



06th June 2026

SEBI Proposes Relaxation in NDCF Framework for InvITs by Allowing Debt-Funded Major Maintenance Expenses for Road Projects

The Securities and Exchange Board of India (“SEBI”), through its Consultation Paper dated June 1, 2026, has proposed amendments to the framework governing the calculation of Net Distributable Cash Flows (“NDCF”) for Infrastructure Investment Trusts (“InvITs”). The proposal seeks to permit debt-funded major maintenance expenses incurred for road projects to be added back while computing NDCF, subject to specified conditions, disclosures, and unitholder approvals. The proposed changes aim to address industry concerns and facilitate ease of doing business for InvITs operating in the roads sector.

Analysis

- Under the existing NDCF framework, InvITs and their SPVs/HoldCos cannot use external borrowings for distributions. Consequently, debt-funded major maintenance expenses are deducted from operating cash flows, reducing distributable cash flows.
- Industry participants represented by the Bharat InvITs Association highlighted that major maintenance expenses in road projects are significant, concession-driven obligations that are typically financed through debt but cannot be capitalised under accounting principles, thereby adversely impacting NDCF.
- To address this concern, SEBI has proposed allowing payments towards major maintenance expenses for road projects, to the extent funded through external borrowings, to be added back while computing NDCF at both the Trust and SPV/HoldCo levels.
- The proposal applies only to projects within the “Roads and Bridges” infrastructure sub-sector and requires prior unitholder approval, with at least 60% of votes cast in favour of the resolution.
- InvITs would be required to disclose details of the proposed borrowings, qualifying maintenance expenses, projected expenditure, impact on leverage and distributions, and alternative funding options as part of the unitholder approval process.
- The proposal also mandates statutory auditor certification confirming that the expenditure qualifies as major maintenance expenditure under the concession agreement and has been funded through external borrowings.



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- Enhanced disclosure requirements have been proposed, including separate reporting of maintenance-related debt in debt maturity profiles, net borrowing ratio disclosures, and NDCF statements.
- Corresponding amendments are proposed to the SEBI Master Circular for InvITs to formally permit such add-backs and create a limited exception to the existing restriction on distributions funded through external debt.
- The proposal is expected to provide greater flexibility to road-sector InvITs in funding major maintenance activities, improve distributable cash flows, and align the NDCF framework with prevailing infrastructure financing practices, while increasing transparency through enhanced approval and disclosure requirements.
- **Key Takeaways**
 - SEBI has proposed allowing debt-funded major maintenance expenses for road projects to be added back while calculating NDCF for InvITs.
 - The proposal seeks to address industry concerns arising from the accounting treatment of major maintenance expenses and their impact on distributable cash flows.
 - Unitholder approval, statutory auditor certification and extensive disclosure obligations have been prescribed as safeguards.
 - The relaxation is limited to road sector projects and would operate as a specific exception to the existing restriction on distributions funded through external borrowings.
 - Public comments on the consultation paper may be submitted to SEBI until June 22, 2026.
- The notification is attached herein.

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MCA Enables CSR Spending through Zero Coupon Zero Principal Instruments Listed on Social Stock Exchanges

The Ministry of Corporate Affairs ("MCA"), vide Notification No. G.S.R. 415(E) dated May 27, 2026, issued under Sections 135 and 469(1) & 469(2) of the Companies Act, 2013, has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2026, enabling companies to undertake a portion of their CSR obligations through subscription to Zero Coupon Zero Principal Instruments issued by eligible Not-for-Profit Organisations listed on the Social Stock Exchange. The amendments came into force on the date of publication in the Official Gazette.

Analysis

- The amendment introduces the definition of a “Not for Profit Organization” by adopting the meaning assigned under Regulation 292A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. This aligns the CSR framework with the regulatory regime governing entities listed on the Social Stock Exchange.
- A new definition of “Zero Coupon Zero Principal Instrument” has been inserted. Such instruments are securities issued by NPOs registered with the Social Stock Exchange segment of a recognised stock exchange in accordance with SEBI regulations. These instruments enable philanthropic funding without repayment of principal or payment of interest, thereby creating an alternative mechanism for channelising CSR funds.
- A new Rule 4A has been inserted permitting companies to undertake CSR activities through subscription to ZCZP Instruments. However, the expenditure incurred through such instruments cannot exceed 10% of the company’s total CSR expenditure for the relevant financial year.
- Companies subscribing to ZCZP Instruments have been exempted from carrying out impact assessments for projects funded through such instruments. This provides compliance relief, particularly where the funded projects are implemented and monitored by SSE-listed NPOs.
- The amendment imposes specific obligations on NPOs issuing ZCZP Instruments. Such organisations must deploy the funds towards projects having a duration not exceeding three succeeding financial years from the date of issuance of the instrument.



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- Upon termination of the listing of a ZCZP Instrument, any unspent amount must be transferred to a fund specified under Schedule VII of the Companies Act, 2013, and the NPO is required to submit a compliance report to SEBI. This seeks to ensure accountability and proper utilisation of CSR-linked funds.
- The MCA has clarified that the existing provisions governing CSR implementation under Rule 4 of the CSR Rules shall apply to CSR activities undertaken through ZCZP Instruments, except for sub-rules (5) and (6).
- The amendment expands the avenues available to companies for discharging CSR obligations by enabling participation in Social Stock Exchange-listed instruments. Companies may now diversify a portion of their CSR spending towards vetted NPO-led projects through capital market mechanisms, potentially improving transparency, governance, and monitoring of CSR initiatives. At the same time, companies will need to establish internal controls to track the 10% expenditure cap, evaluate eligible SSE-listed NPOs, and ensure appropriate disclosures and reporting under the CSR framework.
- Key Takeaways
 - Companies can now utilise up to 10% of their annual CSR expenditure through subscription to ZCZP Instruments issued by eligible SSE-listed NPOs.
 - The amendment strengthens the integration between the CSR framework and the Social Stock Exchange ecosystem, creating an additional channel for funding social impact projects.
 - Companies investing through ZCZP Instruments benefit from exemption from impact assessment requirements for projects financed through such instruments.
 - NPOs issuing ZCZP Instruments must comply with project duration limits and prescribed fund utilisation requirements, thereby enhancing accountability and regulatory oversight.
- The notification is attached herein.

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Party Estopped From Challenging Award Over Expiry of Arbitrator's Mandate After Participating in Proceedings: Supreme Court

The Supreme Court has held that a party which continues to participate in arbitral proceedings without objecting to the extension of the arbitrator's mandate cannot subsequently challenge the arbitral award on the ground that the mandate had expired. The Court observed that a party which acquiesces in the continuation of proceedings and raises no objection at the relevant stage is estopped from disputing the validity of the award after it is rendered.

A Bench comprising Justice Pamidighantam Sri Narasimha and Justice Alok Aradhe delivered the judgment while deciding a dispute arising from arbitration proceedings between the Gujarat Water Supply and Sewerage Board and Saryu Plastics Pvt. Ltd. concerning contracts for the supply of PVC pipes.

Under the arbitration agreement executed on April 3, 2012, the arbitrator was initially required to render the award within six months. The parties subsequently extended the mandate up to September 30, 2014. Thereafter, while the arbitral proceedings remained pending, the arbitrator unilaterally extended the timeline on multiple occasions and continued with the proceedings.

The Board later contended before the courts that it had not consented to any extension beyond September 30, 2015. Consequently, it argued that the arbitral award dated October 27, 2015, had been rendered without jurisdiction as the arbitrator's mandate had expired.

Opposing this contention, the award-holder maintained that although the original period granted to the arbitrator was six months, the Board had tacitly consented to the continuation of the arbitrator's mandate. It was argued that the Board neither objected to the extensions nor declined to participate in the arbitral proceedings, thereby indicating its acceptance of the continuation of the mandate.

Rejecting the Board's challenge, the Supreme Court found that its conduct throughout the proceedings clearly reflected acquiescence to the extensions granted by the arbitrator. The Court noted that after September 2014, the arbitrator repeatedly extended the mandate and continued conducting hearings, yet the Board never questioned the arbitrator's authority to proceed.

The Bench attached particular significance to an email sent by the Board on October 14, 2015, in response to a hearing fixed for October 15, 2015. In that communication, the Board merely informed the arbitrator that it would be unable to attend due to prior engagements. Significantly, it did not assert that the arbitrator's mandate had expired or that the proceedings were without authority.



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Writing for the Bench, Justice Aradhe observed that Section 29A of the Arbitration and Conciliation Act, which now prescribes timelines for arbitral proceedings, was not applicable to the facts of the case. The Court further noted that, at the relevant time, there was no statutory requirement that an extension of an arbitrator's mandate be made in a particular form or reduced to writing.

The Court held that the challenge to the award was not based on any violation of a statutory provision. It observed that despite the arbitrator having unilaterally extended the mandate on three occasions and continuing the proceedings thereafter, the Board failed to raise any objection. Even in its email dated October 14, 2015, the Board did not contend that the arbitrator lacked authority to continue.

In these circumstances, the Court concluded that the Board had tacitly agreed to the extension of the arbitrator's mandate. Having participated in the proceedings and acquiesced in the alleged irregularity, the Board could not subsequently turn around and challenge the award on that basis. Accordingly, the Supreme Court held that the Board was estopped from questioning the award on the ground that the arbitrator's mandate had expired.

Case Title: *Gujarat Water Supply and Sewerage Board v. Saryu Plastics Pvt. Ltd.*

Citation: 2026 INSC 552

Supreme Court Upholds GST on Online Gaming, Holds It Taxable as Betting and Gambling

In a landmark ruling with far-reaching implications for India's online gaming industry, the Supreme Court has upheld the constitutional validity of the levy of Goods and Services Tax (GST) on online gaming activities. The Court rejected both constitutional and statutory challenges to the levy of Central Goods and Services Tax (CGST) on actionable claims arising from betting and gambling transactions.

A Bench comprising Justice JB Pardiwala and Justice R. Mahadevan held that organised online gaming activities, including fantasy sports and other digital games involving pooled stakes and contingent prize structures, generate actionable claims that constitute taxable supplies under the GST framework governing betting and gambling transactions.

Online Gaming Involving Stakes Constitutes Betting and Gambling

The Court clarified that the essential feature of betting is the staking of money on uncertain outcomes. According to the Bench, the character of betting and gambling does not depend solely on whether the underlying activity is a game of skill or a game of chance. Rather, it is determined by the existence of stakes placed on future uncertain contingencies.



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The Court observed that even games involving substantial elements of skill acquire the character of betting and gambling for GST purposes once participation is conditioned upon staking money or money's worth on uncertain outcomes. Consequently, fantasy sports and similar online gaming activities involving monetary stakes fall within the ambit of betting and gambling under the GST regime.

Holding so, the Court stated:

"Online gaming activities, including fantasy sports and other games played on digital platforms, involving staking upon uncertain outcomes, constitute betting and gambling for the purpose of GST framework."

Since actionable claims arising from betting and gambling are specifically subject to GST, the Court concluded that online gaming activities involving such actionable claims are also liable to tax. The Bench emphasized that the levy is imposed on the taxable supply of actionable claims and not directly on the activity of betting and gambling itself. Justice Mahadevan, pronouncing the judgment, held:

"The levy of GST on the supply of actionable claims arising from betting and gambling is constitutionally valid and does not transgress Articles 366(12) and 366(12A) of the Constitution."

GST Levy Supported by Statutory Authority

The Court rejected the contention that the GST levy was unconstitutional merely because it increased the tax burden on gaming operators. It observed that commercial hardship, diminished profitability, or higher tax incidence cannot by themselves invalidate a fiscal measure.

According to the Bench, the levy derives statutory authority from Sections 7, 9, and 15 of the CGST Act and satisfies the constitutional requirement under Article 265 that no tax shall be levied or collected except by authority of law.

The Court further held that the concept of "supply" under Section 7 of the CGST Act is not restricted to the transfer of pre-existing actionable claims but extends to various forms of supply contemplated under the statutory framework, including organised betting and gambling arrangements.

Gaming Operators Are Suppliers, Not Mere Intermediaries

Addressing the nature of online gaming platforms, the Court held that organised gaming and betting operators create a commercial ecosystem through which participants acquire contingent beneficial interests in movable property dependent upon uncertain future events.



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Such contingent interests, the Court noted, qualify as "actionable claims" within the meaning of Section 3 of the Transfer of Property Act, 1882. Consequently, amounts staked by participants for gameplay constitute consideration under Section 2(31) of the GST Act.

The Bench held:

"We hold that online gaming activity involving pooled stakes and contingent prize structure gives rise to actionable claim interests constituting taxable supplies within the meaning of Section 7 of the GST Act. The online game operators are not mere intermediaries facilitating transactions inter se between participants but themselves constitute suppliers of such actionable claims."

Background of the Dispute

The controversy arose over the manner in which GST should be levied on online gaming platforms. Prior to legislative amendments introduced in 2023, gaming companies generally paid GST at the rate of 18% on their platform fee or commission, commonly referred to as Gross Gaming Revenue (GGR).

Under this model, where a player deposited ₹100, the gaming platform would retain a portion as commission while the balance amount would be pooled for prize distribution. GST was paid only on the commission retained by the platform.

The tax authorities, however, adopted a different interpretation. The Directorate General of GST Intelligence (DGGI) argued that online real-money gaming platforms facilitated betting and gambling transactions and that GST should be levied on the entire amount staked by users rather than merely on the platform's commission.

This interpretation substantially increased the tax burden. For example, a ₹100 deposit that previously attracted GST of ₹1.80 under the commission-based model would attract tax of ₹28 when taxed at 28% on the full face value.

The dispute also involved the classification of games such as fantasy sports, rummy, and poker. Gaming companies relied upon judicial precedents recognizing these games as games of skill and argued that they merely provided technological platforms for lawful skill-based contests. They contended that such activities should not be taxed in the same manner as betting and gambling.

The Union Government, however, maintained that online money gaming involving stakes warranted separate treatment under GST. To remove ambiguity, Parliament amended the CGST Act in 2023 by introducing specific provisions relating to online money gaming and prescribing GST at 28% on the full face value of bets or deposits made by users.



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The controversy deepened when tax authorities issued substantial show-cause notices to gaming companies for prior periods based on the broader interpretation of the law. Several companies challenged these demands, contending that the pre-amendment statutory framework did not authorize taxation on the full value of stakes and that the tax department was effectively imposing a retrospective tax burden through administrative interpretation.

The cumulative tax demands in the sector reportedly exceeded ₹1 lakh crore, making the litigation one of the most significant indirect tax disputes involving India's digital economy.

Case: *DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HQS v. GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED*, SLP (C) Nos. 19366–19369 of 2023.

Citation: 2026 INSC 595.



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