The Reciprocity of Acceptance of Deposits in Companies Act, 2013

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Abstract

The meaning of deposits, as well as the chapter on deposits, is now up for debate and interpretation. The Companies (Acceptance of Deposits) Amendment Rules, 2016, which were recently enacted to amend the Deposits Rule, did not address the difficulties raised above and did not provide any clarification on the unclear language. While the legislature has dealt directly with the definition of deposits, it has declined to deal with the overlapping rules. The proposed Companies Bill 2016 appears to be silent on the subject as well. It will be fascinating to see how the courts interpret the relevant provisions. These legal decisions will help to clarify the situation and eliminate any uncertainty. Due to the ambiguity around what constitutes a deposit, stakeholders may request clarification from the Ministry of Corporate Affairs. Only time will tell whether the upcoming wave of revisions to the 2013 Act and Deposits Rules clears the air and offers much-needed clarity.

Introduction

Deposits are defined under the Companies Act of 2013 as any money received by a company in the form of a deposit, a loan, or any other form. Deposits, on the other hand, do not comprise any quantities that the Reserve Bank of India may prescribe in partnership with them. The Companies (Acceptance of Deposits) Requirements, 2014, as revised from time to time, are primarily concerned with deposit rules, as is Chapter V of the 2013 Act.[1]

The Deposits Rules define a thorough, exclusionary definition of deposits, which excludes certain amounts received by a corporation from the definition. It's also worth noting that the Companies

[1]KLE LAW ACADEMY BELAGAVI (Constituent Colleges: KLE Society's Law College, Bengaluru, Gurusiddappa Kotambri Law College, Hubballi, S.A. Manvi Law College, Gadag, KLE Society's B.V. Bellad Law College, Belagavi, KLE Law College, Chikodi, and KLE College of Law, Kalamboli, Navi Mumbai, https://pdfcoffee.com/company-lawpdf-2-pdf-free.html, Accessed on 10/10/21

Act of 1956 and the Companies (Acceptance of Deposits) Rules of 1975 both defined deposits in the same way and banned certain quantities from being considered deposits.

The issue is that a few of the Deposits Rules' exclusions are unclear. These exclusions occasionally go against the Deposits Requirements' applicable rules. In this article, we have attempted to examine some of these inconsistencies, as well as the broader practical problems related with to definition of deposits and the recovery system established under the 2013 Act.

Sections 73 to 76 of the Companies Act, 2013 (hereinafter referred to as the Act) and the Companies (Acceptance of Deposits) Rules, 2014, which are issued under Chapter V of the Act, govern the invitation and acceptance of deposits. It prohibits the entry of deposits from members unless by ordinary resolution or by a "eligible corporation," which must be a public corporation, as defined by the rules. (As per the criteria, a qualified company is characterized by its net worth and turnover.)

The Act, in conjunction with the Rules, addresses several issues, including the prohibition of accepting deposits from anyone other than members, subject to certain conditions, an inclusive definition of deposit, eligible company, depositor, and so on, and conditions for accepting deposits, such as shareholder approval in a general meeting, credit rating, deposit insurance, deposit trustees, and so on. Furthermore, Sections 37 and 245 of the Act protect depositors' interests (class action suit by a sufficient number of depositors). Furthermore, any failure to comply with the Act's responsibilities in this regard will result in severe fines.

The proviso to Section 73(1) read with rule 1(3) of the Companies (Acceptance of Deposits) Rules 2014 exempts banking companies, non-banking financial companies as defined in the Reserve Bank of India Act, 1934 and registered with the Reserve Bank of India, a housing finance company registered with the National Housing Bank established under the National Housing Bank Act 1987, and any other company as may be specified.

Embargo under the 2013 Act and Deposits Rules

The following are examples of amounts that do not fit within the scope of the 2013 Act and Deposits Rules' definition of deposits:[2]

a) “Loans from another company;

[2] CA Apoorv Jain, Conditions & Rules for Acceptance of Deposits BY Companies, https://taxguru.in/company-law/conditions-rules-acceptance-deposits-companies.html, Accessed on 10/10/21

b) Loans from directors or a relative of a director, subject to the directors/relative furnishing a declaration that “such amounts are not being funded by borrowing or accepting loans or deposits from others and the company disclosing the same in the Board's report”;
c) Any non-interest-bearing amount received and held in trust;
d) Any amount received from an employee of the company not exceeding his annual salary in the taxable year; and
e) Any of the goods listed in Rule 2 (c) of the Deposits Rules.

Foreign institutions, foreign governments or foreign banks, foreign corporate bodies, or foreign citizens ("Foreign Bodies") are exempt from the scope of deposits under Rule 2(c) (ii) of the Deposits Rules, subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations promulgated thereunder ("FEMA").

Capital instruments must be granted by the corporation within 180 (one hundred and eighty) days following receipt of the incoming remittance, or the inward remittance must be promptly returned, according to FEMA. Sanctions may be imposed if these deadlines are not met. In exceptional situations, the RBI may consider a refund of the amount due beyond 180 (one hundred and eighty) days from the date of receipt based on the facts of the case. This is where the squabble begins. According to the Deposits Rules, money received for a share application is not considered a deposit if it is allocated against it within 60 (sixty) days of receipt or if it is refunded within 15 (fifteen) days after the 60 (sixty) days have passed. The question is whether the allotment should be made within the Deposits Rules' 60 (sixty) day timeframe or FEMA's 180 (one hundred and eighty) day timeframe.

These phenomena could be explained in one of two ways. The 2013 Act was created to manage and embrace Indian corporations, as well as all elements of their operations. FEMA creates a framework for foreign investment and specifies standards for it. As a result, the 2013 Act might be considered a specialised piece of legislation governing the topic of corporations, as opposed to FEMA, which regulates foreign investment and has a broad clause authorising the issuance of securities to foreign investors. As a result, the general requirements of FEMA should yield to the 2013 Act, which is a specialised statute governing the issuance procedure, in accordance with the notion of *generalia specialibus non derogant*. As a result, share application money will not be recognised as a deposit for 60 (sixty) days. As a result, securities should be issued within 60 days after receiving funds, rather than the 180 days needed by FEMA, failing which the money used to apply for shares will be treated as a deposit.

Another interpretation is that because FEMA regulates the framework for foreign investment, foreign investors should be able to benefit from FEMA's forbearance. This view, on the other

hand, appears to provide a foreign investment with an edge over a domestic one. Given the situation, the assignment of shares should be made within 60 (sixty) days of receipt of the application money in order to avoid having to follow the Deposits Rules' procedure for accepting deposits, and thus potentially having to follow regulations on external commercial borrowings.

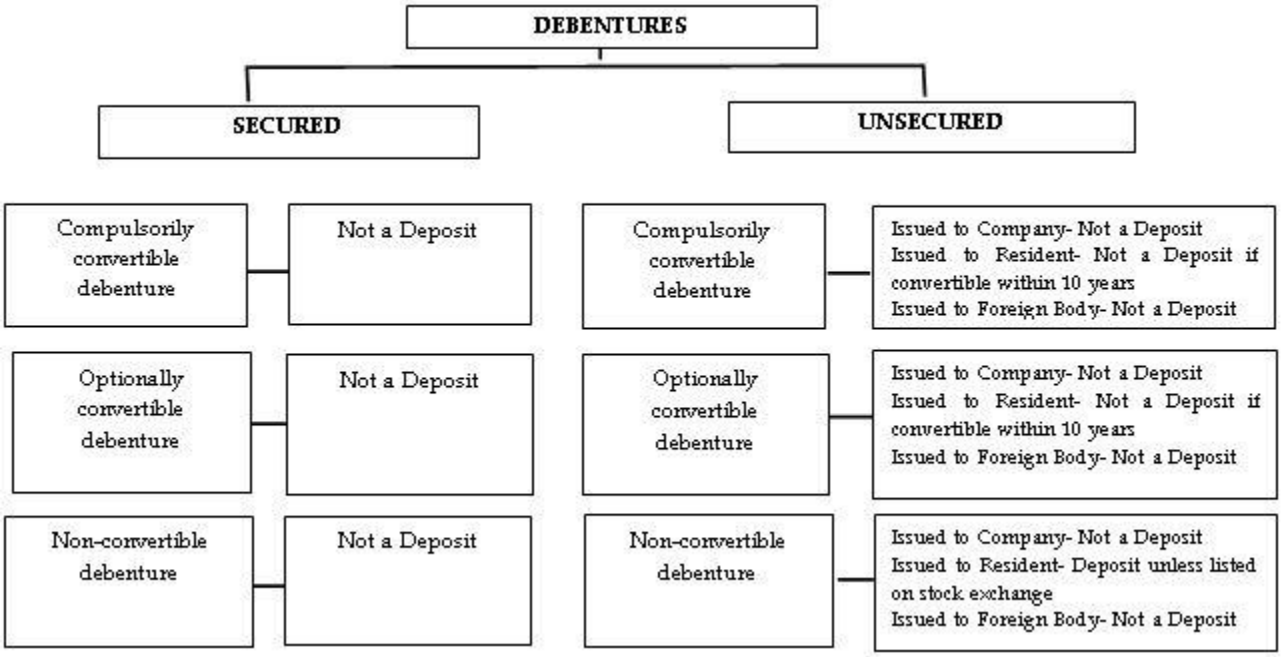
"Rule 2(c) (ix) exempts from the definition of Deposits amounts raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the 2013 Act, excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten (ten) years." This loophole essentially indicates that a secured debenture is exempt from the deposit restrictions, regardless of its length or convertibility. Unsecured debentures, on the other hand, are exempt from deposit requirements only if they are converted compulsorily within 10 (ten) years."[3] In this instance, non-convertible unsecured debentures would be recognised as deposits. Any funds raised in line with SEBI laws through the issuing of non-convertible and unsecured debentures listed on a stock exchange shall not be considered deposits. It's worth noting that the Federal Emergency Management Agency (FEMA) does not set a deadline for converting debentures. When the exemptions in Rule 2(c)(ii) and Rule 2(c)(ix) are combined, it is important to determine whether an unsecured debenture issued by a corporation to a Foreign Body and in conformity with FEMA will amount to a deposit.

Furthermore, any cash received by a company from another company is exempt from the definition of deposits under Rule 2 (c) (vi).

According to a cursory reading of the aforementioned provisions, because amounts received from a Foreign Body are exempt from the definition of deposits, debentures issued to that Foreign Body, regardless of their secured, unsecured, convertible or unconvertible nature, or tenure, will not be subject to the Deposits provisions.

If one agrees with the preceding position, the following rules apply to debentures.

[3] Kartik Ganapathy and Ankita Gupta, Deposits Under The Companies Act, 2013, https://www.mondaq.com/india/securities/511138/deposits-under-the-companies-act-2013, Accessed on 10/10/21



[4]

Embargo under the 1956 Act

Another contentious issue is whether the term "deposits" as used and defined in the 2013 Act and the Deposits Rules meant to exclude funds that were not considered deposits under the 1956 Act. Surprisingly, the Ministry of Corporate Affairs decided to end the debate by issuing a circular on March 30, 2015, more than a year after the provision was announced. ("Circular"). The Circular clarified that amounts received by private companies from their members, directors, or relatives before April 1, 2014 that were not treated as deposits under the 1956 Act will not be treated as deposits under the 2013 Act and Rules, subject to appropriate disclosures in the company's financial statements.[5] The Circular further said that any renewal or acceptance of new deposits on or after April 1, 2014 must comply with the 2013 Act and Rules.

Recompense of Deposits

Deposits taken before the Act's implementation must be repaid within one year of the Act's implementation or the day on which payment of the deposit becomes due, whichever comes first, according to Section 74 of the 2013 Act. While the debate over the term "deposit" in Section

[4] Ibid.
[5]MCA CLARIFIES APPLICABILITY OF COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014, http://almtlegal.com/articles-pdf/MCA%20Circular%20on%20amounts%20received%20by%20private%20companies.pdf, Accessed on 10/10/21

74 of the 2013 Act has generally been addressed, the phrase "repays," which appears often throughout the Section, has gotten little attention. Although the discussion over the term refund may seem irrelevant now that the Section has been in operation for more than 2 (two) years, the debate over the term may still be important since a firm can seek an extension from the tribunal and repay the sum within the time given by the tribunal. In addition, the Companies Amendment Bill, 2016 proposes to revise Section 74 to require that deposits accepted prior to the Act's commencement be repaid by the company within three years of the Act's commencement or on or before the end of the period for which the deposits were accepted, whichever comes first. As a result, it may be required to look into what 'repay' means.

The ambiguity in Section 74(1) (b) of the Act surrounding the term "repay" is a question of interpretation. The traditional interpretation is that the sub-section relates to a company's actual cash or cash equivalent repayment of its loans to its lenders. Some may disagree with this interpretation because Section 74, sub-section (b), appears to be open-ended and does not require deposits to be refunded totally in cash or currency equivalents.

As a result, one can query if the sub-section compels a business to pay its lenders in cash or cash equivalents, or whether it allows for other options, such as issuing securities to the lenders in exchange for the deposits accepted (the issuance being in accordance with the other provisions of the Act).

While Section 74(1) (b) does not directly require a firm to reimburse the "amount" of a deposit, it does not have to be read as demanding actual cash or cash equivalent payment of the deposit. It may be claimed that the term "repay" was used in this context to signify responsibility extinguishment rather than actual deposit payment. According to this view, a corporation will meet the Act's Section 74(1) (b) requirement if it repays its deposit in the manner desired by the lender after receiving instructions from the lender. If a lender's instruction was accompanied by a declaration or acknowledgement that the application amounted to deposit payback, that would be appropriate.

On the other hand, it may be argued that, taken as a whole, Section 74 contemplates a company's real payment of deposit amounts and does not imply any kind of extinguishment of liability. The subsequent sub-sections of Section 74 use the phrase 'amount of deposits' rather than 'deposits,' which appears to imply that such deposits must be paid in cash or currency equivalents only.

Corporate Governance under the Companies Act, 2013

The Companies Act of 2013 focuses on excellent corporate governance by increasing the Board's roles and responsibilities, assuring investors' support, establishing a revelation-based administration, and promoting inherent prevention through self-direction. The 2013 Act has a significant impact on how businesses are represented. The following arrangements are made possible under the Act:

Board Functioning

1. **Appointment of Board**

According to the Companies Act of 2013, an open and also a privately owned corporation can have a maximum of fifteen executives on the Board, and designating more than fifteen executives would necessitate investor approval through an exceptional decision in the General Meeting. It also allows for the appointment of at least one female executive to the Board of Directors for any class or classes of enterprises that may be nominated. The Act mandates that a company have at least one executive who has spent at least 182 days in the country in the previous calendar year.[6]

2. **Disqualification of Directors**

The Companies Act of 2013 tightens the criteria for executive exclusion and expands the scope of examination into linked gathering exchanges. The following additional grounds of exclusion are included in the 2013 Act: (I) A person who has been convicted of a crime involving relevant gathering exchanges in the preceding five years. (ii) Directorships in privately owned firms have also been subjected to exclusion on the basis of a lack of documentation of yearly financial explanations or yearly returns for a period of three years or an inability to reimburse stores for more than a year.

3. **Liabilities of Independent Director**

Under the Companies Act of 2013, an independent chief executive and a non-official executive who is not a promoter or KMP will be held liable for such demonstrations of oversight or commission by an organization that occurred with his knowledge, as inferable from board forms, and with his consent, or where he had not acted decisively.

4. **Number of Directorships**

[6] S.S. Siva Shree and M. Kannappan, A Study of Corporate Governance under the Companies Act, 2013, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 957-967 Pg- 955

A guy can't become an executive of more than 20 companies, rather than the 15 allowed by the Firms Act 1956, and out of those 20, he can't be the CEO of more than 10 open companies, according to the Companies Act, 2013.

5. Independent Directors

The majority of the features of the posting understanding are contained in the definition of independent executive established in the Companies Act, 2013. An independent chief should be a guy of integrity with considerable skill and experience. The Act specifies that an independent chief should have no meaningful financial relationship with the organisation, its promoters, executives, or auxiliaries that could impact the executive's autonomy in the current fiscal year or within the next two years. The following arrangements for autonomous chiefs are included in the Act: According to the Companies Act of 2013, each registered organisation must have at least 33 percent of its total number of executives be independent chiefs, with any portion being adjusted off as one. The central government will be able to recommend the fewest number of independent CEOs in various open company classes.[7]

6. Code of Conduct for Independent Directors

A Code for Independent Directors is included in Schedule IV of the Act, which an independent executive must follow. The "Code for Independent Executives" establishes clear guidelines for professional leadership, roles, and responsibilities. Professional Conduct; Seek enlightenment of facts; Protect the interests of all partners; Exercise obligations and duties in a real-world manner; and Evaluation of board and administration execution, among other things.

Committees of Board

1. Audit Committee

Review panels are required for recorded businesses and other recommended classes of companies under Section 177 of the Companies Act, 2013. According to the Act, a review panel should consist of at least three chiefs, with independent executives playing a significant role. Executives were not required to have any academic or professional qualifications under the 1956 Act. The 2013 Act stipulates that the majority of members of the Audit Committee, including the Chairperson, must be able to read and comprehend financial statements (Ramaiya, 2013).

2. Nomination and Remuneration Committee

[7] Ibid.

Review boards are required for recorded companies and other recommended classes of companies under Section 177 of the Companies Act, 2013. According to the Act, a review panel should consist of at least three executives, with independent heads taking the lead. Executives were not required to have any scholarly or professional skills under the 1956 Act. According to the 2013 Act, the majority of members of the Audit Committee, including the Chairperson, must be able to read and comprehend the directors.

3. The Corporate Social Responsibility (CSR) Committee

According to the Act, an organization that meets certain criteria must form a Corporate Social Responsibility Committee of the Board of Directors, which must include at least three executives. At least one independent executive should serve on the CSR Committee. CSR strategies should be planned and screened by the CSR advisory group, and discussed in the Board's report. The board must approve the CSR strategy and include the details in a board report that will be posted on the organization's website.

4. Stakeholders Relationship Committee

Regardless of value speculators, the Act protects all securities holders. A Stakeholders Relationship Committee must be formed by an organization having more than 1000 investors, debenture holders, store holders, and other security holders at any time throughout the fiscal year. It will be led by a non-official executive and will be made up of a variety of people nominated by the board. The board shall consider and settle the grievances of the organization's security holders.

5. Related Party Transactions

A related gathering exchange can be entered into only if it is endorsed by a unique decision at the general gathering, according to the Companies Act of 2013. A member of the organisation who is a related gathering is unable to vote on such a significant decision. Except for exchanges that are not on a safe distance premise, the confinements will not affect on any exchanges made by the organisation in its normal course of business. Each contract or game plan entered into with a linked gathering shall be mentioned in the Board's report, together with the defence for entering into such a contract or game plan. Additional conditions for participating in related gathering exchanges may be recommended by the central government.

Prohibition of Insider Trading[8]

[8]S.S. Siva Shree and M. Kannappan, A Study of Corporate Governance under the Companies Act, 2013, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 957-967 Pg- 963

Apart from any correspondence needed in the ordinary course of business, profession, or work, or under any law, no individual, including any executive or KMP of an organisation, should engage in insider trading. Insider trading by any member of an organization's executive or important administrative faculty is punishable by imprisonment for up to five years and a fine of up to 25 crore INR or three times the profit obtained through insider trading, whichever is bigger, or both.

Although corporate administration procedures may be traced back to 1961 in other parts of the world, India lags behind. It wasn't until 1991 that progress was made and corporate administration established a global setting. The changing of the Securities and Exchange Board of India was the most important event of 1992. (SEBI). SEBI's primary goal was to manage and institutionalized stock trading, but it also set a number of corporate governance rules and regulations over time (Dhar, 2012). The next significant shift was the establishment of the Confederation of Indian Industry (CII) in 1996, which created a set of laws for Indian businesses to begin the move toward corporate governance.

At that time, two advisory committees within the Securities and Exchange Board of India, Kumar Mangalam Birla and Narayan Murthy, began laying the groundwork for formalizing the necessary corporate management procedures. Clause 49 was given as a major component of the posting contract for organizations listed on the Indian stock exchange in response to recommendations from these committees. Nonetheless, scandals such as Enron, Satyam, WorldCom, and others forced condition 49 to be changed in order to consolidate and overcome the issues that caused these businesses to collapse and shatter the economy of their respective countries. From 2000 to 2003, Statement 49 of the posted understanding of the Indian stock trade achieved results. It included all of the regulations and requirements for the smallest number of free executives, board members, various essential advisory bodies, a set of recognized norms, review council principles and breaking points, and so on. Firms who were not adhering to these guidelines

Conclusion

The chapter on deposits, including their meaning, is now up for discussion and interpretation. The Companies (Acceptance of Deposits) Amendment Rules, 2016, which were recently enacted to change the Deposits Rule, did not address the issues stated above and provide no guidance on the ambiguous clauses. While the legislature has addressed the definition of deposits directly, it has refused to address the overlapping rules. The proposed Companies Bill 2016 also appears to be mute on the topic.

The courts' interpretations of the relevant provisions will be fascinating to watch. These judicial decisions will go a long way toward clarifying the situation and removing ambiguity. Stakeholders may seek clarification from the Ministry of Corporate Affairs due to the ambiguity surrounding

what constitutes a deposit. Only time will tell if the next round of amendments to the 2013 Act and Deposits Rules clears the air and provides much-needed clarity.