



Yes Bank Ltd- QIP Fiasco-Blame the Regulation

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SUMMARY

- Is the bank correct to blame recent change in regulation for the fiasco? SES does not think so as neither changes were recent nor they had anything to do with decision to defer.
- Is the issue deferred or called off, still no clarity? SES is of the view that it cannot be deferred once opened, it can only be called off.
- Has the Bank taken any decision on deferring the issue? SES is of the view that bank has not officially communicated its decision. Communication to Stock Exchanges was to inform advice of Merchant Bankers. Did Yes Bank agreed to advice or not is not known.
- Is Bank justified in blaming the Regulations? Is Bank justified in conveying to investors and regulators that 11 Merchant Bankers and three legal advisors did not guide it properly? All of them are tight-lipped. SES cannot imagine that Crème de la crème of Merchant Banking and Legal Professions failed on simple interpretation. Probably, client confidentiality is keeping them tight-lipped. This creates a suspicion that probably reasons lie somewhere else and these advisors and Regulations are just a scapegoat.
- Is fall in price the reason?
- Was run up in the price prior to opening of issue has anything to do with price fall? Or price fall was engineered by some investors to put pressure on pricing? This is subject matter of investigation by SEBI. If there was a deliberate attempt to fail the issue by any lobby, it must be investigated.
- SEBI must examine how others have done successful QIP and followed Regulations.?
- SES does not agree putting blame of Regulations and indirectly on Regulator SEBI.
- Incidentally, the Bank has removed its placement document from its website. SES could trace it on BSE website. Why it is removed is a mystery?

BACKGROUND

On September 7, Yes Bank flagged off USD 1 Billion QIP issue, post market hours, with the aim of supporting its growth for the next three years. As stated by Mr. Rana Kapoor himself, in various interviews, that till early morning September 8, the response was fantastic and the issue was oversubscribed. However, in a span of almost 24 hours the said QIP issue was 'deferred'.

Despite lot of hype and hoopla, issuer (YES Bank) having the benefit of wisdom of 11 leading Investment Bankers and three top law firms in India, had a failed QIP program.

What led to such a fiasco?

- Is it the timing and / or Pricing of the issue? Answer is No because, as per Mr. Kapoor, the response was fantastic and issue got subscribed 1.1 times.
- What was the extent of subscription is a matter of fact and record, which only authorities and person associated with the issue would know? SES and other investors have to go by what is stated by issuer.
- Whether too many merchant bankers validate the saying "too many cooks spoil the broth"?
- Was it a mere coincidence or overconfidence of the issuers?

As per the Issuer, none of the above reasons hold good, as the reasons stated for such a debacle is '**confusion on QIP guidelines**'.

And what the issuer does, rather than accepting the failures, blames on recent changes in Regulation.

Everything said and done, this fiasco gave a new meaning & measure for word '**recent**'. According to the Bank, '**recent**' was as old as one year, to be precise even a bit more than a year. The changes in Regulation being blamed were notified on 2nd September 2015 and came into force on 1st December 2015. While the Bank sounded as if changes were introduced night before opening of QIP. Only for historians a period of a year qualifies for terming it **recent**. It sets a new standard for the time required by issuers, investment bankers, legal eagles and practitioners to understand and decipher laws, which incidentally were made after public consultation.



It is a well-known saying that “*while success has many fathers, but failure is an orphan*”. Therefore, who will take care of orphan? Not the issuer, none of 11 bankers and 3 legal eagles but the regulator. Who off late has become favourite whipping boy. It appears that these legal advisors and all those connected with the QIP forgot “*Ignorantia juris non excusat*”. It is immaterial if the law was recent, or one did not understand the law. If the law is existing one has to follow and not blame anyone for that.

The entire fiasco needs to be examined on following

1. Communication from issuer and Relevant law
2. Fundamental Factors-Market dynamics
3. Post Fiasco communication

COMMUNICATION FROM ISSUER

Was the issue deferred?

The BSE website has following communication from the Company-

As notified by Bank to BSE on 8th September 2016 at 16:53 pm

Yes Bank Ltd has informed BSE that:

"Due to Extreme Volatility during today's trading day because of misinterpretation of new QIP guidelines, YES BANK has been advised by its appointed Merchant Bankers to defer its proposed QIP." [Link](#)

The basic question is, can an issue which has already opened be deferred? An issue which has yet to open can be deferred prior to its opening. SES is of the view that in an issue which has already opened its book for book building, **only its closing can be deferred**. And if after opening of issue the issuer does not want to go ahead for whatever reasons **the issue needs to be called off or abandoned**. Therefore, SES is of the view that above is a miscommunication from the issuer. Whether it is an issue of semantics or intention, SES cannot comment.

Further the communication is either poorly worded or cleverly worded. **It does not convey whether any decision has been taken on deferment**. All it says that Merchant Bankers have advised to defer the issue. The Bank has not communicated to authorities whether it has accepted advice of Merchant Bankers or not?

As notified by Bank to BSE on 8th September 2016 at 07:40 am

"1. This is to inform you that subsequent to the approval accorded by the Board of Directors of the Bank, at its meeting held on April 27, 2016 and the approval of the shareholders of the bank by way of special resolution dated June 7, 2016 for the QIP, the Capital Raising Committee of the Bank has today i.e. September 7, 2016, inter alia, passed resolutions in connection with the following:

(i) Approving and adopting the preliminary placement document dated September 7, 2016, in connection with the QIP

(ii) Authorising the opening of the QIP on September 7, 2016.

2. -----

3. We further wish to inform you that the Capital Raising Committee of the Board of Directors of the Bank on Monday, September 12, 2016 would consider and determine the price for Equity Shares of the Bank to be issued in the QIP, in accordance with Chapter VIII and other applicable provisions of the SEBI Regulations and Section 42 of the Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014." [Link](#)

From the above communication it is crystal clear that bank as on 7th September had decided to -

- I. open the issue on 7th September, 2016
- II. convene Board meeting on 12th September, 2016 to determine price for allocation

There was no confusion in the minds of the Bank that the law SEBI LODR requires minimum 2-day notice, and the communication at the end very clearly stated that “*the same may be treated as compliance under applicable clause(s) of the Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements) Regulations, 2015*”



SES would interpret that all that was required any further was to decide date of closing the issue and price.

The next question that needs to be examined is, whether there is any law which dictates minimum or maximum gap between closure of the issue and subsequent pricing? To the best of understanding and knowledge of SES team, there is no Regulation which determines how quickly or how long after closure of issue pricing must be done.

The next communication from the Bank makes things clear *inter alia* stated-

As notified by Bank to BSE on 8th September, 2016 at 15:41 pm

*“With reference to the earlier letter dated September 07, 2016 intimating the approval accorded by the Capital Raising Committee of the Bank to open the QIP and of the proposed meeting of the Capital Raising Committee of the Bank on September 12, 2016. Yes Bank Ltd has now clarified that the said date has been intimated in compliance with **recently notified regulations, namely Regulation 29(1) read with Regulation 29(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, which requires a notice of at least two clear working days for meetings of the board of directors for determination of issue price in connection with a fund raising.**”*

*“Consequently, in compliance with the above mentioned Regulations, **(A) the Issue Price for the QIP cannot be determined by the Bank prior to the aforesaid meeting on September 12, 2016. (B) Accordingly, the Bank is required to keep the issue open till September 09, 2016.**” [Link](#)*

- (A) if the company has called a Board meeting on 12th September 2016, obviously the pricing cannot be decided by the bank prior to that and previous communication indicated the intention. Therefore, this is a superfluous statement as a prelude to next announcement.
- (B) This statement that accordingly the Bank is required to keep the issue open is a decision that is taken by the bank and does not flow out of any Regulation of SEBI. ICDR Regulation 85 talks about relevant date and that is 7th September 2016 as per Regulations. LODR does not talk about pricing date. If at all there was to be any link between closing date and pricing date it must have been stated in Offer/ Placement Document.

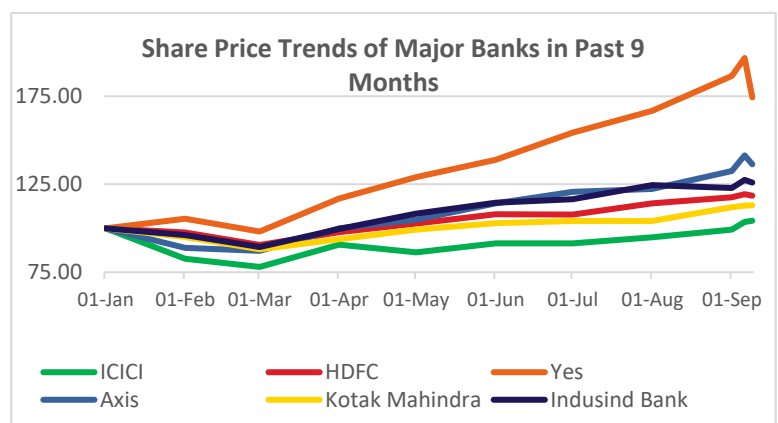
The placement document talks about pricing and pricing date but does not link it with reference to closing date. The custom is that the pricing is done immediately after closing the books, however it is not regulated by SEBI but more by custom, need to adhere to time schedule and market forces.

Therefore, it can be safely concluded that

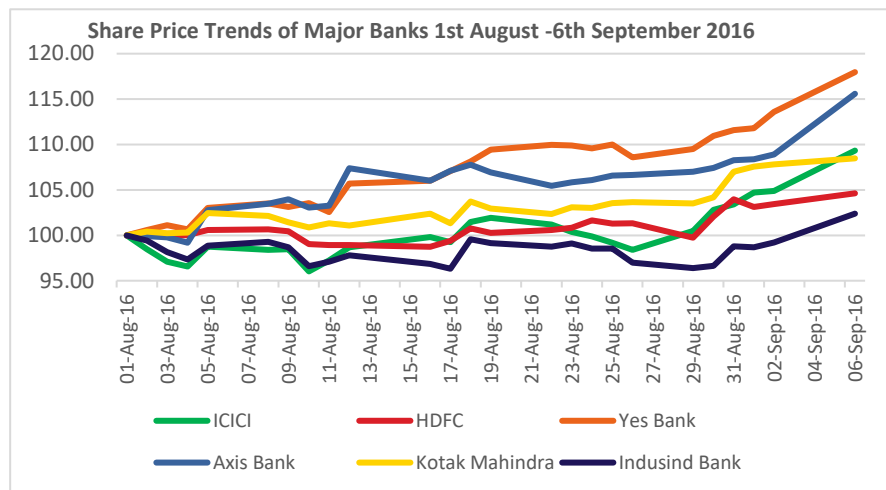
- There is no regulation which dictates the period for which issue is to be opened
- There is no regulation which prescribes time period between closing and pricing of issue
- Regulations prescribes ‘Relevant Date’ and intimation for Board Meeting for pricing, both were complied with and all the parties were aware of the Regulations.
- Therefore, taking shelter under excuse that recently notified Regulations mandated keeping issue for three days can be called at best a poor joke and divert blame.

FUNDAMENTAL FACTORS-MARKET DYNAMICS

Yes Bank shares had a dream run as far as share price goes. Following graphs of normalized price clearly gives a complete picture. It appears that Yes Bank was favorite of investors and stood far ahead of its formidable competitors. While its competitors had a rather poor run in comparison, with the second best performer Axis Bank way below in price performance. On 6th September 2016 while normalized price of Yes Bank was 196.76, AXIS was at 136.33. Indicating that Axis rose by 36.33% as compared to that Yes rose by 96.76 % a clear lead of 60%. The dream run continued in August 2016 as



well and extended into September coming to a halt on 7th September.

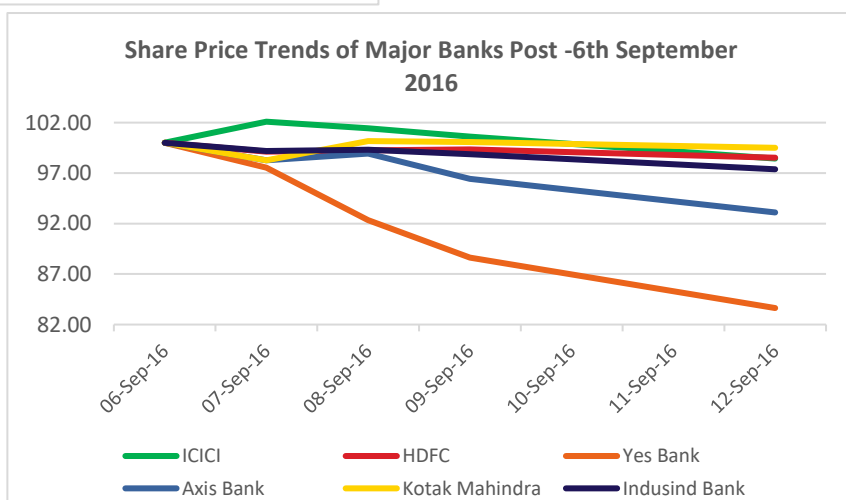


In August and early September as well the scrip of Yes bank outperformed its formidable peers. Once again beating Axis, although by a narrow margin.

On issue opening date it saw a reversal of trend and in three session Yes Bank scrip performed worst compared to its Peers. And fell by about 12% in three days.

Following questions need to be asked-

- 1) What was it that was driving the price of Yes Bank?
- 2) What changed on 7th September?
- 3) If investors were backing the shares for last 9 months, suddenly what changed on 7th September 2016?
- 4) How does it matter to an investor whether the issue is open for three days or one day?



COMMUNICATION POST ISSUE WITHDRAWAL (OR DEFERRED)

The thrust of the communication is on following-

- The issue was deferred(withdrawn) due to volatility
- Book was oversubscribed
- Confusion in minds of investors why issue will be open for three days
- Will launch issue again sooner than later
- Will approach SEBI for changing QIP guidelines

SES is of the view that whether books were oversubscribed or not is a matter of record. One can understand that poor retail investors may not understand Regulations but here the Bank was dealing with QIBs and they are supposed to be sophisticated investors.

Whether the Bank will be allowed a subsequent QIP will be governed by following Regulation of ICDR

Validity of the special resolution.

88. (1) Allotment pursuant to the special resolution referred to in clause (a) of regulation 82 shall be completed within a period of twelve months from the date of passing of the resolution.

(2) The issuer shall not make subsequent qualified institutions placement until expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

As the Resolution passed by shareholder is valid for a year, SES is of the opinion that the Bank may not be required to approach shareholders again for any subsequent QIP provided it is completed in one year and is within the limits. As regards



6 months' gap between two QIPs, a lot will be dependent upon the fact, whether SEBI treats a failed QIP as a QIP made or not. The Regulations do not differentiate with a successful attempt vs unsuccessful. Logically speaking a failed QIP will be counted as a QIP, like a failed IPO. If it was not to be counted in that case a company having failed would keep on making multiple attempts, causing avoidable uncertainty in the market. If that was not the logic, there was no need to prescribe six months' gap at all, as if a failed attempt could be made many times why stop a successful attempt.



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