Date 26/05/24

Chapter-6

(8-10m)

'Shares' capital & 'Debentures'

Que-1 Kinds of share capital

- ESC
  - with VR
  - with differential rights as to dividend, voting, or otherwise
- PSC
  - Carries preferential right with respect to payment of dividend & repayment of capital at time of winding up.

Important points –

→ A company cannot issue only PS. However they can only issue ES.

→ PS are always presumed to be $\boxed{\text{Cumulative}}$

→ PSH will get a right to vote on the resolutions where in its right are affected. However, if the Preference dividend is not paid for $\boxed{\text{min. 2 yrs}}$, then the PSH will get a right to vote on all the resolutions.

Que-2. Procedure for issuing ES with differential rights

Ans- Every Co. ltd. by shares shall issue share with differential rights only after fulfilling following conditions –

1. It should be authorised by AOA.

2. Member should pass $\boxed{\text{OR}}$
   for listed co. → It should be passed through postal ballot only.

3. The VP on differential rights shares can be more $\boxed{74\%}$ at any point of time.

4. Omitted.

5. No default in filling of FS & AR } In last 3 years

6. No default of
   - Dividend
   - Deposits

7. No default of
   - Payment of dividend to PSH
   - Repayment of loan to PFI
   - Transfering amounts to IEPF

\# If default rectified & 5 years has elapsed then shares with differential rights can be issued.

8. No penalty by ~~Cour~~ Court/tribunal in last 3 years of any offence by — RBI, SEBI, SCRA, FEMA.

\# Co. cannot convert its existing ESC into share of differential voting rights or vice versa (i.e. it should be freshly issued)

\# Rights of SH with differential right will be same as that of normal SH.

All details of SH with differential voting rights should be maintained in ROM

. Read certificate of share - section 46 - SM
(page no. - 4.11 to 4.15)

Que-3 Procedure for variation of rights of SH - section 48

Ans- (i) Where the SC of a Co. is divided into different class, the rights attached to it can be varied provided it is approved by -

- SR passed in GM (in number)
- (value) members holding 3/4th of total shares

Such variation should be mentioned — MOA / AOA

If variation by 1 class of SH affects the right of other ~~than~~ class ⟶ the consent of member holding 3/4th of that class shall also be obtain.

(II) If minimum 10% of issued class of shares are not in favour of variation,
they can apply ⟶ Tribunal for getting variation cancelled & if they have applied, variation will not be effective unless approved by Tribunal.

Such application to tribunal shall be made within 21 days of passing the resolution for variation.

(iii) The decision of Tribunal shall be made binding on all the SH.

(iv) Co. → file → copy of tribunal order → ROC $\boxed{\le 30 \text{ days}}$ of order

(v) If section is contravened,

chad ske no

Co = 25,000 - 5L

officer = imprisonment upto 6 months
'or' 25000 - 5L

read section 50 & 51 module pg. 4.21, 4.22

Que-4 Securities Premium Reserve - Section 52

Ans- It can be used only for 5 purposes, ie
R - Premium on redemption of pref. share & debentures
P - written off preliminary expenses.
I - written off shares & debentures issue expenses
B - Issuing fully paid up bonus shares
B - Buy back.

Que-5 Prohibition on issue of shares at discount - Sec 53

Ans- (i) No company shall issue shares at discount and if it has issued, such issued shall be void.

(ii) If section 53 is contravened.
amount raised through discount issue
or
₹ 500,000/-
whichever is less

+

refund @ 12% interest per annum.

3. Exception

Sweat Equity shares U/S 54

shares given to creditors when debt is converted into equity as per scheme approved by RBI

Jan MTP 2

Que-6 Explain sweat Equity shares. – Section 54

Ans- (i) Some company may issue sweat equity share at discount or for consideration other than cash to their employees or director for their value addition, intellectual property, technical know how etc.

(ii) Conditions-

S – shares should be of a same class already issued.

W – When? any time

E – Employee, and director details like no. of shares, current market price, consideration if any and class should be disclosed in the resolution.

A – Authorised by special resolution by shareholders.

T – Terms & Conditions

listed co. ⟶ SEBI

unlisted co. ⟶ CG Rules

amendment –

The company can issue sweat shares for maximum 15% of its paid up capital (equity shares) in a year or shares of ₹5 cr. whichever is higher subject to maximum 25% of paid up share capital at any time.

However, a startup company may issue sweat equity shares of maximum 50% of its paid-up share capital upto 10 years from the date of incorporation.

Que-7 Preference shares – Section 55

Ans- (i) A company cannot issue irredeemable preference shares.

(ii) A company can issue preference shares for maximum redeemable in 20 years.

(iii) However, company in infrastructure project can issue preference shares redeemable in maximum 30 years. with atleast 10% to be redeemed from the beginning of 21st year at the option of preference share holder.

(iv) If a company is unavailable to pay dividend to preference share or is unable to redeemed preference share, then such company may issue further redeemable preference share equivalent to amount due including the dividend with the consent of three-fourth in value of such unredeemed preference shares and approval of Tribunal

(V) In this way the unredeemed preference share shall be deemed to be redeemed.

read section 56 to 59 from module
– transfer & transmission (page no. 4.35)

Timeline for delivery of share certificate –

1. Subscribers ⟶ within 2 months from date of incorporation.

2. Any allotment of any of its share ⟶ within 2 months of allotment.

3. A transfer of securities ⟶ within 1 months of receipt of instrument of transfer by company.

4. A transmission of securities ⟶ within 1 months of receipt of intimation of transmission by the company.

5. Any allotment by specified IFSC public and private company ⟶ within 60 days after incorporation, allotment, transfer or transmission.

debenture – 6m

Summary of section 58 –

rules of transfer

Private Company
↓
Send notice of refusal with reasons ≤30D
↓
appeal to tribunal in 30/60 days

Public company
↓
Can't refuse without sufficient cause ≤30D
↓
appeal to tribunal in 60/90 days

↓

Tribunal will either dismiss appeal or order
1. Transfer within 10 days
2. Rectification of register

↓

In case of contraventions of order fine and imprisonment.

Que-8 Ways to alter capital clause – Section 61

Ans- following are the ways to alter capital clause

(a) It may increase its authorised capital by such amount as it thinks expedient.

(b) Consolidate & divide the whole or any part of its SC into share of large amount.

Date ___ / ___ / ___

(c) Convert all and any of its fully paid up shares into stock or vice versa into any denomination.

(d) Sub-divide the whole or any part of its SC into shares of small amount.

(e) Cancel those shares which have not been taken up & reduce its capital accordingly.

Company shall pass OR for altering capital clause and inform to ROC within 30 days of passing resolution.

Que-9 Right Issue – Section 62

Ans- 1) If a company goes for public offer the shares should be first offered to existing shareholders only by a notice.

2) The notice shall contain all the particulars like no. of shares offered, time i.e. min 7 days & maximum 30 days

3) The above right is given only to equity shareholders and not to preference shareholders.

4) Right of renounciation is available to existing shareholders.

5) Issue can be offered to outsiders –
(a) SR is passed by shareholders.
(b) OR passed by shareholders along with sanction of CG.

(c) If it is declined by existing shareholders.
(d) Conversion of debenture into shares
(e) Re-issue of forfeited shares.

Que-10 Issue of Bonus share — section 63
Ans- Read section 63 from module - page no. 4.55

Que-11 Reduction of share capital — section 66.
Ans- 1) A Co. Ltd. by shares can reduce share capital only by passing SR and confirmation of Tribunal

2) The Co. ⟶ apply ⟶ Tribunal for approval

3) Tribunal ⟶ Inform CG
SEBI
ROC
creditors

Seek their representations

≤ 3 months from receipt of notice.

If no representations received, assume no objections

4) Tribunal will give the approval only if such reduction is in conformity of accounting treatment U/S 133.

5) The order of Tribunal shall be published in a prescribed manner

6) ~~The order of Tribunal shall be published in a prescribed manner.~~

Date ___/___/___

6) The order of Tribunal shall be filled with ROC within 30 days of order copy received.

7) Nothing in this section shall apply to buy back u/s 68 (as it has different provisions)

8) A member of the company < Past / Present shall not be liable to contribute for difference exceeding if any between the paid amount & reduced amount as shares

9) If a creditor who is entitled for objection to reduction, & his name is ignored in the list and Co. is unable to pay his debts on winding up because of such ignorance, then

Every person who was a member on date of reduction shall be liable to contribute not exceeding the amount liable to contribute if wound up was not commenced

&

If the company is wound up by order of tribunal, the tribunal shall settle the list of contributories.

10) If any person

Knowingly conceals the name of creditors entitled

Knowingly misrepresents the amt to

~~Knowingly~~ Knowingly or is a ~~party~~ privy for objection the creditors to such

Concealment misrep-resentative

shall be liable u/s 447

Que-12 Purchase of own shares — section 67

Ans- 1) No company can buy its own shares or give loan, guarantee, security to any person for buying shares in it or in its holding Company.

2) However, company can give loan for buying shares in it or in its holding company, provided all three conditions are fulfilled.

- It is given to its employees other than director and kmp.
- amount is maximum 6 months salary
- The amount should be used to purchase fully paidup shares

3) The shares held by the employee will be in the capacity of beneficial owner.

Que-13 Buy back of shares — Section 68

Ans- 1) Company can buy back max. 25% of equity share Capital.

2) Only fully paid up shares can be bought back

3) Special resolution is required for buy back. However, either buy back is upto 10% then Board resolution is required-

→ Sources of buy back
- free reserves
- securities premium
- proceeds of fresh issue

4) Buy back should be authorised by AOA

5) The entire buy back shall be completed within 12 months of passing SR/BR

6) The company is prohibited from issuing same class of shares for next 6 months.

7) Post buy back, the debt equity ratio should be 2:1

8) As per section 69, if the company buy backs the shares out of free reserves, out of securities premium, an amount equal to ~~m~~ nominee value of shares should be transferred to capital redemption reserve (CRR)

The balance in CRR can be used only for issuing fully paid up bonus shares.

9) As per section 70, following is the prohibition for buy back.

(a) Through any subsidiary company including its own subsidiaries.

(b) Through investment ~~of~~ or group of investment companies.

(c) If the company has defaulted in repayment of deposits, interest, redemption of debentures, preference share, payment of dividend, repayment of loan or interest.

This prohibition is lifted if the company has rectified the default and the period of 3 years is passed after the rectification of such default.

(d) Company has defaulted in filing annual return (92) dividend (sec 123), penalty for failure to distribute dividend (sec 127) and financial statement (sec 129).

If sec 68, 69, 70 is contravened

Company
1lakh - 3lakh

officer
1lakh - 3lakh

Que-14 Debentures — section 71

Ans- 1) A company may issue debentures with option to convert either wholly / Partly at the time of redemption.

Date __ / __ / __

* Such conversion should always be approved by SR in general meeting.

2) No company shall issue debentures carrying different voting rights.

3) If debentures are issued by co., co. shall create debenture redemption reserve [DRR] out of the profits available for distribution of dividend and such amount shall not be used for anything except for redemption of debentures.

4) Co. shall madatorily appoint debenture trustees if co. is issuing prospectus for invitation for debentures to minimum 500 persons.

5) A debenture trustee shall protect the interests of debenture holders and redress their grievances.

6) If debentures trust deed contain any provision for exempting trustee from their liability; such provision will be void.

however the liability of trustee can be exempted if agreed by min 3/4th of debenture holders in value.

7) A co. shall → issue debenture & pay interest as per agreed terms

8) If debenture trustee's come to conclusion that assets of co. are insufficient to redeem debentures, then they shall apply ⟶ to tribunal and the tribunal shall pass such orders as it may deem fit for putting restrictions on company for incurring liability.

9) If co. fails redeem debenture or pay interest then person interested shall apply to tribunal & tribunal shall pass order to company to redeem debenture / pay interest

10) If defaulted in complying with orders of tribunal then every officer in default; shall be liable for

Imprisonment upto 3 years or fine 200,000/- to 500,000/- or both

QB Que - 2, 3, 5, 8