

# Chapter - 4

(8-10 marks)

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Date	

## Share - Capital & Debenture.

Unit - I



Share Capital

(Sec-43-55,  
60-70, 72)

Unit - II



Transfer &  
Transmission

of shares  
(Sec-56-59)

Unit - III



Debenture  
(Sec-71 +  
Rule-18)

→ Section Used: Ch-IV of Companies Act - 2013

Covering Sec 43 to 72, deals about share capital, transfer & debenture.

→ Rules Used: The Companies (Share-Capital & Debenture) Rules - 2014

⇒ Forms: SH-1 :- Format of share-capital certificate  
SH-2 → Register of duplicate share-certificate.  
SH-4 → Instrument used for transfer of shares:



Share & its features (Sec. 2(84))	Types of shares	Types of issue of shares	Share Certificate Sec. 46
+	Sec. 43	→ At par	→ Voting right Sec. 47
Sec. 44	Equity Share    Prefer. Share	→ At premium Sec. 52	→ Variation in right Sec. 48
Sec. 45		→ At Discount Sec. 53	→ Right of Bonus Sec. 62, 63
		↓	
		E-1 Sweat Equity E-2 Settlement with lender	→ Buy-Back ← → Reduction of alteration.

Concept -1 Share & its Characteristics  
Sec. 2(84) + Sec 44, 45

(I) Def of Share: (2(84))

Meaning and includes  
↓ ↓  
a share (part) in the share-capital of a company      Stock

Note: Stock

- No legal definition in sec. 2
- As per sec 61(2)(c) a co. is empowered to convert its fully paid shares into stock & re-convert stock into shares.
- Stock = Aggregate value of fully paid shares @ bundle of rights, which arises after conversion of fully paid shares



## II Features of shares:

1 **Movable** : (Sec 44) - Shares are movable property, which can be transferred from one person to another as per provision of AOA of company.

2 → **Unique and distinctive No.** (Sec. 45)

Every physical share, shall be numbered and such number shall be unique. However, the concept of numbering of shares, is not applicable upon shares held in demat form.

## Concept - 2 kinds of share-capital (Sec-43)

### Sec-43(a) Equity Shares



Further divided into

Equity shares with normal rights

(Plain-Vanilla)

No further discussion

Equity shares with diff. right w.r.t voting, dividend

(Rule-4)

### Sec-43(b) Pref. shares



Explanation II (Sec. 43)



such shares which carry two types of preference rights:

a) Preferential payment of dividend and

b) Preferential repayment of capital in comparison of equity shares.



## Concept - 3:- Differential voting rights & Condition for issue of differential voting rights [Sec-43(1)(b) + Rule-4]

**I- Meaning:** It means a types of equity shares where the investor either get higher voting and lower dividend or higher dividend then lower voting right.

**Eg: Case-I:** Rohan is getting 2% higher rate of dividend, then he has to reduce voting rights.

ICAI [Book page 408]

## II- Conditions for issue of equity shares with differential rights [Sec. 43(1)(b) + Rule.4]

a) **AOA:** Authorisation in AOA

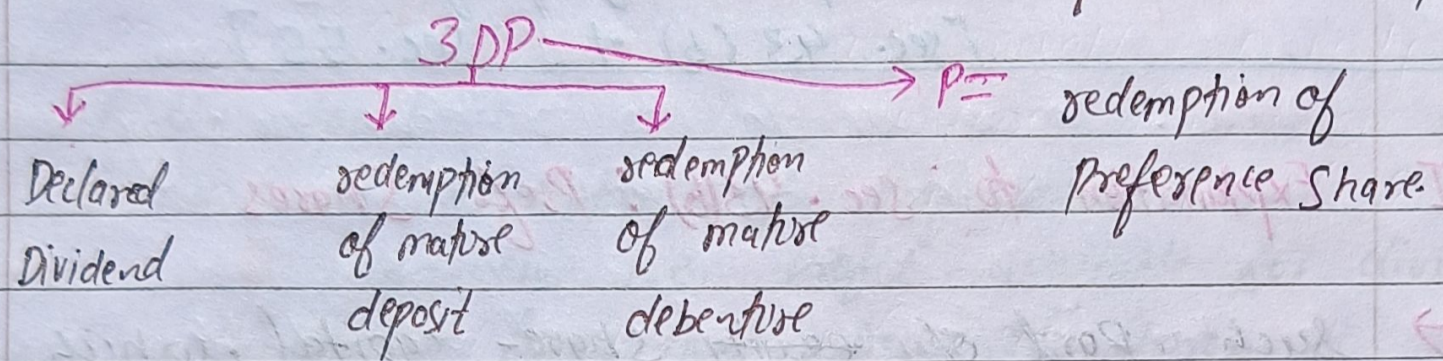
b) **O/R:** Get approval of member in GM by passing Ordinary Resolution. [Listed - Co; pass O/R by Postal-ballet i.e. without calling physical-meeting, by sending letter to members]

c) **Maximum voting Rights:** The holder of DVR shall not have more than 74% of total - Voting power of Company.

d) **No default in filing:** The Co. has not defaulted in filing of its Annual - Accounts [FS → Sec.137] Annual - Returns [Reports of non-financial information] for the last 3 years.



e) No default in payment of 3DP: The Co. has not default in the payment

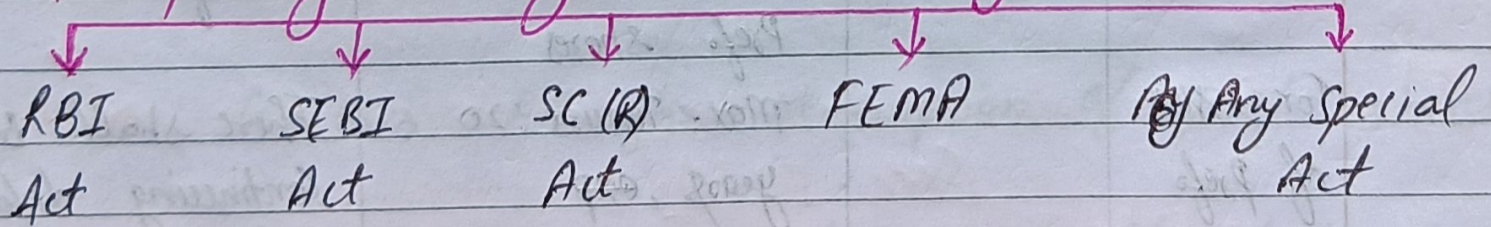


f) No Subsisting default: The Co. has not defaulted in the

- payment of dividend (on pref. shares)
- Repayment of Bank loan/PFI
- Statutory dues
- Crediting → unpaid dividend into IEPF

The company will remain ineligible for issuing DLR for next 5 years, from the completion of 5 years in which such default made good.

g) No penalty: During last 3 years under



Concept - 4: Pref. shares & Condition for issue & redemption of pref. share [Sec.]



Concept :- 4 Prefo shares & Condition for issue & redemption of prefo shares.  
[Sec. 43 (b) + Sec. 55]

I Explanation to Sec. 43(b): Prefo Shares

→ Such part of equity share-capital, which carries

preferential right in respect to payment of dividend; and

preferential right in respect of repayment of capital at the time of winding-up of the company.

II Condition for issue of Prefo share [Sec. 55]

Authority in AOA	(b) Pass S/R	(c) Max. Tenure → No irredeemable Prefo shares	d) No subsisting Default
For issue of Prefo Shares		Max. Tenure: 20 years, exp except co. may issue Prefo Share upto 30 years duration, but in that case	There shall be no continuing default in redemption of pref. shares or payment of dividend.
<p>it need to offer for redemption of at least 10% of o/s prefo shares on annual basis. Starting from 21<sup>st</sup> year onwards</p>			



### III Conditions / Important Provision for redemption of [Pref. Shares [Sec. 55 + Rule - 9]]

- a) Fully paid
- b) Sources of redemption of Pref. shares
- Free-reserve i.e., Profit - available for dividend.
  - Proceed from fresh issue of shares.

#### c) Sources of Payment of Premium on redemption of Pref. Shares.

- Out of securities Premium collected by (Co. U/S 52)
- Out of free-reserve

Co may prescribe certain class of Companies, [which  
Fs comply with AS prescribed U/S 133]  
which will not use SPA collected U/S 52 for  
payment of premium on redemption of  
pref. Shares.

#### d) Creation & Use of CRR [Sec. 55(2), (4)]:

- When:- Co. uses FR for redemption of pref. shares.
- How much: The amount of CRR shall not be less than nominal value of Preference shares redeemed.
- Where to Use:- Issue of fully paid - bonus shares



Note: Issue of New Pref. shares to existing pref. shareholder [sec. 55(3)]

→ When: Co is unable to redeem existing pref. shares or pay dividend

→ Condition - (i) Approval of pref. shareholders, who hold at least 3/4th value of unredeemed Pref. shares

(ii) and approval of NCLT

→ The NCLT shall order the Co. for forthwith repayment of outstanding money to dissenting Pref. shareholders.

Concept-5: Issue of Securities at Premium [sec. 52]

: (i) Issue Price > Face / Nominal Value

(I) Extra Amount to be transferred into New A/c [sec. 52(1)]

→ Any excess amount than the Face value, shall be transferred into separate A/c, which is known as "Securities Premium A/c".

~~II Utilisation of SPA by Normal Co. [sec. 52(2)]~~



## II Utilisation of SPA by Normal - Co. [Sec 52(2)]

B	B	P	P	O
Buy-back	bonus issue	Premium on redemption of pref. share / Debenture	Writing of preliminary expenses [incorporation - expenses]	Other issue exps. including underwriting Commission & discount on issue of shares

## III Further restriction on certain class of Companies [Sec. 52(3)]

B ⇒ Buy - Back

B ⇒ Bonus

O ⇒ Write off

## Concept - 6: Prohibition on issue of shares at discount [Sec. 53]

### I Prohibition : [Sec - 53(1)]

→ No company shall issue at discount.

### II Consequence of contravention of 53(1):

(i) Allotment will be void  
Sec - 53(2)

Penalty on O-I-D :  
100% of amount raised or  
₹ 5 lakh (whichever is lower)

Co. refund with into  
(a) 12% p.a for period  
of holding of money  
[Sec - 53(3)]



(iii) Exceptions: - Section 54 of Companies Act, 2013

(i) Issue of sweat Equity shares  
[Refer Sec. 54]

(ii) Issue of shares at discount to creditor as per statutory Resolution plan (or) Debt restructuring scheme as made by RBI  
[Sec. 53(2A)]

Concept - 7: Sweat Equity Shares & Condition for issue of sweat Equity shares [Sec. 2(88) + Sec. 54 + Rule-8]

I Def. of Sweat Equity shares: [Sec 2(88)]

→ A types of equity shares, which are issued to employee & director either at discount or consider other than cash

→ For providing know how, intellectual-property rights & value-additions.

II Condition for issue of sweat Equity shares: [Sec-54(i)]

<p>a) Existing class The shares must belong to existing class of shares, which is already issued</p>	<p>b) Pass S/R Call <sup>or</sup> general meeting and pass S/R</p>	<p>c) matters to be Confirmed in S/R • No. of Shares Current market price Consideration (if any) Classes of employee/director</p>	<p>d) Listed Co: To comply other condition as prescribed by SEBI by regulation Unlisted co: Additional Condition prescribed in Rules made there (Ch.</p>
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### III Status of Sweat Equity shares: [Sec-54(2)]

- a) Rights, restricts etc. on sweat equity shares will be equal to normal equity shares.
- b) The holders of Sweat equity shares shall rank pari-passu with other equity shareholders.

### IV Other provision about sweat Equity shares [Rules-8]:

#### 1. Definition of Employee:

- (a) Permanent employee of Co. [working in or outside of India]
- b) a director of Co. [whether a whole time director or not]
- c) employee or director of holding Co. or subsidiary Co. of relevant - Co.

2. Validity of S/R: 1 year from the date of passing S/R.

#### 3. Ceiling limit on issue of sweat Equity shares:

→ In a particular F.Y. Sweat equity shares can be higher of

a) 15% of PUESC or

b) ₹ 5 cr. (issue-value).

→ However, it shall not exceed 25% of PUESC at any time.

→ However, a start up company may issue sweat equity shares @ 50% of PUESC instead of 25% of PUESC.



## Concept - 8: Right shares & its exceptions: [Sec-62]

### I Meaning of right shares:

Offering of further shares to existing shareholder @ of proportionate existing shares held by them

### II Condition for / Provision for right shares:

[Sec-62(2)(a) & 62(2)]

a) **LOO**: The Co. shall dispatch "LOO" through regd. post/e-mail etc. at least 3 days before opening of right issue.

#### b) Content of LOO: →

→ No. of Shares offered to existing shareholders

→ Time-limit for taking decision min. 15 day & max. 30 days. provided that a private Co. may reduce 15 days time by obtaining consent in writing of at least 90% members of the Co.  
[Not lower than 7 days]

→ **Deemed declining**: LOO must also state about deemed declination, if Co. doesn't get any response within specified time limit.

→ **Renunciation Right**: The "LOO" must specify about right of existing holders to renounce, it offer in favour of any other person, subject to provision of AOA



any other person, subject to provision of AOA.

c) **Power of BOD: [Sec 62(1)(a)]**: If existing holder decline the offer or after expiry of specified period, the BOD may dispose further shares to any person by any manner but that should not be disadvantageous to Company & Share-holders.

### (III) Exception to Right Shares [Sec. 62(1)(b)(c), - 62(3)(4)(5)]

In following special cases a Co. may issue its further shares to any person, except existing share holders:

#### 1-> Issue of further shares as ESOP: [Sec 62(1)(b)]

→ A Co. may offer further shares to its employees, which is known as "Employee stock option Plan" provided such ESOP is approved by members by passing S/R.

#### 2-> Issue of further shares as "Preferential Allotment" [Sec-62(1)(c)]

Here Co. may sell its further shares to o/s by obtaining consent of members, by passing S/R.

#### 3-> Issue of further shares to Debenture holders [Sec-62(3)]

→ A Co, which has issued convertible debentures,



→ Shall issue further shares to holder of convertible debentures.

V.V.I 4.

Compulsory Conversion of loan & Debentures / loan into shares [sec. 62(4) (5) (6)]

→ The Govt. may direct the Co. to convert such debenture which are held Govt. by referring public-interest, whether there is no clause of conversion of conversion in loan / debentures.

Before issuing conversion order, the Govt. will consider following points:

- (i) Financial position of Co.
- (ii) terms of issue of debentures / loans as the case may be.

(iii) rate of int. payable on such debentures or loan.

(iv) Such other matters as it may consider necessary:

→ Appeal against terms & Co.

→ Appeal against terms & condition of conversion:

→ If terms & condition of conversion are not acceptable to company.

→ then such company may file appeal with NCLT within 60 days from the date of order.



→ The action of BOD to not offer further shares to VRS Co. Limited, on the ground of higher voting right is not valid, due to contravention of Sec - 62 (2) (a)

As per Sec. 62 (1) (a) of CA, 2013, it is duty of Co. to firstly offer further shares to its existing shareholder in their existing share-holder whether small shareholders or big shareholders.

II Reasons of lower shares [Sec. 62(1)]:

III Conditions for issue of lower shares:

- a)
- b)
- c)



## Concept - 9:- Bonus Shares & Condition for issue of Bonus shares [sec-62 + Ruk-14]

### I Meaning of Bonus shares:

→ Issue of further shares to existing member in proportion to their existing shareholding without any consideration.

→ Bonus shares = Capitalisation of profit i.e. converting profit into share capital.

### II Sources of Bonus shares [sec-63(1)]:

CRR

SPA

FR

Revaluation

→ Unrealised profit

↓

Reserve

Dividend  
Equalisation  
ReserveAny other specific  
Reserve

### III 6 Conditions for issue of Bonus shares:

a) Authority in AOA

b) Recommended by BOD + authorised / approved by passing member by passing ordinary resolution

c) No default in payment of int. or principal in respect of fixed deposit or debt securities issued by it.



d) **Statutory dues:** There shall not be continuing default in payment of statutory dues of the employees like contribution to PF, gratuity etc.

e) **Fully paid - up:** Partly paid-up shares shall be made fully paid.

f) **Additional conditions:** A listed Co. shall also fulfil such additional condition as prescribed by SEBI, while all other companies shall fulfil condition prescribed by Co.

#### IV Bonus - shares Not in lieu of Dividend [Sec-63(3)]

→ A Co. shall pay dividend only through cash and not through issue of bonus shares.

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M/S Shankar Portland Cement Ltd on issue bonus shares subject to compliance of Sec-63

As per Sec-63(1) a company can issue bonus shares in any matter out of.

→ Free-reserve

→ SPA

→ CRR

However Co. can't use revaluation reserve for issue of bonus share.

As per Sec 63(2) the company need to fulfil -----.

to added -----



## Concept - 10: Alteration in share - capital [Sec. 61 + Sec. 64]

Eg:- V. The Authorised Capital of Co. is ₹ 1 lakh divided into 10k equity shares @ ₹ 10 each

### (I) Modes of alteration in share - capital [Sec. 61(1)]

A company may alter its existing capital clause if any of these 5 ways

- a) by increasing existing authorised capital;
- b) consolidating shares into higher face-value than existing face-value.
- c) converting full paid-up shares into stock & vice-versa
- d) sub-dividing shares into smaller face-value.
- e) Cancellation of such part of authorised capital which is not taken by public.  
(It is called as Diminution of Share-capital, which is reduction of unsubsribed share-capital.)

### II Condition for alteration in share - capital:

- |                     |                    |   |
|---------------------|--------------------|---|
| a) Authority in AOA | b) Pass O/R in G.M | c) Intimate to ROC in form SH-7 (30 days) |
|---------------------|--------------------|---|



## Concept - 11: Reduction in share-capital [Sec-66]

I **Meaning**: Reduction means reduction in subscribed (or) cancellation of uncalled share-capital as reduction in paid-up capital etc.

II 2 types of reduction in share-capital.

Reduction after approval of NCLT

↓

Sec-66

↓

Covers only 3 method

Reduction without approval of NCLT

Covers various points

- a) Buy-Back of Share (Sec 68-70)
- b) Forfeiture of Shares
- c) Redemption of Shares

III **Scope of Sec-66**: [Sec-66(1)]: A company may reduce its share-capital in following manner -

a) By extinguishing (fully) (or) reducing of the liability of members to pay call money

Eg:- Existing situation

F.V = ₹ 10  
Issue Price = ₹ 10  
Called-up = ₹ 6  
Uncalled = ₹ 4

After reduction

F.V = ₹ 6/8  
Issue Price = ₹ 6/8  
Called up = ₹ 6/6  
Uncalled = ₹ 4  
Uncalled = 0/2  
                    ↓                    ↓  
                    Extinguish          reduction



b) Cancellation of lost-capital: A Co. may reduce such part of share-capital which is not represented by real assets

Eg: X Ltd.

Equity Share Capital 10,000 share / £10	1,000,000	Real Assets	80,000
		Preliminary Exp	20,000
	1,000,000		1,000,000

ESC 10,000 shares @ £8	80,000	Real Assets	80,000
	X X X		X X X

Intrinsic value per share  
=  $\frac{\text{Realised Assets value}}{\text{No. of Shares}}$

$$\Rightarrow \frac{£ 80,000}{10,000} = £ 8 / \text{share}$$



c) Returning excess share-capital: Here company may refund, such part of capital not needed it.

#### IV Condition for reduction in share-capital: (Sec-66)

- a) Authority in AOA (iii)
- b) Pass s/R for reduction of share-capital (iii)
- c) Obtain approval of NCLT (iii)

#### Procedure/important steps relating to reduction: ⇒

- a) Apply to NCLT for reduction (iv)
- b) Duty of NCLT to inform [CG, (RD), ROC] (v)  
creditors & SEBI [in case of listed company]
- c) Consider representation of CG/ROC etc, if received within 3 months.

d) Publication of Sanction letter: The sanction letter of tribunal shall be published and filed to ROC by the company.

P.T.O



## Concept - 12: Diminution of Share-capital v/s Reduction in Share-capital

	BOD	Diminution	Reduction
(i)	Sec	Sec-61(1) i.e., alteration	Sec-66: Reduction in share-capital
(ii)	meaning	Cancellation of unsubscribed capital	Cancellation of lost-capital, uncalled capital
(iii)	Nature of member's approval	O/R	S/R
(iv)	NCLT approval	Not Applicable	Applicable
(v)	Use of words of reduced	Not - Applicable	Mandatory if directed by NCLT

## Concept - 13: Restriction on Purchase of own shares as well as giving financial - assistance [Sec-67]

Restriction on Purchase of own shares	Restriction of financial Assistance
<p>↓</p> <p>Sec-67 (1)</p> <p>↓</p> <p>Applicable on: All Companies</p> <p>↓</p> <p>No Co. shall purchase its own shares without following condition of</p>	<p>↓</p> <p>Sec-67 (2) (3)</p> <p>↓</p> <p>Applicable on only public Company</p> <p>↓</p> <p>No public Co. shall give financial assistance to any person to enable that person for</p>



a) Reduction in share capital [sec-66] | No public Co. shall give financial assistance to any person, to enable that person for purchase of its (or its holding) Co's share.

b) Buy-Back [sec-68] | 3 Exception [sec-67(3)]

c) Redemption of pref. share [sec-55] | a) Banking Co.:- A banking Co. may lend money in its ordinary course of business.

b) Association of employee:- A public Co. may give financial assistance to its employee's association, as per scheme approved by members by passing S/R.

**5 star Q.**

c) Individual Employee: Conditions

(i) Such employee shall not be a director, and key-managerial personnel.

(ii) Max. Amount of financial assistance: upto 6 month salary.

(iii) Nature of shares: Only fully-paid.

Marketing manager doesn't mean KMP [Key-Managerial-Person]



## Concept-14: Buy-Back of Shares [sec-68,69,70]

Sec-68  
↓

Main Section of Buy-Back

Sources of BB  
Condition for BB

Sec-69  
↓

Creation of CRR

If buy-back is funded out of free-reserve SPA

Sec-70  
↓

Prohibition-on buy back in case of default/  
certain cases

### I Meaning & objective of buy-back:

→ Re-acquisition of own shares and returning money to investors.

→ Reason: (i) To increase EPS  
(ii) To avoid hostile (unfriendly) takeover

### II Sources of Buy-Back [sec-68(1)]

- a) R ⇒ Free reserve      b) S ⇒ Securities Premium      c) S ⇒ Sale-proceed of different class of shares or specified securities
- If used, create CRR equal to face v shares bought back value.



### III. Condition for buy-back of shares & other specified securities: [Sec-68(2)]

a) Authority in AOA

b) S/R

Exception: - No need to pass S/R, if Co. wants to buy-back upto 10% of PUESC+FR provided such BB is approved by Board-Resolution.

c) Overall limit of BB:

→ BB shall not exceed 25% of PUSC+FR

However, if Co. wants to buy-back only equity shares, then maximum limit will be 25% of total PUESC in a year.

d) Post buy-back Debt - Equity Ratio: -

Ensure that debt - equity ratio after buy-back doesn't exceed 2:1. However Co. may prescribe higher debt - equity ratio for certain class (or) classes of companies.

$$\left[ \frac{\text{Debt}}{\text{Equity}} \Rightarrow \frac{\text{Secured} + \text{Unsecured}}{\text{Shares} + \text{Reserve}} \Rightarrow \frac{2}{1} \right]$$

e) Fully paid: → The shares (or) other specified securities shall be fully paid.

f) Other-conditions: → as prescribed by SEBI in case of listed Co. & Co. in case of unlisted Co.



## IV other important Condition / Provision about BB:

### 1. DOS: Declaration of Solvency [sec. 68(6)]

→ The Co. shall file a declaration of solvency in form SH-9, which shall be verified by an affidavit stating that the BOD has full inquiry into the affairs of the company and have found that the Co. is capable to meet all his liabilities & will not rendered insolvent within a period of 12 months from the date of declaration.

⇒ The above form shall be signed by at least 2 director of the Co. one of whom shall be MD.

→ Filing to Whom: SEBI + ROC [Listed Co.]  
 Only ROC [unlisted Co.]

2.  
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### Extinguishment of Securities [sec - 68(7)]:

The Co. shall physically destroy the shares / securities within 7 days of last date of completion of buy-back.

### 3. Time-limit for completion of BB [sec. 68(4)]

→ The BB shall be completed within 12 months from the date of passing of resolution i.e., SR or BR as the case may be.



#### 4) Restriction on further issue of fresh shares [Sec-68(8)]

No Co. shall make further issue of similar type of shares/securities with a period of 6 months from the date of completion of buy-back.

Exception - (i) Bonus shares

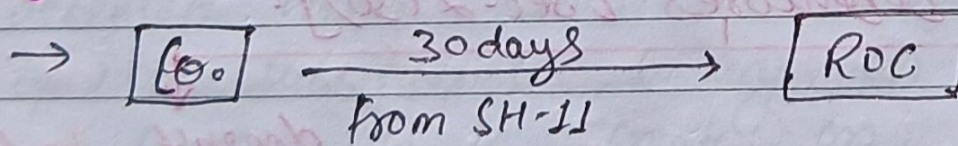
(ii) To discharge existing obligation like o/s convertible pref. shares, convertible bonds / Debentures etc.

#### 5. Register of Buy-Back [Sec-68(9)]:

The Co. shall maintain a register of bought back securities in form SH-10 containing details like -

- Shares/securities so bought
- Consideration paid
- Date of cancellation of shares
- Date of extinguishment of shares
- Such other particular as may be prescribed.

#### 6. Filing of Return of BB [Sec-68(10)]:



#### 7) Transfer to certain amount in CRR [Sec-69]

→ If BB is funded out of FR or/and SPA then the Co. shall create a fund named as CRR, equal to face value shares/specified securities bought back.



**V** Prohibition - for buy-back in certain circumstances [Sec-70]

**Sec-70(1)**

- A co. can't buy back through its subsidiary or subsidiaries company.
- a) through one or more investment co.
  - b) default of amount & 5 amounts (3DPL)

→ Provided that BB is not prohibited if co. has remedied and 3 years has lapsed since such correction

**Sec-70(2)**

- Default of following Provision
- Sec-92: Annual - Return
  - Sec-123: - Declaration & payment
  - Sec-127: - Punishment for non payment of dividend
  - Sec-129: - FS

**Concept-15: Debenture: Complete view [Sec-2(30) Sec 71 + Rule - (18)]**

**I** Def of Debentures [Sec-2(30)]:

includes

- (i) debenture Stock
- (ii) bonds
- (iii) any other instrument evidencing indebtedness of company, whether creating a charge on assets of co. or not.

doesn't include

- i) instrument covered u/c III D of RBI Act - 1934  
Eg:- Derivative money market instrument
- ii) Cr may prescribe other instrument. (RBI's consultation)



## II Characteristics of Debentures

- 1) Acknowledgement of indebtedness of Co.
- 2) Doesn't carry voting rights [Sec-71(2)]

## III Condition for issue for Convertible Debentures [Sec. 71(1)]:

A Co. may issue convertible debentures by passing S/R in G.M.

## IV Condition for issue of Secured Debentures [Sec. 71(3) + Rule-18]

### 4 Conditions

- (i) **Tenure / Redemption Period:** In case of secured debenture, the time of redemption shall not exceed 10 years from the date of issue. Provided that in infrastructure Co. may issue debenture which period may exceed 10 years but not exceed 30 years.
- (ii) **Creation of charge:** The issuer Co. shall create charge in favour of secured debenture either on own assets (or) assets of its subsidiaries, holding (or) associate company.  
\* Charge can be create on CASH
- (iii) **Appointment of Debenture Trustee:** [Sec-71(5)(b)]
- (iv) **Creation of DRR** [Sec-71(4)]



## Concept-16: Debenture - Trustee [Sec-71(5)(6)+Rule-18]

### I Cases requiring appointment of Debentures-Trustee:

- a) When co. offers debenture to public by issue of prospectus (or) offering debenture its member exceeding 500.
- b) When co is issuing secured debentures.

### II Timing of appointment of DT:

- Co. shall appoint DT BEFORE issue of prospectus (or) letter of offer.
- Name of DT shall be displayed in prospectus etc after obtaining his written consent.
- **Debenture Trust-Deed:** The co. shall execute a D-T-D in form SH-12 within 3 months from the date of closure of issue of or offer.

### III Disqualification of Debenture - Trustee [Rule-18]

Following person shall not be appointed as DT: (Total 7)

- (i) Beneficial owner of shares of the co.
- (ii) P-K-D (or) officer/employee of CASH

P ⇒ Promoter  
 K ⇒ Key - managerial Person  
 D ⇒ Director.



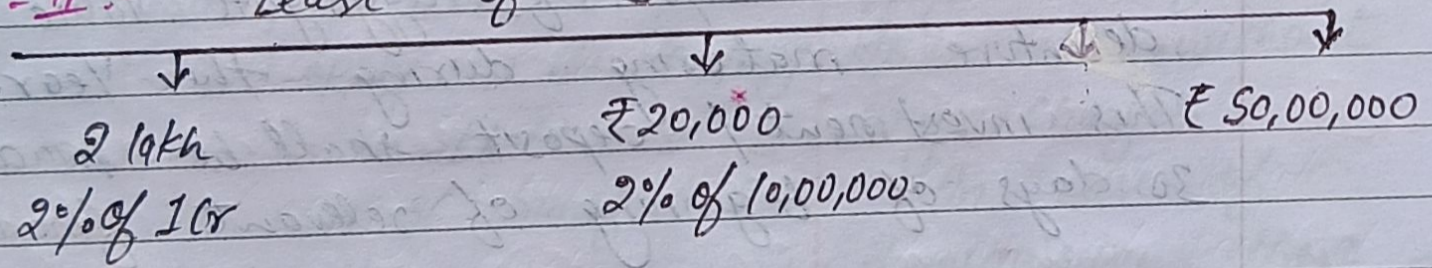
- (iii) Related of - PKO only
- (iv) Creditor (except DT whose remunerations is outstanding)
- (v) Debtor (OF CASH)
- (vi) Guarantor: A person who is guarantor for issue of debenture by company.
- (vii) Pecuniary Relation:- A person will be disqualified if his monetary relation exceed is equal to or exceed is equal to or exceed, least of [2% of Gross Turnover (or) Total income or ₹ 50 lakhs] during Current F.Y. (or) Preceding 2 F.Years.

Eg: X Ltd's T/O = 1 cr

Net Income = ₹ 10 lakh  
Value of monetary relation = ₹ 5 lakh / ₹ 50,000

Step-I:- Value of Monetary relation = ₹ 5 lakh

Step-II:- Least of 3



Conclusion:- Since y's pecuniary relation exceeds ₹ 20,000 So y will not be eligible to be appointed as D.T.

IV Removal of Debenture - Trustee:- A DT may be removed if it is approved by not less than 3/4<sup>th</sup> in value of outstanding debentures.



## (V) Debenture Redemption Reserve [Sec-71(4)+Rule-18]

1 → **Applicability**:- Presently only unlisted companies are required to create DRR.

2 → **Sources**:- Out of such profit of the Co. which are available for payment of dividend; (Free-reserve)

3 → **Rate of DRR**:- Only unlisted <sup>Co.</sup> are required to create DRR, which is at least 10% of outstanding debentures;

4 → **Debenture Redemption investment** :-> DRI

Every Co. which was raised fund by issue of debentures shall also invest/deposit at least 15% of aggregate value of debenture maturing during the year.

This investment\* / deposit shall be made within 30 days of beginning of relevant financial year.

\* investment in unencumbered securities of Co/ Sh. or such securities as prescribed u/s 20 of Indian Trust Act - 1882

[Q. No. 9] [ICAI Page - 4.91]

(1) Provision about Debenture-Trustee

II Qualified or not?



Answers :-

- (i) Qualified: Since Shareholder is not a beneficial owner.
- (ii) Disqualified: As per Rule-18, or Creditor is always disqualified.
- (iii) Disqualified: Guarantor for redemption of debenture is also disqualified.

Transfer & Transmission of Physical Shares

Concept-17:- Transfer & Transmission of Shares

B.O.D	Transfer of Shares	Transmission of Shares.
(i) <u>Meaning</u>	It means change of ownership between 2 living person	It means change in ownership bet, one-living & one-deceased <sup>person</sup> A.
(ii) <u>Formalities</u>	To share transfer the transferee or transferee shall apply to the company in form SH-4	The transferee can validly apply to Co. for updating its records, without any charges.
(iii) <u>Consideration</u>	In case of transfer there will be <u>same</u> - consideration	In case of transmission there is no consideration.
<u>Payment of Stamp duty</u>	Here stamp-duty is applicable	Not applicable



## Concept - 18: Provision relating to transfer of Shares [Sec-56(4) + other provisions]

- I Form SH-4** Every Co. is required to follow these steps regarding transfer of physical shares.
- II Stamping** ⇒ Before execution of final deed the parties shall pay stamp duty and then put their signature.
- III Filing with ROC/Company:** The executed STD (Share transfer Deed) shall be filed with company, along with original share-capital, within 60 days from the date of execution of agreement (STD/ I.O.T)  
Share transfer Deed/ Instrument of Transfer.
- IV Duty of Co.:** either to issue new shares - certificate within 30 days of receipt of STD; - (or)  
If delay is there in issuing new shares, (beyond 30 days) then transferee can file appeal to NCLT.



## Concept - 19: Additional Condition for transfer of partly paid shares [sec - 56(3)]

**I Applicability :-** When instrument of transfer is submitted by transferee, where share are partly paid, then this section 56(3) will be applicable.

**II Duty of Co. :-** Shall intimate to transferee (in form-  
SH-5) about nature of shares (i.e., partly paid-up). The Co. shall give at least 2 weeks for showing any objection w.r.t registration of partly paid-shares.

## Concept - 20: Refusal of Registration of transfer of shares [sec - 58]

# Refusal by Pvt. Co. : [sec - 58(1)(3)(5)(6)]

**I Duty to give reason of refused :**

If private co. doesn't want to register the transfer of shares, then it shall give reason of non-registration to transferee & transferee within 30 days from the date instrument of transfer received by it.

**II Appeal by Transferee :** If ground of refused is not justified, then the transferee may file appeal to NCLT within 30 days of receipt of rejection letter.



If Co. doesn't send rejection letter, then 60 days will be allowed to file appeal from the date of submission of application for transfer of shares.

### III Order by NCLT:

→ a) The NCLT may either reject the appeal (a) by order.

a) direct the Co. to register transfer / transmission of shares, which shall be complied by Co. within 10 days of receipt of such order.

b) direct the Co. to rectify its register and also pay compensation to the aggrieved party.

### Special points w.r.t refusal by public - company [Sec - 58(2), (4), (5), (6)]

→ In case of refusal by public - company, the transferee may appeal to NCLT within 60 days from the date of receipt of notice of refusal. If public - Co. doesn't send any refusal notice, then appeal can be filed within 90 days from the date of submission of "Instrument of Transfer" (a) "Share Transfer Deed" etc.



## Concept-21:- Rectification in Register of members [Sec. 59]

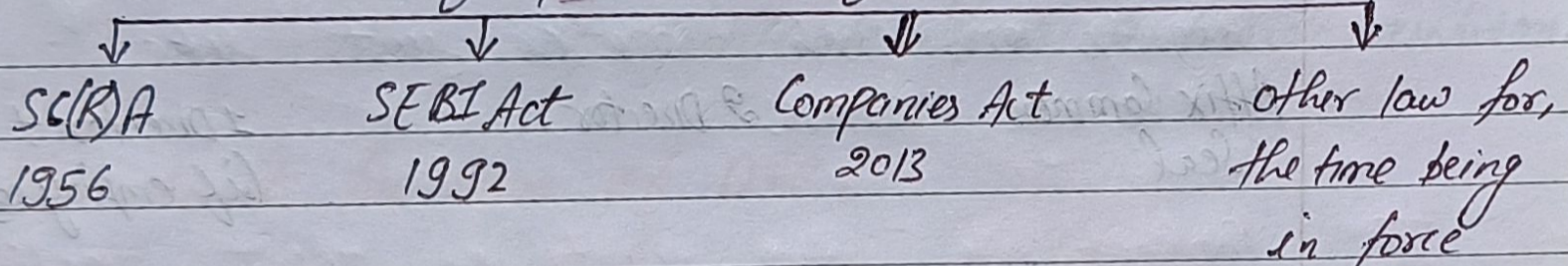
### (I) Ground for appeal to NCLT: [Sec. 59(2)] + 59(4)]

Members (a): Name removed without sufficient Cause ←

b) Name added without sufficient Cause.

c) Default or unnecessary delay in entering name of a person in Register of Members.

d) Transfer of securities has taken place, which is in contravention of provision of.



### II Who can appeal :-

→ Aggrieved - Member

→ Company

Depository

Depository - Participants [Angel Broker, Crow etc]

### III Order of NCLT: [Sec - 59(2)]:

The NCLT after hearing the parties to the appeal, either dismiss the appeal or by orders

a) direct the Co. to register transfer or transmission within 10 days.

b) direct rectification of the records of the depository as well as pay damage to the aggrieved party.



## Miscellaneous - Topic

### Concept-22: Share-Certificate & Duplicate Shares Certificate: [Sec. 46 + 56(4)]

#### (I) Prima Facie evidence: [Sec-46(1)]:

→ "Share-Certificate" is a certificate in form SH-1 issued by a co. having physical shares, evidencing title of shares mention in the certificate.

#### II Authentication [Sec-46(1)]

Attix Common Seal

2 Director

1 Director + CS (if employed)

#### III Time-limit for issue of Share-Certificate [Sec-56(4)]:

a) In case of incorp./ Allotment: within 2 months from the date of incorporation / allotment of securities.

b) In case of transfer / Transmission: Within a period of 1 month

#### IV Duplicate Share Certificate: ⇒ [Sec-46(2)]:

(1) Cases: Original certificate has been defaced mutilated or torn, renewed share certificate,



(ii) Other imp. points about Duplicate/Renewed Share-Certificate:

- Always put the word "Issued in lieu of share Certificate No. ...." as well "DUPLICATE CERTIFICATE"
- maintain Register: The co. shall maintain a register of duplicate share-certificate in form SH-2
- Pass Board-Resolution: Before issuing duplicate share-certificate, pass a board-resolution.

(iii) Time-Limit for issue of DSC:

Unlisted Co.  
3 months from the date of submission of complete-document

listed Co.  
within 15 days from the date of submission of complete records.

(iv) Optional charges: Co. may charge, but not exceeding ₹ 50 per certificate.

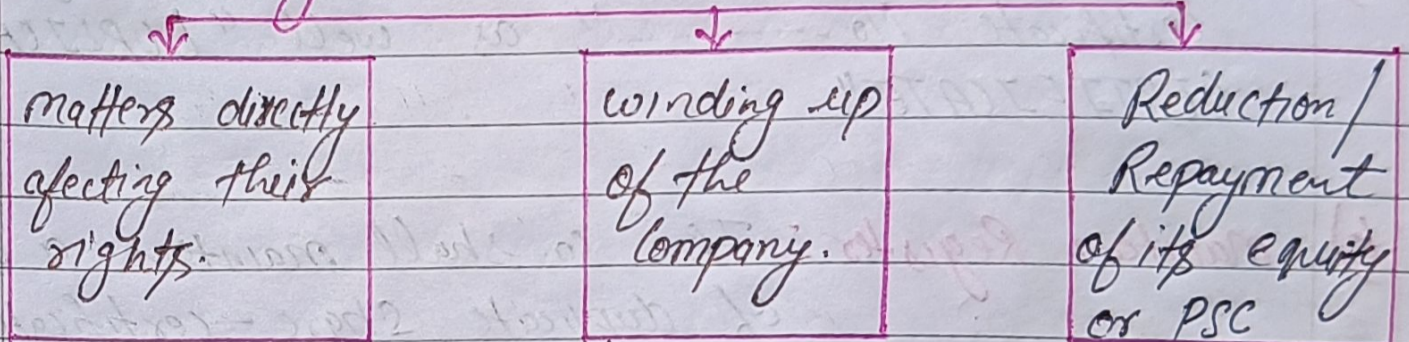
Concept-23: Voting Rights of Equity pref. Shareholder [Sec. 47(1)]

(I) Voting Rights of ESTH:- Equity Shareholder shall have right to vote on every matter placed before the Company



## II Voting Rights of Pref. Share holder. [Sec-47(2)]

Generally on these 3 matters.



However (2nd proviso) if there is default in payment of dividend of pref. shareholder for 2 year or more, than they get voting rights on each matter just like equity shares.

## III Proportionate voting rights in joint-meeting [1st proviso to Sec-47(2)]

→ In case of joint meeting the voting rights of ESH & PSH will be proportion to their respective paid-up capital.

## Concept-24:- Variation of Shareholder Rights [Sec-48]

I Condition for variation in rights attached to any shares / class of shares:

- a) Express authority in MOA or AOA for variation.
- b) obtain written consent of 75% of issue shares of relevant class  
By passing SR in class meeting of affected class of members,



## II Rights of dissenting share-holders: [sec-48(2)]

The holder of at least 10% of issued / Shares of relevant class may appeal to NCLT for cancellation of variation within 21 days after date of consent / resolution.

III Binding [sec 48(3)] :- Order of NCLT shall be binding upon the company.

IV ROC Filing :- The company shall within 30 days of order of tribunal file a copy of such order to ROC.

## Concept :- 25 Calls & related Concept [sec 49-51]

# Sec-49: Uniform Basis :- Call shall be made on uniform basis from all the member of same class.

## Sec-50 - Calls in advance :- If authorised by AOA a company may receive call in advance from its members. However, call in advance will not entitle a person to have higher voting rights.

### Sec-51 Payment of dividend on paid up Capital :-

If authorised by AOA a co. may pay dividend in proportion to amount paid-up on each shares.

END