# MOST IMPORTANT QUESTIONS FOR CA INTER CORPORATE & OTHER LAWS

## CHAPTER 4 – SHARE CAPITAL & DEBENTURES

| Five Star | Four Star | 3 Star | 2 Star |
|---|---|---|---|
| ✓ Sec 68 Buy Back<br>✓ Sec 68 & 70 Buy Back & prohibition<br>✓ Sec 67 Restriction on purchase of its own shares | ✓ Sec 62 Right Issue<br>✓ Sec 54 Sweat Equity Shares<br>✓ Sec 53 Discount<br>✓ Sec 63 Bonus shares | ✓ Sec 61 Alteration of share capital<br>✓ Sec 71 Debenture<br>✓ Sec 55 Redemption of preference shares | ✓ Sec 58 Refusal to register<br>✓ Forged transfer<br>✓ Sec 50 Calls in advance |

## Important sections

- ✓ Sec 68 Buy Back
- ✓ Sec 68 & 70 Buy Back & prohibition
- ✓ Sec 67 Restriction on purchase of its own shares
- ✓ Sec 62 Right Issue
- ✓ Sec 54 Sweat Equity Shares
- ✓ Sec 53 Discount
- ✓ Sec 63 Bonus shares
- ✓ Sec 61 Alteration of share capital
- ✓ Sec 71 Debenture
- ✓ Sec 55 Redemption of preference shares
- ✓ Sec 58 Refusal to register
- ✓ Forged transfer
- ✓ Sec 50 Calls in advance



## Buy Back

**Question 1A**

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?

**Answer**

Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares or other specified securities unless-

(a) The buy-back is authorized by its articles;

(b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—

(1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that 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.

As per the stated facts, Xgen Ltd. has a paid-up equity capital and free reserves to the extent of Rs. 50,00,000. The company planned to buy back shares to the extent of 4,50,000.

Referring to the above provisions, the answers will be as follows:
1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. 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.
3. 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.

The above buy-back is possible when backed by the authorization by the articles of the company.

## Question 1B

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 buyback 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?



## Answer

(i) In the instant case, the company's proposal is not in order due to the following reasons:
(A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

(B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

(C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is 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. [proviso to section 68(2)]

(D) The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), 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.

(ii) If 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.

## Question 1C

London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:
(A) Whether company's proposal is in order?
(B) Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?

## Answer

According to the provisions of section 68 (2) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub- section (1), unless—

(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;

(c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:



Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

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

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

## Question 1D

"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.

**Answer**

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

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

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

**Question 1E**

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.

**Answer**

Sources of buy back – Same as above

| | |
|---|---|
| Prohibition in case of defaults in payments | No company shall directly or indirectly buy-back its own shares or other specified securities, if default is made by the company in - -<br>(a) repayment of deposits or interest payable thereon<br>(b) redemption of debentures<br>(c) redemption of preference shares<br>(d) payment of dividend to any shareholder<br>(e) repayment of any term loan or interest payable thereon to any financial institution or bank.<br>However, the buy-back is not prohibited, if the default is remedied and a period of 3 years has lapsed after such default ceased to subsist. |
| Other prohibitions | No company shall directly or indirectly buy-back its own shares or other specified securities -<br>(a) through any subsidiary company including its own subsidiary companies; or<br>(b) through any investment company or group of investment companies. |
| Prohibition in case of non-compliances | No company shall, directly or indirectly, buy-back its own shares or other specified securities if it has not complied with the provisions of-<br>(a) Sec. 92 (Filing of annual return);<br>(b) Sec. 123 (Provisions relating to declaration of dividend); or<br>(c) Sec. 127 (Payment of dividend within 30 days); or<br>(d) Sec. 129 (Provisions relating to financial statement). |

# Restriction on purchase by company or giving of loans by it for purchase of its shares

## Question 2

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

## Answer

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

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

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

1. The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore, this condition has not been fulfilled;

2. The amount does not exceed their salary or wages for a period of six months. - This condition has not been fulfilled.

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



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

# Right Issue

## Question 3A

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.?

## Answer

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—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely: -

(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 aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them 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 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.

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.



In the second part of the question, 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.

## Question 3B

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders except VRS Company Ltd.

Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

## Answer

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of Section 62 (1) (a) as well as Articles of the issuing company.

**Question 3C**

Shilpi Developers India Limited owed to Sunil Rs. 10,000. On becoming this debt payable, the company offered Sunil 100 shares of Rs. 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

**Answer**

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 subject to such conditions as may be prescribed.

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 and any other conditions as may be prescribed.



## Sweat Equity Shares

**Question 4A**

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?

**Answer**

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

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

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

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share

as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

**Question 4B**

Innovative Ltd., a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

| Particulars | INR (Crore) |
|---|---|
| Authorised Share Capital | |
| 100,00,000 Equity Shares of Rs. 10 each | 10 |
| Issued, Subscribed and Paid-up Share Capital | |
| 50,00, 000 Equity Shares of Rs.10 each | 5 |
| Share Premium | 1 |
| General Reserve | 3.52 |
| Profit & Loss Account | 1.58 |

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price Rs. 25 per share with a consideration of Rs. 5 per share to be issued to a class of directors and employees.

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.
(i) Whether size of issue of sweat equity shares was appropriate?
(ii) Whether lock-in period was justifiable?

**Answer**



Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued. if the following conditions are fulfilled, namelv-

(a) the issue is authorised by a special resolution passed by the company;
(b) 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.

**Limit on issue of Sweat Equity Shares:** According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

**Lock-in Period**: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that 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.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

**Alternate answer**

Conditions for issue of sweat equity shares & lock in period is same as above

**Limit on issue of Sweat Equity Shares:**

- According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t
- a start-up company,
- as defined in notification number G.S.R. 127(E)
- dated the 19th February, 2019
- issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India,
- it may issue sweat equity shares not exceeding fifty percent of its paid up capital up to ten years from the date of its incorporation or registration.
- A company which is not a start-up company shall not issue sweat equity shares for more than fifteen per cent of the existing equity paid-up share capital in a year or shares of the issue value of rupees five crore, whichever is higher,
- provided that the issuance of sweat equity shares in the company shall not exceed twenty-five per cent, of the paid-up equity capital of the company at any time.
- As per the aforesaid notification number G.S.R. 127(E) dated the 19th February, 2019 an entity shall be considered as a Start-up, if it is incorporated as a private limited company (as defined in the Companies Act, 2013).



Accordingly, in the given instance,

(i) Size of issue of sweat equity shares i.e., 30% to be issued by a start-up entity would be appropriate. However, Innovative Ltd. being a public company cannot assume the status of a start-up entity. Hence, the decision of the company to issue 30% sweat equity shares to a class of directors and employees was not within the prescribed limit. Hence, the size of issue of sweat equity shares of the company was not appropriate.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

## Discount

**Question 5**

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

(1) Decide whether the advise of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act. 2013.
(2) What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

**Answer**

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

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

(1) As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advise of the underwriter to issue shares at a discount is not valid.

(2) In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

## Bonus shares

**Question 6A**

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

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



On 1st April, 2020 the company has made final call at Rs. 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?

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

**Answer**

Issue of Bonus Shares

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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

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

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

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

(B) 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 = 22,500 × Rs. 10 per share bonus shares = Rs. 2,25,000

Total amount available to be capitalized from = 1,20,000+25,000+2,00,000 free reserves to issue bonus shares = Rs. 3,45,000

Hence, the amount to be capitalized from free reserves to is sue bonus shares will be Rs. 2,25,000.

(c) A company can issue bonus shares on only fully paid shares. Hence, if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.



**Question 6B**

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50, 00,000 equity shares of Rs.10 each) Rs. 5,00,000

(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of Rs. 10 each, fully paid-up) Rs. 2,00,00,000

(iii) Free Reserves Rs. 50,00,000

(iv) Securities premium account Rs. 25,00, 000

(v) Capital Redemption Reserve Rs. 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus Issue.

**Answer**

**Conditions for bonus shares**

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

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

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 [Section 63(2)]:** No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

**Issue of bonus shares:** For the issue of bonus shares, Frontline Limited will require reserves of Rs. 1,00,00,000 (i.e. half of Rs. 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. Rs. 1,00,00,000 (Rs. 50,00,000 + Rs. 25,00,000 + Rs. 25,00,000). 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.



## Alteration of capital clause

### Question 7A

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of Rs.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 Rs.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?

### Answer

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 Rs. 100 each) can reduce the face value of each share to Rs. 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to Rs. 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

How the company can alter its Share Capital

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.

## Question 7B

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



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

## Answer

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

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

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

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

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

(i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.

(ii) According to 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.

# Debenture

## Question 8A

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 regardingthe maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on31st March, 2022:

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



Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise 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 Companyin 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?

## Answer

The amount that can be raised by the Company by issuing Debentures:
Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. 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 Amount that can be raised by the Company by issuing Debentures: 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 andsecurities 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) = Rs. 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 Rs. 90,00,000.

(ii) Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 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.

Thus, in case SRD Limited 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.

## Question 8B

What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?
(i) A shareholder of the company who has shares of Rs. 10,000.
(ii) A creditor whom the company owes Rs. 999 only.
(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.

**Answer**

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

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

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-
(1) beneficially holds shares in the company;
(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

Thus, based on the above provisions answers to the given questions are as follows:
(i) A shareholder who has holds shares of Rs. 10,000, cannot be appointed as a debenture trustee.
(ii) A creditor whom company owes Rs. 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.



## Redemption of Preference Share

**Question 9A**

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to Rs. 10,00,000 (10,000 preference shares of Rs. 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

**Answer**

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

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

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

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

In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. Rs. 10,00,000. For this purpose,

it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition.

In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.
On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

**Question 9B**

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

Can the company include the dividend unpaid in the above issue of redeemable preference shares?

**Answer**

Provision same as above

In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.



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

## Forged transfer

**Question 10**

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?

**Answer**

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

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

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

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

## Call in advance

**Question 11**

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?

**Answer**

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.