

'Deposits' & 'Loans' under Companies Act, 2013

April 25, 2019 | [\[2019\] 104 taxmann.com 412 \(Article\)](#)



**Gaurav N.
Pingle**

CS

A company enters into several transactions during its course of business. Such transaction can be for sale, purchase of goods (movable or immovable) or services. At the time for entering into such transactions, a company may receive or pay an amount as advance to the third party. The question would be whether such amount, either given or received, is a 'deposit' or 'loan' or 'advance'. Such distinction is important from the perspective of applicability or non-applicability of certain provisions, compliances, disclosures in financial statements and maintenance of certain documents. This article discusses important concepts – 'deposit' or 'loan' and its inter-se difference.

Definition of 'deposit'

The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfilment of certain condition [*CIT v. Bazpur Co-operative Sugar Factory Ltd.* [\[1988\] 172 ITR 321/38 Taxman 195_\(SC\)](#)]. Something deposited, sum deposited; the action of depositing; to commit to the charge of someone for safe keeping as pledge; natural accumulation [P. Ramanatha Aiyar's Concise Law Dictionary, 5th Edition, Page No. 348].

Section [2\(31\)](#) of Companies Act, 2013 defines 'deposit', it includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. The definition is in an inclusive definition. Deposit can be: (i) Any receipt of money by way of deposit, (ii) Any receipt of money by way of loan or (iii) Any receipt of money in any other form. Interestingly, loan is now within the purview of 'deposit', which was not the case under Companies Act, 1956. Under Companies Act, 1956, 'deposit' means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. [Explanation to section 58A]. This definition under Companies Act, 1956 was an exhaustive definition and interestingly, does not specifically include 'loan' but included 'any amount borrowed by a company'.

Definition of 'loan'

To lend, esp. money; To provide (money) temporarily on condition of repayment, usually with interest. [Page 955 and 921 of Black's Law Dictionary, 8th Edition].

Discussion on the difference between 'deposit' and 'loan'

1. **Intention of parties is important:** Whether a

transaction is a transaction of 'loan' or 'deposit' does not depend merely on the terms of the document but has got to be judged from the intention of the parties and all the circumstances of the case. Even though the transaction is a transaction of deposit, the deposit can be coupled with an agreement that it will be payable on demand. Such an agreement could be express or implied and if an express agreement in that behalf is recorded in the document, the transaction of deposit cannot thereby be converted into a transaction of loan. *V. E .A. Annamalai Chettiar v. S. V. V .S. Veerappa Chettiar*, AIR 1956 SC 12.

2. **Who is the prime mover?:** In the case of a loan and in the case of a deposit, there is a relationship of a debtor and a creditor between the party giving money and the party receiving money. But, in the case of a deposit, the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposits the money—the benefit normally being earning of interest from a party who customarily accepts deposits. Deposits could also be for safe-keeping or as a security for the performance of an obligation undertaken by the depositor. In the case of a loan, however, it is the borrower at whose instance and for whose needs the money is advanced. The borrowing is primarily for the benefit of the borrower although the person who lends the money may also stand to gain thereby by earning interest on the amount lent. Ordinarily, though not always, in the case of a deposit, it is the depositor who is the prime mover while in the case of a loan, it is the borrower who is the prime mover. *Pennwalt India Ltd.v.Registrar of Companies Maharashtra [1987] 62 COMP CASE 112 (Bom.)*;
3. **Deposit is more than mere loan of money:** The case of a deposit is something more than a mere loan of money. It will depend on the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which the parties treated the transaction will throw light on the true form of the transaction. *Ram Janki Devi v. Juggilal Kamlatpat* AIR 1971 SC 2551;
4. **Obligation to return the amount:** The other and more important distinction is in relation to the obligation to return the amount so received. In the case of a deposit which is payable on demand, the deposit would become payable when a demand is made. In the case of a loan, however, the obligation to repay the amount arises immediately on receipt of the loan. It is possible that in the case of deposits which are for a fixed period or loans which are for a fixed period, the point of repayment may arise in a different manner. But, by and large, the transaction of a loan and the transaction of making a deposit are not always considered identical. *Pennwalt India Ltd. (supra)*.
5. **How loan & deposits are not interchangeable:** The section contains an express provision which includes, in the term 'deposit', monies borrowed by a company also. If a deposit and a loan were synonymous, there would be no need for such a provision. Similarly, under section 227(1A) (d) [of Companies Act, 1956] it is provided that an auditor shall, *inter alia*, inquire "Whether loans and advances made by the company have been shown as deposits." These provisions indicate that it may not be possible to interchange

the terms 'loans' and 'deposit' under the Companies Act unless there is an express provision to that effect or the context makes it clear that the terms are interchangeable. *Pennwalt India Ltd. (supra)*.

6. **Relevance of Limitation period:** In a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms "deposit" and "loan" may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances. What must also be borne in mind is that under the Limitation Act, the period when limitation would begin in a case of deposit and in a case of lending are differently provided. Hence, the distinction between a loan and a deposit is fine but appreciable. *Durga Prasad Mandelia v. Registrar of Companies*, [1987] 61 Comp. Cas. 479 (Bom.).
7. **'Debtor - Credit' relationship not sufficient to equate loan with deposit:** The fact that both transactions create the relationship of debtor and creditor is not enough to equate a loan with deposit. Nor would it be correct to make a distinction between the two only for the purpose of calculating the period of limitation. The nature of the two is somewhat different and that is the reason why a distinction is made between the two for the purpose of calculating the period of limitation. If the two transactions were identical, there would be no need to prescribe different periods of limitation. *Pennwalt India Ltd. (supra)*.

It is necessary to understand the above case law not only from the perspective of having conceptual clarity but also from the perspective of drafting agreements. The compliances may change depending on whether the transaction is clothed as 'deposit' or as 'loans'. Since intention of parties is the underlying theme of indentifying a transaction as 'deposit' or 'loans', it is desirable to have an agreement with detailed background / recital. The comparison is important from the perspective of the compliances of some important provisions under the Companies Act, 2013, which includes section [179\(3\)](#) of the Act (*i.e.* the board of directors of a company shall exercise the certain powers on behalf of the company by means of resolutions passed at meetings of the board of directors), section [185](#) of the Act (*i.e.* loans to directors, etc.), section [186](#) of the Act (*i.e.* loans and investments by company). In certain cases, the provisions of section [188](#) relating to related party transactions may also be applicable.

■ ■