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Scope and Limits of Statutory Exemptions under Section 186(11) for “Ordinary Course of Business”

When an Exemption Stops Being an Exemption

Imagine a company whose very business is to lend money. For a lending company, giving a loan is not an unusual corporate event; it is the business itself. Now imagine asking that company to treat every ordinary loan as though it were an exceptional inter-corporate transaction requiring the same regulatory checks designed for an ordinary operating company.

The law, quite sensibly, does not always insist on such duplication.

Section 186 of the Companies Act, 2013 (“the Act”) regulates loans, guarantees, securities and investments by companies. At its core, the provision ensures that corporate funds are deployed with governance, transparency and accountability. Yet the legislature also recognises that the same restrictions cannot operate identically across every business model.

This is where Section 186(11) becomes significant.

Section 186(11) carves out specified transactions from the operation of Section 186, except sub-section (1). The provision covers specified banking, insurance, housing finance and financing/infrastructure businesses and certain investment activities. The exemption is not merely a relaxation; it recognises that some transactions are inherent to the entity’s business model.

But an important question remains:

Does being an eligible entity automatically place every loan, guarantee, security or investment outside Section 186?

The answer is no.

The real scope of Section 186(11) emerges only when the exemption is examined through four questions — Who is claiming the exemption? What transaction is covered? Is it connected with the permitted business? And which requirements of Section 186 continue to survive?

That is where the limits of the exemption become as important as the exemption itself.

Understanding the Architecture of Section 186(11)

Section 186(11) begins with an important expression:

“Nothing contained in this section, except sub-section (1), shall apply...”

The words “except sub-section (1)” are significant.

The exemption is therefore not an exclusion from Section 186 altogether. The statutory framework deliberately keeps sub-section (1) alive. Thus, the first step is to identify which parts of Section 186 are excluded and which continue to operate, rather than saying “Section 186 does not apply”.

The provision broadly addresses two categories:

1. Financing and infrastructure-related activities

Section 186(11)(a) covers specified loans, guarantees, securities and investments made by banking companies, insurance companies and housing finance companies in the ordinary course of business, as well as companies falling within the statutory description of businesses relating to financing industrial enterprises or providing infrastructural facilities.

The expression “business of financing industrial enterprises” has assumed greater importance following the 2025 amendment to Rule 11(2) of the Companies (Meetings of Board and its Powers) Rules, 2014.

The amended Rule 11(2) expressly recognizes, for an RBI-registered NBFC, the business of giving loans or providing guarantees or securities for repayment of loans in the ordinary course of its business. It also extends corresponding recognition to specified activities of Finance Companies registered with IFSCA.

This shows that the exemption can adapt to evolving financial businesses.

2. Specified acquisition and investment activities

Section 186(11)(b) separately deals with specified acquisitions, including those undertaken by qualifying NBFCs whose principal business is acquisition of securities, investments by companies whose principal business is acquisition of securities, and acquisition of shares allotted pursuant to Section 62(1)(a).

Thus, the exemption is activity-oriented as much as it is entity-oriented.

The First Boundary: Being an Eligible Entity Is Not Enough

A common mistake is to look only at the company’s status.

For example: “The company is an NBFC; therefore, Section 186 does not apply.”

That is too broad.

The exemption follows the statutory character of the transaction, not merely its label.

Practical Example — Investment by a company whose principal business is acquisition of securities

Suppose Company A is an NBFC whose principal business is acquisition of securities. It acquires shares of another company and treats the transaction as exempt under Section 186(11)(b).

However, on examination, the transaction is actually structured as an acquisition of shares on behalf of a promoter/group entity, with Company A merely providing the funds and holding the shares temporarily before transferring them to the promoter.

It appears to be an investment by an eligible NBFC, but in substance may not form part of its own securities-acquisition business. Eligibility alone is insufficient.

 **Takeaway:** The exemption follows the statutory nature of the activity, not merely the description given to the transaction.

The Second Boundary: “Ordinary Course of Business” Is Not Decorative Language

“Ordinary course of business” is perhaps the most important practical limitation in Section 186(11).

A commercially sensible activity may still fall outside the ordinary course for the exemption.

A useful way to test this is to ask:

1. Is the activity consistent with the principal business of the company?
2. Is the transaction of a nature ordinarily undertaken by the company?
3. Does the company's regulatory status support such activity?
4. Is the transaction connected with the business for which the statutory exemption exists?
5. Would the transaction still appear ordinary if the company's name and regulatory classification were removed from the analysis?

The last question is particularly useful:

A company should not be able to convert an extraordinary transaction into an “ordinary course” transaction merely by passing a Board resolution describing it as such.

The substance of the activity should support the description.

Practical Example — The “Investment” That Is Actually a Loan

An eligible company acquires redeemable preference shares of a group company for ₹50 crore and records the transaction as an “investment”. However, the shares are redeemable within a short-fixed period, carry a predetermined return, involve minimal investment risk, and the primary purpose of the arrangement is to provide temporary funding to the group company.

Although documented as an investment, its substance may be financing. Merely labelling it an “investment” should not make it eligible for Section 186(11).

 **Takeaway:** The nature, purpose and terms of the transaction must be examined to determine whether it genuinely falls within the statutory exemption

The 2025 Amendment: A Small Change with a Larger Message

The amendment to Rule 11(2) notified in 2025 is particularly relevant to understanding the modern scope of Section 186(11).

The amended provision expressly includes, for RBI-registered NBFCs, the business of giving loans or providing guarantees or securities for repayment of loans in the ordinary course of business. It also brings specified activities of IFSCA-registered Finance Companies within the expression “business of financing industrial enterprises”.

This reflects an important legislative approach.

As the financial sector evolves, statutory exemptions cannot remain dependent on outdated terminology. At the same time, the amendment does not say that every transaction of every finance company is automatically exempt.

It identifies specific business activities and anchors the exemption to the ordinary course of business.

In other words, the amendment expands clarity without eliminating boundaries.

That balance is significant.

The Third Boundary: Exemption from Section 186 Is Not Exemption from Corporate Governance

This is the key practical distinction.

Section 186(11) does not mean that an eligible company can disregard all other requirements of corporate law.

A transaction may be outside the operation of most of Section 186 and still attract requirements under:

- the Companies Act, 2013;
- the Articles of Association;
- applicable sectoral regulations;
- RBI or IFSCA requirements, as applicable;
- accounting and disclosure requirements;
- related party transaction provisions, where applicable; and
- directors' fiduciary and statutory duties.

The exemption is a specific statutory carve-out, not general immunity from corporate governance.

This is particularly relevant in group structures.

Suppose an eligible financial company proposes to provide a substantial loan to another entity within its group. The company may initially examine Section 186(11) and conclude that the transaction falls within the exemption. That conclusion should not end the compliance analysis.

The next question is:

“What other provisions are triggered by the relationship between the parties, the nature of the transaction and

the regulatory framework applicable to the company?”

A Section 186 exemption cannot be used as a shortcut to answer questions that Section 186 was never designed to answer.

Suppose an eligible financial company provides a loan in its ordinary course to a group company in which a specified related party has an interest. Even if the loan qualifies for the Section 186(11) exemption, that does not automatically answer whether related party transaction requirements, applicable approvals or disclosures are triggered. The Section 186 exemption and related-party analysis must therefore be performed separately. An exemption can remove a statutory restriction; it cannot create a power that does not otherwise exist.

This principle becomes especially important when Section 186 is examined alongside the company's constitutional documents.

The Board's power is derived from the Companies Act, the Memorandum, the Articles and applicable shareholder approvals. Section 186(11) may remove certain restrictions applicable to an otherwise permissible transaction, but it does not transform an unauthorised corporate act into an authorised one.

The distinction is simple:

Power: Can the company legally undertake the transaction?

Exemption: If it can, is the transaction exempt from specified requirements of Section 186?

These are two different questions.

Confusing them may wrongly suggest that the exemption itself creates authority.

Consider an RBI-registered NBFC whose principal business is lending. It proposes to give an interest-free advance to a group company to enable the group company to purchase land for setting up its corporate office. At first glance, the transaction may look like an ordinary loan by an NBFC and therefore exempt under Section 186(11). However, if the advance is a one-off group funding arrangement and is not connected with the NBFC's ordinary financing activity, the company should not assume that its NBFC status provides a blanket exemption. The transaction must first satisfy the ordinary-course-of-business and business-connection tests. The lender's identity may qualify, but the transaction's character and purpose determine whether the exemption can be relied upon.

The decision of the National Company Law Appellate Tribunal (“NCLAT”) in *Pawan Kumar v. Utsav Securities Pvt. Ltd. & Anr.*, Company Appeal (AT) (Ins.) No. 251 of 2020, decided on 3 August 2021, illustrates why Section 186(11) should not be read in isolation.

The matter involved an RBI-registered NBFC which had advanced funds to a corporate debtor. One of the arguments advanced on behalf of the financial creditor was that, being an NBFC acting in the ordinary course of business, Section 186(11) meant that a written agreement was not necessary.

The NCLAT did not allow the Section 186 exemption to determine the existence of the financial debt under the Insolvency and Bankruptcy Code, 2016. The Tribunal examined the transaction independently and held that the financial creditor had failed to establish the necessary financial contract and other elements required for the insolvency proceedings.

The decision does not establish a general rule for every exempt transaction; rather, it demonstrates that:

“An exemption under one statute or provision cannot automatically answer a legal question arising under another statutory framework.”

The exemption must remain within its statutory field.

A compliance professional should therefore resist treating “Section 186 not applicable” as the end of the analysis.

The more accurate conclusion is:

“The transaction falls within the specified exemption under Section 186(11), subject to the provisions that continue to apply and other applicable laws and regulatory requirements.”

A Practical Four-Gate Test

A four-gate framework makes application of Section 186(11) more reliable.

Gate 1 — Entity

Does the company fall within one of the categories specifically recognised under Section 186(11) and the applicable Rules?

If not, the exemption cannot be claimed merely because the company undertakes financial activities.

Gate 2 — Transaction

Is the transaction one of the transactions covered by the relevant clause — loan, guarantee, security or specified investment/acquisition?

The nature of the transaction must be established before applying the exemption.

Gate 3 — Business Connection

Is the transaction undertaken in the ordinary course of the business covered by the exemption?

This is where the company's principal business, regulatory registration and actual activity become relevant.

Gate 4 — Residual Compliance

Even if the transaction passes the first three gates, what requirements continue to apply?

This includes the surviving provisions of Section 186 and obligations arising under other applicable laws, regulations, constitutional documents and governance frameworks.

Only after all four gates are cleared should an organisation conclude that the transaction enjoys the statutory relaxation.

Why the Limits Matter

Statutory exemptions exist for a reason:

If a bank were required to treat every loan to a customer as an extraordinary inter-corporate financial transaction, the regulatory framework would become commercially unrealistic. Similarly, imposing identical compliance burdens on entities whose principal business is financing would defeat the purpose of specialised financial regulation.

But the opposite extreme is equally dangerous.

If every financial transaction of an eligible entity were automatically treated as exempt, the exception could swallow the rule.

Section 186(11) therefore represents a legislative balancing exercise:

commercial practicality on one side and governance discipline on the other.

The challenge is to maintain that balance.

The right question is not:

“Is the company exempt?”

It is:

“To what extent is this particular transaction exempt, why is it exempt, and what remains applicable despite the exemption?”

That change in question improves the quality of compliance analysis.

Conclusion: Read the Exemption with a Boundary Around It

Section 186(11) reflects a practical truth of company law: regulation must recognise the business it regulates.

A banking company lending money, an insurance company undertaking its ordinary business, an eligible housing finance company financing customers, an NBFC carrying on its permitted financing activity, or an eligible infrastructure-focused entity cannot always be placed in the same compliance box as an ordinary operating company making an occasional inter-corporate investment.

The legislature has therefore created statutory space for specified activities.

But that space has boundaries.

The exemption depends upon the identity of the entity, the nature of the transaction, the connection with the ordinary course of the permitted business and the provisions that continue to apply. The 2025 amendment to Rule 11(2) further demonstrates that the regulatory framework is capable of adapting to new financial business models while retaining the discipline of defined categories.

Ultimately, Section 186(11) should not be read as “No compliance required.”

It is better understood as a sign saying:

“This road has a different set of rules — but it still has a road.”

That is the real scope of the exemption; understanding its limits prevents a statutory relaxation from becoming a compliance blind spot.

References

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