

Changing Role of Debenture Trustee



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Debenture Trustee (DT) acts as intermediary between Issuer & Debenture Holders. Ever since 1993, when the first regulation for Debenture Trustee was introduced by SEBI, DT in India have been supporting the corporates to raise funds by way of issuance of Non-Convertible Debentures (NCDs) under a regulated framework. Regulator from time to time have come up with amendments to the prevailing regulations to protect the interest of the investors. The market

size of NCD issuances (both public & private) stands at Rs. 6.6 lakh crores approx. as of March 31, 2022.

Generally, issuers raise funds from the debt market to meet their long-term fund requirement based on the fixed coupon rates as per prevailing market scenario/ interest rates. In case of such issuances, the protection of the Debenture Holder's interest becomes one of paramount importance. DT functions in principled manner and in accordance/compliance within laid down extant regulations to protect investor's interest, such as monitoring of interest payments, redemptions, covenants of transaction documents etc. Trustees play an important role through enforcement in case of occurrence of any event of default arising on the part of issuers.

The increased defaults by a few Issuers have resulted in the loss of hard-earned money of investors, including retail investors and the complications faced by DTs in expeditious enforcement of collateral for debt securities has prompted the SEBI to review its regulatory framework for listed / "to be" listed debt securities, public issue of debt securities and debenture trustees for adequately protecting the interest of debenture holders. In furtherance of this objective, a slew of amendments has been notified by SEBI i.e. Issue and Listing of Non-convertible Securities Regulations 2021, Listing Obligations and Disclosure Requirements 2015, LODR Regulations and Debenture Trustee Regulations 1993 on October 13th 2020, November 3rd 2020, November 12th 2020 & May 19th 2022 to ensure adequate disclosures and strengthen the role of DTs for effective discharge of their role.

Our Regulators have been pro-active in formulating series of circulars which has enabled the strengthening of DT's role as a first level gate keeper of the primary bond market issuances. These have ensured greater transparency and good governance. Introduction of investor charters have brought in better practices across the capital market players at large. Circulars issued from time to time have substantially modified the DTs roles and responsibilities and also act as guiding factor. All these measures are with the centralised theme of protecting the

interest of debenture holders/investors bring about clarity in their operations.

- a) Standardisation of procedure to be followed by debenture trustee(s) in case of 'default' by issuers of listed debt securities
- b) Circular on contribution by issuers of listed or proposed to be listed debt securities towards creation of "recovery expense fund".
- c) Creation of security in issuance of listed debt securities and 'due diligence' by debenture trustee(s)
- d) Monitoring and Disclosures by Debenture trustee(s)
The Trustees are now required to undertake independent due diligence on a continuous basis with respect to creation of security.
 - Issue due-diligence certificate, before execution of transaction documents
 - Maintain documents and records pertaining to due diligence for a minimum period of 5 years from redemption of debt securities
 - Call for valuation report, ROC search report, title search report/ appraisal report, asset cover certificate, any other report/ certificate as applicable etc. and independently assess that the assets for creation of security are adequate for the proposed issue of debt securities.
- e) Continuously monitor transaction covenants on an ongoing basis.
- f) Security and Covenant Monitoring using Distributed Ledger Technology (DLT):

The DLT provisions were introduced by a regulatory guideline in August 2021 and come in to effect from 01/04/2022. These platforms were developed by Depositories (NSDL/ CDSL). The DLT system will be used to capture the process of creation of security (viz. due diligence, charge creation, etc.), provide continuous monitoring of covenants by DTs (as applicable), record interest and redemption payments, and consolidate information on credit rating of non-convertible securities by credit rating agencies, etc. The system would provide an alert to the issuer and the DT by having appropriate validation/ duplicate checks in the system for identifying possible duplicate entries for assets of an issuer. The DLT is based on auditable track-ability akin to block-chain technology and in a disclosure regime, it will remove the element of the unknown (anonymous.). This technology-driven exercise undertaken by Regulator through DTL is appreciated by the industry.

Adopting a neutral stance while resolving differing view points between Issuer and Debenture holder is fraught with many challenges for the DT's. Pro-active regulatory guidance certainly enables DTs to perform their duties as a responsible capital market intermediary and ensuring best practices.

Changes in regulation are headed in the right direction by enhancing the role of trustees in discharging its fiduciary role with greater transparency and higher responsibilities towards the debenture holders. We highly welcome and appreciate the continuous efforts of the Regulator to safeguard the interest of the Debenture Holders in the dynamic market.