, he is not liable.

(c) Ignorance of untrue statement

A director, etc. may sometimes be ignorant of the untrue statement contained in the prospectus. If after issue of the prospectus and before allotment there under, he on becoming aware of any untrue statement therein withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reasons therefore, he is not liable.

(d) Reasonable ground for belief

If a director, etc. has reasonable ground to believe that the statement was true and he, in fact, believed it to be true up to the time of allotment, he is not liable.

(e) Statement of expert

If the statement is a correct and fair representation or extract or copy of the statement made by an expert who is competent to make it and had given his consent and not withdrawn it, the director, etc. is not liable.