NITIKA BACHHAWAT

Swift scan – CA Inter Share Capital and Debentures

Dear Students.

This scanner contains all the questions of

- RTP (May' 18 - Nov' 23)
- Question papers (May' 18 - May' 24)
- Mock test papers

The scanner has been divided chapter wise to make it easier for you to follow. Do try to solve the questions before looking into the answers.

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A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:

a) The articles of association of the company shall authorize issue of shares with differential rights;
b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
c) The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;
d) The company shall have consistent track record of distributable profits for the last three years; **(RTP May' 19)**

Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been received by the company. In the given circumstances, advise as per t he provisions of the Companies Act, 2013:

a) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh
b) Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.
c) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh
d) Corrupt Limited will give the shares back to Mr. Suresh **(MT Mar' 19)**

Part of the capital for which application have been received from the public and shares allotted to them: **(MT May' 20)**

a) Nominal capital
b) Issued capital
c) Subscribed capital
d) Called up capital

Answer: C
Answer: B
Answer: C

In a company if any change of right of one class also affects the right of other class, then: **(MT)**

a) A resolution should be passed in general meeting in this case
b) Company need not to do anything else
c) Written consent of three fourth majority of that other class should be obtained
d) A resolution in joint meeting of both the classes should be passed

Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with:

a) Equity Shares
b) Preference Shares
c) Sweat Equity Shares
d) Redeemable preference shares **(RTP Dec' 21)**

A Private Company cannot issue securities:

a) By way of rights issue
b) By way of bonus issue
c) By way of private placement
d) By issue of Prospectus in Public **(MT)**

Answer: C
Answer: C
Answer: D

Raman, the original allottee of 2000 equity shares in ABC Limited has transferred the same to Ruchi. The instrument of transfer dated 21st August, 2020, duly stamped and signed by Raman was handed over to Ruchi. Advise Ruchi regarding the latest date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.

a) 21st August, 2020.
b) 20th September, 2020
c) 20th October, 2020.
d) 19th November, 2020 **(RTP May' 22)**

Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than ---------- 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:

a) One-fourth
b) 50%
c) **Three-fourths**
d) 75% **(RTP Nov' 22)**

Which of the following statement is contrary to the provisions of the Companies Act, 2013? **(MT)**

a) A private company can make a private placement of its securities.
b) The company has to pass a special resolution for private placement.
c) Minimum offer per person should have Market Value of 20,000.
d) A public company can make a private placement of its securities.

Answer: C
Answer: C
Answer: C

Mr. Hari Dutta is an Operation head of North India region of Hilton Ltd. He was a full- time employee of the company. Mr. Hari draws a monthly salary of Rs. 1,00,000. On 14th May 2020, Mr. Hari applied for a loan of Rs. 10,00,000, to buy 1000 fully paid-up equity shares of Rs. 1000 each in Mohan Limited (holding company of Hilton Ltd). The company refused to grant loan to Mr. Hari saying he is not eligible for the loan for the said amount of Rs. 10,00,000.

Hilton Ltd. is a listed company, authorized by its articles to purchase its own securities. According to the balance sheet and Annual statements of the company for the year 2020-21:

- Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of Rs. 100 each, fully paid-up)
- Free Reserves Rs. 30,00,00,000
- The security premium account Rs. 20,00,00,000
- The secured and unsecured Debt Rs. 50,00,00,000
- Accumulated losses Rs. 50,00,000

The company issued a circular as it wanted to buy back shares worth Rs. 10,00,00,000 from the funds it has in its free reserve and security premium account. The board of directors passed a resolution for the same on 28th April, 2021.

The company has filed with the Registrar of Companies a Letter of Offer in e-form SH-8 on 1st May 2021. The company had also filed with the Registrar of Companies, along with the letter of offer, a declaration of solvency.

The Letter of Offer was dispatched to all the shareholders on 3rd May, 2021. The company announced to avail the buy back offer latest by 10th May, 2021. Many shareholders who approached the company after the due date were not considered applicable for this buy back scheme. The shareholders raised strong objection on giving just 7 days time to avail the offer by the company.

A special resolution has been passed at a general meeting of the company authorizing the buy-back of shares, which was accompanied by an explanatory statement containing the particulars required to be mentioned as per the provisions of the Companies Act, 2013. **(MT)**

The company has planned to buy back shares worth rupees 10,00,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?

a) Rs. 2,00,00,000
b) Rs. 5,00,00,000
c) Rs. 7,00,00,000
d) Rs. 8,00,00 000

Suppose the company intends to buy back some partly paid equity shares. Which of the following statement is correct?

a) The company is allowed to buy back partly paid equity shares
b) The company is allowed to buy back partly paid equity shares if the total amount of such partly paid equity shares does not exceed 2% of the total buy back.
c) The company is allowed to buy back partly paid equity shares but it cannot buy back partly paid other specified securities.
d) All the shares or other specified securities for buy back must be fully paid up.

Some shareholders and officers of the company are of the opinion that it was not necessary for the company to pass a special resolution in general meeting with respect to buy back. Choose the correct reasoning:

a) It was not necessary to pass the special resolution as the approval of Board had already been granted for such buy back of shares
b) It was necessary to pass special resolution as the amount of buy back exceeds ten percent of the total paid up equity share capital and free reserves
c) It was not necessary to pass the special resolution as the buy back was authorized by the articles of the company
d) It was necessary to pass special resolution as the amount of buy back exceeds fifteen percent of the total paid up equity share capital and free reserves

Answer: B
Answer: D
Answer: B

A company enter into process of reducing capital. Mr. Shah is concerned officer designated for preparing the list of creditor to records their reservation and reach to a settlement under section 66 of the Companies Act, 2013. Mr. Shah while preparing such list deliberately conceal the name of Ms. Ramya who is one of the company's creditor and object to the reduction, whereas make misstatement in context of some other creditors' claims. The offence committed by Mr. Shah is punishable under; (i) Under section 447 of the Companies Act, 2013 and (ii) Also under sections 417 read with 415 of Indian Penal Code 1860 (as dishonest concealment is involved). You are required to select the most appropriate option out of given below in context of offence committed by Mr. Shah: **(RTP Nov' 23)**

a) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code 1860, but shall be punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
b) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code, 1860, but shall be punished under the Companies Act, 2013 or the Indian Penal Code, 1860 where maximum punishment is lower.
c) Mr. Shah shall be liable to be prosecuted and punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
d) Mr. Shah shall be liable to be prosecuted and punished under both of the Companies Act, 2013 and the Indian Penal Code, 1860.

A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2% of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25%. The amount that the company is eligible to pay as underwriting commission is: **(MT)**

a) 5%
b) 2%
c) 2.5%
d) 2.25%

Answer: C

Answer: B

Purple Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.

Being a public company is it possible for Purple Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year? **(MT)**

According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security. If a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

In the given case Purple Limited, though a public company can raise funds through private placement as provisions related to private placement allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions. However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42.

Hence, the offers given by the company will be treated as public offer. In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

State the purposes for which the securities premium account can be utilized? **(MT)**

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.

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 Nov' 18)**

OR

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. Advice 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:

i. 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:

ii. 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,

iii. 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.

iv. 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.

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. **(May' 18)**

As per Rule 4 of the Companies (Share capital and Debenture) Rules, 2014 a company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, after complying with the following conditions:

i. the articles of association of the company authorizes the issue of shares with differential rights;
ii. the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
iii. the shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
iv. the voting power in respect of shares with differential rights of the company shall not exceed 74% of the total voting power including voting power in respect of equity shares with differential rights issued at any point of ti
v. the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
vi. the company has no subsisting default in the
   - payment of a declared dividend to its shareholders or
   - repayment of its matured deposits or
   - redemption of its preference shares or debentures that have become due for redemption or
   - payment of interest on such deposits or debentures or payment of dividend;

vii. the company has not defaulted in
- payment of the dividend on preference shares or
- repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or
- dues with respect to statutory payments relating to its employees to any authority or
- default in crediting the amount in Investor Education and Protection Fund to the Central Government;

Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."

viii. the company has not been penalized by Court or Tribunal during the last three years of any offence under the
- Reserve Bank of India Act, 1934,
- the Securities and Exchange Board of India Act, 1992,
- the Securities Contracts Regulation Act, 1956,
- the Foreign Exchange Management Act, 1999 or
- any other special Act, under which such companies being regulated by sectoral regulators.

ix. The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.

x. The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

xi. 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.

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance.
However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance.
Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void? **(RTP Nov' 23)**

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.
According to section 6 of the Companies Act, 2013, 'Save as otherwise expressly provided in this Act—

a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

In simple words, the provisions of this Act shall have overriding effect. It is also to be noted that section 6, starts with "Save as otherwise ….". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the articles of association will prevail and cannot be considered as void.

SKS Limited issued 8% 1,50,000; Redeemable Preference Shares of 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' 22)**

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 ` 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, SKS Limited is not 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 to accord approval to issue further redeemable preference shares equal to the amount due. 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.

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 Dec' 21)**

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. If the company registers the name of the transferee on the basis of a forged transfer deed the company is bound to restore the name of the real owner and to pay him dividend which he ought to have received.

In the above case Mr Amit acquired shares on which the signature of Mr Manoj the transferor is 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. 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.

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.

PQR Ltd. had issued 10000 shares of 10 each, on which company called up 7.50 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. **(Nov' 18)**

Section 50 of the Companies Act, 2013 states that a company may accept that part of the unpaid capital which has not been called up if authorised by its articles.
When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:

i. The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up.
ii. T he shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.
iii. The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. 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.
iv. The amount received in advance of calls is not refundable.
v. 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.
vi. The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

In the above case PQR Ltd. issued shares of 10 each, 7.50 called up. A shareholder C deposited the remaining amount in advance though the call was not made by the company. The company can accept this calls in advance provided it was authorized by the articles and C shall get all the rights stated above.

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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. **(MT)**

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, 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. 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)

State the purposes for which the securities premium account can be utilized? **(MT)**

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.

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of 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 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 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course. Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares? **(Nov' 20)/ (MT)**

As per the provisions of section 53(1) read with section 54 of the Companies Act, 2013, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares. As per the provisions of sub-section (2) of section 53 of the Companies Act, 2013, any share issued by a company at a discount shall be void.

In the above case ABC Ltd. decides to issue shares to the public at a discount of Rs.1 per share.

Thus the issue of shares at a discount is void. In case the above shares have been issued to employees as Sweat equity shares, then the issue of shares at discount is valid.

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 Dec' 21)**

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) a start-up company 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 shall be stamped on the certificate.

In the above case Yellow Pvt Ltd., an unlisted company has a 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. The company can issue sweat equity shares by passing special resolution at its general meeting.

Thus 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.

A Limited has an Authorized Capital of 10,00,000 equity shares of the face value of 100/- each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the share market and requested the Company to reduce the face value of each share to 10/- and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the company can alter its share capital as per the provisions of the Companies Act, 2013. **(Nov' 17)/ (RTP Nov' 23)**

As per section 61 of the Companies Act, 2013, a limited company having share capital may alter its memorandum so as to

- divide all or any of its share capital of a larger amount than its existing shares or
- sub-divide the whole or any part of its shares of smaller amount than is fixed by the memorandum

However the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was before such division or sub-division. For such alteration the company

i. must be authorized by its articles
ii. must pass an ordinary resolution in the general meeting.
iii. shall alter its memorandum
iv. shall file a copy of the altered memorandum with the Registrar.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in section 61(1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given instance, shareholders of A Limited in the Annual General Meeting, requested the company to reduce the face value of each shares from 100 to 10 per share and increase in the number of shares, then is fixed by the memorandum from 10 lacs to 1 crore. According to the provision of the Act it is possible for the company to sub-divide the shares provided it is authorised by its articles.

Hence, the request of the shareholders is considerable.

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 100 Lakh divided into 10 Lakh equity shares of 10 each. The subscribed and paid-up share capital on that date is 80 Lakh divided into 8 Lakh equity shares of 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' 22)**

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 for the same are:

1. 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. cancellation of shares shall not be deemed to be a reduction of share capital.

Further according to section13, 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

In the above case Manorama Travels Private Limited 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. As per the provisions of the Act 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

i. Contention of practicing Company Secretary is not valid.
ii. Company may alter the provisions of its memorandum with the approval of the members by a special resolution

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.? **(Nov' 19)**

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company. such shares shall be offered in proportion to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions:-

i. the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
ii. unless the articles of the company otherwise provide, the offer shall be deemed to include a right to renounce the shares offered in favour of any other person and the notice referred to in clause (i) shall contain a statement of this right;
iii. after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018. Mr. Kavi applied to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation.

Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Further even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Rashi Computers Limited was incorporated in the year 2018 having paid up share capital of 10 crores. Now the company wants to convert its share capital into stock. Can the company do so? State also whether the company may create stock as its capital at the time of incorporation. **(Nov' 19)**

According to section 61 of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination. However a company cannot create stock as its capital at the time of incorporation as the memorandum shall specify the number of shares. So a company cannot be incorporated with stock.

In the above case Rashi Computers Ltd. incorporated in the year 2018 having paid up share capital of 10 Crores can convert its share capital into stock by provision under section 61 of the Act. However the company cannot create stock as its capital at the time of incorporation.

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? **(RTP May' 18)/ (MT Mar' 19)/ (MT)**

OR

Poorva Limited refuses to register transfer of shares made by Mr. Akbar to Mr. Amar. The company does not even send a notice of refusal to Mr. Akbar or Mr. Amar respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013. **(RTP Nov' 17)**

OR

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him? **(May' 18)**

As per Section 58 of the Companies Act, 2013 where a company refuses to register the transfer of shares the company shall inform the transferor and transferee of such refusal. In case of a public company if the company without any sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.

In the above case Mr. Nilesh holding shares of Perfect Ltd. made an application to the company for transfer to Ms. Mukta. The company refused to register transfer but did not inform Mr. Nilesh or Ms. Mukta of such refusal. If the company fails to inform the refusal of transfer Ms. Mukta may appeal to the tribunal.

Thus Ms. Mukta may appeal to the Tribunal within 90 days from the delivery of the transfer instrument with the company.

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. **(Nov' 19)/ (Nov' 20)**

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 the person who acquires the shares by a forged signature has a right to claim damages from the person who filed the forged transfer deed with the company.

In the above case Mr. A was the owner of the shares. A transfer deed was filed with the company for transfer of the shares to B but the signature of A was forged. B transferred the shares to C. As the forged transfer deed is a nullity B does not get the ownership of the shares and so he cannot transfer ownership to C.

Thus the company is bound to restore the name of A and to pay him any dividends which he ought to have received. B and C can recover damages from A as he seems to be the perpetrator of the forger.

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' 21)**

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.

Distinguish between transfer and transmission of shares. **(May' 18)**

The following are the differences between transfer and transmission:

Transfer	Transmission
It is effected by a voluntary/ deliberate act of the parties by way of a contract.	It takes place by operation of law e.g. due to death, insolvency or lunacy of a member.
It takes place for consideration.	No consideration is involved.
The transferor has to execute a valid instrument of transfer.	There is no prescribed instrument of transfer
As soon as the transfer is complete, the liability of the transferor ceases.	Shares continue to be subject to the original liabilities.

Bhuj 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, 2023 showed the following position:

1. Authorized Share Capital (25,00,000 equity shares of 10/- each) 2,50,00,000
2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of 10/- each, fully paid-up) 1,00,00,000
3. Free Reserves 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, 20130 . **(MT)**

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—

1. it is authorised by its Articles;
2. it has, on the recommendation of the Board, been authorised in the general meeting of the company;
3. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
4. it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
5. the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paidup;

6. 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.
7. Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

In the above case Bhuj Cement Limited decide to issue 1 bonus share for every 2 shares. The paid up share capital of the company 1,00,00,000 so the company will require reserves of 50,00,000 (i.e. half of 1,00,00,000). The company has free reserves of 3,00,00,000. 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.

What are the modes of reduction of share capital under the Companies Act, 2013? Will the provisions related to reduction of share capital also apply on the buy-back of its securities by a company? **(Nov' 20)**

According to section 66(1) of the Companies Act, 2013, 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:

According to sub-section (6), the provisions related to reduction of share capital shall not apply to buy-back of its own securities by a company under section 68.

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

i. Reduction in Authorized Capital from 5 crore divided into 50 Lakhs equity shares of 10 each to 4 crore divided into 50 Lakhs equity shares of 8 each.
ii. Conversion of 30 Lakhs partly paid up equity shares of 8 each to fully paid up equity shares of 8 each there by relieving the shareholders from making further payment of 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' 20)**

As per section 66 of the Companies Act, 2013, a company may reduce its share capital by the following procedure:

1. A company limited by shares or limited by guarantee may reduce its share capital by any of the following ways:
   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. The company shall for such reduction:
   a) pass a SR
   b) get confirmation of the Tribunal.

3. The Tribunal shall give notice of every application to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice.
4. The Tribunal shall grant sanction for reduction on such terms and conditions its deems fit if:
    i. 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,
    ii. the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal
5. The order of confirmation of the reduction by the Tribunal shall be published by the company in such manner as the Tribunal may direct.
6. 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 30 days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

In the above case SSP Limited proposes to alter its share capital from 5 crore to 4 Crore. So the company can alter its share capital by following the procedure stated above.

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed? **(RTP May' 18)**

As per section 68 of the Companies Act, 2013 a company may buy back its equity shares provided the buy back does not exceed 25% of its paid up equity share capital. The sources for such buy back is:

a) Free reserves or
b) Security Premium account or
c) Proceeds of the issue of any shares or other specified securities

However, no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

In the above case Kavish Ltd wants to buy back all of its equity shares. The company u/s 68 is given the power to buy back its shares provided the buy back does not exceed 25% of its paid up equity share capital.

Thus Kavish Ltd. cannot buy back all of its equity shares.

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard? **(RTP Nov' 18)**

Under section 67 of the Companies Act, 2013 a public company shall not directly or indirectly give any loan or any guarantee or provide any security for purchase or subscription of its shares or the shares of its holding.

However the company may give loan

i. to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months
ii. 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.

The company shall make a disclosure in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates in its Board's Report.

In the above case Heavy Metals Ltd. wants to provide financial assistance to its employees to subscribe for its fully paid up shares. The company can provide this assistance to its employees provided the employees are not any key managerial personnel and the shares to be subscribed are fully paid up shares.

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 30,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. **(MT Aug' 18)/ (RTP May' 20)/ (Jan' 21)/ (MT)**

As per section 67 of the Companies Act, 2013 a company may give loan to its employees to purchase its shares if:

i. The loan is given to any employee other than a key managerial personnel.
ii. The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
iii. The shares to be subscribed must be fully paid shares

As per section 2 (51) of the Companies Act, 2013 a "Key Managerial Personnel " (KMP) includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer, such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board and such other officer as may be prescribed.

In the given case OLAF Ltd. a subsidiary of PQR Ltd. decides to give a loan of 4,00,000 to the HR Manager to buy 500 partly paid shares of the company. the salary of the manager was 30,000 per month. As per the Act a loan can be given to an employee who is not a KMP. Since the HR Manager was not a KMP the company could give him the loan. However the loan amount exceeded his 6 months salary and was given to purchase partly paid up shares of the company. this is not in accordance with the provisions of the Act.

Thus the decision of OLAF Ltd. is invalid due to two reasons; the loan amount exceeds his 6 months salary and the loan is given to purchase partly paid up shares of the company.

Large Limited has a paid-up equity capital and free reserves to the extent of 50,00,000. The company is planning to buy-back shares to the extent of 4,50,000. The company approaches you for advice with regard to the following

i. Is special resolution required to be passed?
ii. What is the time limit for completion of buy-back?
iii. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?? **(RTP Nov' 18)**

OR

Xgen Limited has a paid-up equity capital and free reserves to the extent of 50,00,000. The company is planning to buy-back shares to the extent of 4,50,000. The company approaches you for advice with regard to the following

i. Is special resolution required to be passed?
ii. What is the time limit for completion of buy-back?
iii. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back? **(May' 18)**

As per section 68 of the Companies Act, 2013 the conditions for buy back of securities by a company are:

1. The buy-back is authorized by its articles;
2. A special resolution has been passed at a general meeting of the company authorizing the buy-back. However the company need not pass a special resolution if:
   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;
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.
4. Every buy-back shall be completed within a period of one year from the date of passing of the special resolution or the resolution passed by the Board.

In the above case Large Ltd. having paid up equity and free reserves of 50,00,000 proposes to buy back its shares to the extent of 4,50,000. The total buy back is less than 10% of the total paid up capital and free reserves (50,00,000x10/100= 5,00,000). As the buy back is less than 10% the company can buy back by passing a Board resolution.

Thus

i. Special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves of the company. However the buy back must be authorized by the Board by means of a resolution passed at its meeting.
ii. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
iii. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

XYZ Company Ltd, at general meeting of members of the company pass an ordinary resolution to buy-back 30% of its equity share capital. The Articles of the company empower the company for buy-back of equity shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of companies own shares be executed. Examine:

i. Whether company's proposal is in order?
ii. Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its equity share capital? **(Nov' 16)**

Under section 68 of the Companies Act, 2013 a company can purchase its own shares or other specified securities subject to fulfilment of prescribed conditions and subject to defined limits and procedures.

1. A company can purchase its own shares or other specified securities out of:
   i. its free reserves; or
   ii. the securities premium account; or
   iii. the proceeds of the issue of any shares or other specified securities.

   However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
2. The buy-back is authorised by its articles;
3. A special resolution authorising the buy-back is passed at a general meeting of the company. the company need not pass a special resolution if:
   i. the buy-back does not exceed 10% of the total paid-up equity capital and free reserves of the company and
   ii. such buy-back has been authorized by the Board by means of a resolution passed at its meeting,

4. The buy-back should not exceed 25% of the aggregate of the paid-up capital and free reserves of the company.

In the above case XYZ company Ltd. wants to buy back 30% of its equity share capital out of the proceeds of the earlier issue of equity shares. The articles of the company authorise such buy back. Further the company passes an ordinary resolution for such buy back. The decision of the company for such buy back is not in accordance with the proposal of the Act as it crosses the limit specified, is made out of the earlier issue of the same shares or specified securities and the company does not pass a special resolution for the buy back..

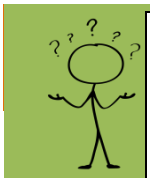
Thus on the basis of the above discussion

i. The company's proposal for buy-back is not in order as it has passed only an ordinary resolution., the buy back exceeds the limit specified and payment of buy back out of the proceeds of an earlier equity issue.
ii. The answer to the second part shall also be the same since the irregularity and contravention will not be affected by the fact that the proposed buy back will be 20% of its equity.

"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. **(July' 21/ MT/ MT)**

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



As per the provisions of the Companies Act, 2013, state the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares. **(MT)**

According to Section 68 (6), where an unlisted public company has passed a special resolution under Section 68 (2) (b) or the Board has passed a resolution under item (ii) of the proviso to Section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency'.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

Board of Directors of Shine Ltd. gives you the following information extracted from the company's financial statements as at 31st March, 2020.

Authorised equity share capital (1 crore shares of 10 each)	10 crores
Paid up equity share capital	5 crores
General Reserve	3 crores
Debenture redemption reserve	1 crore

Board of Directors, by a resolution passed at its meeting, decides to go for buy-back of shares to the extent of 20% of the company's paid-up share capital and free reserves. Examine the validity of Board's resolution with reference to the provisions of the Companies Act, 2013. **(Jan' 21)**

Section 68(2) provides that a company shall not purchase its own shares or other specified securities, unless—

a) the buy-back is authorised by its articles;
b) 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;

In the given instance, Board of Directors of Shine Ltd. have paid up equity share capital and general reserve in aggregate of 8 crores. By resolution, Board of Directors passed at its meeting, buy back of shares to the extent of 20% of the paid- up share capital and free reserves which is 1.6 crores which is more than 10% of the total paid-up equity capital and free reserves i.e. 0.8 crores of the company. Therefore, special resolution is required to be passed at a general meeting of Shine Ltd., authorising the buy-back.

Thus Board resolution passed by the Board of Directors, is invalid.

XYZ unlisted company passed a special resolution in a general meeting on January 5th 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

i. Decide, whether the company's proposal is in order.
ii. What will be your answer if buy back offer date is revised from January 5th 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above? **(Nov' 19)/ (Jan' 21)**

As per section 68 of the Companies Act, 2013 a company may buy back its equity shares provided the buy back does not exceed 25% of its paid up equity share capital. The sources for such buy back is:

a) Free reserves or
b) Security Premium account or
c) Proceeds of the issue of any shares or other specified securities

However, no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.
The Act further states that no offer of buy back or other specified securities shall be made within a period within a period of one year from the date of closure of the preceding offer of buy back.

In the instant case the articles of XYZ unlisted company authorizes the company to buy back. The company passed a special resolution in a general meeting on January 5th 2019 to buy back 30% of its own equity shares. The company had earlier also passed a special resolution to buy back its own shares on January 15th 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. The company's proposal is not in order due to the following reasons:

i. Though a special resolution is passed the proposal to buy back 30% of its own equity shares exceeds the limit of 25% specified.
ii. The resolution passed on 5th January 2019 not valid as 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 and the previous offer was made on 15th Jan 20018.
iii. The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus the proposal of the company is not in order.
Even if the buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares. **(Nov' 19)**

Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

i. its free reserves; or
ii. the securities premium account; or
iii. the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

As per section 70

1. a company cannot directly or indirectly purchase its own shares or other specified securities-
    a) through any subsidiary company including its own subsidiary companies; or
    b) through any investment company or group of investment companies; or
    c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company; But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.
2. A company shall not directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders? **(RTP Nov' 18)**

As per Section 62 of the Companies Act, 2013 if, at any time, the company brings a further issue of its shares such shares must be offered to the existing equity shareholders of the company as at the date of the offer. Such offer shall be made in proportion to the capital paid up on the shares held by them. However these shares can be offered to any other person in the following cases:

a) to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
b) to any persons, if it is authorized by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.

As section 62 clearly states that the offer must be made to the existing equity shareholders but it can also be issued to other persons hence these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Thus Earth Ltd. may offer the shares to any person other than existing shareholders including the preference shareholders if the company has passed a special resolution.

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of 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)**

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:

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,

iv. 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.

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.

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. **(RTP May' 19)/ (May' 18)**

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:

i. unlisted public companies
ii. private companies
iii. 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

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 expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
c) for the purchase of its own shares or other securities under section 68

Misha India Ltd. owed to Sunil 1,000. On becoming this debt payable, the company offered Sunil 10 shares of 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.
Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013 **(RTP May' 18)/ (MT Aug' 18)**

Under section 62 of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such share may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

In the present case, Misha India Ltd owed money to Sunil a sum of 1,000. The company offered shares to Sunil for payment of the debt. The company is empowered to allot shares in settlement of a debt provided the company passes a special resolution authorizing such issue. Further the issue is for consideration other than cash the shares must be valued by a registered valuer.

Thus misha Ltd. can allot the shares to Sunil in full settlement of the debt provided it had passed a special resolution and the shares are valued by a registered valuer.

ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

	Amount
Equity shares capital (3.00 lakhs equity shares of 10 each)	30.00 lacs
Free reserves	5.00 lacs
Securities Premium Account	3.00 lacs
Capital redemption reserve account	4.00 lacs
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? **(Nov' 18)/ (MT)**

As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members out of—

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

Issue of bonus shares shall not be made by capitalising reserves created by the revaluation of assets.

In the given case ABC Ltd. has issued 3,00,000 equity shares of 10 easch. The company proposes to issue bonus shares. The total amount of fund available for such issue is 12 lakhs (i.e. 5.00+3.00+4.00). So the company can issue bonus shares upto the value of 12 lakhs.

i. For issue of bonus shares in the ratio of 1:3 the total fund required shall be 10 lakhs (1/3 of 30.00 lakh) which is well within the limit of available amount of ` 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
ii. In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of 15 lakhs (½ x 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 15 Lakhs is exceeding the available eligible amount of 12 lakhs.

MN 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, 2017 shows the following position:

	Amount
Authorized Share Capital (25,00,000 equity shares of face value of 10/- each)	2,50,00,000
Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of 10/- each, fully paid-up)	1,00,00,000
Free Reserves	3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1share 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. Advise. **(Nov' 17)/ (RTP May' 21)**

As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members out of—

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

Issue of bonus shares shall not be made by capitalising reserves created by the revaluation of assets.

For such capitalization of profits the company:

i. must be authorised by its Articles;
ii. 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. 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. complies with such conditions as may be prescribed
vii. bonus shares cannot be issued in lieu of dividend

In the above case the Board of Directors of MN Ltd. propose to declare 1 bonus share for every 2 shares. The total number of shares is 25,00,000, so the total number of bonus shares shall be12,50,000 (1/2 of 25,00,000). The total funds required for this issue is 1,25,00,000. The total funds available with the company for such issue is 4,00,00,000 (1,00,00,000 + 3,00,00,000). Hence the company has sufficient funds for the issue of such bonus shares.

Thus MN Ltd. can issue 1 bonus share for every 2 shares after complying with the above provisions.

Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Sl. No.	Particulars		Amount
	Equity & Liabilities		
1.	Shareholder's Fund		
	(a) Share Capital		
	Authorized Capital:		
	10,000, 12% Preference Shares of 10 each	1,00,000	
	1,00,000 1,00,000 equity shares of 10 each	10,00,000	11,00,000
	Issued & Subscribed Capital:		
	8000,12% Preference Shares of 10 each fully paid up 80,000		80,000
	90,000 equity shares of 10 each, 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	2,00,000	4,20,000
2.	Non-Current Liabilities:		
	(a) Long-term borrowings:		
	Secured Loan: 12% partly convertible Debenture @ 100 each		5,00,000

On 1st April, 2020 the company has made final call at 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize it's 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?

If the company did not ask for the final call on April 1st, 2020. Can it still issue bonus shares to its members? **(Dec' 21)/ (MT)**

According to section 63 (1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members 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 capitalising 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.

In the above case, Beltex Ltd. decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders. 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 10 per share = 2,25,000 Total amount available to be capitalized from free reserves to issue bonus shares = 1,20,000+25,000+2,00,000 = ` 3,45,000

Thus

(a) The following sources can be used by the company to issue bonus shares:
    i. General Reserve
    ii. Securities Premium
    iii. Surplus in statement of P&L
(b) The amount to be capitalized from free reserves to issue bonus shares will be 2,25,000.
(c) If the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.

"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

i. a company cannot issue shares at a discount except by way of sweat equity
ii. 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:

i. issue of sweat equity shares u/s 54 if:
   - the articles of the company authorise
   - the shares belong to a class of shares already issued
   - the company has passed a special resolution
   - the resolution 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
   - if the shares are listed the issue must comply with the regulations issued by SEBI
ii. 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

Shyam Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Jaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached XYZ Ltd. for subscribing to the shares of the Company for expansion purposes. Can Shyam Dairy Ltd. issue shares only to XYZ Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions. **(Nov' 17)**

According to Section 62 of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. If the existing shareholders refuse to take up the shares the Board may dispose the shares in any manner they deem fit which is not disadvantageous to the shareholders or the company.

In the above case Shyam Dairy Ltd. wanted to set up a new unit and was in need of capital for the same. The existing shareholders refused to take up the shares due to paucity of funds. The company approached XYZ Ltd. to subscribe for the shares of the company. As the members had refused to take up the shares of the company the Board may offer the shares to any person if it is not disadvantageous to the shareholders or the company.

Thus Shyam Dairy Ltd. may offer the shares to XYZ Ltd.

Shilpi Developers India Limited owed to Sunil 10,000. On becoming this debt payable, the company offered Sunil 100 shares of 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013. **(MT)**

Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer.

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

ABC Company Ltd. is holding 46% of total equity shares in SVS Company Ltd. The Board of Directors of SVS Company Ltd. (incorporated on January 1st, 2014) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to ABC Company Ltd. on the ground that it was already holding a high percentage of the total number of shares already issued, in SVS Company Ltd. The Articles of Association of SVS Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1st 2014 new shares were offered to all the shareholders except ABC Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SVS Company Limited of not offering any further shares to ABC Company Limited.**(May' 17)**

As per section 62 of the Companies Act, 2013 if, at any time, a company brings a further issue of its shares such shares must be offered to the existing equity shareholders of the company in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and the offer of shares must be made to every existing equity shareholder in proportion to their holdings.

In the above case SVS Company Ltd. brings a further issue of its shares. The company makes the offer to the existing shareholders except one of the equity shareholder ABC Company Ltd. The reason for not offering the shares to ABC Company Ltd. was that ABC Company Ltd. was already holding a high percentage of shares in SVS Company Ltd. (46%). The company cannot exclude any existing shareholder and make the offer to the rest.

Thus SVS Company Ltd.'s decision not to offer any further shares to ABC Company Ltd. on the ground that ABC Company Ltd. already held a high percentage of shareholding in SVS Company Ltd., is not valid.

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of 100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013? **(MT)**

According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in Section 61 (1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore). According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value 100 each) can reduce the face value of each share to ` 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to 10,00,00,000], if authorised by the articles of association.

Hence, the request of the shareholders is considerable.
The company has to alter its memorandum in its general meeting as per the procedure contained in Section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Write short notes on the following in respect of the provisions of the Companies Act, 2013 creation of debenture redemption reserve account. **(MT Aug' 18)**

According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

What are the provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company? **(Nov' 16)/ (MT Aug' 18)**

Where a company issues secured debentures the company shall not make such an issue without appointing a debenture trustee. Under section 71 of the Companies Act, 2013, a company shall not 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. A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with the prescribed rules.

As per Companies (Share Capital and Debentures) Rules, 2014 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.

As per the Rules a person shall not be appointed as a debenture trustee, if he –

i. Beneficially holds shares in the company;
ii. Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
iii. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
iv. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
v. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
vi. Has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
vii. Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

What do you mean by 'Pari Passu' clause in a debenture? State the particulars that are required to be filed with the Registrar of Companies in case such debentures are secured by way of a charge on certain immovable assets of the Company. **(Nov' 17)**

The term "pari passu" means equal ranking. Pari Passu clause in a debenture means that all the debentures of that particular series are to be paid rateably. If the security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately. If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue, and if they are all issued on the same date they will be payable according to their numerical order.

A company, however, cannot issue a new series of debentures so as to rank 'pari passu' with any prior series unless the power to do so is expressly reserved and contained in the document of offer.

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 10,000.
ii. A creditor whom the company owes 999 only.
iii. A person who has given a guarantee for repayment of amount of debentures issued by the company. **(RTP Nov' 22)**

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 10,000, cannot be appointed as a debenture trustee.
ii. A creditor whom company owes 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.

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 10,000.
ii. A creditor whom the company owes 999 only.
iii. A person who has given a guarantee for repayment of amount of debentures issued by the company. **(Dec' 21/ MT)**

Under section 71 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. As per Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014, 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, 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 10,000, cannot be appointed as a debenture trustee.
ii. A creditor whom company owes 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.

The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

Authorised Share Capital: 1,00,000 Nos. of Equity Shares of 100 each	1,00,00,000
Subscribed and Paid-up Share Capital: 40,000 Nos. of Equity Shares of 100 each, fully paid-up. Share Premium Reserve General Reserve Balance in Profit and Loss Account Capital Reserve (profit on sale of Fixed Assets) 8% Non-Convertible Debentures 9.5% Term Loan from XYZ Bank Limited for purchase of Plant and Machinery (Repayment starts after 1 year moratorium period) Short-term Cash Credit Loan from XYZ Bank Limited (On hypothecation of stock and receivables of the Company, repayable on demand)	40,00,000 50,00,000 30,00,000 20,00,000 30,00,000 30,00,000 20,00,000 50,00,000

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advice the company presenting the necessary calculations:

i. The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?

ii. What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares? **(Nov' 22)**

As per section 71 of the Companies Act, 2013, before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The section further states that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	1,40,00,000

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	50,00,000

Here, Short– term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed 90,00,000

Thus the company

i. Can issue debentures upto 90,00,000. If the borrowings exceeds 90,00,000 the company shall obtain approval of the shareholders through special resolution.
ii. If the company desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

State the differences between the debenture and shares. **(Nov' 18)**

Following are the differences between shares and debentures:

Shares	Debentures
Shares are a part of the capital of a company	Debentures constitute a loan.
The shareholders are the owners of the company	Debenture holders are creditors.
Shareholders generally enjoy voting right	Debenture holders do not have any voting right.
Dividend is paid to shareholders only out of the profits of the company.	Interest on debenture is payable even if there are no profits.
Shares do not carry any such charge.	Debentures generally have a charge on the assets of the company
The dividend may vary from year to year.	The rate of interest is fixed in the case of debentures
Dividend on shares do not get preference over interest.	Fixed amount of interest on debentures gets priority over dividend on shares