

8. ISSUE OF SHARES

ANALYSIS OF PREVIOUS EXAMINATIONS FOR THEORY QUESTIONS

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CHAPTER OVERVIEW

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SECTION 1: THEORY FOR CLASSROOM DISCUSSION

Q.No.1. What is Share & share certificate? What is the form of Share certificate? What are its contents? (C) (NEW SM, OLD SM)

- 1) **DEFINITION OF SHARE:** Section 2(84) defines share as a share in the share capital of a company and includes stock. The share capital of a company is divided into small units having a certain face value. Each such unit is termed as **share**¹.
- 2) **SHARE CERTIFICATE [SEC 46(1)]:**
 - a) A certificate
 - i) issued under the common seal, (if company has common seal) or
 - ii) signed by -
 - 2 directors or
 - a director and the CS, wherever the company has appointed company secretary
 - iii) specifying the shares held by that person,
 - b) A certificate shall be prima facie evidence of the title of the person to such shares.
- 3) **MANDATORY FOR EVERY COMPANY:** Issue of share certificate is mandatory for every company having share capital, whether public or private.

¹ Example 1: Sun Bakers Limited has authorised share capital of Rs. 50.00 lacs. The face value of each unit of capital or 'share' is Rs. 10. In this case, it can be said that the company has 5.00 lacs shares of Rs. 10 each. When these shares (either in part or whole) are allotted to various persons, they, on the date of allotment, become shareholders of the company.

- 4) **CONDITIONS FOR ISSUE OF SHARE CERTIFICATE:** Share certificate can be issued only -
- After passing a Board Resolution in this regard, and
 - On surrender of allotment letter by the allottee to the company
- 5) **DEPOSITORY²:** Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
- 6) **FORM, MANNER ETC. BY CG:** It makes obligatory for companies to follow the rules prescribed by CG in regard to the following matters:
- The manner of issue or renewal of a certificate or issue of a duplicate thereof.
 - The form³ of a certificate (*original on renewed or a duplicate thereof*).
 - The particulars to be entered in the
 - Register of Members or
 - Register of renewed or duplicate certificate.
 - The form of such registers.

Q.No.2. What is the law and procedure for “Issuing a duplicate share certificate” under the provisions of the Companies Act, 2013 in case the original share certificate is lost or destroyed? (B) (NEW SM, N11 - 5M)

ISSUE OF DUPLICATE SHARES [Sec 46(2)]: A company may issue a duplicate certificate of shares if original certificate

- is proved to have been lost or destroyed or
- has been defaced, mutilated or torn and is surrendered to the company.

PROCEDURE: In case of -

- Lost or destroyed share certificate:** An application is required by the company along with an affidavit and an indemnity bond to issue a duplicate share certificate to the shareholder.
- Mutilated or torn share certificate:** An application with the original certificate in its mutilated or torn form sent to the company will get the shareholder a duplicate one.

Once the duplicate share certificate is issued, necessary record of the same will be made by the company in its register of members.

PENALTY FOR FRAUD [SEC 46(5) OF THE COMPANIES ACT, 2013]: If a company with intent to defraud issues a duplicate certificate of shares, then

- Company shall be punishable with fine
 - Minimum: 5 times the face value of the shares involved in the issue of the duplicate certificate
 - Maximum: (i) 10 times the face value of such shares or (ii) Rs.10 crores, whichever is higher
- Every officer of the company who is in default shall be liable for action u/s 447 (Fraud).

- Demat** - Now-a-days most of the listed shares are held in electronic format. Even banks and financial institutions now insist for demat of securities for charge creation to facilitate corroboration with central registry for loans and mortgages. Physical securities are mostly limited to private limited companies and closely held companies.

At present there are two depositories in India: NSDL and CDSL with various depository participants (DPs) linked to them. Dematerialised securities are held by investors in their respective accounts with the DP. The DP keeps a track of transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all these procedures.

- Signature in share certificate Rule 5(3):** Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by the secretary or any person authorised by the Board for the purpose subject to following conditions:
 - If the composition of the Board permits it, at least one of the aforesaid two directors shall be a person other than the MD or WTD.
 - In case of a OPC, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed
 - by 1 director or a person authorized by the BOD of the company for the purpose and
 - the CS, or any other person authorized by the Board for the purpose.

TIME LIMIT FOR ISSUE OF DUPLICATE SHARE CERTIFICATE:

- 1) In case **unlisted** companies, the duplicate share certificates shall be issued within a period of 3 months and
- 2) In case of **listed** companies such certificate shall be issued within 45 days, from the date of submission of complete documents with the company respectively.

SIMILAR QUESTION:

1. Sushil, a shareholder, holding 100 shares in XYZ Ltd. applied to the Company for issuing of a duplicate shares certificate. As a lawman, advise the Company with reference to the circumstances and conditions subject to which duplicate shares certificates can be issued?
 - A. Refer the above provisions.

Q.No.3. What is the nature of share and debenture? What are its basic requirements? (C) (NEW SM, OLD SM)

NATURE OF SHARES [Sec 44]:

- a) **Movable property:** Shares or debentures or other interest of any member in a company are movable property.
- b) **Transferable:** Shares are transferable in the manner provided in the AOA of the company.

BASIC REQUIREMENTS:

- 1) **Numbering of Shares and Debentures [SEC 45]:**
 - a) **Distinctive Numbering:** In case of company having a share capital, every share shall be distinguished by its distinctive number
 - b) **Exception:** The above rule is not applicable to shares held in the records of depository.
- 2) **Signing:** Certificate has to be issued under common seal of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Q.No.4. Write about various kinds of share capital? (C) (NEW SM, OLD SM)

KINDS OF SHARE CAPITAL [SEC 43]: The share capital of a company limited by shares shall be of two kinds:

- 1) Equity share capital.
- 2) Preference share capital.

EQUITY SHARE CAPITAL: Share capital which is not preference share capital is termed as Equity Share Capital.

EQUITY SHARE CAPITAL IS FURTHER CLASSIFIED INTO TWO TYPES:

- 1) Equity Shares with voting rights, (*Plain Vanilla*) or
- 2) Equity Shares with differential rights. (*as to dividends, voting etc. subject to prescribed conditions*).

PREFERENCE SHARE CAPITAL: Share Capital carrying a preferential right with respect to:

- 1) Payment of dividend (*absolute/ fixed/ ad-valorem*) and
- 2) Repayment of capital during winding up.

Q.No.5. Explain the provisions of the Companies Act, 2013 relating to issue and redemption of Preference Shares? (A) (NEW SM, OLD SM)

MEANING: A Preference share is a share that carries a preferential right with respect to:

- 1) Payment of dividend and
- 2) Repayment of capital during winding up.

ISSUE OF PREFERENCE SHARES

- 1) **Company to issue redeemable preference shares [Sec 55(1)]:** Company limited by shares shall not issue irredeemable preference shares. (*i.e., only Redeemable Preference shares can be issued by a company*)
- 2) **AOA Authorization:** A Company limited by shares can issue preference shares only if it is authorised by AOA of the company.
- 3) **Special Resolution:** The issue has been authorized by passing a Special Resolution in the General Meeting of the company
- 4) **No Subsisting Default:** The company, at the time of such issue has no subsisting default in:
 - a) the redemption of preference shares issued earlier; or
 - b) in payment of dividend due on any preference shares
- 5) **Period for redemption of preference shares:** The Company (limited by shares) cannot issue preference shares which are redeemable after the expiry of 20 years from the date of issue (*i.e., The term of Preference Shares shall not exceed 20 Years*).
Exception: The term may exceed 20 years but not exceeding 30 years, if the following conditions are satisfied -
 - a) Such issue can be made only by a company engaged in infrastructure projects (*as specified under Schedule VI*).
 - b) Minimum 10% of such preference shares should be redeemed every year from the 21st year onwards or earlier at the option of such preferential shareholders.

REDEMPTION OF PREFERENCE SHARES

- 1) **Redeemed shares to be fully paid:** Only Fully paid up Preference shares can be redeemed (*i.e. partly paid up preference shares shall not be redeemed until they are fully paid up*).
- 2) **Sources for Redemption:** Preference shares can be redeemed out of the:
 - a) Profits available for distribution as dividend (*Divisible profits*) or
 - b) Proceeds of a fresh issue of shares made for the purpose of such redemption.
- 3) **Proposed shares to be redeemed shall be transferred to the CRR account:**
 - a) If preference shares are redeemed out of company's profits then an amount equal to the nominal value of shares to be redeemed shall be transferred to Capital Redemption Reserve (CRR) Account.
 - b) The capital redemption reserve account may be utilised only for the purpose of issuing fully paid bonus shares to the members.
- 4) **Premium payable on redemption:**
 If premium is payable on redemption then such premium shall be provided out of –
 - a) Profits of the company or
 - b) Securities premium account of the company.

NOTE: However, in case of Companies whose financial statements are prepared in compliance with the accounting standards (Sec 133) then the premium payable on redemption shall be provided for out of the profits of the company only.

- 5) **Notice to ROC [Sec 64]:** A notice of redemption of preference shares is to be given to ROC within 30 days in the prescribed form (Form SH7) along with a copy of altered MOA.

SIMILAR QUESTIONS:

1. M/s Fashion Ltd, a listed company decided to issue preference shares. The Company plans to issue 40 years redeemable preference shares. Can a company do so? What are the requirements of companies act in regard to issue and redemption of preference shares?
- A. No. Company limited by shares cannot issue preference shares redeemable for a period exceeding 20 years. However, companies engaged in infrastructure projects can issue redeemable preference shares for a period of 30 years.

Write above answer for requirements

2. X Ltd. wants to issue redeemable preference shares. Can it proceed for issue even if its AOA is silent on this point?
- A. No. A company limited by shares can issue redeemable preference shares only if its AOA authorises it, subject to the provisions of Sec. 55.
3. State the sources of redemption of preference shares. Can partly paid preference shares be redeemed?
- A. Refer the above answer. No, only fully paid up preference shares can be redeemed.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 3)

Q.No.6. Discuss the provisions relating to redemption of preference shares where the company is unable to redeem the preference shares [Sec 55] (B) (NEW SM)

SECTION 55(3) : UNREDEEMED PREFERENCE SHARES (UPS) AND ITS REDEMPTION:

1) Issue of further redeemable preference share capital:

- a) If a company is not in a position to redeem any preference shares or to pay dividend on such shares in accordance with the terms of issue (*such shares are treated as unredeemed preference shares*) then
 - b) Company may issue further redeemable preference shares equal to the amount due in respect of the unredeemed preference shares (*including the dividend thereon*)
- 2) On the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

CONDITIONS FOR REDEMPTION OF UPSS:

- 1) The consent of holders of 75% in value of UPSS is obtained
- 2) The approval of the Tribunal, on a petition made by company in this behalf, is obtained.
- 3) The Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

NOTE: The issue of further redeemable preference shares or the redemption of preference shares shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

NOTICE TO ROC [SEC 64]: A notice of redemption of preference shares is to be given to ROC within 30 days in the prescribed form along with a copy of altered MOA.

SIMILAR QUESTIONS:

1. On 24/08/2014 M/s Yamuna Ltd has issued Preference shares amounting Rs. 20 Crores for a period of 10 years. At the end of 10th year the company is facing severe financial difficulty and thereby it is not in a position to redeem its preference shares. The Board of Directors of Yamuna Ltd decided to extend the tenure of preference shares due to financial difficulties of company. Is the decision of Board of directors acceptable under the provisions of companies act, 2013. Advise the company as to redemption of preference shares.
- A. No the decision of BOD is not acceptable as per provisions of companies act. Yamuna Ltd is required to redeem its preference shares by following the above stated procedure.
2. Option to redeem the redeemable preference shares only lies with the holders thereof. Comment.
- A. No. Redemption should be made by the company, subject to the Act, and as per the terms and conditions of issue of such shares u/s 55.
3. A public company can issue either redeemable or irredeemable preference shares. Comment?
- A. No company shall issue irredeemable preference shares u/s 55.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 8,9)

Q.No.7. what are the conditions that needs to be satisfied for issue of Equity shares with differential rights? [Sec 43] (A) (NEW SM, OLD SM)

CONDITIONS FOR THE ISSUE OF EQUITY SHARES WITH DIFFERENTIAL RIGHTS:

A company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, subject to the following conditions:

- 1) **AOA:** the articles of association of the company authorizes the issue of shares with differential rights;
- 2) **Ordinary Resolution:** The issue of such shares is authorized by an Ordinary Resolution at a General Meeting.
NOTE: Where the equity shares of the Company are listed on recognized stock exchange, the issue of shares shall be approved by the shareholders through postal ballot.
- 3) **Maximum limit:** Equity shares with DR's of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
- 4) **No Defaults:**
 - a) Company has not defaulted in filing financial statements and Annual returns for a period of 3 financial years immediately preceding the financial year in which it is decided to issue such shares;
 - b) The company has no subsisting default in the
 - i) payment of a declared dividend to its shareholders or
 - ii) repayment of its matured deposits or payment of interest on deposits or
 - iii) redemption of debentures or payment of interest on debentures or
 - iv) redemption of preference shares or payment of dividend.
 - c) The company has not defaulted in -
 - i) payment of the dividend on preference shares or
 - ii) repayment of any term loan from a
 - Public financial institution or
 - State level financial institution or
 - Scheduled Bank or
 - iii) Interest payable thereon
 - d) The company has not defaulted in
 - i) payment of dues with respect to statutory payments relating to its employees to any authority or
 - ii) crediting the amount in Investor Education and Protection Fund (IEPF) to the CG;

NOTE: However, a company may issue equity shares with differential rights upon expiry of 5 years from the end of the FY in which such default was made good.
- 5) **Not penalized:** During the last 3 years, the Court or Tribunal has not penalized the company for convicting any offence under the
 - a) Reserve Bank of India (RBI) Act, 1934,
 - b) The Securities and Exchange Board of India (SEBI) Act, 1992,
 - c) The Securities Contracts Regulation (SCRA) Act, 1956,
 - d) The Foreign Exchange Management (FEMA) Act, 1999
 - e) Any other special Act, under which such companies being regulated by sectoral regulators.

NOTE:

- 1) **No Conversion:** *The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.*
- 2) **Privileges:** *The equity shareholders with differential voting rights shall enjoy all other rights such as*
 - a) *bonus shares, right shares, etc.*
 - b) *similar to other equity shareholders, subject to the differential voting rights with which such shares have been issued.*
- 3) **Particulars of shares to be maintained in the register of members:** *The Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.*

SIMILAR QUESTIONS:

1. Can a company issue Non-voting equity shares? State the conditions, if any, in this regard.
 - A. Yes the company can issue equity shares with differential voting rights by following the above stated procedure.
 2. A public company cannot issue equity shares with differential voting rights as to dividend Comment.
 - A. False. Sec 43 authorises the issue equity shares with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.
3. Can equity shares with differential voting rights be issued? If yes, state the conditions under which such shares may be issued? (M18 (N) - 6M)
 - A. Yes, Refer above Answer.

Q.No.8. Explain the provisions of Companies Act, 2013 about “issue of shares at a premium”. Also State the purposes for which the share premium A/c can be used under the provisions of the Companies Act, 2013. (A) (NEW SM, OLD SM, M11 - 8M, M12 - 5M)

ISSUE OF SHARES AT PREMIUM:

- 1) **Meaning:** Shares are said to be issued at a premium if the issue price is higher than face value. The excess of issue price over face value is termed as Premium.
- 2) **Cash or Kind:** Shares can be issued at premium which may be received in cash or in kind.

NO PROVISION IN THE ACT:

- 1) There is no restriction contained in the Companies Act 2013 on the issue of shares at premium. Shares can be issued at differential premium.
- 2) No provision is required in the articles to issue the shares at a premium.

SECURITIES PREMIUM ACCOUNT [Sec 52]: If a company issues shares at a premium (*whether for cash or otherwise*) then the amount of premium received shall be transferred to the “securities premium A/c”

UTILIZATION OF SECURITIES PREMIUM BY OTHER COMPANIES [SEC 52(2)]: The 'Securities premium A/c' can be used for the following purposes:

- 1) Issuing fully paid bonus shares to members.
- 2) Writing off the preliminary expenses of the company.
- 3) Writing off the (a) expenses incurred or (b) commission paid or (c) discount allowed, on the issue of shares or debentures of the company.
- 4) Providing for premium payable on redemption of any redeemable preference shares or debentures of the company.
- 5) Buy Back of own shares or other securities u/s 68.

UTILIZATION OF SECURITIES PREMIUM BY PRESCRIBED COMPANIES [SEC 52(3)]: In case of companies whose financial statements are prepared in compliance with the Accounting Standards prescribed u/s 133, securities premium can be used only for:

- 1) Issuing fully paid bonus shares to members.
- 2) Writing off the (a) expenses incurred or (b) commission paid or (c) discount allowed, on the issue of shares or debentures of the company.
- 3) Buy Back of own shares or other securities u/s 68.

APPLICATION OF PREMIUM FOR OTHER PURPOSES: If Security Premium is used for any purpose other than the purposes permitted under the Act then Securities Premium account shall be treated as Share Capital of the Company and the provisions of the act as are applicable to reduction of share capital shall apply.

SIMILAR QUESTIONS:

1. A company desirous of issuing shares at a premium seeks your advice, regarding the purpose for which money received as share-premium may be applied by the company.
 - A. Refer above answer.

2. Explain the provisions of the Companies Act, 2013, relating to the utilization, by a company, of the amount standing to the credit of Securities Premium A/c. (OLD PM)
- A. Refer above answer.
3. WW Limited has an authorized share capital of 1,00,000 equity shares of Rs.100 per share and an amount of Rs.3 crores in its share premium Account as on 31-3-2017. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. (M18 (O) - 4M, RTP M19 (N))
- A. Refer above answer.
4. A company desirous of issuing shares at a premium seeks your advice, whether the company can issue such shares at a premium for consideration other than cash? Referring to the provisions of the Act, advise the company?
- A. Refer above answer.
5. Shares at a premium can also be issued for consideration other than cash. Comment?
- A. Yes. The Companies Act, 2013 uses the word "at a premium, whether cash or otherwise".

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 5)

Q.No.9. Write the provisions regarding the "Issue of shares at a discount" under the companies Act, 2013. (Sec 53) (B) (NEW SM, OLD SM, N12 - 5M)

MEANING: Shares are said to be issued at a discount if the issue price is less than its face value. The excess of face value over the issue price is called the discount amount.

ISSUE OF SHARES AT A DISCOUNT [SEC 53]:

- 1) A company shall not issue shares at Discount.
- 2) Any Issue at a discount by a company is void.

Exceptions:

- a) Sweat equity shares [Sec 54].
- b) A Company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme as per RBI guidelines [Sec 53(2A)].

PENALTY FOR IMPROPER ISSUE OF SHARES AT A DISCOUNT:

- 1) Where a company issues shares at discount by contravening the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the
 - a) amount raised through the issue of shares at a discount or
 - b) Rs. 5,00,000,
 whichever is less,
- 2) Company is required to refund the amount along with interest @ 12% p.a. from the date of issue of shares.

SIMILAR QUESTIONS:

1. Explain the provisions of the Act, regarding the issue of shares at a discount. State the liability of the directors in respect of improper issue of shares at a discount? (OLD PM)
- A. Refer above answer
2. What are the rules relating to issue of shares at a discount? (OLD PM)
- A. Refer Point "Issue of shares at discount"
3. Whether a company may issue shares at discount? State the conditions which must be fulfilled before issuing the shares at discount contained in the Companies Act, 2013. (OLD PM)
- A. Refer above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 6)

Q.No.10. Explain the provisions of the Companies Act, 2013 relating to sweat equity shares. (Sec 54) (A) (NEW SM, OLD SM)

DEFINITION [Sec 2(88)]: Sweat equity shares means equity shares

- 1) issued by a company
- 2) to its directors or employees⁴,
- 3) at a discount or for consideration other than cash,
- 4) For (a) providing know-how or (b) making available rights in the nature of intellectual property rights (IPRs) or (c) value additions⁵, by whatever name called.

CONDITIONS: A company may issue sweat equity shares subject to the following conditions:

- 1) **Special Resolution:** Issue of Sweat Equity shares must be authorized by SR;
- 2) **Contents of Resolution:** The Resolution must specify
 - a) Number of shares,
 - b) Current market price,
 - c) Consideration, if any, and
 - d) The class or classes of directors or employees to whom such equity shares are to be issued;
- 3) **Class:** Sweat equity shares must be of same class of shares already issued by the company.
- 4) Sweat Equity shares should be issued in accordance with –
 - a) SEBI regulations, in case of Listed Companies⁶,
 - b) Companies (Shares and Debentures) Rules, 2014, in case of Unlisted Companies.
- 5) **Treatment [Sec 54(2)]:** The rights, limitations, restrictions, and provisions relating to Equity shares are applicable to sweat equity shares issued by the company. Sweat Equity Shareholders shall rank pari-passu with other equity shareholders.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 7)

Q.No.11. What is meant by calls on shares? Also state the rules for making calls? (B) (NEW SM, OLD SM)

CALLS ON SHARES:

Meaning: Call refers to the demand for share money other than those by way of application and allotment.

RULES FOR MAKING CALLS:

- 1) **Board Resolution:**
 - a) Only BOD is empowered to make calls on shares. Call must be made by way of resolution at the Board Meeting.
 - b) The power cannot be delegated to a director or to a committee of directors or to any other officer of the Company [Sec.179].
 - c) The Board's resolution making the call must specify:
 - i) The amount of call per share and
 - ii) The time allowed for its payment.

- 4) **Employee:** means a permanent employee of the company who has been working in India or outside India; or a director of the company, whether a WTD or not; or an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;
- 5) **Value additions:** means Actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.
- 6) Whose equity shares of the company are listed on a recognised stock exchange.

2) **Uniform Basis [Sec 49]:**

- a) Calls on shares of same class must be made on a uniform basis.
- b) However, Shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the 'same class'.

3) **Interest of Company:** The power to make calls must be exercised in the general interest and for the benefit of the Company.

Q.No.12. Write the provisions of Payment of calls in advance?

(B) (NEW SM, OLD SM)

CALLS IN ADVANCE [Sec 50]: AOA must authorize the company to accept Calls in advance (*i.e. accept money remaining unpaid on the shares, in respect of calls not made by the company*).

CONSEQUENCES: When a Company receives payment in advance of calls, the consequences will be as follows:

- 1) **No Voting rights:** The shareholder is not entitled to any voting rights in respect of calls in advance paid by him until the same is called up
- 2) **Liability extinguished:** *The shareholder's liability to the Company in respect of the call for which the amount has been paid is extinguished.*
- 3) **Interest:**
 - a) *The shareholder is entitled to claim interest on the calls in advance in according to AOA.*
 - b) *If there are no profits then interest must be paid out of capital, because shareholder becomes the creditor of the Company in respect of this amount.*
 - c) *Maximum interest on calls in advance shall not exceed 12% p.a. (Regulation 18 of Table-F of Schedule-I).*
- 4) **Not refundable:** *The amount received in advance of calls is not refundable.*
- 5) **Priority:** *In the event of winding up, the shareholder ranks after the creditors, but calls in advance must be paid along with the interest, if any before the other shareholders are paid off.*
- 6) **Duly exercised power:** *The power to receive the calls in advance must be exercised in the general interest and for the benefit of the Company.*

SIMILAR QUESTIONS:

1. PQR Ltd. had issued 10,000 shares of Rs. 10 each, on which company called up Rs. 75 per share. However, Mr. C a shareholder of PQR Ltd., deposited in advance the remaining amount due on his shares without any calls made by PQR Ltd. Referring to the provisions of the companies Act, 2013, state the rights and liabilities of Mr. C, which will arise by the payment of calls made in advance. (N18 (O) - 4M)
- A. Refer above answer
Note: It has been presumed that PQR Ltd was authorized by its articles to accept the unpaid calls.
2. Coriander Masale Limited has issued 10,00,000 equity shares of Rs. 10 each on which Rs. 6 per share has been called till allotment and the first and final call of Rs. 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of Rs. 10 per share. In the upcoming extra-ordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares. However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of first and final call. Is the contention of Company Correct?
- A. Yes, the contention of Company is correct. The restriction will continue till the amount is duly called up by the company.
3. Can shareholder demand any voting rights for calls in advance?
- A. Refer 'point 1' in the above answer.
4. Is there any economic benefit on calls in advance? Explain?
- A. Refer 'point 3' in the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. CRD 4)

Q.No.13. What are the provisions relating to voting rights of members?

(A) (NEW SM, OLD SM, OLD PM)

VOTING RIGHTS OF MEMBERS [SEC 47]:

1) Voting right of member holding equity share capital [Sec 47(1)]:

- a) Every member of a company limited by shares and holding equity share capital shall have a right to vote on every resolution placed before the company.
- b) On a poll, the voting right of every equity shareholder shall be in proportion to his share in the paid up equity share capital of the company.
- c) Voting rights of equity shareholders are subject to the conditions of
 - i) Sec 43 (Differential Rights),
 - ii) Sec 50(2) (Calls in Advance) and
 - iii) Sec 188(1) (Related Party Transactions)

2) Voting right of member holding preference share capital [Sec 47(2)]: Preference shareholders have a right to vote only on resolution for the:

- i) matters which directly affect the rights attached to his preference shares;
- ii) winding up of the company;
- iii) repayment or reduction of share capital (Equity or Preference share capital).

NOTE: On a poll, his voting right shall be in proportion to his share in the paid-up preference share capital of the company.

Exception: If dividend due to preference shareholders or any part of it, remains unpaid for a period of 2 years or more then every preference shareholders are entitled to vote on every resolution placed before the meeting.

3) Proportion of voting rights: The voting rights of equity shareholders and preference shareholders shall be in proportion to their paid-up capital.

Note: Section 47 shall not apply where memorandum or articles of association of private company and IFSC and Private Company so provides.

SIMILAR QUESTION:

1. What are the different aspects of voting rights of a member? (OLD PM)
- A. Refer the above sec 47.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. CRD 1, 2; SELF PRACTICE 1, 2)

Q.No.14. Explain variations of Share Holders Rights

(A) (NEW SM)

MEANING: Variation refers to change in rights of any class of shareholders.

- 1) **APPLICABILITY:** Share Capital of the Company consists of various **classes** of shares.
- 2) **VARIATION IN RIGHTS OF SHAREHOLDERS WITH CONSENT:** Rights attached to any class of shares may be varied if the following conditions are satisfied-

- a) Consent in writing of the holders of not less than 3/4th of the issued shares of that class

Or

A special resolution passed at a separate meeting of the holders of the issued shares of that class.

- b) Such variation should be authorized by MOA or AOA of the company;
- c) Where no such authorization is there in MOA or AOA, such variation is not prohibited by the terms of issue of the shares of that class.

d) **Consent from others:** If variation in one class of shareholders affects the rights of any other class of shareholders then the consent of 3/4th of such other class of shareholders shall also be obtained.

3) **RIGHTS OF DISSENTING SHAREHOLDERS UPON VARIATION:**

a) **Application to tribunal:** Any member can object to variation of Rights.

b) **Minimum Members:** Holders of not less than 10% of the issued shares of that class who had not assented to the variation may apply to the Tribunal to have the variation cancelled,

c) Where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal

d) **Time Limit:** Application shall be made within 21 days after the date on which the consent was given or the resolution was passed, and

e) **Representative Group:** Application may be made on behalf of the shareholders (entitled to make the application) by one or more of their number as appointed for this purpose by writing.

4) **BINDING DECISION OF TRIBUNAL:** The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

5) **FILING COPY OF ORDER WITH THE ROC:** Within 30 days of the date of the Tribunal order, the company shall file a copy of order with the ROC.

6) **DEFAULT IN COMPLIANCE WITH THE PROVISION:** If any default is made in complying with the provisions of this section,

Who is Punishable	Punishment
Company	Fine: Minimum: Rs. 25,000 Maximum: Rs. 5,00,000
Every officer of the company who is in default	Imprisonment: Up to 6 months or Fine: Minimum: Rs. 25,000 Maximum: Rs. 5,00,000 or Both

SIMILAR QUESTION:

1. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights. (RTP N18 (N&O))

A. Refer above answer.

SECTION 2: QUESTIONS FOR ACADEMIC INTEREST FOR STUDENTS SELF STUDY

Q.No.15. Difference between Equity shares and Preference shares?

(C)

Particulars	Equity Shares	Preference Shares
Dividend	The dividend on equity shares is paid only after the preference dividend has been paid.	Shareholders get a preference in dividend payment over equity shareholders.
Winding up	Shareholders get payment of capital after the payment of capital to preference shareholders.	Shareholders get preference in capital Payment in Winding up over equity shareholders.
Rate of dividend	Depends upon the amount of profit available and funds requirement of the company.	Entitled to a fixed rate of dividend.
Dividend accumulation	Cannot be cumulative.	May be cumulative for cumulative preference shares.

Redemption	No redemption of equity shares except under a scheme involving reduction of capital.	Redeemable Preference shares may be redeemed by the company.
Voting Rights	An equity shareholder can vote on all matters affecting the company.	A preference shareholder cannot vote on all resolution.
Voting on a poll	Voting rights in proportion to his share in the paid up equity share capital of the company.	Voting in proportion to his share in the paid-up preference share capital of the company.

Q.No.18.what is meant by issue of shares at ‘Premium’ or ‘Discount’? Why the companies will issue shares at premium or discount. (C) (NEW SM, OLD SM)

Shares are said to be issued at a premium if the issue price is higher than face value. The excess of issue price over face value is termed as Premium.

Shares are said to be issued at a discount if the issue price is less than the face value and the differential known as discount.

- 1) There could be several reasons for issue at premium or discount.
 - a) To capture the play of market forces between the issuer and investor at the time of issue;
 - b) To give effect to the fair value of underlying business or rights linked to the securities;
 - c) To minimise payment of stamp duty / ROC fee during incorporation of the company which is based on the authorised capital of the company
- 2) There are precautionary provisions covered in **section 52 and 53** for both these scenarios (premium or discount) respectively to safeguard the issuer company and its stakeholders.

Q.No.19. Define the terms (a) ‘Capital’ (b) “Share”. (C) (NEW SM, OLD SM)

CAPITAL: In relation to a company limited by shares, the word capital means share-capital.

- 1) It is raised by issue of shares.
- 2) The amount invested by the investors towards the face value of shares is known as share capital.

SHARE: A share is a share in the share capital of a company and includes stock [Sec 2(84)].

- 1) A ‘share’ is smallest unit into which the capital of the company is divided.
- 2) The proportion of the capital to which each member is entitled, is his share.
- 3) A share is not a sum of money; it is made up of various rights contained in the contract (*Borland Trustees vs. Steel Bros. & Co. Ltd*).
- 4) The rights and obligations attaching to a share are those prescribed by the MOA and AOA of the company.
 - a) Rights of a shareholder in the company: Right to receive dividend, Right to attend and vote at meeting, Right to share in surplus assets in event of winding up
 - b) Liability of the shareholder in the company: is to pay calls on shares until shares are fully paid up.

Q.No.20.Write short notes on various terms related to share capital. (C) (NEW SM, OLD SM)

- 1) **NOMINAL OR AUTHORISED OR REGISTERED CAPITAL [SEC 2(8)]**: “Authorised capital” or “Nominal capital” means such capital as is authorised by the MOA of a company to be the maximum amount of share capital of the company.
 - a) It is the amount of capital with which the company is registered.
 - b) It is the maximum amount of capital that a company can issue.

- c) It is stated in the capital clause of the MOA.
- d) The registration fee and stamp duty are payable at the time of registration of the company on the basis of authorised capital.
- e) It is determined after considering present and future requirements, including the working capital and reserve capital, if any.

2) ISSUED CAPITAL [SEC 2(50)]:

- a) Issued capital means such capital as the company issues from time to time for subscription.
- b) It is that part of authorised capital which has been issued by the company for the time being.
- c) It is not required to be disclosed in the MOA.
- d) It includes the share capital issued for cash as well as for consideration other than cash.
- e) It is obligatory for a company to disclose its issued capital in the balance sheet [Schedule III requirement].

3) SUBSCRIBED CAPITAL [SEC 2(86)]:

- a) Subscribed capital means such part of the issued capital which is for the time being subscribed by the members of a company.
- b) It is the nominal amount of shares subscribed by the public.
- c) It is clear that entire issued capital may or may not be subscribed.

4) CALLED UP CAPITAL [SEC 2(15)]:

- a) Called-up capital means that portion of the subscribed capital which has been called up for payment.
- b) It is the total amount called up on the shares issued.

5) PAID UP CAPITAL [SEC 2(64)]: Paid up share capital means such aggregate amount of money credited as paid-up as is equivalent to the:

- i) amount received as paid up in respect of shares issued and includes
- ii) amount credited as paid-up in respect of shares of the company, but does not include
- iii) any other amount received in respect of such shares, by whatever name called.

NOTE: Paid up capital = Called up capital – Calls in arrears

NOTE: 2 Marks question can be expected to define any of the above terms or differentiate between any of them.

Q.No.21. Explain the provisions of the Companies (Share Capital and Debentures) Rules, 2014 relating to issue and redemption of preference shares? (C)

RULES UNDER COMPANIES (SHARE CAPITAL & DEBENTURES) RULES, 2014 WITH REGARD TO ISSUE AND REDEMPTION OF PREFERENCE SHARES:

1) Conditions - Rule 9(1)

- a) The issue has been authorized by passing a **Special Resolution** in the General Meeting of the company
- b) The company, at the time of such issue has no subsisting default in:
 - the redemption of preference shares issued earlier; or
 - in payment of dividend due on any preference shares

2) Resolution - Rule 9(2): The resolution set out to issue preference shares shall contain:

- a) Priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares
- b) Participation in surplus fund
- c) Participation in surplus assets and profits, on winding up

- d) Dividend on cumulative or non-cumulative basis
 - e) Conversion of preference shares into equity shares
 - f) Voting rights
 - g) Redemption of preference shares
- 3) **Register of Members - Rule 9(4):** Register of members maintained under section 88 shall contain the particulars in respect of preference shareholders.
- 4) **Redemption of preference shares - Rule 9(5):**
- a) A company may redeem its preference shares:
 - i) only on the terms on which they were issued; or
 - ii) as varied after due approval of preference shareholders under section 48 of the Act
 - b) The preference shares may be redeemed:
 - i) at a **fixed time** or on the happening of a particular event; or
 - ii) any time at the company's option; or
 - iii) any time at the shareholder's option.

Q.No.22. Explain the provisions of Companies (Share Capital & Debentures) Rules, 2014 relating to sweat equity shares? (C) (NEW SM)

PROVISIONS IN CASE OF UNLISTED COMPANY: An unlisted company can issue sweat equity shares by complying with following provisions of Rule 8 of Companies (Shares and Debentures) Rules, 2014:

- 1) **Special Resolution:**
 - a) Special Resolution passed is valid for 12 months.
 - b) The explanatory statement should contain specified particulars.
- 2) **Limits on issue: In one year**, the company can issue SES up to the amount of **15%** of the existing paid up equity share capital or shares of the issue value of **Rs 5 Crores**, whichever is **higher**.
 - a) Total SES cannot exceed **25% of the paid up equity capital** of the Company **at any time**.
 - b) Startup Company can issue SES up to 50% of its paid up capital within 5 years from date of its incorporation.
- 3) **Lock in period:** The SES issued to directors or employees shall be locked-in period of 3 years from the date of allotment.
- 4) **As a part of managerial remuneration:**
 - a) The SES shall be treated as part of managerial remuneration, if issued to director or manager and the consideration does not form part of assets of the company in balance sheet.
 - b) Thus, if SES are issued to director or manager for technical know-how or intellectual property rights which can be capitalised in books of company, these will not form part of the remuneration.
- 5) **Disclosure in Board's Report:** Directors' Report shall contain specified disclosure on SES.
 - a) The class of director or employee to whom SES were issued
 - b) The class of shares issued as SES.
 - c) The reasons or justification for the issue.
 - d) The principal terms and conditions for issue of sweat equity shares, including pricing formula.
 - e) The total number of shares arising as a result of issue of sweat equity shares.
 - f) The percentage of SES of the total post issued and paid up share capital.
 - g) The diluted EPS pursuant to issuance of SES.

- h) The consideration received or benefit accrued to the company from the issue of SES.
- i) The number of sweat equity shares issued to the directors, KMP or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding 1% or more of the issued share capital.

6) Register of Sweat Equity:

- a) **Form:** The company shall maintain a Register of Sweat Equity Shares in **Form SH.3**.
- b) **Place:** At the **Registered Office** of the company or such other place as the Board may decide.
- c) **Authentication:** The entries in the Register shall be authenticated by:
 - i) the **Company Secretary** of the company; or
 - ii) by **any other person** authorized by the Board.

7) Sweat equity shares and compensation aspects:

- a) **If the sweat equity shares are not issued pursuant to acquisition of an asset:** Accounting Treatment for accounting value of Sweat Equity is treated as a form of compensation to the employee or the director.
- b) **If the shares are issued pursuant to acquisition of an asset:**
 - i) Value of asset as per Valuation report shall be carried in Balance Sheet as per Accounting Standards.
 - ii) Excess of Fair value of Sweat Equity over asset value as above, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

AMENDMENT:

“A startup company, may issue sweat equity shares ~~not exceeding 50% of its paid up capital upto 5 years~~ from the date of its incorporation or registration.”

Provided that in case of a startup company, the conditions mentioned below shall not apply up to 5 years from the date of its incorporation or registration.

- 1) who is a promoter or a person belonging to promoter group or
- 2) a director who either himself or through his relative or through anybody corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company

Q.No.23. Explain publication of authorised, subscribed, and paid-up capital (C) (NEW SM, OLD SM)

Any notice, advertisement or other official publication, or any business letter, bill head or letter paper of a company which contains the amount of the authorised capital of the company shall also contain details of subscribed and paid-up capital (*in an equally prominent position and in equally conspicuous characters*).

IF ANY DEFAULT U/S 60:

- 1) The company shall be liable to pay a penalty of Rs. 10,000/-
- 2) Every officer in default shall be liable to pay a penalty of Rs. 5,000/-, for each default.

SECTION 3: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

Q.No.1. Rishi Limited's share capital is divided into different classes. Now, Rishi Limited intends to vary the rights attached to a particular class of shares. Advise Rishi Limited as to obtaining consent from the shareholders in relation to variation of rights (RTP Nov' 17)

As per section 48 of the Companies Act, 2013 where the share capital of the company is divided into different class, the rights attached to one class may be varied if the following conditions are fulfilled:

- a) If authorised in the memorandum or articles of the company or in the absence of such authorization such variation is not prohibited by the terms of issue of the shares of that class.
- b) Consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class.
- c) If variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained.
- d) If holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution they may within 21 days from the date of consent or resolution apply to the Tribunal to have the variation cancelled. Where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

Q.No.2. J held 100 partly paid up shares of LKM Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of J is valid. **(OLD PM, RTP M15)**

PROVISIONS OF LAW: Sec 106(1) of the Companies Act, 2013 states that the AOA of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

CONCLUSION: In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and J's contention is not valid.

Q.No.3. What are the rights of preference shareholders if dividends remained unpaid? Would your answer be different if preference shares are non-cumulative? **(OLD PM)**

ABC Ltd. has not given dividend to its preference shareholders. In this regard state the rights of preference shareholders and non-cumulative Preference Shareholders on dividend. **(OLD PM)**

PROVISION:

Voting rights of preference share holder:

- a) Every member of a company limited by shares, who is holding any preference share capital shall have a right to vote on the following resolutions:
 - i) matters which directly affect the rights attached to his preference shares;
 - ii) winding up of the company;
 - iii) repayment or reduction of share capital (Equity or Preference share capital).
- b) On a poll, his voting right shall be in proportion to his share in the paid-up preference share capital of the company if voting is conducted by poll.
- c) **Exception:** If dividend due to preference shareholders or any part of it, remains unpaid for a period of 2 years or more then every preference shareholders are entitled to vote on every resolution placed before the meeting.

ANALYSIS AND CONCLUSION: The above provision lays down the rights of preference shareholders who have not been paid dividend for a continuous period of 2 years and this does not change whether the shares are cumulative or noncumulative.

[Note: Vide Notification G.S.R. 464 (E) dated 5th June 2015, in case of private companies Sec 47, shall not apply where MOA / AOA of the private company so provides.]

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Q.No.4. Moon star Ltd” is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. Mr. ‘A’, a shareholder of the Moon star Ltd., deposits in advance the remaining amount due on his shares without any calls made by “Moon star Ltd”.

Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr. A, which will arise on the payment of calls made in advance. **(OLD PM, MTP N14)**

PROVISIONS: Sec 50 of the companies Act, 2013 - Company to accept unpaid share capital, although not called up.

As per Sec.50(1), A Company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. Hence, the Companies Act recognizes the right of a Company to receive calls in advance provided it is authorized by its Articles to do so.

However, sec 50(2) further provides that a member of the Company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him in advance until that amount has been called up.

CONSEQUENCES OF PAYMENT OF CALLS IN ADVANCE ARE AS FOLLOWS:

- a) **Voting rights:** The shareholder is not entitled to voting rights in respect of the moneys so paid by him until such payment become presently payable.
- b) **Liability extinguished:** The shareholder’s liability to the Company in respect of the call for which the amount is paid is extinguished.
- c) **Interest:** The shareholder is entitled to claim interest on the amount of the call to the extent payable according to AOA. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the Company in respect of this amount.
- d) **Not refundable:** The amount received in advance of calls is not refundable.
- e) **Priority:** In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
- f) **Duly exercised power:** The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the Company (Syke’s case).

ANALYSIS: As per Sec 50(2) Mr. A will not derive any additional voting rights by virtue of such advance calls paid by him.

CONCLUSION: In the given case Mr. A, has deposited in advance the remaining amount due on his shares without any calls made by ‘Moon star Ltd’. ‘Moon star Ltd’ was authorized to accept the unpaid calls by its articles. Hence, there is no irregularity in the transaction.

Q.No.5.Walnut Limited has an authorized share capital of 1,00,000 equity shares of 100 per share and an amount of 3 crores in its Share Premium Account as on 31-3- 2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. **(NEW SM-TYK, RTP May18]**

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to "securities premium account".

This account can be utilized only for the purposes specifies u/s 52 and any other use shall amount to reduction of capital. The securities premium account may be applied by the company—

- a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- b) in writing off the preliminary expenses of the company;
- c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

- d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- e) for the purchase of its own shares or other securities under section 68 In case of:
 - a) unlisted public companies
 - b) private companies
 - c) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by SEBI and whose financial statement comply with the accounting standards prescribed for such class of companies u/s 133 shall utilize it for
- d) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- e) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- f) for the purchase of its own shares or other securities under section 68

Q.No.6 "A company cannot issue shares at a discount as per Section 53 of the Companies Act, 2013". Explain the exception to this provision, if any, with reference to Companies Act, 2013. **(Nov' 18)**

Under section 53 of the Companies Act, 2013

- 1) a company cannot issue shares at a discount except by way of sweat equity
- 2) any share issued by a company at a discount price shall be void.

However in the following cases a company may issue shares at a discount in the following cases:

- 1) issue of sweat equity shares u/s 54 if:
 - a) the articles of the company authorise
 - b) the shares belong to a class of shares already issued
 - c) the company has passed a special resolution
 - d) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued
 - e) if the shares are listed the issue must comply with the regulations issued by SEBI.
- 2) A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949

Q.No.7. A company proposed to issue debentures of the face value of Rs 100 each at Rs 80 each i.e., at a discount of 20%. The company advertised a scheme which provided that every debenture holder could surrender his debentures to the company and in return could have 10 shares of Rs 10 each for each debenture. Can the company proceed with the scheme Advise the company.

PROVISION: As per Section 53, the company is absolutely prohibited from issuing shares at a discount. Any issue of shares by a company at a discount shall be void.

ANALYSIS AND CONCLUSION: In view of the above legal provision, the scheme advertised by the company is unlawful as its effect is to issue the shares at a discount

Q.No.8 Data limited (listed on stock exchange) was incorporated on 1st October, 2018 with a paid up share capital of Rs.200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old. **(RTP May' 19)/ (MT Mar' 19)**

PROVISION: According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

- a) the issue is authorised by a special resolution passed by the company;
- b) the resolution specifies
 - i) the number of shares,
 - ii) the current market price,
 - iii) consideration, if any, and
 - iv) the class or classes of directors or employees to whom such equity shares are to be issued;
- c) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,
- d) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares and the holders of such shares shall rank pari passu with other equity shareholders.

ANALYSIS AND CONCLUSION: In the above case Data Ltd. whose shares were listed on a stock exchange had earned huge profits in just 4 months of incorporation so it wanted to offer equity shares to its employees.

As the Act does not lay down any time limit for the issue of such shares the company may issue such shares.

Thus Data Ltd. may issue the shares provided it fulfils all the other requirements of the Act regarding such issue.

Q.No.9 Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs. 10,00,000 (10,000 preference shares of Rs. 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013? **[NEW SM-TYK]**

PROVISION: According to Section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- 1) with the consent of the holders of three-fourths in value of such preference shares, and
- 2) with the approval of the Tribunal on a petition made by it in this behalf,

issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

However, Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

ANALYSIS AND CONCLUSION: In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs. 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

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Q.No.10 Apart from the equity share capital of Rs 50 lakhs, the redeemable preference share capital of the company is Rs 10 lakhs. The company is running in losses and the preference share capital is to be redeemed before 31st March, 2014. In order to improve its financial position and also to redeem the preference share capital, the company wants to borrow funds from financial institutions. Can the company redeem the preference share capital from these borrowings? Give reasons.

PROVISION: As per Section 55, the redemption of preference share capital is permitted only out of (a) profits of company available for dividends or (b) the proceeds of fresh issue of share which are issued for this purpose.

ANALYSIS AND CONCLUSION: In view of the above legal provision, the company cannot redeem the preference shares out of the borrowings from financial institutions.

SECTION 4: PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE

Q.No.1. Preference shareholders have same voting rights as the equity shareholders. Comment?

FALSE: In general they have voting right only on matters directly relating to rights attached to preference share capital (*E.g.: Resolution for winding up of Company, change in dividend rate*). (Sect 47 of the Companies Act, 2013)

EXCEPTION: Where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, then such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Q.No.2. Mr. John held certain partly paid up shares of Ltd. Company. The Company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the Company. At a GM of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. John contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of John is valid. **(RTP M15, N16)**

PROVISION: Sec 106(1) of the Companies Act, 2013 states that the articles of a Company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the Company has exercised any right of lien.

ANALYSIS: In the present case the articles of the Company do not permit a shareholder to vote if he has not paid the calls on the shares held by him.

CONCLUSION: Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. John's contention is not valid.

Q.No.3. Sujeev, a shareholder, holding 2000 shares of Rs. 100 per share of Touchwood Pharma Ltd. The Company has called and collected Rs. 60 per share. Sujeev has paid Rs. 40 per share (the balance amount not yet demanded by the Company) as calls in advance. At the time of AGM of the Company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the Company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.

Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013. **(RTP M16)**

PROVISION: Refer CRD 3

ANALYSIS & CONCLUSION: In the light of above provisions:

- i) Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.
- ii) As per the provisions of law, the amount received in advance of calls is not refundable.

However, Sujeev is entitled to claim interest on the amount of the call to the extent payable according to the AOA. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the Company in respect of this amount.

Q.No.4. Gold limited invited applications for 5,00,000 equity shares of Rs. 10 each through a public issue. As per the prospectus, applicants were required to pay only Rs. 2 on application. 'A' applies for 500 shares and deposits Rs. 5,000 to the Company because he did not properly go through the offer. Later, he applies to the Company seeking refund of the excess amount paid by him. Refreshing provisions of the companies Act, 2013, decide whether the Company is bound to pay excess money to A?

PROVISIONS & ANALYSIS: Company if authorized by its Articles of Association may accept from any member calls in advance. Mr. A has made excess payment of Rs. 4,000. It cannot be treated as calls in advance because as on the date of payment of Rs. 4,000, he was not a member of Company. Calls in advance provisions are applicable to shares held by members. It can be treated as excess application money and refunded.

CONCLUSION: Mr. A can claim refund.

Q.No.5. Well-done Ltd. Wants to make a first call of Rs. 30 on equity shares of nominal value of Rs. 100 each on 16th October 2011. Can it do so? Further, if the Company proposes to make second call on 7th November 2011. Will it be permitted to do so?

As per Table F, Company cannot make a call in excess of 25% of nominal value of shares. At the same time, there must be time gap of one month between two calls. Therefore, Company cannot make first call of Rs. 30 (being more than 25%). Company cannot make second call on 7th November 2011 (one-month gap required).

SECTION 5: SECTION NUMBERS

CONCEPT	SECTION NO.
Authorised or Nominal or registered capital	2(8)
Issued capital	2(50)
Subscribed capital	2(86)
Called up capital	2(15)
Paid up capital	2(64)
Definition of Share	2(84)
Definition of Sweat equity share	2(88)
Kinds of share capital	43
Nature of shares	44
Numbering of shares	45
Share certificate	46
Voting rights of shareholders	47
Variation of shareholders rights	48
Application of securities premium	52
Prohibition on issue of shares at discount	53
Issue of sweat equity shares	54
Issue of shares at premium	52
Redeemable preference shares	55

PENALTY

S.NO	DEFAULT	PENALTY
1)	Default in display of subscribed share capital	Company and every officer who is in default shall be liable to pay penalty extending Rs.10,000 and Rs 5,000 respectively

2)	Penalty for improper issue of shares at a discount (Sec 53)	<p>a) Company: fine of not less than Rs.1 lakh but which may extend to Rs.5 lakhs and</p> <p>b) Every officer who is in default:</p> <ul style="list-style-type: none"> • Imprisonment for a term which may extend upto 6 months or • Fine of not less than Rs.1 lakh but which may extend to Rs.5 lakhs, or • Both.
3)	Penalty for fraud by a company with intent to defraud, issues a duplicate certificate of shares (Sec 46)	<p>a) Company:</p> <ul style="list-style-type: none"> • Which shall not be less than 5 times the FV of the shares involved in the issue of the duplicate certificate • but which may extend to 10 times the FV of such shares or Rs.10 Crores, whichever is higher. and <p>b) Every officer who is in default: shall be liable for action u/s 447 (Punishment for fraud)</p>

TIME - LIMITS

PARTICULARS	TIME-LIMIT
Time limit conditions for issue of shares with differential voting rights	No default in filings and not penalized by various Acts during the preceding 3 financial years.
Time limit for having right to vote on all resolutions placed before the company for preference shareholders.	Dividend in respect of a class of preference shares has not been paid for a period of 2 years or more
Rights of the dissentient shareholders for their petition to Tribunal u/s 107	<ul style="list-style-type: none"> • Within 21 days of passing of resolution in a class meeting for consideration of varying the rights attached to any of the shares • Order of Tribunal shall be filed with ROC within 30 days of receipt of order.
Maximum tenure of Preference shares (Sec 55)	<ul style="list-style-type: none"> • Company must be redeemed within a period <u>not exceeding 20 years</u> from the date of their issue subject to such conditions. • However a company engaged in <u>infrastructure projects may redeem it within 30 years instead of 20 years subjected to redemption of 10% of such preference shares on an annual basis at the option of such preferential shareholders.</u>

THE END

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