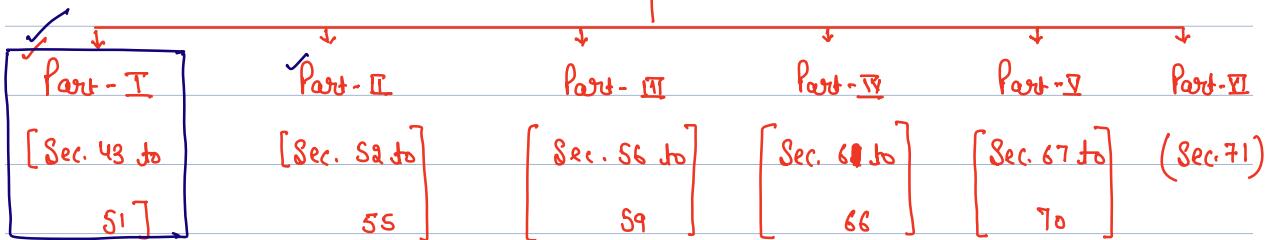


Chapter - 4 Share Capital and Debentures



Part-I (Sec. 43 to 51)

(i) Kinds of Share Capital (Sec. 43):

Share Capital [co. limited by shares]

Equity Share Capital

all share capital which is not
preference share capital

Preference Share Capital

that part of issued share
Capital which carries preferential
rights w.r.t.

It may be

(a) Payment of dividend

↓
with Voting Rights

↓
with differential rights
as to - dividend

(b) Repayment of Capital in
case of winding up of
Company.

- Voting ; or

- Otherwise ✓

In accordance with Rule 4

Rule 4 of Companies (Share Capital and Debentures) Rules 2014:

- Conditions to be learned from book -

✓ H.W.: Conditions to be fulfilled by a co. for issuing shares with differential rights.

(ii) Certificate of Shares : (Sec. 46)

Share Certificate: Document of title issued by the company declaring that the person named therein is the owner of a specified number of shares in the capital of the company.

- Sec. 46 (1):
- Share certificate shall be prima facie evidence of title of the person.
 - Share certificate to be issued under common seal of the company, if any.

Share certificate to be signed by

(Or)
2 directors
or
One director and
CS (if Employed)

Ans:

Sec. 46 (2): Duplicate share certificate may be issued if:

(a) Certificate is proved to have been lost or destroyed

(Or)

(b) Certificate has been defaced, mutilated and surrendered to Co.

Penalty for issuing duplicate share certificate with intent to fraud

Sec. 46 (5):

Fine

CompanyOfficer in default

Minimum: 5 times of face value of shares involved.

Maximum: Higher of (a) 10 times of F.R. u/s 447.

liable for action

(b) ₹ 10 Crores

(iii) Voting Rights (Sec. 47):

of members of a company limited by shares

equity shareholders

Preference shareholders

- Every member shall have a right to vote on every resolution placed before the company.
- Voting rights on a poll will be in proportion of his share in paid-up equity share capital.

Note! In case of Nidhi Companies, no member can exercise voting

rights on a poll in excess of 5% of total voting rights.

- Shall have a right to vote on following resolutions:
 - (a) which directly affect their rights.

(b) Winding up of the company
(c) Repayment / reduction of equity or preference share Capital.

- Voting rights shall be in proportion to his share in paid-up preference share Capital.

Ex: Equity Capital = 50 Lacs

Preference Capital = 30 Lacs.

Mr. X holds 7 Lacs Equity Capital and 6 Lacs Preference Capital.

Voting Rights → $\left[\begin{array}{l} \text{on a resolution not affecting rights of P. shareholders.} \\ \text{Winding up of co.} \end{array} \right] = \frac{7}{50}$

$$\frac{7}{50} \times \frac{50}{80}$$

Note: Preference shareholders shall have a right to vote on all resolutions, if dividend not paid for ≥ 2 years.

$$+ \frac{6}{30} \times \frac{30}{80}$$

(iv) Variation of Shareholders Rights (Sec. 48):

(A) Conditions to be fulfilled:

- Holders of not less than 15% of issued shares of that class whose rights are to be varied must give consent in writing.

Or

Special Resolution passed at a separate meeting of such shareholders.

- Provision for such variation contained in MoA/AoA; else such variation shall not be prohibited by the terms of issue of such shares.

Note: If such variation affects the rights of any other class of shareholders, consent of $\frac{3}{4}$ th of that class shall also be obtained.

(B) Rights of dissentient shareholders:

- Dissentient shareholders holding $\geq 10\%$ of issued shares of that class may apply to Tribunal (NCLT) for cancellation of variation.
- Application shall be made within 21 days on which consent was given or resolution was passed.
- Decision of NCLT shall be binding on shareholders.
- Copy of NCLT order to be filed with ROC within 30 days of order of NCLT.

(v) Calls on Shares (Sec. 49, 50 and 51):

(i) Calls to be made on a uniform Basis. (Sec. 49)

Ex: Class I shares : f.y. ₹ 10 each → call raised - [₹ 2] X

Class II shares : f.y. ₹ 20 each.

(ii) Calls in Advance : Sec. 50

(1) may be accepted by Company if authorised by Articles.

(2) Members shall not be entitled to "Voting Rights"

Until the amount has been called-up.

(iii) Dividend on paid-up Capital : (Sec. 51)

If authorised by Articles, Company may pay dividend in proportion of paid-up amount on each share.

Chapter - 4 " Share Capital and Debentures "

Part II - Sec. 52 to 55

(vi) Issue of Securities at Premium: Sec. 52

(a) Premium received on issue of securities shall be credited to "Securities Premium A/c".

(b) Securities Premium A/c can be utilised for:

(1) Issue of unissued shares of company to members as fully paid bonus shares.

(2) Writing off the preliminary expenses of the company.

(3) Writing off the expenses of or commission paid or discount allowed on any shares/ debentures of the co.

(4) providing premium payable on redemption of preference shares or debentures of the company.

(5) purchasing of its own shares or debentures u/s 68.

(vii) Issue of Shares at discount: Sec. 53

(a) Company shall not issue shares at a discount except in case of issue of sweat equity shares u/s 54.

(b) Any share issued by a company at a discount shall be void.

(c) Penalty for contravention:

- Company and officer in default shall be liable to a penalty which may extend to amount equal to the amount raised through the issue of shares at a discount or ₹ 5 lacs, whichever is less.
- Company shall be liable to refund all monies received with interest @ 12% p.a. from the date of issue of such shares to the person to whom such shares have been issued.

(viii) Issue of Sweat Equity Shares (Sec. 84)

Sweat Equity Shares: Equity shares issued by a company to its directors / employees

- at a discount ; or
- for a consideration (other than cash) for providing their know-how or other IPR or value addition, by whatever called.

Conditions to be fulfilled:

A company may issue sweat equity shares of a class already issued subject to following conditions :

(1) Issue is authorised by a SR.

(2) Resolution must specify the followings :

- No. of shares
- Current Market Price

- Consideration, if any
- class of directors/ Employees to whom such shares are to be issued.

(3) Issue is made in accordance with SEBI Regulations (if shares are listed on a recognised stock exchange).

(4) Shares are issued in accordance with prescribed rules if shares are not listed. (Rule 8).

Rule 8 of Companies (Share Capital and Debentures) Rules, 2014:

(applicable in case of unlisted company)

(1) Issue is authorised by SR.

(2) SR shall be valid for making allotment within a period of 12 Months.

(3) Limits over issue:- Issue in a year shall not exceed 15% of paid up equity share capital or ₹ 5 crore whichever is higher.

Ex: PUFSC = 50 Crores

2021-22 = $\frac{5 \text{ Crore}}{55 \text{ Crore}} \times 15\%$ Issue at any time shall not exceed 25% of

2022-23 = $\frac{5 \text{ Crore}}{60 \text{ Crore}} \times 15\%$ paid up equity share Capital.

2023-24 = $\frac{7 \text{ Crore}}{67 \text{ Crore}} \times 15\%$ X

(a) = 7.5 or. ✓

(b) = 5.0 or.

✓ (c) = 2.5 or. ✓

(d) = Nil.

Note: In case of start-up company, issue of sweat Equity shares is allowed to the extent of 50% of PUC for a period upto 10 years from date of incorporation.

(4) Lock in period : 3 years from date of allotment.

(5) Other Provisions : - reading from main book - H.W. → Questions

(ix) Issue and Redemption of Preference Shares (Sec. 55):

- (A) Issue of Irredeemable Preference shares : Not allowed
(B) " Redeemable Preference share: is allowed subject to following conditions:

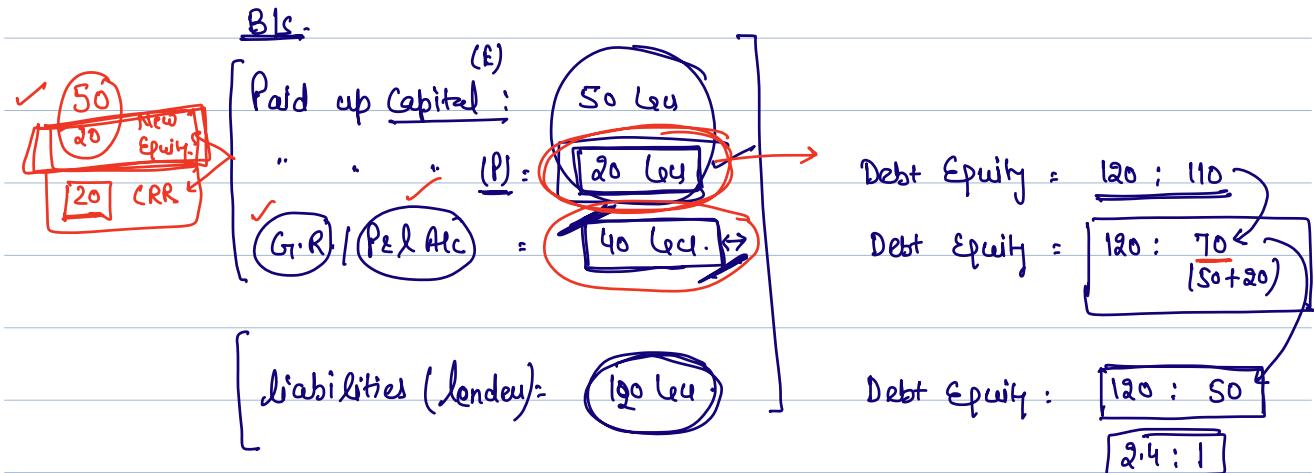
- (1) Issue is authorised by AOA.
- (2) Maturity period of preference shares shall not exceed 20 years.

[Note: 30 years allowed if company is dealing in Infrastructural projects provided redemption of $\geq 10\%$ of preference shares per year is made from 21st year onwards or earlier.

- (3) Issue is authorised by special resolution.
- (4) Company has no subsisting default in redemption of preference shares issued earlier or in payment of dividend due on any preference shares.

(C) Redemption of Preference Shares :

- (i) Redemption can be made out of profits available for distribution as dividends or out of proceeds of fresh issue made for this purpose.
- (ii) Only fully paid up shares shall be redeemed.
- (iii) If shares are redeemed out of profits, a sum equal to nominal amount of shares redeemed be transferred to CRR A/c. [Purpose of CRR is to keep the capital intact]



(iv) Premium, if any payable on redemption shall be provided out of profits of the Company or out of securities premium a/c.

(D) Remedies available if company not able to redeem the P. shares:

- Company may with the consent of holders of 3/4 th in value of such preference shares and with the approval of Tribunal on a petition made to it in this behalf



Issue further preference shares

equal to amount due for redemption

Including dividend thereon, in respect of unredeemed preference shares.

- [On issue of such further preference shares, the unredeemed preference shares shall be deemed to have been redeemed.]
- [In respect of persons who have not consented to issue of further preference shares, Tribunal shall order for the redemption forthwith.]

Example: Preference shares due for redemption = 20,00,000
 O/S dividend = 2,00,000

Company not able to redeem.

- ✓ (i) Tribunal approval.
- (ii) Preference shareholders holding not less than 75% value - consent
 Consent given by 30 P.S.H holding 18,00,000 value.
- [(iii) New P. shares issued for 90% of outstanding - 19,80,000
 $(18,00,000 + 180,000)$
- (iv) Remaining S.H - get the redm' amount in cash.

Chapter - 4 : Share Capital and debentures"

Part III - Sec. 56 to 59

(X) Transfer and Transmission of Securities : Sec. 56 :

(a) Meaning of Transfer and Transmission:

- Transfer means voluntary conveyance of the rights and duties of member to another person desirous of becoming a member, for a consideration involved.
- Transmission means transfer of shares under operation of law.
It takes place under various circumstances like:

- death of shareholder;
- when shareholder becomes lunatic or declared incompetent.
- In case shareholder is a company, it goes into liquidation.

(b) Registration of transfer of securities : Sec. 56(1)

A Company shall not register a transfer of securities unless following conditions complied with:

- (1) Proper instrument of transfer (transfer deed) delivered to company within 60 days of execution;
- (2) Instrument of transfer may be delivered by transferor or transferee.
- (3) Instrument of transfer must be duly stamped, dated and executed by or on behalf of transferor and transferee.

(4) Instrument must specify the name, address and occupation of the transferee.

(5) Instrument must be accompanied by Share Certificate/
Letter of allotment.

Note: If instrument of transfer is lost or not been delivered within specified time, company may register transfer on such terms as to indemnify as the Board may think fit.

(c) Registration of transmission: Sec. 56(2)

A Company may register, on receipt of intimation of transmission of any right so denuded by operation of law from any person to whom such rights had been transmitted.

(d) Transfer of partly paid shares: Sec. 56 (3)

If application is made by transferor for partly paid shares, transfer shall not be registered, unless:

(i) Company gives the notice of application in form No. SH-5 to transferee; and

(ii) No objection is received from transferee within 2 weeks.

(e) Time period for delivery of share certificate: Sec. 56(4)

(i) Subscribers to MoA : within 2 Months from date of incorporation of Co.

(ii) Allotment of shares : within 2 Months from date of allotment.

(iii) Allotment of debⁿ : within 6 Months from date of allotment.

(iv) Transfer / transmission : within 1 Month of receipt of instrument of transfer or intimation of transmission.

(f) Transfer by legal representative : Sec. 56(5)

Transfer of any security or other interest of a deceased person in a Company, made by his legal representative



shall be valid



as if he had been the holder of the shares at the time of execution of transfer.

(g) Other Provisions:

(i) Penalty for default: If any default is made in complying with the provisions of Sec. 56(1) to 56(5), then the company and every officer in default shall be liable to a

↓

penalty of ₹ 50,000.

(ii) Transfer and transmission of securities:

- To be learned from book -

(iii) Forged transfer:

- To be learned from book -

(xi) Refusal to register the transfer and appeal against refusal (Sec. 58):

(a) Private Company: Sec. 58(1) and 58(3)

✓ Company shall send [notice of refusal] to transferee and transferor/ person giving intimation of transmission within 30 days from the date on which instrument of transfer/ intimation of transmission was delivered to the company.

✓ Transferee may appeal to Tribunal within 30 days of receipt of notice; Or in case no notice has been sent by the company, then appeal may be made within 60 days from the date on which the instrument of transfer or intimation of transmission was delivered to the company.