

BEST ANSWER - CASE STUDY - OCTOBER, 2025

1. Summary of the Case

The appellant company had entered into an arrangement with XYZ ARC Pvt. Ltd., its creditor, to convert part of its outstanding debt of Rs. 32.80 crore into equity shares. A **Board Resolution dated 02.05.2018** was passed to effect the conversion, but **no approval of shareholders** was obtained for this preferential allotment. Subsequently, the appellant applied to **BSE on 15.05.2018** for **listing of 59,63,636 equity shares** allotted to the creditor.

BSE rejected the listing application citing:

- Absence of shareholders' approval under Section 62(1)(c) of the Companies Act, 2013; and
- Lack of in-principle approval from BSE as per Regulation 28 of SEBI (LODR) Regulations, 2015.

The **Securities Appellate Tribunal (SAT)** upheld BSE's rejection, leading to an **appeal before the Supreme Court** under Section 22F of the Securities Contracts (Regulation) Act, 1956.

2. Answers to Legal Issues

Legal Issue 1:

Whether conversion of debt into equity by an ARC under Section 9(1) of the SARFAESI Act requires shareholder approval if initiated by the borrower company?

(a) Provisions of Law

Section 62(1)(c), Companies Act, 2013

Provides that when a company proposes to increase its subscribed share capital by allotment of further shares, **such allotment must be authorized by a special resolution of the shareholders** and carried out in compliance with prescribed rules (Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014).

Rule 13(2)(d)&(g) of the Companies (Share Capital and Debentures) Rules, 2014 explicitly requires shareholder approval by a **special resolution** and **valuation report** from a registered valuer for preferential allotments.

Section 9(1) of the SARFAESI Act, 2002

Empowers an Asset Reconstruction Company (ARC) to take measures such as conversion of any portion of debt into shares of the borrower company for asset reconstruction. However, it **does not override** the provisions of the Companies Act governing issue or allotment of shares unless explicitly stated.

Section 37 of SARFAESI Act further clarifies that the provisions of SARFAESI Act are **in addition to and not in derogation of** other laws including the Companies Act.

(b) Application of Law to the Facts

In this case, the **Board of Directors of the appellant company** voluntarily passed a resolution on 02.05.2018 to convert the outstanding debt into equity and allot the shares to the creditor. Hence, it was **the company itself** that proposed to increase its subscribed capital.

Even though the ARC had the power under Section 9(1) of SARFAESI Act to seek conversion, the **actual issuance of shares** emanated from the company's decision and actions such as convening the Board meeting, authorizing the allotment, and applying for listing.

Therefore, this act constituted a **preferential allotment** under **Section 62(1)(c)** of the Companies Act, 2013 read with **Rule 13** of the Companies (Share Capital and Debentures) Rules, 2014, requiring prior **shareholder approval** by way of a special resolution.

Further, **Section 42** of the Companies Act on private placement and **Rule 14** also apply when the allotment is made to a specific person (here, the creditor), mandating compliance with both procedural and disclosure requirements.

(c) Relevant Case Law

- **Shrim Industries Pvt. Ltd. v. BSE Ltd. & Ors. (2023)** – SAT held that where conversion of debt into equity shares was carried out by the borrower company, the **onus of compliance** with Section 62(1)(c) and shareholder approval lies with the company, even if the proposal originates from the creditor.
- **ICICI Bank Ltd. v. SIDCO Leathers Ltd. (2006) 10 SCC 452** – The Supreme Court clarified that the SARFAESI Act operates *in addition to* and not *in derogation of* the Companies Act, reinforcing the need for compliance with corporate governance norms.
- **In Re: Sahara India Real Estate Corporation Ltd. (2012) 10 SCC 603** – The Court emphasized that **any issue of securities** must strictly comply with the provisions of the Companies Act and SEBI regulations, regardless of the purpose or mode of issuance.

(d) Conclusion to Issue 1

Since the **proposal for conversion and allotment** was initiated and executed by the **borrower company**

itself, shareholder approval under **Section 62(1)(c)** of the Companies Act, 2013 was **mandatory**. The absence of such approval rendered the allotment **non-compliant and invalid**. The SARFAESI Act does not provide an exemption from the Companies Act for such actions.

Legal Issue 2:

Is in-principle approval from BSE mandatory under Regulation 28 of SEBI (LODR) Regulations, 2015 for listing of newly allotted shares?

(a) Provisions of Law

Regulation 28, SEBI (LODR) Regulations, 2015

Mandates that before issuing any shares or securities to be listed on a recognized stock exchange, the listed entity must obtain **in-principle approval** from such stock exchange.

Schedule XIX (Clause 1) to SEBI (ICDR) Regulations, 2018 further provides that any company proposing to make a preferential issue of shares shall **obtain in-principle approval** prior to such allotment for ensuring post-issue listing eligibility.

(b) Application of Law to the Facts

In the present case, the appellant company **did not obtain in-principle approval** from BSE before allotting 59, 63, 636 equity shares to the creditor.

The company directly applied for final listing after the allotment had already been made.

This sequence **violated Regulation 28** of SEBI (LODR) Regulations, 2015, as the **in-principle approval must precede the allotment**, allowing the exchange to verify compliance with SEBI, Companies Act, and other regulatory provisions.

The rejection by BSE was therefore justified since **non-compliance with Regulation 28** of SEBI (LODR) Regulations, 2015 renders the shares ineligible for listing.

(c) Relevant Case Law

- **J. Kumar Infraprojects Ltd. v. NSE & SEBI (2019 SAT 32)** – SAT reaffirmed that in-principle approval under Regulation 28 is a **pre-condition** for listing, and post-facto approval cannot cure the defect.
- **NCLT v. SEBI (Bhushan Steel Case, 2018)** – SEBI clarified that listing obligations must be strictly complied with, and exchanges cannot relax mandatory approvals even during debt-restructuring.

(d) Conclusion to Issue 2

Obtaining **in-principle approval from BSE under Regulation 28** of SEBI (LODR) Regulations, 2015 is **mandatory** before issuing and allotting shares for

listing. The appellant's failure to do so resulted in a **procedural and regulatory lapse**, validating BSE's rejection and SAT's confirmation.

3. Overall Conclusion

The appellant company's conversion of debt into equity shares without **shareholder approval by way of Special Resolution under Section 62(1)(c)** of the Companies Act, 2013 and **without prior in-principle approval under Regulation 28 of SEBI (LODR) Reg., 2015** violated mandatory provisions of the Companies Act and SEBI LODR Regulations.

The actions of BSE and SAT in rejecting the listing application were in consonance with the applicable legal framework, thereby underscoring that adherence to corporate and securities law compliance requirements remains imperative, even in cases of debt restructuring under the SARFAESI regime.



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