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# REDEFINING THE BOUNDARY BETWEEN EQUITY AND DEBT: A CASE COMMENTARY ON EPC CONSTRUCTIONS INDIA LTD. V. MATIX FERTILIZERS AND CHEMICALS LTD.

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## INTRODUCTION

Every insolvency framework that draws a sharp distinction between equity and debt inevitably faces an instrument that seeks to obscure that distinction. The ruling of the Supreme Court in *EPC Constructions India Ltd. V. Matix Fertilizers and Chemicals Ltd.*[1] is an example of that encounter. The ruling concerned whether the cumulative redeemable preference shares ('CRPSs') that were issued to convert unpaid amounts owed by a contractor into capital could be classified as 'financial debt' after redemption was not made. The court famously ruled that they cannot be classified as such, laying down the criteria for differentiating debt (or equity) precisely.

## FACTUAL BACKGROUND

In 2009-2010, EPC Constructions India Limited (formerly Essar Projects India Limited), entered into engineering, procurement and construction agreements with Matix Fertilizers and Chemicals Limited in connection with the construction of a fertilizer plant at Panagarh, West Bengal. At the close of 2015, Matix owed EPCC the sum of ₹572.72 crores. However, Matix itself was in dire financial straits, and lenders would not release any further funds until Matix raised their debt-equity ratio to 2:1 through an infusion of new equity capital. To resolve the

[1] *EPC Constructions India Ltd. v. Matix Fertilizers & Chems. Ltd.*, 2025 INSC 1259.

issue without actually spending any money, Matix suggested that the amount payable to EPCC could be converted into preference shares at a value up to ₹400 crores.

EPCC agreed to the offer, provided that the shares would be cumulative and pay 8 percent interest annually. Matix allocated 25 crore 8 percent cumulative redeemable preference shares of ₹10 each to EPCC for a cumulative value of ₹250 crores, redeemable at par after a period of three years. Subsequently, EPCC went into insolvency, and the liquidator treated the CRPS value that was due for payment as a deferred liability. EPCC issued a notice and subsequently filed for insolvency proceedings against Matix. The petition was dismissed by both the National Company Law Tribunal in Kolkata and by the National Company Law Appellate Tribunal[2] because preference shares are considered as equity.

**ISSUES BEFORE THE COURT**

The essence of the appeal has been distilled in the form of three questions. The first concerns whether CRPS come within the category of 'financial debts' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 'IBC'.[3] The second concerns whether the holder of such shares could qualify as a 'financial creditor' under Section 5(7) of the code.[4] Thirdly, whether Matix's treatment of the CRPS in its balance sheet has made the instrument a liability.

**THE COURT'S HOLDING AND RATIONALE**

While rejecting the appeal by EPCC, the Court reiterated that preference shares constitute a form of share capital and cannot be viewed as loans even if a fixed dividend is attached to them. Invoking Section 55 of the Companies Act, 2013,[5] which provides that preference shares can be redeemed only out of profits available for distribution as dividend or through proceeds obtained by a fresh issue, the Court noted that since Matix did not earn any profits or issue fresh shares, there was no question of any redemption amount becoming due. Resting on the statutory definition itself, the Court interpreted Section 5(8) narrowly: to qualify as a financial debt, there should be money made available in return for the time value of money, and while

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[2]Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016), § 7.
[3]Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016), § 5(8).
[4]Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016), § 5(7).
[5]Companies Act, No. 18 of 2013, India Code (2013), § 55.

bonds, debentures, etc., are specifically mentioned in this context, preference shares are clearly omitted, which seemed to the Court to be intentional.

The Court has further stated that the acceptance of the CRPS by EPCC has the effect of destroying the old debtor-creditor relationship forever and replacing it with a new relationship of the company and its shareholders, which cannot be reverted in the future merely because redemption did not take place. Drawing on *Lalchand Surana v. Hyderabad Vanaspathy Ltd.*[6], the Court noted that redeemable-preference-shareholders never become creditors even if redemption is delayed indefinitely, since redemption remains conditional on distributable profits. It relied on *Commissioner of Income Tax v. Rathi Graphics Technologies Ltd.*[7] to distinguish conversion into a loan (where liability survives) from conversion into equity (where liability is extinguished), and on *State Bank of India v. Commissioner of Income Tax, Ernakulam*[8], for the proposition that book entries made under prescribed accounting standards cannot override the true legal character of a transaction. Finally, invoking *Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram*[9] and its own earlier articulation of the Section 7 threshold in *Innoventive Industries Ltd. v. ICICI Bank*[10], the Court held that a Section 7 application cannot proceed unless a debt has actually become due and remains unpaid; a threshold EPCC could not cross.

**CRITICAL ANALYSIS**

The ruling deserves praise due to its commitment to the legal principles. The court's insistence on not permitting the commercial interests to modify the statutes preserves the sanctity of the provisions of the company legislation regarding the maintenance of capital.

The application of the principle of *expressio unius* in relation to subsection 5(8) is justified, while also taking into consideration the fact indicated in subsection 55 that the redemption of preference shares is not an absolute obligation of payment.

However, the judgment does not quite go hand in hand with the economic reality of the transaction in question. Matix's Board resolution admits that the CRPS were created simply to

[6]*Lalchand Surana v. Hyderabad Vanaspathy Ltd.,* 1988 SCC OnLine AP 290.
[7]*Comm'r of Income Tax v. Rathi Graphics Techs. Ltd.,* 2015 SCC OnLine Del 14470.
[8]*State Bank of India v. Comm'r of Income Tax,* (1985) 4 S.C.C. 585.
[9]*Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram,* (2020) 10 S.C.C. 538.
[10]*Innoventive Indus. Ltd. v. ICICI Bank,* (2018) 1 S.C.C. 407.

meet a lender's equity-debt obligation while expecting them to be paid back within three years, which is not very different from what Section 5(8)(f) calls the "commercial effect of borrowing." As per the relevant accounting standard Ind AS 32, [11] redeemable preference shares with a fixed dividend and mandatory redemption date have to be treated as a financial liability because the issuer has the legal obligation to pay cash on them, which is the very economic substance that the court decided to ignore in the present case. In the case of *Pioneer Urban Land and Infrastructure Ltd. V. Union of India,*[12] the Court generously interprets the term 'commercial effect of borrowing,' ultimately holding that homebuyers are indeed financial creditors. This is a situation where theory triumphs over practicalities; the apparent contradiction would not need to happen if preference shares were subject to statutory requirements concerning redemption or other redemption mechanisms under Section 55, which do not exist in the case of homebuyers.

## CONCLUDING OBSERVATIONS

For transactional attorneys, the takeaway lesson is clear: turning overdue receivables into preference shares to comply with a lender's covenant is not a reversible bookkeeping act. This decision is final and replaces a creditor's remedies with that of a shareholder. The IBC will not reinstate the abandoned claim only because the parties expected repayment. In order to have the flexibility of a debt-like instrument while maintaining the ability of the creditor, the parties must ensure enforceability right in the instrument itself, through put options, share purchases and personal guarantees instead of relying on Section 7 as backstop.

Thus, EPC Constructions demonstrates the key aspect of structured finance in cases of distress: it promotes careful transaction structuring and punishes the assumption that insolvency law will come to the rescue at a later stage when corporate and contract law turned out to be unable to protect the parties' interests. Whether the markets of hybrid financing in India will learn and come up with ways of avoiding this formality or Parliament will expand Section 5(8) to cover economically debt-like preference instruments remains to be seen.

[11]Companies (Indian Accounting Standards) Rules, 2015, Ministry of Corporate Affairs, Notification G.S.R. 111€, Rule 3, Ind AS 32, ¶ 11.
[12]Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 S.C.C. 416, 430–33.