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Conversion of loan into Equity: Understanding Section 62(3) of Companies act, 2013

Introduction.

Sub-section (1) of Section 62 of Companies act, 2013 ['the Act'] provides for further issue of share capital and also prescribes procedure for the same. The procedure includes requirements relating to sending of notice for fund raising to shareholders and adhering to timelines etc. Sub-section 3 of section 62 provides an exemption from this lengthy process in a specific situation. In this article we shall try to understand in detail about this exemption and the condition to be fulfilled for availing this exemption. We shall also try to figure out the consequences of availing this exemption without fulfilling the required condition.

Situation giving exemption from sec 62(1) & pre-condition thereof.

Sub-section (3) of section 62¹ states that, no requirement prescribed in sec 62 shall apply for increasing the share capital if it is being increased due to conversion of convertible debenture/loan into equity. That means, process stated under sub-section (1) of section 62 need not be followed at the time of conversion of convertible securities or conversion of loan into equity.

However, there is one pre-condition applicable for availing this exemption. 1st proviso to sub-section (3) of section 62 states that, the exemption from the provisions of sec 62 (viz. shareholders' approval) will be applicable only if the terms of issue of such debentures or loan containing such an option (viz. conversion of debenture/loan into equity) was approved by shareholders through a special resolution before issue of such debentures or raising of loan.

Registrar of Companies ['ROC'] adjudication order

In August 2024 ROC Jaipur passed an adjudication order for the non-compliance of sub-section (3) of section 62 of the Act. In this case, the company had taken convertible loan from its directors and passed the required special resolution just before the conversion of loan amount into equity. The ROC Jaipur in this case imposed a penalty on the company and its officers in default for late passing of special resolution.

Correct consequence of late passing of special resolution.

As discussed above, the exemption provided in sub-section 3 will be applicable only if the special resolution by shareholders is passed before issue of debentures or raising of loan. If such resolution is not passed before issue of debentures or raising of loan, then the company will have to follow the process as prescribed under sub-section 1 for such conversion. If the company passes the resolution under sub-section 3, at the time of conversion, then it might result in circumvention of section 62(1).

If resolution is not passed, then the company must follow the process under sub-section 1, more specifically that under clause (c) of sub-section 1 since, the subscriber to the shares is already identified. In such a situation, the company is required to obtain valuation report before converting loan into equity and follow other process as specified in sections 62 and 42 of the Act.

Conclusion.

By looking at these provisions it is clear that, only undertaking all the procedural compliances is not enough. Following the correct sequence for these compliances is also necessary. Incorrect sequence in compliance of one sub-section may lead to non-compliance of other sub-sections in addition to that original sub-section itself. Hence the company should be cautious about the sequence of compliances.

This article is published on Taxguru

https://taxguru.in/company-law/conversion-loan-equity-section-62-3-companies-act-2013.html#google_vignette

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ⁱ (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:
Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.



Regulatory Safeguards for Fund Allocation: Navigating Variations in Objects of the Issue

Object of the Issue: Commitment to purpose

When companies raise funds through an Initial Public Offering (IPO) or other public issuance, they commit to specific goals for the use of these funds, known as the "Objects of the Issue." According to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) regulations, 2018 ('ICDR')ⁱ companies planning to conduct an IPO must clearly disclose the object of the issue in the offer document. This means that the company is required to provide detailed information about the specific purpose for which the funds raised through the IPO will be utilized. Effective monitoring of funds raised through public issues is essential to ensure alignment with the object of the issue stated in offer documents. However, companies often face unforeseen circumstances or strategic shifts that necessitate deviations from their original plans.

Below are few case studies where companies had to deviate from the slated objects as specified in DRHP due to some unforeseen circumstances:

A. Unforeseen Changes in Circumstances:

Unexpected situations often compel companies to reallocate funds to address operational or market challenges. These changes, though unplanned, highlight the importance of adaptability in achieving organizational goals.

1. Company A – Construction and Equipment Delays

Allocation to Object Clause as per DRHP:

₹82.70 crores were allocated for constructing a new manufacturing facility in Panchla, West Bengal, with a planned completion in FY 2023.

Variation and Reason:

Due to construction delays, the company has extended its timeline for the completion of the Panchla facility construction from the fiscal year 2023 to fiscal year 2024. The company reallocated ₹30.78 crores for civil work, clean room costs, and equipment by introducing a new funding sub-category, "Machines & Moulds,". This adjustment ensured that the project stayed within budget while addressing unforeseen delays.

2. Company B – Market Adaptation and Flexibility

Allocation to Object Clause as per DRHP:

₹234.55 million was earmarked for capital expenditure from the ₹5,000 million raised through its IPO.

Variation and Reason:

By FY 2023, only ₹149.18 million was utilized, and the remaining ₹85.37 million was deferred to FY 2024 and FY 2025. The company revised its retail strategy, prioritizing Multi-Brand Outlets (MBOs) over Exclusive Brand Outlets (EBOs) due to difficulties in securing affordable rental spaces. This flexibility enabled the company to navigate market conditions effectively.

3. Company C – Shift from Capital to Operational Expenditure

Allocation to Object Clause in DRHP:

₹34.65 crores were allocated for machinery and equipment to upgrade existing data centre infrastructure of company.

Variation and Reason:

The company initially allocated the funds to upgrade the existing data centre infrastructure as it neared the end of its lifecycle, but only ₹1.41 crores out of ₹34.65 crores were spent in FY 2022 on current data centre infrastructure, and the remaining funds were reallocated to migrate operations to Amazon Web Services (AWS) Cloud which is a scalable and resilient infrastructure, which can adapt to the company's evolving needs without the limitations of physical infrastructure. Migrating to AWS Cloud allows the Company to avoid the periodic, significant investments required for upgrading physical data centre equipment every five years. This shift from capital to operational expenditure reduced infrastructure costs, improved scalability, and introduced a predictable cost structure.

B. Strategic Goal Revisions or Lack of Clarity

Some reallocation decisions happen because of changes in the company's overall strategy or a better understanding of its goals. While these changes reflect the company's priorities, they might sometimes seem unclear or not fully explained.

1. Company A – Operational Efficiency and Strategic Alignment**Allocation to Object Clause as per DRHP:**

The IPO funds were allocated for the expansion of "Nashik Manufacturing Facility I."

Variation and Reason:

Company Allocated the funds for the expansion of the "Nashik Manufacturing Facility II" in Trishala, Nashik. This development of new facility intended to improve operational efficiency and take advantage of new opportunities at the site. This change aligns with the companies updated growth strategy and boosts production capacity.

Due to delays in the project, the company needs more time to fully utilize the remaining IPO funds. Originally, these funds were to be used by the end of FY 2024-25, but the Board of Directors proposes extending the deadline to FY 2028-29

2. Company B – Debt Repayment and Financial Restructuring**Allocation to Object Clause as per DRHP:**

To utilise ₹448.83 million out of the IPO Proceeds towards funding the capital expenditure of the Company's wholly owned subsidiary company for the purpose of setting up a manufacturing facility at plot in SEZ Aerospace Park, Devanahalli, Bengaluru, for Electronic Manufacturing Services ("EMS Facility")

Variation and Reason:

The company used internal funds for setting up the EMS facility and reallocated IPO proceeds for debt repayment and corporate expenses. Such repayment and/or pre-payment will help reduce company's outstanding indebtedness, reduce debt servicing costs, improve debt-to-equity ratio and enable the utilisation of company's accruals for further investment in company's future business growth and expansion plans.

Process of Changing Object of the issue:

As is seen above companies sometimes need to change their object of the issue. This may include change in timelines of use of issue proceeds, reallocation of IPO proceeds. In that process as prescribed under Section 27 of the Companies Act, 2013 and Rule 7 of Companies (Prospectus and Allotment of Securities) Rules, 2014 needs to be followed. The process begins with the Board of Directors approving the proposed change and preparing a detailed notice for shareholders. This is followed by seeking shareholder approval through a special resolution requiring 75%

consent via a general meeting or postal ballot. The notice must clearly outline the original objects of the issue, funds raised, utilization status, proposed changes, reasons, and associated risks. Key details of the resolution should then be advertised in one English and one vernacular newspaper. Dissenting shareholders must be provided an exit offer in line with SEBI guidelines. Finally, the company must notify stock exchanges, upload relevant details on its website, and report the changes in the annual Director's Report.

What care should be taken while drafting object clause?

In order to avoid change in objects of the issue care needs to be taken in drafting the objects clause. As is seen from above examples some of the variations are due to unavoidable circumstances, while other deviations reflect a strategic realignment, where companies have proactively chosen to redirect funds to align with broader growth objectives or emerging business needs. These adjustments highlight a need for flexibility in fund utilization. Such deviations from the original object of the issue raise concerns about the company board's long-term strategic vision, potentially leading shareholders to question the reliability of their investment.

To avoid such deviations from the stated purpose of the issue, companies should carefully consider and refine their plans before including them in the prospectus that will ultimately be presented to shareholders. Only well-thought-out and realistic objectives should be listed to ensure alignment with long-term strategy and to build shareholder trust.

When defining the object of the issue, companies should ensure,

- Alignment with long-term strategy.
- Set realistic and achievable goals.
- Anticipate market conditions to maintain flexibility.
- Each use of funds should have a clear, transparent justification, and contingency planning should be in place to manage any unforeseen obstacles.
- Objectives should also align with the company's financial health, especially regarding debt repayment or operational expansions.

By focusing on these aspects, companies can build shareholder trust and reduce the likelihood of deviations.

Choosing the right key partners, such as merchant bankers, monitoring agents, statutory auditors, legal counsel is crucial for a company. These professionals are responsible for ensuring that the company sticks to its stated objectives and complies with all legal and regulatory requirements. For example, merchant bankers and monitoring agents play a vital role in overseeing the proper use of funds, helping to prevent deviations from the object clause. Statutory auditors and legal counsel ensure that everything is transparent and legally sound, while registrars manage the issuance process and investor records. By carefully selecting these partners, companies can minimize the risk of straying from their original plans, protecting shareholder interests and maintaining the integrity of their operations.

This article is published on Taxmann

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000024823/regulatory-safeguards-for-fund-allocation-navigating-variations-in-objects-of-the-issue-experts-opinion>

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¹Chapter II Regulation 24 (2) (b) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) regulations, 2018 ('ICDR')

Custom Fit or Ready-Made? Rethinking the Approach to UPSI Lists

I. Evolution of UPSI:

The definition of Unpublished Price Sensitive Information (UPSI) under SEBI's regulations has evolved significantly to enhance sensitivity about price sensitive information and prohibition of insider trading. As per the Securities and Exchange Board of India (SEBI) Prohibition of Insider Trading Regulations, (PIT) 2015, UPSI initially covered material events in accordance with the listing agreement based on recommendation of 2017 FMC committee constituted by Sebi. But they believed all material events may not be UPSI and hence approved to remove the same from the definition.

Further, in March 2023 SEBI introduced quantitative thresholds for determining materiality to ensure uniform compliance across companies and later in May 2023 came up with a consultation paper where it was proposed to include material events under regulation 30 of SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015 as UPSI. But on the feedback from the Indian inc., the Working Group discussed each event/information listed in Para A and Para B of Part A of Schedule III of LODR to identify few events that may potentially be price sensitive and recommended including litigations, penalty, credit rating etc certain types of agreements (e.g., shareholder and joint venture agreements), and major legal outcomes, as these can materially impact a company's stock price. SEBI's revisions may be aimed to align or to distinguish the UPSI definition with significant events under Regulation 30 of the SEBI LODR ensuring clarity for listed entities and investors.

II. Need for revision of UPSI:

We have tried to collate some interesting relevant pointers from the consultation paper issued by SEBI¹ in May 2023 which made SEBI revisit their decision and include certain regulation 30 of SEBI LODR events as UPSI

- **Events having a potential impact on company but not considered as UPSI:**

On multiple instances, it has been observed that an information/event which should have been categorised as UPSI was not done so by the listed entity. A few examples as noted by SEBI, wherein the information despite of being UPSI was not categorised so, are as under:

3.2.1. A company acquired another company and made the announcement through a press release. The press release claimed that the said acquisition would help grow a particular business vertical, thereby indicating that the acquisition was likely to have direct impact on revenue and profits. Upon this announcement, the share price of the company increased by 4.79% in 1 trading day.

3.2.2. A company won a deal, the largest ever in the history of a particular vertical in that company. The company itself claimed that the deal will propel revenue growth in that particular vertical. Upon this announcement, the share price of the company increased by 6.09% in 1 trading day.

- **Events which purportedly sought market reaction but were not considered as UPSI:**

Thus, it was seen that, out of 1,099 press releases, in 227 instances, the price movement in the scrip, adjusted for movement in the Nifty/Sensex, was more than 2%. However, of these 227 instances, merely 8% (18) press releases were categorised as UPSI by the listed companies.

- **Events having potential of impact on performance and not so ordinary events:**

It was further observed that the nature of information released/ announcement made in several of these press releases, indeed warranted it to be categorised as UPSI. However, the same was not

categorised as UPSI by the entities. A few kinds of announcement made in these press releases which warranted to be categorised as UPSI are as under:

3.6.1. Sales/production related press release.

3.6.2. Potential investments by the listed company, regulatory approvals, etc.

3.6.3. Expansion of business including brand acquisitions, product launches, etc.

3.6.4. Strategic tie-ups

- **Insider trading was not identified due to non UPSI identification:**

It was observed from the analysis that, by and large companies categorised only the items explicitly mentioned in Regulation 2(1)(n) of PIT Regulations as UPSI. The market feedback also suggested that most companies consider this to be a 'uniform practice' since this is explicitly articulated in PIT Regulations.

Further, SEBI's surveillance system also generates a significant number of alerts on suspected insider trading cases where it was observed that a substantial number of entities made notional profits, sometimes exceedingly even Rupees Twenty-five crores. However, a significant number of these alerts could not be taken up for further examination by SEBI due to non-categorization of material information as UPSI, by the listed companies. Therefore, SEBI's efforts towards curbing insider trading is hampered by the non-categorization of material information as UPSI by the listed companies

SEBI observed that there are no systems for identification of UPSI and started asking questions Managing Directors. In recent past there have been 3 such instances in wherein the questioned had to settle the matter with SEBI. For any regulator, enforcement is the last option, and having a constructive approach, SEBI revisited the UPSI list and issued consultation paper to widen the explicit list of UPSI. For SEBI also, it is difficult to give an explicit list of UPSI considering the demographics and dynamic factors such as size, sector and type of industry.

Hence, based on their analysis, they are proposing the addition of those event in the explicit part of UPSI which warrant to affect the price of the securities materially.

III. Is the Given list of UPSI good enough?

An interesting question whether explicit list of events under all circumstances would be considered as UPSI and the events which are not considered explicitly not covered would they ever be UPSI. Let's try to evaluate this with few illustrations:

- Whether in manufacturing companies, routine capital expenditures (capex) may be considered ordinary and not UPSI?
- Whether in the finance industry, routine fundraising activities are typically not UPSI, while acquiring a new loan portfolio could be?
- For engineering firms, is awarding a new material order in not so normal course of business? Will it qualify as UPSI? And in comparison, to the same whether a new order in service industry may be considered UPSI?
- Can a director resignation be a UPSI or resignation due to governance concern be a UPSI?
- Can 1 lakh penalty be UPSI or a linkage to PAT of penalty which can portray impact of financial performance of the company be a parameter to UPSI?

MMJC Conclusion:

This above illustration depicts that it is not so easy for SEBI to provide with definition or list of UPSI which is ideal or comprehensive or appropriate in nature for any company. Therefore, there is dire need of objectively crafting customised list/ parameters for determination of USPI and more importantly not be considered as UPSI. This can be done in great consultation with the head of relevant employees.

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https://taxguru.in/sebi/custom-fit-ready-made-rethinking-approach-upsi-lists.html#google_vignette

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ⁱ Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem issued on 18th May 2023.



RBI digitizes process of Compounding under FEMA, 1999

The Ministry of Finance (the Ministry) on September 12, 2024 had notified Foreign Exchange (Compounding Proceedings) Rules, 2024. The Ministry vide the Rules had updated limits expanding the authority of RBI officers to decide on compounding application, revised compounding application fees providing electronic mode for payment of fees.

The Reserve Bank of India (RBI) for implementation of the mentioned Rules on October 1, 2024 vide A.P.(DIR Series) Circular.No.17/2024-25 has issued directions for compounding of contraventions under FEMA, 1999. RBI with the directions has provided for ease in the process of compounding.

The Process of compounding would be as follows:

- **STEP 1: CHECKING OF PRE-REQUISITES:**

The applicant may check whether it is eligible for compounding of contravention under FEMA, 1999. The Directions provides for the following cases not be eligible for compounding i.e.

- Where similar contravention has been compounded and a period of 3 years has not been completed from the date of compounding such contravention.*

The applicant may in its records or through the summary of orders available at <https://rbi.org.in/scripts/InfoContravention.aspx> may check if similar contravention has been compounded during the previous 3 years.

- Pendency of requisite administrative action on the side of applicant:*

The directions provide indicative list of such administrative actions such as obtaining requisite approvals from RBI/ GOI, unwinding transaction, repatriating receivables due, compliance with pricing guidelines or reporting requirements, any other such corrective actions which may be required to be completed before submitting the compounding application.

- **STEP 2: CREATION OF USER ON PRAVAAH PORTAL:**

The Directions issued by RBI have introduced online submission of compounding application through PRAVAAH portal. The applicant shall be required to create requisite user on the portal for submission of online portal. Detailed guidelines and FAQs for the portal are available at <https://pravaah.rbi.org.in/pravaah/#/>

The option of physical submission of compounding application shall still be available with the applicant till further directions from RBI.

- **STEP 3: PAYMENT OF COMPOUNDING FEES:**

The applicant had to submit the compounding fees by way of demand draft prior to the directions, the applicant shall now have an option for payment of fees by online mode. The directions have provided for the requisite details for enabling payment of application fees and penalty for compounding of contraventions which was revised to Rs. 10,000/- plus GST at the rate 18% vide Rules prescribed by the ministry.

The option of payment of application fees/ penalty vide demand draft shall still be available with the applicants.

- **STEP 4: INTIMATION OF PAYMENT VIA EMAIL TO RBI:**

Once the payment is made through electronic mode – the same is to be intimated to the RBI via e mail at the earliest but not later than 2 hours from the time of payment.

- **STEP 5: SUBMISSION OF COMPOUNDING APPLICATION:**

The Directions have provided for submission of application along with requisite annexures online through Pravaah Portal. Unique ID shall be generated on the portal for future tracking of application.

The applicant shall also have an option to submit compounding application along with requisite annexures (the e mail communication to RBI for payment of compounding fees may form part of the compounding application) with the respective RBI regional office or central office in physical form.ⁱ

- **STEP 6: REVIEW BY THE CONCERNED COMPOUNDING AUTHORITY/ SUBMISSION OF ADDITIONAL DOCUMENT OR CLARIFICATION**

The RBI may review the application and request additional documentation or clarification as necessary for its processing.

For applications submitted via the Pravaah portal, applicants may monitor the status or check for any additional requirements raised by the RBI using the Unique ID generated during submission. Any required responses or documents can be uploaded directly on the portal.

In the case of physical submission of a compounding application, the RBI will communicate any additional requirements to the designated contact person via email, based on the contact details provided in the application. Responses should be submitted via email and followed by a physical submission to the relevant RBI office.

- **STEP 7: CONFIRMATION ON THE CONTRAVENTION SOUGHT TO BE COMPOUNDED**

The designated RBI officer will share details of the contravention observed and proposed for compounding. Once the applicant and the authority reach an agreement, the RBI will offer the applicant the option to attend a hearing, either in person or through virtual mode. Alternatively, the applicant may choose to waive the hearing option if no further submissions are required.

- **STEP 8: ISSUE COMPOUNDING ORDER:**

The RBI will issue the compounding order, which will be shared via email for physical submissions or uploaded on the Pravaah portal against the unique ID for online submissions.

- **STEP 9: PAYMENT OF COMPOUNDING PENALTY:**

The applicant is required to make the payment of the compounding penalty if any within 15 days from the date of the order and is required to arrange for the submission of the acknowledgement of compounding penalty payment to the concerned RBI office. Payment can be made via demand draft or through an online payment method.

In case of electronic mode - an intimation of the payment must be provided to the concerned RBI office within 2 hours of the payment in the format as provided in the directions.

- **STEP 10: CERTIFICATE TO BE ISSUED BY THE AUTHORITY**

On realization of the sum for which contravention was compounded, a certificate shall be issued by the Reserve Bank subject to the specified conditions, if any, in the order.

The Rules issued by the ministry followed by the Directions issued by RBI aim to facilitate and implement the ease of regularisation. RBI has been working towards digitisation of procedures and records, which shall benefit both the regulator and applicant.

While online platform for compounding shall provide ease to the applicant it shall also enable transparency in the time involved at various stages of application and effective disposal.

This article is published in Taxguru. The link to the same is as follows:

https://taxguru.in/rbi/rbi-digitizes-compounding-process-fema-1999.html#google_vignette

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ⁱ Contraventions to be compounded by RBI **Regional offices** include: 1. Contravention under Notification No. FEMA 20/2000-RB dated May 3, 2000, 2. Notification No. FEMA 20(R)/2017-RB dated November 07, 2017, 3. FEM (Non-Debt Instruments) Rules, 2019 dated October 17, 2019, 4. Notification No. FEMA 395/2019-RB dated October 17, 2019

Contraventions to be compounded by RBI **Central office**: Contraventions of Rules and/or Regulations related to Liaison/ Branch/ Project office (LO/ BO/ PO), Non-Resident Foreign Account (NRFAD) and Immovable Property (IP)



**In the matter of Mr. Vidyasagar Prasad - Appellant Vs. UCO Bank -
Respondent in the order dated 22 October 2024
passed by Supreme Court**

The entry made in the balance sheet coupled with note of Auditors clearly amounts to acknowledgment of debt

Facts of the Case:

- Kaizen Power Limited - Corporate Debtor's/CD. The CD had taken loan and credit facilities from UCO Bank - Financial Creditor /FC and other consortium banks between 2010 and 2012. These funds were intended to support the CD's thermal power plant project. Having defaulted on repayment of principal as well as interest levied thereupon the CD's account was declared as Non-Performing Asset (NPA) on 5 November 2014.
- Subsequently, FC initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act and the Debts Recovery Tribunal (DRT).
- FC also filed an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (the IBC) to initiate Corporate Insolvency Resolution Process (CIRP) proceeding against the CD before the National Company Law Tribunal (NCLT). These proceedings were resisted by the CD, primarily on the grounds of limitation.
- The main objection to the initiation of CIRP proceedings on the ground of limitation was rejected by the NCLT on the ground that there is an acknowledgement of debt in the financial statements as well as auditor's report of the CD for the year ending on 31 March 2017.
- The NCLT rejected the CD's contention that the name of the FC was not explicitly mentioned in the relevant balance sheet entry. The tribunal referred to the Explanation to Section 7(1) of the IBC, which clarifies that proceedings can be initiated even if the default by the CD pertains to a Financial Creditor other than the applicant.
- The NCLT admitted the application u/s 7 of the IBC. Aggrieved by the admission, initiation of CIRP and appointment of Interim Resolution Professional (IRP), the appellant preferred an appeal to the National Company Law Appellate Tribunal (NCLAT). The NCLAT dismissed the appeal.
- The appeal in the Hon'ble Supreme Court was filed by Mr. Vidyasagar Prasad, a suspended director of the CD, challenging both the NCLT's and the NCLAT's decisions to admit UCO Bank's application for CIRP.

Arguments of the Appellant:

- The appellant, a suspended director, argued that FC's claim was time-barred, as more than three years passed since the CD's account became a NPA in 2014.
- The entries in the balance sheets did not contain a clear and unequivocal acknowledgment of the CD's debt
- In the absence of clear demarcation regarding the amount owed by the CD to the FC, the said entries cannot be relied upon for extending the period of limitation u/s Section 18 of the Limitation Act. Even, if the entry is taken to be an acknowledgment of debt, it does not support the respondent's case as it fails to specifically mention the name of the FC.

Arguments of the Financial Creditor:

- The Balance Sheets of a Company are prepared in the prescribed statutory format as per Section 129, read with Schedule III of the Companies Act 2013, which does not provide for giving specific names of each and every Secured and Unsecured creditor. The *judgment in Asset Reconstruction Company (India) Ltd., v. Bishal Jaiswal*, was quoted in support, where it was observed that there was no compulsion for Companies to make any particular admissions in the balance sheet, except for what is prescribed.

Held:

- The statutory scheme provides for the commencement of a fresh limitation period from the time of acknowledgment of the debt. Section 238A of the IBC extends the applicability of the Limitation Act to proceedings under the IBC. Consequently, with the Limitation Act applying to IBC proceedings, the benefit of Section 18 of the Limitation Act—relating to the effect of a written acknowledgment of debt—also becomes applicable.
- Having considered the specific facts and circumstances of this case, the NCLT as well as the NCLAT have concurrently held that the entries in the balance sheets amount to clear acknowledgment of debt. The Hon'ble Supreme Court agrees with the findings.
- Furthermore, Note 3.4 appended to the balance sheet entry dated 31 March 2017 stated that "the company has made certain defaults in the repayment of term loans and interest" and referred to a continuing default. The entry also mentioned long-term borrowings. The conclusions drawn by the NCLT and NCLAT regarding the acknowledgment of debt are, therefore, unimpeachable.
- Following the principles as expounded in the case of *Bishal Jaiswal* (supra), the NCLT as well as the NCLAT examined the case in detail and concluded that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. The Hon'ble Supreme Court sees no reason whatsoever to take a different view of the matter.
- The findings arrived at by the NCLT and NCLAT are correct in law and fact. There was no merit in the appeal and appeal was dismissed accordingly.

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NEWS UPDATES FOR THE MONTH OF NOVEMBER 2024:

Sr. No.	News Updates	Link
	TOPIC	
1	FDI inflows in India	https://cfo.economictimes.indiatimes.com//news/key-investment-destination-fdi-inflows-in-india-cross-1-trillion/116126682 Key investment destination: FDI inflows in India cross \$1 trillion
2	IBC	https://cfo.economictimes.indiatimes.com//news/governance-risk-compliance/ibc-under-scrutiny-rbis-rao-urges-better-oversight-for-creditors-committees/116121995 IBC under scrutiny: RBI's Rao urges better oversight for creditors' committees
3	NFRA	https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/aligning-indian-auditing-with-global-standards-to-boost-investor-confidence-attract-more-funds-nfra-chief/116121617 Aligning Indian auditing with global standards to boost investor confidence, attract more funds: NFRA chief
4	IPO	https://cfo.economictimes.indiatimes.com//news/at-rs-1-4-lakh-crore-ipo-mop-up-in-2024-more-than-doubles-over-last-year/116040715 At Rs 1.4 lakh crore, IPO mop-up in 2024 more than doubles over last year https://cfo.economictimes.indiatimes.com//news/corporate-finance/ipo-rush-keeps-fpis-busy-in-primary-market-in-november-outflow-continues-in-secondary-market/115883854 IPO rush keeps FPIs busy in primary market in November, outflow continues in secondary market
5	NFRA	https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/auditing-of-companies-has-improved-in-last-3-4-yrs-nfra-chairperson/115882278 Auditing of companies has improved in last 3-4 yrs: NFRA Chairperson
6	PM Internship	https://cfo.economictimes.indiatimes.com//news/pm-internship-scheme-firms-willing-to-top-up-stipend-fixed-by-govt-for-pay-parity/115883914 PM Internship scheme: Firms willing to top up stipend fixed by govt for pay parity
7	FDI	https://cfo.economictimes.indiatimes.com//news/finance-ministry-backs-raising-fdi-in-insurance-to-100/115791189 Finance Ministry backs raising FDI in insurance to 100%

	Amendments	
1	Securities and Exchange Board of India (Attestation of Documents) (Amendment) Regulations	<p>- https://www.sebi.gov.in/legal/regulations/nov-2024/securities-and-exchange-board-of-india-attestation-of-documents-amendment-regulations-2024_89090.html</p> <p>Affidavits requirement removed by SEBI from SAST, Delisting, buyback and other applicable regulations.</p>
2	Notification on PIT Regulations	<p>https://ca2013.com/notifications/securities-exchange-board-india-prohibition-insider-trading-third-amendment-regulations-2024-dated-04-12-2024/</p> <p>Relatives of a connected person to become connected person for the purpose of these regulations</p>
3	Circular on Joint standard operating procedure for release of 1% security Deposit	<p>https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20241206-6</p> <p>The Joint SOP for the Release of 1% Security Deposit is a guideline or regulatory procedure that sets the rules for releasing a 1% security deposit in cases related to financial contracts or market transactions. It ensures transparency, cooperation among multiple entities, and compliance with regulatory standards in the release of such deposits. This circular likely aims to streamline the process and ensure market integrity by laying down clear procedures for the release of security deposits in various financial and trading contexts.</p>



VIEWS SHARED IN MEDIA - FOR THE MONTH OF DECEMBER 2024

Sr. No.	Topic for Media Comment	Link
1.	SEBI Mandates Online Document Repository for Merchant Bankers Starting Jan 2025	https://www.deccanchronicle.com/business/latest/sebi-mandates-online-document-repository-for-merchant-bankers-starting-jan-2025-1844572 This step will be demanding for merchant bankers but will significantly enhance transparency in the IPO process.
2.	Repository of documents relied upon by Merchant Bankers during due diligence process in Public issues	https://www.sebi.gov.in/legal/circulars/dec-2024/repository-of-documents-relied-upon-by-merchant-bankers-during-due-diligence-process-in-public-issues_89321.html This would be demanding on the part of merchant bankers. At the same time this would also bring transparency in the process adopted by the merchant in bringing an IPO.
3.	Govt moves to fill 59% vacant independent director posts at CPSEs	https://economictimes.indiatimes.com/news/economy/policy/govt-moves-to-fill-59-vacant-independent-director-posts-at-cpses/articleshow/115741467.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst "Non-filling of independent director positions leads to the approval of related party transactions and appointments of key personnel being done by committees of the board of directors with inadequate composition."
4.	Why SME players are a worried lot today	https://www.rediff.com/business/report/why-sme-players-are-a-worried-lot-today/20241128.htm Stricter compliance requirements would ensure there are checks and balances in place for detecting undesired manipulations. "Sebi in December 2023 made additional surveillance measures applicable to the SME segment to increase surveillance on unwarranted trading practices. "With these compliance requirements in place, it is likely that compliance costs for SMEs might get escalated," said Makarand M Joshi, founder of the corporate compliance firm MMJC and Associates

<p>5.</p>	<p>Extension of timeline for verification of market rumours by listed entities</p>	<p>Investment Guru India on X: "Comment on Rumour verification under SEBI LODR becoming applicable to the next 250 companies based on market capitalization from December 1 by Makarand M Joshi, Founder MMJC and Associates, a corporate compliance firm https://t.co/c7X08Pd93M #SEBI #ExpertViews #MakarandMJoshi https://t.co/6r1YiaDb06" / X</p> <p>Rumour verification framework by SEBI helps achieve fair market price by eliminating price volatility created due to rumours and creating information symmetry. Failure to comply with rumour verification standards might inflict enforcement from SEBI and also impact credibility of market price of the stock.</p>
<p>6.</p>	<p>SEBI Press release - cautioning trading on unauthorised platform</p>	<p>https://investmentguruindia.com/newsdetail/comment-on-sebi-cautioning-platforms-facilitating-transactions-in-unlisted-securities-by-makarand-m-joshi-founder-mmjc-and-associates-a-corporate-compliance-firm163843</p>

