

Questions & Answers

Chapter 4 : Share Capital & Debentures

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Question 1 :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 NOV 2019]**

Answer 1 : Sweat equity shares of a class of shares already issued .

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, namely-

- i. the issue is **authorized by a special resolution** passed by the company
- ii. 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
- iii. where the equity shares of the company are **listed on a recognized 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*

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Question 2 : Walnut 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 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. **[RTP NOV 2019]**

Answer 2 : 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 a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

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.

Question 3 : K Limited, a subsidiary of Old Limited, decides to give a loan of Rs.4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of Rs.30,000 per month, to buy 500 partly paid-up equity Shares of Rs.1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. **[RTP MAY 2020]**

Answer 3 : **Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations :

- a. The employee must not be a Key Managerial Personnel
- b. The amount of such loan shall not exceed an amount equal to six months' salary of the employee
- c. The shares to be subscribed must be fully paid shares

In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of Rs. 30,000 per month and took loan taken to buy 500 partly paid up equity shares of Rs.1000 each in K Ltd

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons :

- i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs.1.8 Lakh.
- ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Question 4 : Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position. Authorized Share Capital (25,00,000 equity shares of face value of Rs.10/- each) Rs.2,50,00,000.

Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of Rs.10/-each, fully paid-up) Rs.1,00,00,000

Free Reserves Rs.3,00,00,000.

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss. **[RTP NOV 2020]**

Answer 4 : According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of –

- i. its free reserves
- ii. the securities premium account or
- iii. the capital redemption reserve account

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

- i. it is authorised by its Articles
- ii. it has, on the recommendation of the Board, been authorised in the general meeting of the company
- iii. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it
- iv. it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus
- v. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up
- vi. it complies with such conditions as may be prescribed

But the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

To issue bonus shares, company will need reserves of Rs.50,00,000 (half of Rs.1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Surya Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders

Question 5 : Shiva Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2020 showed the following position

- i. Authorized Share Capital (25,00,000 equity shares of Rs. 10/- each) Rs. 2,50,00,000/-
- ii. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of Rs. 10/-each, fully paid-up) Rs.1,00,00,000/-
- iii. Free Reserves Rs. 3,00,00,000/-

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013 **[RTP MAY 2021]**

Answer 5 : According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of –

- i. its free reserves
- ii. the securities premium account or
- iii. the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares : No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

- i. it is authorized by its Articles
- ii. it has, on the recommendation of the Board, been authorized in the general meeting of the company
- iii. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it
- iv. it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- v. the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up
- vi. it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

For the issue of bonus shares Shiva Cement Limited will require reserves of Rs. 50,00,000 (*i.e.* half of Rs. 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 6 : 500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares? **[RTP NOV 2021]**

Answer 6 : According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. Amit) any title to the shares. Similarly, any transfer made by Mr. Amit (to Mr. Abhi) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Manoj) from the Register of Members, then the company is bound to restore the name of Mr. Manoj as the holder of the shares and to pay him any dividends which he ought to have received.

In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name. However, neither Mr. Amit nor Mr. Abhi have any rights against the company even if they are bona fide purchasers. But as Mr. Abhi acted on the faith of share certificate issued by company, he can demand compensation from Mr. Amit.

Question 7 : Data Limited (listed on Stock Exchange) was incorporated on 1 st 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.? [MTP MAY 2019]

Answer 7 : Sweat equity shares of a class of shares already issued :-

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, namely-

- i. the issue is **authorised by a special resolution** passed by the company
- ii. 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
- iii. 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*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Question 8 : Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain? **[RTP NOV 2021]**

Answer 8 : Sweat Equity Shares is governed by Section 54 of the Companies Act 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.

According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

Question 9 : Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? **[MTP MAY 2019]**

Answer 9 The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal .

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under subsection (4), may, after hearing the parties, either dismiss the appeal, or by order-

- a. direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order or
- b. direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Question 10 : Mr. Transferor has transferred 1000 shares of Perfect Ltd. to Ms. Receiver. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Transferor or Ms. Receiver respectively within the prescribed period. Examine the given situation and discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? **[MTP NOV 2019]**

Answer 10 : The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under subsection (4), may, after hearing the parties, either dismiss the appeal, or by order-

- a. direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order or
- b. direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

In the present case Ms. Receiver can make an appeal before the tribunal and claim damages

Question 11 : Aptech Technology Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 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 be fulfilled before the issue of sweat equity shares especially since their company is just a few months old? **[MTP MAY 2020]**

Answer 11 : **Sweat equity shares of a class of shares already issued.**

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, namely-

- i. the issue is authorised by a special resolution passed by the company
- ii. 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
- iii. 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*

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *paripassu* with other equity shareholders

Aptech Technology Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Question 12 : Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. **[MTP MAY 2020]**

Answer 12 : According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary”, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (*Barton v. North Staffordshire Railway Co.*).

In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

Question 13 : OEMR Limited, a subsidiary of PQR Limited, decides to give a loan of Rs.4,00,000 to its Human Resource Manager Mr. Shyam Kumar, who does not fall in the category of Key Managerial Personnel and draws a salary of Rs.40,000 per month, to buy 500 partly paid-up equity shares of Rs.1000 each in OEMR Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. **[MTP NOV 2020]**

Answer 13 : **Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations :

- a. The employee must not be a director or Key Managerial Personnel
- b. The amount of such loan shall not exceed an amount equal to six months' salary of the employee
- c. The loan must be extended for subscribing fully paid-up shares

In the given instance, Human Resource Manager Mr. Shyam Kumar is not a Key Managerial Personnel of the OEMR Limited. Further, he is drawing a salary of Rs.40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of Rs.1000 each of OEMR Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OEMR Limited in granting a loan of Rs.4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons.

- i. The amount of loan is more than 6 months' salary of Mr. Shyam Kumar, the HR Manager. It should have been restricted to Rs. 2,40,000 only.
- ii. The loan to be given by OEMR Limited to its HR Manager Mr. Shyam Kumar is meant for purchase of partly paid shares.

Question 14 : Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2021

		Rs.
(1)	Equity shares capital (3.00 lakhs equity shares of Rs. 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

- i. Whether company can give bonus shares in the ratio of 1:3?
- ii. What if company decide to give bonus shares in the ratio of 1:2? ?

[MTP NOV 2021]

Answer 14 : Issue of bonus shares: As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of-

- i. its free reserves
- ii. the securities premium account or
- iii. the capital redemption reserve account

Provided that no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of Rs.12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is Rs.30.00 lakhs.

Accordingly

- i. For issue of 1:3 bonus shares, there will be a requirement of Rs.10 lakhs (i.e., $\frac{1}{3} \times 30.00$ lakh) which is well within the limit of available amount of Rs.12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.
- ii. In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of Rs.15 lakhs (i.e., $\frac{1}{2} \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of Rs.15 Lakhs is exceeding the available eligible amount of Rs.12 lakhs

Question 15 : Kat Pvt. Ltd., is an unlisted company incorporated on 2.6.2012. The company have a share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees on 5.7.2021. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provisions for issue of sweat equity shares by a start-up company, with reference to the provisions of the Companies Act, 2013? Explain. **[MTP NOV 2021]**

Answer 15 : Sweat Equity Shares are governed by section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to section 54, the company can issue sweat equity shares to its director and permanent employees of the company.

According to proviso to rule 8 (4), a start up company, [as defined in notification number G.S.R.127(E), dated 19th February 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India], may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non-transferable for a period of three years from the date of allotment.

Hence in the above case, the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment (as not five years, as given in the question).

Question 16 : Mr. Nirmal has transferred 1000 equity shares of Perfect Private Limited to his sister Ms. Mana. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nirmal or Ms. Mana within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company? **[MTP NOV 2021]**

Answer 16 : The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of

refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mana being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Question 17 : "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard. **[MTP NOV 2021]**

Answer 17 : According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement “the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions” is not valid.

Question 18 : Following is the extract of the Balance sheet ABC Ltd. as on 31st March, 2022 :

Particulars		Amount (Rs.)
Equity & Liabilities		
(1) Shareholder’s Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of Rs. 10 each	1,00,000	
1,00,000 equity shares of Rs. 10 each	10,00,000	
		<u>11,00,000</u>
Issued & Subscribed Capital:		
8000,12% Preference Shares of Rs. 10 each fully paid up		80,000
90,000 equity shares of Rs. 10 each, Rs.8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	<u>2,00,000</u>	<u>4,20,000</u>
(2) Non-Current Liabilities:		
Long-term borrowings:		
Secured Loan: 12% partly convertible		
Debenture @ Rs. 100 each		5,00,000

On 1st April, 2022 the company has made final call at Rs.2 each on 90,000 Equity Shares. The call money was received by 25th April, 2022. Thereafter, the company decided to capitalize its reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

- A. Which of the above-mentioned sources can be used by company to issue bonus shares?
- B. Calculate the amount to be capitalized from free reserves to issue bonus shares? **[MTP NOV 2022]**

Answer 18 : Issue of Bonus Shares

According to section 63 (1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- i. its free reserves
- ii. the securities premium account; or
- iii. the capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets

Section 63 (2) provides that the company can issue bonus shares only when the partly paid -up shares, if any outstanding on the date of allotment, are made fully paid-up.

A. The following sources can be used by the company to issue bonus shares :

1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

B. .

Particulars	Amount
Amount of bonus shares to be issued	90,000 shares x 1/4 = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	22,500 x Rs. 10 per share = Rs. 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+ 25,000+ 2,00,000 = Rs. 3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	Rs. 2,25,000

Question 19 : Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of Rs.10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of Rs.1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of Rs.1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

- i. Decide whether the advise of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act, 2013.
- ii. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares? **[MTP NOV 2022]**

Answer 19 : According to section 53 of the Companies Act, 2013, except as provided in section 54, a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

According to section 54 of the Companies Act, 2013, notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the prescribed conditions are fulfilled.

- i. As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advise of the underwriter to issue shares at a discount is not valid.
- ii. In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

Question 20 : What are provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

- i. A shareholder of the company who has shares of Rs. 10,000
- ii. A creditor whom the company owes Rs. 999 only
- iii. A person who has given a guarantee for repayment of amount of debentures issued by the company. **[RTP NOV 2022]**

Answer 20 : Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules *inter-alia*, no person shall be appointed as a debenture trustee, if he-

- i. beneficially holds shares in the company;
- ii. is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee
- iii. has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon

Thus, based on the above provisions answers to the given questions are as follows:

- i. A shareholder who has holds shares of Rs.10,000, cannot be appointed as a debenture trustee.
- ii. A creditor whom company owes Rs.999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- iii. A person who has given guarantee for repayment of principal and interest thereon in respect of debentures, cannot be appointed as a debenture trustee.

Question 21 : The Authorized share capital of SSP Limited is Rs.5 crore divided into 50 Lakhs equity shares of Rs. 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far Rs.8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from Rs.10 each to Rs.8 each and to carry out the following proposals:

- i. Reduction in Authorized Capital from Rs.5 crore divided into 50 Lakhs equity shares of Rs.10 each to Rs.4 crore divided into 50 Lakhs equity shares of Rs.8 each.
- ii. Conversion of 30 Lakhs partly paid up equity shares of Rs.8 each to fully paid up equity shares of Rs.8 each there by relieving the shareholders from making further payment of Rs.2 per share.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013. **[NOV 2020, 5 Marks]**

Answer 21 :

- i. **Procedure for reduction of share capital-** In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital

Procedure

1. **Reduction of share capital by special resolution:** Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—
 - a. extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
 - b. either with or without extinguishing or reducing liability on any of its shares,—
 - i. cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - ii. pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
2. **Issue of Notice from the Tribunal:** The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.
3. **Order of tribunal:** The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.
4. **Publishing of order of confirmation of tribunal:** The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.
5. **Delivery of certified copy of order to the registrar:** The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

ii. **Alteration of Share Capital:**

SSP Limited proposes to alter its share capital. The Present authorized share capital Rs.5 Crore will be altered to Rs.4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum.

A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to -

1. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
2. A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].

The Company has to follow the above procedures to alter its authorized share capital.

Question 22 : State the reasons for the issue of shares at premium or discount. Also write in brief the purposes for which the securities premium account can be utilized?. [JAN 2021, 5 Marks]

Answer 22 : When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium. On the other hand, when a company issues shares at a price lower than their face value, the shares are said to be issued at discount and the differential amount is termed as discount. However, as per the provisions of section 53 of the Companies Act, 2013, a company is prohibited to issue shares at a discount except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.

As per the provisions of sub-section (1) of 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 a “securities premium account”.

Application of Securities Premium Account: As per the provisions of sub-section (2) of section 52 of the Companies Act, 2013, 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.

Question 23 : London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:

- A. Whether company's proposal is in order?
- B. Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital? **[JAN 2021, 5 Marks]**

Answer 23 :

- i. According to the provisions of section 68 (2) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub-section (1), unless—
 - the buy-back is authorised by its articles
 - a. a special resolution has been passed at a general meeting of the company authorising the buy-back:
Provided that nothing contained in this clause shall apply to a case where—
 - i. the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
 - ii. such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
 - b. the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:
Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

In the instant case, London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.

- A. the Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.
- B. if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our answer will not change. This proposal of the company will also be not in order.

Question 24 : The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of Rs.3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of Rs.40,000 per month, to buy 500 partly paid-Up equity shares of Rs.1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013. **[JAN 2021, 2 Marks]**

Answer 24 : As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

As per the provisions of section 67(3)(c) of the Companies Act, 2013, nothing stated above, shall apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore this condition has not been fulfilled;
2. The amount does not exceed their salary or wages for a period of six months.- This condition has not been fulfilled.

3. The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd., which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.

Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

Question 25 : "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard. **[JAN 2021, 3 Marks]**

Answer 25 : According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62(1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid.

Question 26 : What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

- i. A shareholder of the company who has shares of Rs.10,000.
- ii. A creditor whom the company owes Rs.999 only.
- iii. A person who has given a guarantee for repayment of amount of debentures issued by the company. **[JAN 2021, 3 Marks]**

Answer 26 : Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules *inter-alia*, no person shall be appointed as a debenture trustee, if he-

1. beneficially holds shares in the company
2. is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee
3. has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon

Thus, based on the above provisions answers to the given questions are as follows;

- i. A shareholder who has holds shares of Rs. 10,000, cannot be appointed as a debenture trustee.
- ii. A creditor whom company owes Rs.999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- iii. A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Question 27 : SKS Limited issued 8% Rs.1,50,000; Redeemable Preference Shares of Rs.100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?

Can the company include the dividend unpaid in the above issue of redeemable preference shares? **[MAY 2022, 3 Marks]**

Answer 27 : 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—

- with the consent of the holders of three-fourths in value of such preference shares, and
- 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.
- Provided that the 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.
- In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

- If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

Question 28 : As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of Rs.100 Lakh divided into 10 Lakh equity shares of Rs.10 each. The subscribed and paid-up share capital on that date is Rs.80 Lakh divided into 8 Lakh equity shares of Rs.10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.

[MAY 2022, 5 Marks]

Answer 28 : According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

1. According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
2. It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.

Accordingly, in the light of the stated facts, following shall be the answers:

- i. Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.
- ii. According to section 13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.