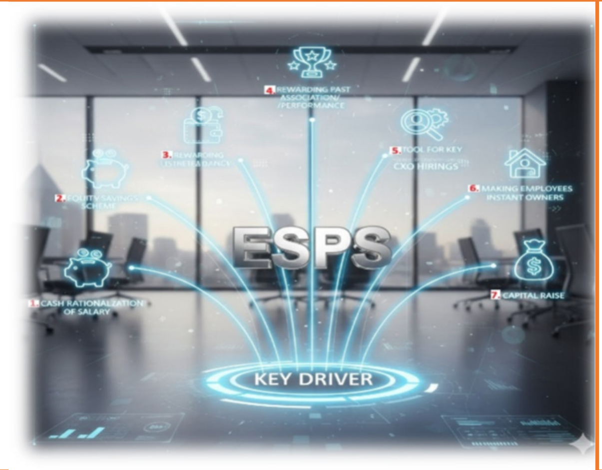

"ESPP" / "ESPS" – What, Why and When

Author: Mr. Uma Shankar Acharya
Partner, ArthEdge Corporate Consulting LLP
Email: umashankar@arthedge.co.in

Employee Stock Purchase Plan or Employee Share Purchase Plan ("**ESPP**") is also referred to as Employee Stock Purchase Scheme ("**ESPS**") in SEBI language. The difference is just nomenclature. It is another variant of share based employee benefit ("**SBEB**").

Statistically, ESPS use in India is lesser than 10% of all SBEB programs taken together where majority adopt Employee Stock Option Plans ("**ESOPs**"). Whereas, in the developed economies particularly in the United States ("**US**"), its adoption rate is way higher. An article published by National Association of Stock Plan Professionals in the US ("**NASPP**") reports that around 57% of the Public companies in the US adopt ESPS.

In India, ESPS has been the last bencher as (i) decisively not adopted, or (ii) not explored. We have nothing to say for situation (i); but have prepared this compilation for situation (ii) summarizing what are ESPSs, why are those used and when.

ESPS is an equity based compensation where an offer is made by a company to its eligible employees to purchase shares with "**upfront**" payment and become "upfront" owners" (unlike ESOPs which defer equity ownership with many forfeiture riders). ESPS comes with minimum 1 year lock-in period restriction during which shares cannot be sold/ transferred.

Well, these upfront ownership and lock-in aspects offer opportunities to strategize/ customize ESPS that prove significantly more efficient than a traditional ESOP program in certain business situations.

Game changer structures are possible using ESPS in situations/ objectives detailed below like high tax saving equity LTIP in an unlisted company, critical CXO hiring with appropriate contractual clauses, equity saving or contributory benefit plans for mid/ large cap listed companies.

The indicative situations/ objectives where ESPS has been considered a better fit:

A. Listed Entities		
Sl. No.	**Objective**	**Reason**
1	Reward past association/ loyalty *(e.g. BPCL in 2020)*	Crossing a milestone or special achievement/ event
2	Hire/ retain/ reward Leadership/ Top Management *(e.g. Jindal Steel & Power in 2013, Suzlon in 2014, Tanla in 2018)*	Negotiation, rewarding past performance, or skin-in the-game at the beginning
3	Raise Capital *(e.g. several PSU Banks namely PNB, Cent Bank of India, UBI, Allahabad Bank, Can Bank, OBC, etc. in Year 2018 & 2019)*	Capital adequacy
4	Equity Savings Scheme or Contributory Benefit program with systematic payroll deduction *(few in India like Havells in 2022, Godfrey in 2024, plenty in EU/ US)*	Promoting co-ownership culture, savings, rationalisation of cash salary

B. Unlisted Entities

Instances of ESPS implementation are rare due to:

- No willingness of employees due to upfront investment risk in the absence of marketability of shares
- No willingness of Company due to unclear regulations on ESPS, upfront dilution, upfront changes in the Cap table.

However, in handful of instances, CEOs are offered ESPS to have:

(i) Significant personal tax advantage;
(ii) Skin-in-the-game; and
(iii) Belief that company won't play trick to avoid allotment of shares in future.

Cautions adopted in unlisted scenario: Retention/ performance are taken care by appropriate contractual clauses claiming the shares back to shareholders/ trust.

For a structuring a successful ESPS program, it is important have 'a predictable ESPS roadmap' worked-out considering all relevant parameters with appropriate numerical analysis and simulations with reference to applicable laws, practice, accounting, tax, and projected business growth/ valuation.

Our write-up "Comparative Analysis of Instruments of Equity Based Compensation - ESOP vs. SAR vs. ESPP vs. Phantom" may be relevant to understand ESPS better. This write-up is available at our website along with our other compilations.