LAWS GOVERNING DEBENTURES IN INDIA

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INTRODUCTION

A debenture is an instrument of obligation executed by the organization recognizing its commitment to reimburse the whole at a predefined rate and furthermore conveying an intrigue. It is just a single of the strategies for raising the credit capital of the organization. A debenture is consequently similar to an endorsement of credit or an advance security confirming the way that the organization is at risk to pay a predefined sum with premium and despite the fact that the cash raised by the debentures turns into a piece of the organization's capital structure, it doesn't move toward becoming offer capital.[1]

"Section 2 (30) of the Companies Act, 2013 define inclusively debenture as "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not."[2]

In summary a "debenture" has the following characteristics:

The repayment of all moneys is secured by a charge in favour of the trustee over the whole or any part of the tangible property of the borrower or of any of the guarantors and The tangible property that constitutes the security for the charge is sufficient to meet the liability for the repayment of all such money and all other liabilities that have been incurred and rank in priority to or equally with that liability.

ISSUE OF DEBENTURES

Issue of debentures is governed by the Companies Act, 2013, SEBI regulations and RBI regulations.

The Companies Act, 2013 allows both private and public companies to issue any type of debentures as long as they do not carry any voting rights. Debentures (taking any form) may be issued by two methods: public offer (where the offer is being made to more than 200 persons) or private placement (where the offer is being made to a select group of persons). While public companies can issue debentures using either method, private companies may only issue debentures using the private placement route.

In addition to the specific sections of the Companies Act, 2013, companies also need to refer to the Companies (Share Capital and Debentures) Rules, 2014 and the Companies (Prospectus and Allotment of Securities) Rules, 2014 when issuing debentures.

Secured debentures

If a company is proposing to issue secured debentures, then the additional requirements of the Companies (Share Capital and Debentures) Rules, 2014, r 18 need to be met. In particular, the date of redemption of such debentures cannot exceed 10 years from the date of issue, except in the case of

[1] G.P. Sahi, 'Regulation of Debentures Issue- An overview,2008.
[2] Section 2 (30), Companies Act, 2013.

companies engaged in infrastructure projects in which case such period cannot exceed 30 years.

Fully or partly convertible debentures

In the case of fully or partly convertible debentures, the additional requirements of the Companies (Share Capital and Debentures) Rules, 2014, r 13 relating to issue of securities on a preferential basis need to be complied with. If the fully or partly convertible debentures are being issued by an unlisted public company on a public basis or by a listed company, then the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 will also apply.

Non-convertible / redeemable debentures

Both listed and unlisted public companies issuing non-convertible/ redeemable debentures on a public basis need to also comply with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
For more information on types of debentures, an overview of the regulatory framework and process for issuance of debentures.

GOVERNING LAWS

1. Companies Act, 2013
2. Companies (Share Capital and Debentures) Rules, 2014
3. Companies (Acceptance of Deposits) Rules, 2014
4. Companies (Acceptance of Deposits) Amendment Rules, 2016
5. SEBI (Debenture Trustees) Regulations, 1993 and
6. SEBI (Issue and Listing of Debt Securities) Regulation, 2008

PROVISIONS REGULATING ISSUE OF DEBENTURES

The ability to issue debentures can be practiced for the benefit of the organization at a gathering of the Board of Directors[3]. An open organization may, in any case, require the endorsement of investors to get cash in abundance of the total of its paid up capital and free reserves.[4]. Assent of the investors would likewise be required for offering, renting or discarding the entire or generously the entire of the endeavour of the organization under segment 293 (1) (a).[5] Debentures have been characterized under Section 2 (12) of the Act[6] to incorporate debenture stocks, securities and some other securities of the organization in the case of constituting a charge on the organization's advantages or not.

The qualities of a debenture are:

a. A movable property.
b. Issued by the organization as an authentication of obligation.
c. It by and large indicates the date of recovery, reimbursement of foremost and enthusiasm on determined dates.
d. Could conceivably make a charge on the advantages of the organization.

Section 372 An of the Companies Act additionally controls between corporate credit and speculations and stipulates as far as possible on ventures and the measure of advance that can be obtained by an organization. The clarification condition of

[3]Section 292(1)(b) of the Companies Act.
[4]Section 293 (1) (d) of the companies Act.
[5]Companies Act, 2013.
[6]Companies Act, 2013.

this segment expresses that the advance might incorporate debentures.

Section 117 to Sections 123 of the Companies Act, 1956 manage the arrangements identifying with debentures, arrangement of debenture trustees, their obligations, formation of Debenture Redemption Reserve Account, risk of trustees and so forth.

The debentures issued under the Act should not convey any voting rights. On account of open issue of debentures, there would be countless holders on the enroll of the organization. All things considered it might not be possible to make charge for every one of the debenture holder. A typical strategy for the most part embraced is to make Trust Deed passing on the property of the organization. A Trust deed is a game plan empowering the property to be held by a man or people for the advantage of some other individual known as recipient. The Trustees pronounce the Trust for the debenture holders. The Trust Deed may give the Trustees settled charge over the freehold and leasehold property while a skimming charge might be made over different resources. The Company might permit review of the Trust Deed and furthermore give duplicate of the same to any part or debenture holder of the organization on installment of such total as might be endorsed. Inability to give the same would welcome punishments by method for fine under the Act. Any arrangement contained in the Trust Deed, which exempts a Trustee from risk for rupture of Trust, is void.

According to Section 125 (4) of the Companies Act, enlistment of a charge for motivation behind issue of debentures is obligatory. Area 128 stipulates that where an organization issues arrangement of debentures which is secured by charge, advantage of which will be accessible to all debenture holders paripassu, the organization might document the recommended particulars in Form 10 and 13 with the Registrar of Companies for enlistment of charge. These structures should be recorded inside 30 days after the execution of the deed.

CONTRADICTIONS BETWEEN THE COMPANIES ACT AND THE SEBI REGULATIONS

There are logical inconsistencies between the Companies Act and the SEBI directions on issues identifying with:

a. Utilisation of Debenture Redemption Reserves. The Act gives that the Debenture Redemption Reserve will be utilized towards recovery of debentures just while the SEBI control expresses that these will be a piece of the General Reserves, which can be used with the end goal of extra issues.

b. Any debentures issued with a development time of year and a half or less is exempted from the production of Debenture Redemption Reserve Account, while no such exception is given under the Companies Act.

c. No Public Issue/Rights Issue of Debentures might be made by an organization unless it has named at least one Debenture Trustees for such debentures though under SEBI rules, arrangement of Debenture Trustees is mandatory just if there should be an occurrence of debentures with development of year and a half or more.

A recorded organization however subjected to SEBI directions must conform to stringent standards between the two enactments/controls made there under.

The Indian legal has talked about this inquiry at different events and some of their discoveries have been set out beneath.

i. CIT v Motor Industries Co. Ltd.[7]: It was held that the debentures were bought in to recognize the obligation owed to monetary organizations from which credits were acquired and the sums were used for making of capital resources in India.

ii. Deputy Commissioner of Income Tax v Modern Syntex (India) Ltd. also, Modern Syntex (India) Ltd v Dy. CIT[8]: Similarly, the council had held that the consumption acquired was on 'issue of debentures as it were, for raising of credit' and the debentures were 'issued by the organization and it is as sure obligation'. This was regardless of the way that these debentures were convertible into value shares.

iii. Kirloskar Pneumatic Co. Ltd v Commissioner of Surtax[9] and Ganesh Banzoplast Limited v Assistant Commissioner of Income Tax[10]: The courts have held that debentures, either convertible or non-convertible, are an affirmation of obligation.

iv. However, the Supreme Court of India in Sahara India Real Estate Corporation Limited v SEBI[11], had broke down the qualities of a half and half instrument in detail and took an opposite view that a cross breed instrument, for example, alternatively convertible debentures are securities for the reasons for the Act and the SCRA. The Supreme Court held that 'it is clear, that "half breeds" are incorporated inside the expression "securities" for the motivations behind Companies Act, as well as, under the SEBI Act'.

CONCLUSION

Several companies decide to issue debentures to raise capital, along with the other sources of long-term finance. The companies need to follow the regulations and the procedure associated with the issuance of debentures. Further, they also need to account debentures issued at a par, premium or discount accordingly.

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[7] CIT v Motor Industries Co. Ltd. ILR 1992 Karnataka 345.

[8] Modern Syntex (India) Ltd v Dy. CIT (2005)95TTJ(JP)161.

[9] Kirloskar Pneumatic Co. Ltd v Commissioner of Surtax (1994)118CTR(Bom)13.

[10] Ganesh Banzoplast Limited v Assistant Commissioner of Income Tax (2007)111TTJ(Mum)385.

[11] Sahara India Real Estate Corporation Limited v SEBI (2013) 1 SCC (Civ) 1.