

Chapter 4 - Share capital and Debentures

Section → 43-72

Form → SH

Rules → The companies (Share capital & Debentures) Rules, 2014.

Purpose of company to buy back its own securities.

* Meaning -

A procedure which enables a company to go back to holder of its securities and offer to purchase from them the securities specified security that hold.

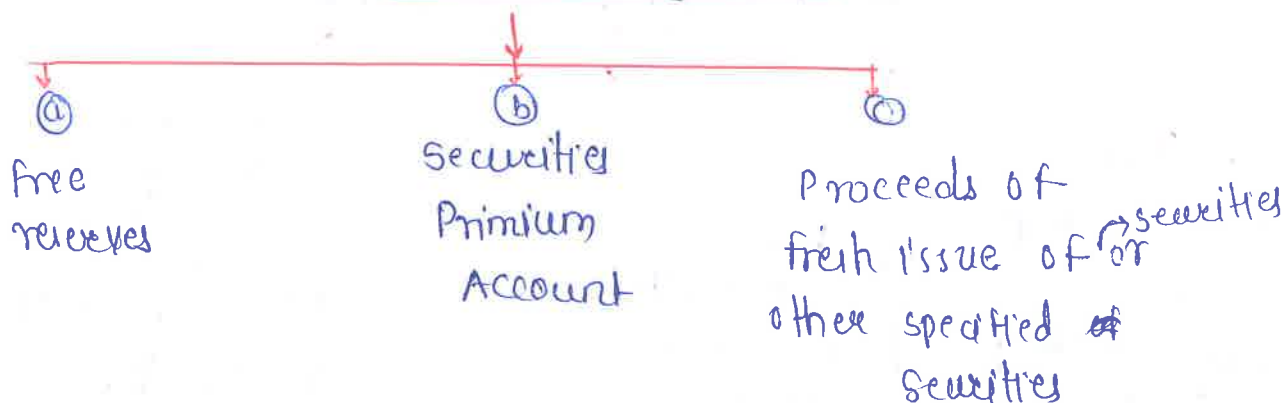
* Purpose -

- ① To improve shareholder value /- Buy back generally result in higher earning per share.
- ② As defense mechanism - Buy Back provides safeguard against Hostile Takeover by increasing promoter holding.
- ③ To provide an additional exit route to shareholders whose shares are undervalued or thinly traded.
- ④ To return surplus cash to shareholders.

Buy Back of Securities [Sec 68]

(A)

Source of Buy Back



NOTE BB shall ~~not~~ be allowed out of the proceeds of an earlier issue of same kind of shares or other specified securities.

(B) Condition for Buy Back

- ① Authorisation in Articles.
- ② Resolution for BB and limits on BB

BB by passing SR

shall not exceed 25%
of aggregate paid up
capital free reserve.

BB by Passing BR

shall not exceed 10%
of aggregate of paid
up Equity capital and
free reserves.

NOTE → BB of equity shares in any
Fy shall not exceed 25% of
its total paid up equity capital
in that Fy.

③ Debt equity Ratio → $\frac{\text{Debt (Secured + Unsecured)}}{\text{Agg P.U.C + FR}} = \frac{2}{1}$
↓
After BB.

④ Fully paid up shares / securities.

⑤ Time period for offer of BB

Not less
than 15 days
&
not exceeding
30 days

from
dispatch
of letter
of offer.

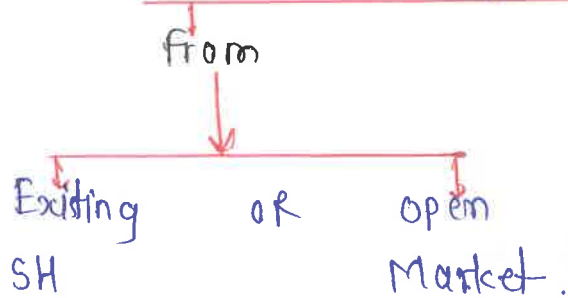
IF all members
are agree

↓
May remain open
for less than
15 days

⑥ Completion of B.B

Within one year of passing of resolution.

⑦ BB from Whom



By purchasing shares issued to employees by ESOS or sweat equity.

Different Time lines

Completion of BB
Within 1 yr of resolution.

Declaration of Solvency
company will not be insolvent within next 1 year.

Exinction of shares
physically destroy shares within 7 days of completion of BB.

Prohibition on Further

Buy Back
Within 1 year of closure of BB

Issue of same kind of securities
Within next 6 Month

Except

① Conversion of deb. & pref. share into equity or conversion of warrants.

sweat equity shares.

⑧ Declaration of solvency.

filed

ROC
↓
unlisted

co. will
not be
involved
within
1 year.

SEBI
↓
Listed

* Practical Example of Maximum Buy Back -

Paid up capital = ₹ 100 lakhs
[100000 × ₹100]

Equity share capital = ₹ 75 lacs
[75000 x ₹ 100]

Pref share capital = ₹ 25 Lakh
[25000 × ₹ 100]

Free Reserves = ₹ 100 lakhs.

$\rightarrow$ Max BB - ₹ 100 lakh + ₹ 100 lakh = 200 lakh × 25%.
P.U.S.C FR
 $= ₹ 50 \text{ lakh}$

SR

Max equity B.B in any F.Y = ₹ 75 lakh $\times$ 25%
= 18.75 lakh

BR

$$\begin{array}{c} (75 \text{ lakh} + 100 \text{ lakh}) \times 10\% = ₹ 17.5 \text{ lakh} \\ \downarrow \qquad \qquad \downarrow \\ \text{P.E.} \quad \text{F.R.} \end{array}$$

Practical Example of Debt equity ratio 2:1

$$\begin{aligned}\text{Max BB Amount} &= 25\% \cdot [\text{P.U.S.C} + \text{FR}] \\ &= 25\% \cdot [10 + 10] \\ &= ₹ 5 \text{ lakh}\end{aligned}$$

Suppose Co is BB @ ₹ 50/share.

$$\text{So, } \frac{₹ 5 \text{ lakhs}}{₹ 50/\text{share}} = 10000 \text{ shares}$$

↓
company can BB
Max 10000 shares

Maximum post BB ratio

$$\frac{\text{Debt}}{\text{P.U.S.C} + \text{FR}} = \text{can not exceed } 2:1$$

CS LLB LLM Arjun Chhabra - 9552 52 143 8

NOTE - Pre buy back debt or post buy back deb will remain same.

Suppose, Debt is 38 lakh

$$\frac{\text{Post BB } 38 \text{ lakh}}{\text{Post BB P.U.S.C} + \text{FR}} = \frac{2}{1}$$

$$\frac{38 \text{ lakh}}{2} = 19 \text{ lakh}$$

So before BB P.U.S.C + FR = 20 lakh

After BB P.U.S.C + FR = 19 lakh

So the max BB Allowed = 1 lakh.

So the max no. of shares which can be bought back

$$\frac{100000}{50 \text{ per share}} = 2000 \text{ shares / Max shares which can be bought.}$$

Final Answer Max Buy back can be of 2000 shares.

Ex - Xgen Limited

P.U.S.C + F.R = 50 lakh

Co. planning to buy back to the extent = 4.5 lac

① SR required ?

② Time limit for completion ?

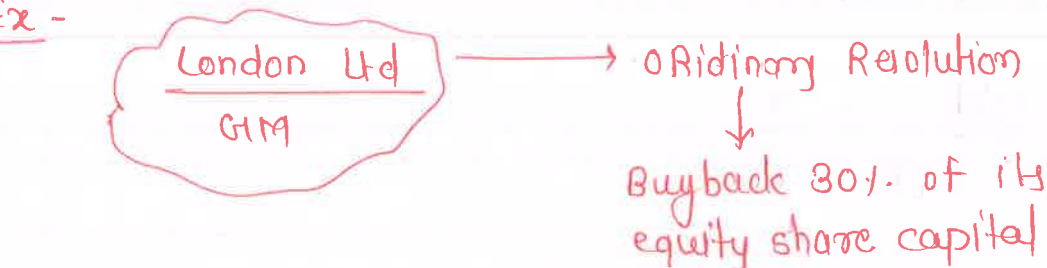
③ Ratio of debt to paid up capital and FR after buy back?

→ ④ SR is not required to be passed - since the buyback shall not exceed 10% of aggregate P.U.S.C and free reserve.

⑤ Within 1 year of passing of resolution for buy back.

⑥ Twice the aggregate P.U.C → free reserve after such buybacks.

Ex -



Proposal valid ?

What if Co. decides to BB only 20% of its equity shares capital ?

→ ① As per sec 68 of The Companies Act, 2013 no Company shall purchase its own shares or other specified securities unless -

④ The buyback is authorized by its articles.

⑤ A SR has been passed at a GM of the authorising buy back.

Provided Nothing above shall apply to a case where -

① The buy back is 10% or less than off the total paid up equity capital and free reserves of the Co.; and

② such buyback has been authorised by the board means of resolution passed at its meeting.

③ The buyback is twenty five percent or less of the aggregate of paid up capital and free reserve of the company.

① The proposal of the Co. to buyback its shares is not valid.

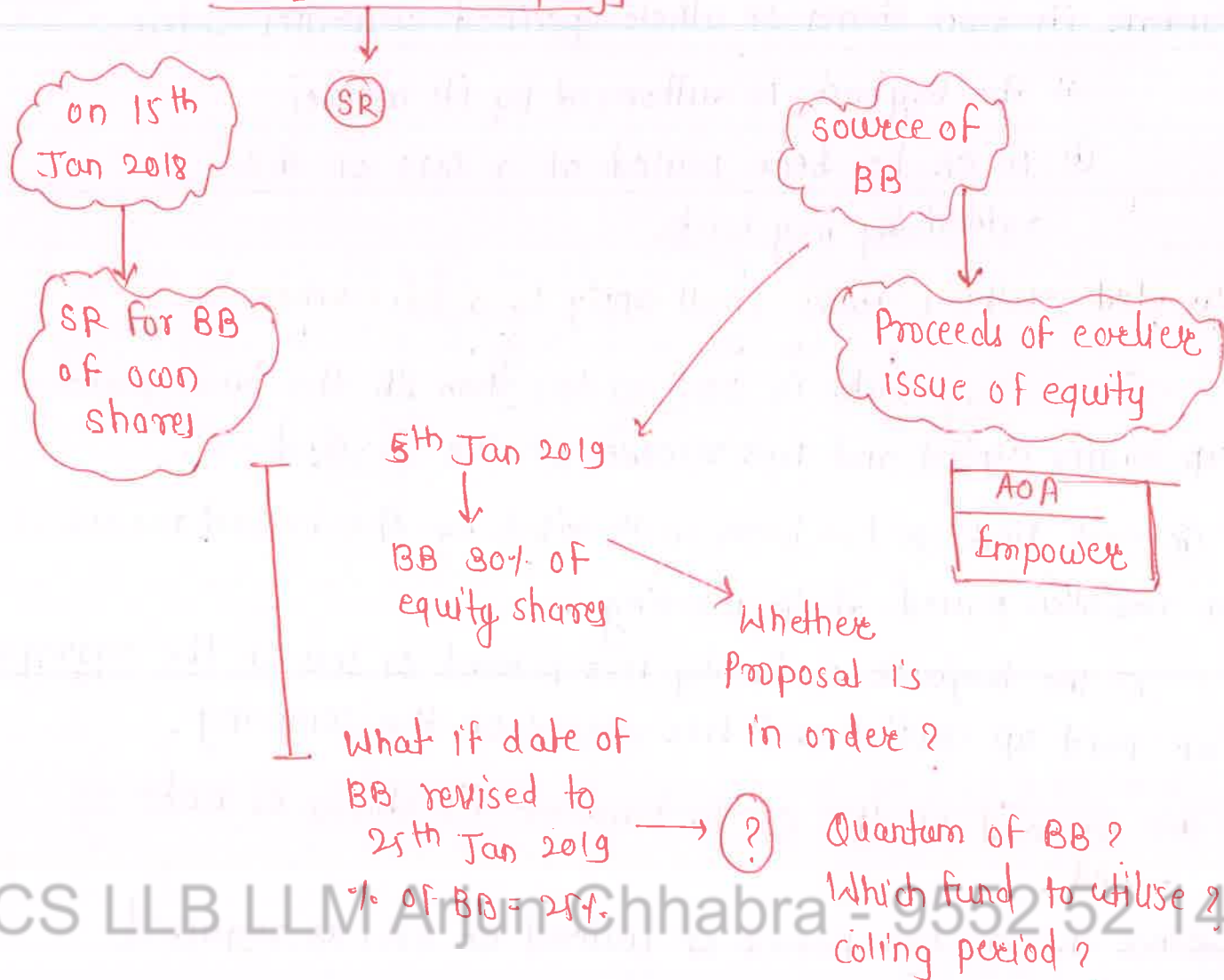
- Since the Co. has passed of instead of SR, as required u/s 68.

- Since the Co. proposes to buyback 30% of the equity share capital which exceeds the statutory selling of 25% of total paid up equity capital.

② The decision to buyback 20% of equity share capital shall not be valid.

- Since buyback by passing OR is violative of Sec 68.

Ex - XYZ [Unlisted Company]



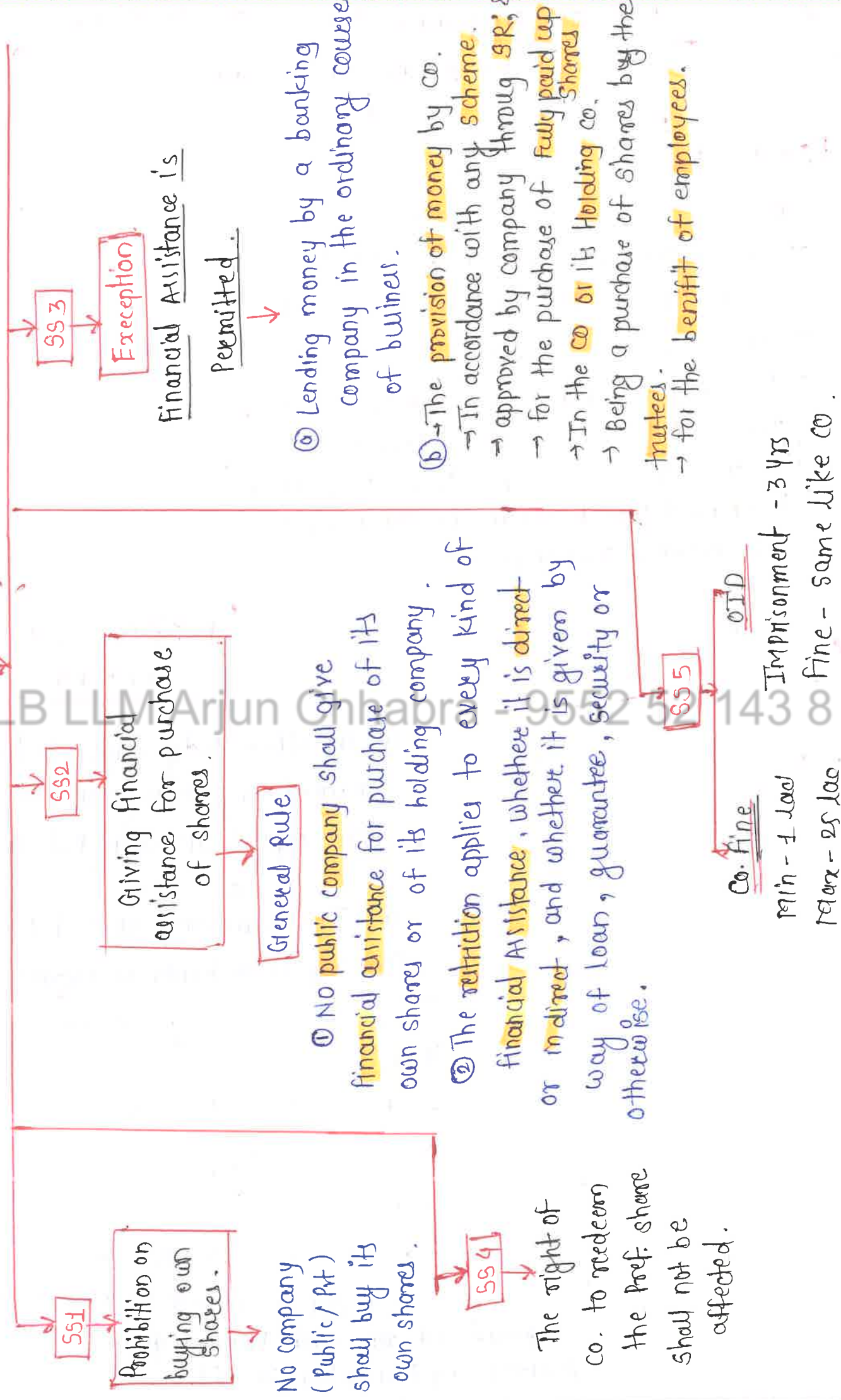
→ @ As per sec 68(2)(c) of Co. Act, 2013 BB of ES shall not exceed 25% of its total paid up equity capital in that F.Y.

(b) Now the co. passed a SR on 5th Jan 2019. This is not valid As no offer shall be made with period of one year from date of closure of first offer.

(c) BB can not be made out of proceeds of an earlier issue of the same issue.

(d) If BB is reduced from 80% to 25% then also co. Proposal is not in order as BB can not be made out of proceeds of an earlier issue of the same share.

Sec 67 - Restriction on purchase by Co. or giving of Loans by it for purchase of its shares.



Sec 67 - Restriction on purchase by Company or giving of loans by it for purchase of its shares

[553] - Exception

(c)

- ⊕ The giving of loans by a company
- To persons in the employment of company
- other than its directors or kmp
- for an amount not exceeding their salary or wages for period of 6 months.
- With a view to enable them to purchase fully paid up shares in the company or its holding company.

Exception to Pvt company

(a) No other Body corporate has invested any money in the share capital of such Pvt company.

&

(b) The borrowing of such private Company from banks or financial institution or any Body corporate is less than -

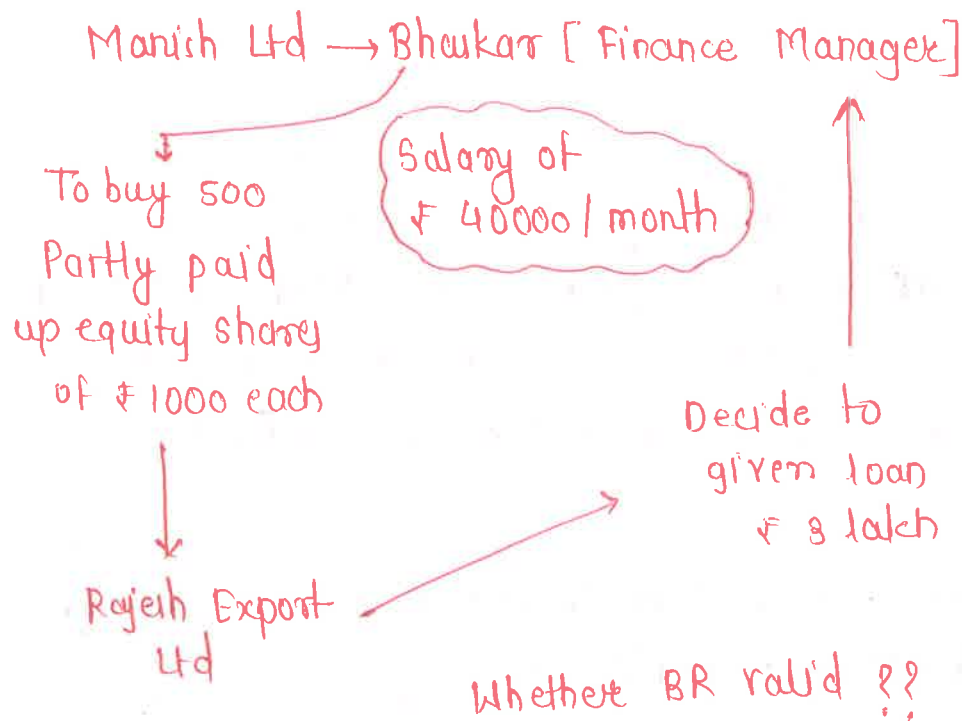
→ Twice its paid up share capital
OR

→ ₹ 50 Cr

whichever is lower &

⊕ such a prt co. is not in default in repayment of such borrowings at the time of making any transaction u/s 67.

Case study I - Jan 21 [3 Marks]



→ As per Sec 67 (3) (c) of the companies Act, 2013.

① Loan must be given to employee of company other than Director and company. [Not the employee of the holding company].

Here loan was given to loan employee of .

② Amt of loan shall not exceed employees 6 month salary. Here exceeded.

③ Amount must be utilised by company to purchase fully paid shares. Here the shares are partly paid.

Therefore, resolution of the Board is not valid.

II) The BOD of XYZ Pvt Ltd, decides to Grant a loan of ₹ 2 lac to P, the finance manager of the co. getting salary of ₹ 30000 p.m to buy 400 partly paid up equity shares of ₹ 1000 each. Examine the validity of Decision.

HINT Ans -

In this case provision of sec 67 shall not apply if the following conditions are satisfied. (Point ①, ② & ③ of exception of Pvt Co)

Case III -

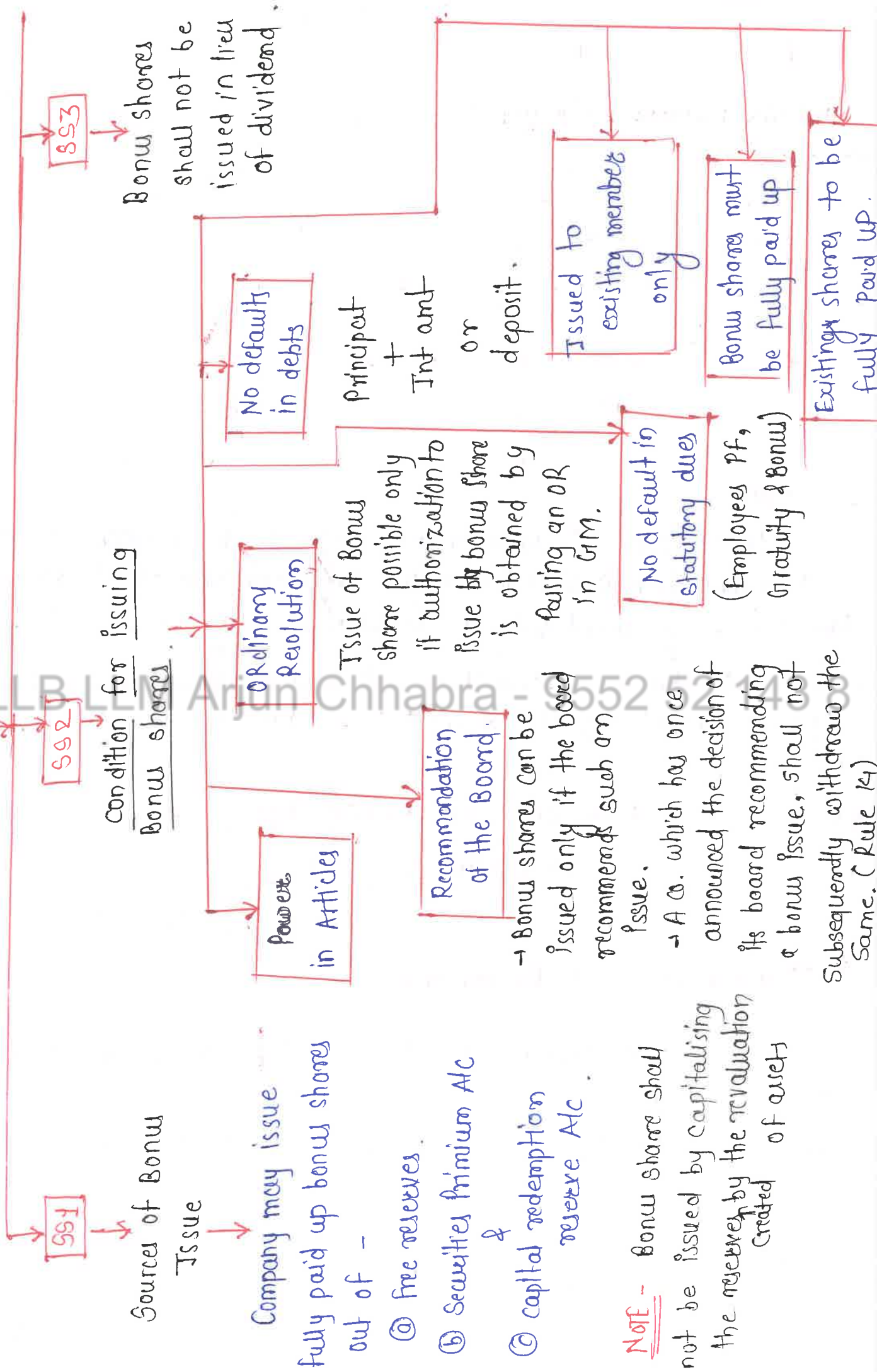
MNO Pvt. Ltd, A subsidiary of PQR Ltd decides to give a of ₹ 4 lac to the HR manager, who is not KMP of MNO Pvt Ltd, Drawing a salary of ₹ 80000/month to buy 500 partly paid up equity of ₹ 1000 each in MNO Pvt Ltd. Examine the validity of decision.

Hint Ans - MNO Pvt Ltd shall be treated as public company since it is subsidiary of public co.

② The decision MNO Pvt Ltd is not valid since the loan of ₹ 400000 given to HR Manager exceeds his six months salary and the loan was given to purchase partly paid shares.

Sec 63 - Issue of Bonus shares

Sec 63 - Issue of Bonus share



As on 31st March 2018

- ① E.S. c [3 lakhs E.S x 10] ₹ 30 lakh
- ② FR ₹ 5 lakh
- ③ SPA ₹ 3 lakh
- ④ CRR ₹ 4 lakh
- ⑤ Revaluation Reserve. ₹ 3 lakh

Whether co can issue bonus shares.

1:3? 1:2?

→ Hint Ans

for issue of 1:3 bonus shares, there will be requirement of ₹ 10 lakh which is well within the limit available of ₹ 12 lakh. ABC Ltd can go ahead with the bonus issue in the ratio of 1:3.

In the second case there will be requirement of ₹ 15 lakh. The co. can not go ahead with the issue of bonus shares.

Sec 54 - Issue of Sweat Equity shares

read with Sec 2(88)

* Meaning of Sweat Equity shares

Sweat equity shares are issued by co. to its directors or its employees are reward to them for their contribution and effort towards the creation of intellectual property rights to the company.

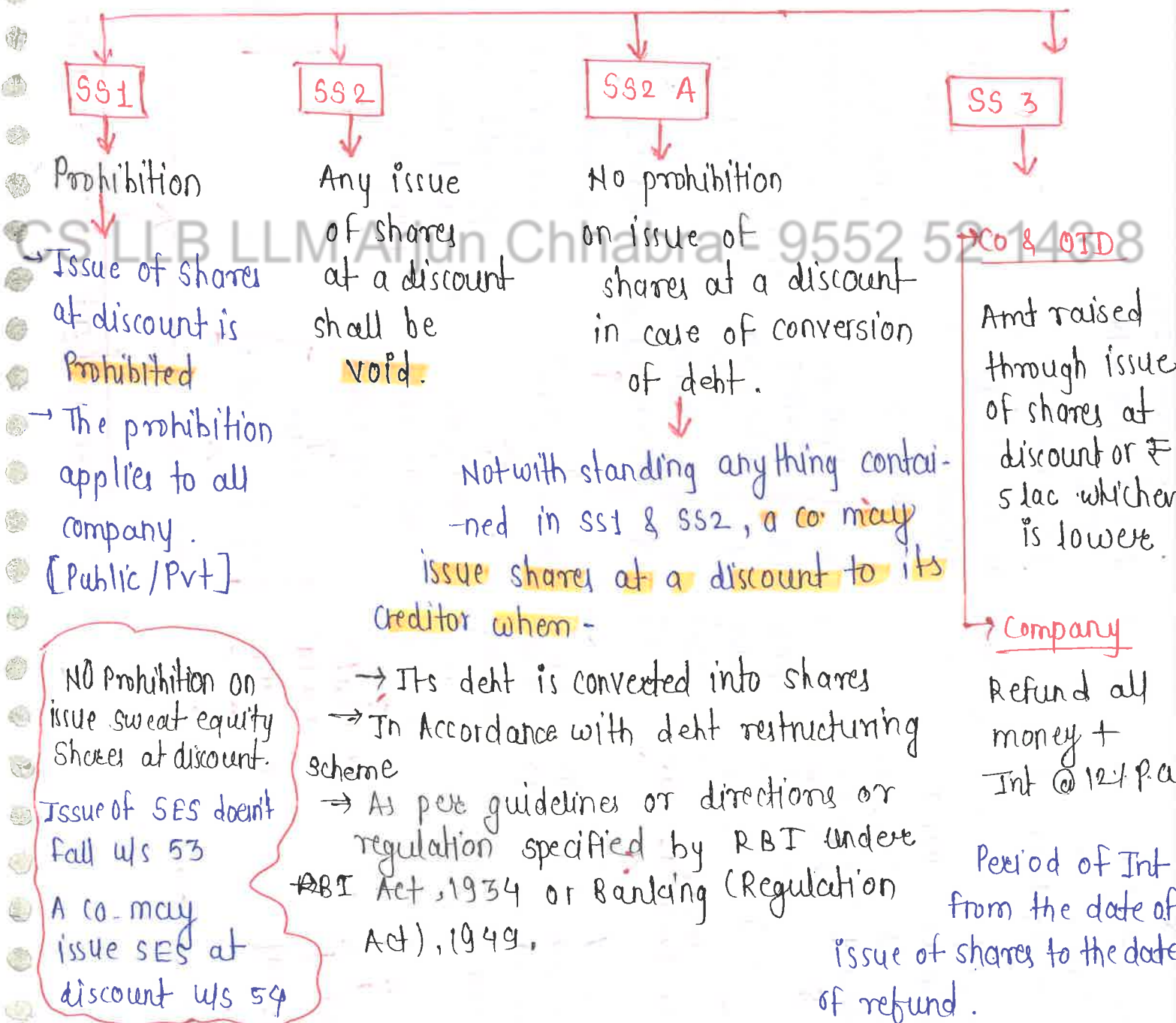
* Definition of Sweat equity shares

Sweat equity shares means such equity shares as are issued by company to its directors or employees -

① At a discount; & or

② for consideration, other than cash, for providing their know how or making available rights in the nature of IPR or value additions, by whatever name called

Sec 53 - Prohibition on Issue of shares At discount



Sec 54 - Issue of Sweat Equity shares.

Overriding effect to Sec 53

Authorization for issue.

Same provisions applicable.

① The rights, limitation, restriction and provisions, as are applicable to equity shares, shall apply to sweat equity shares.

② Sweat equity share must belong to a class of share already issued by the company.

③ Issue of sweat equity shares must be authorized by passing SR.

④ SR shall specify the following particulars:-

- ⑤ No. of shares
- ⑥ Current Market price.
- ⑦ Consideration if any.
- ⑧ The class of directors or employees to whom sweat equity shares to be issued.

Issue of SES to whom?

only to its directors or employees

Employee means

- ① Permanent employee of co working in India or o/s India
- ② Director of the co, whether whole time director or not.

- ③ An employee or director under or of subsidiary, in India or o/s India

Time limit for making allotment

Within a period of not more than 12 months from date of SR.

Lock-in Period

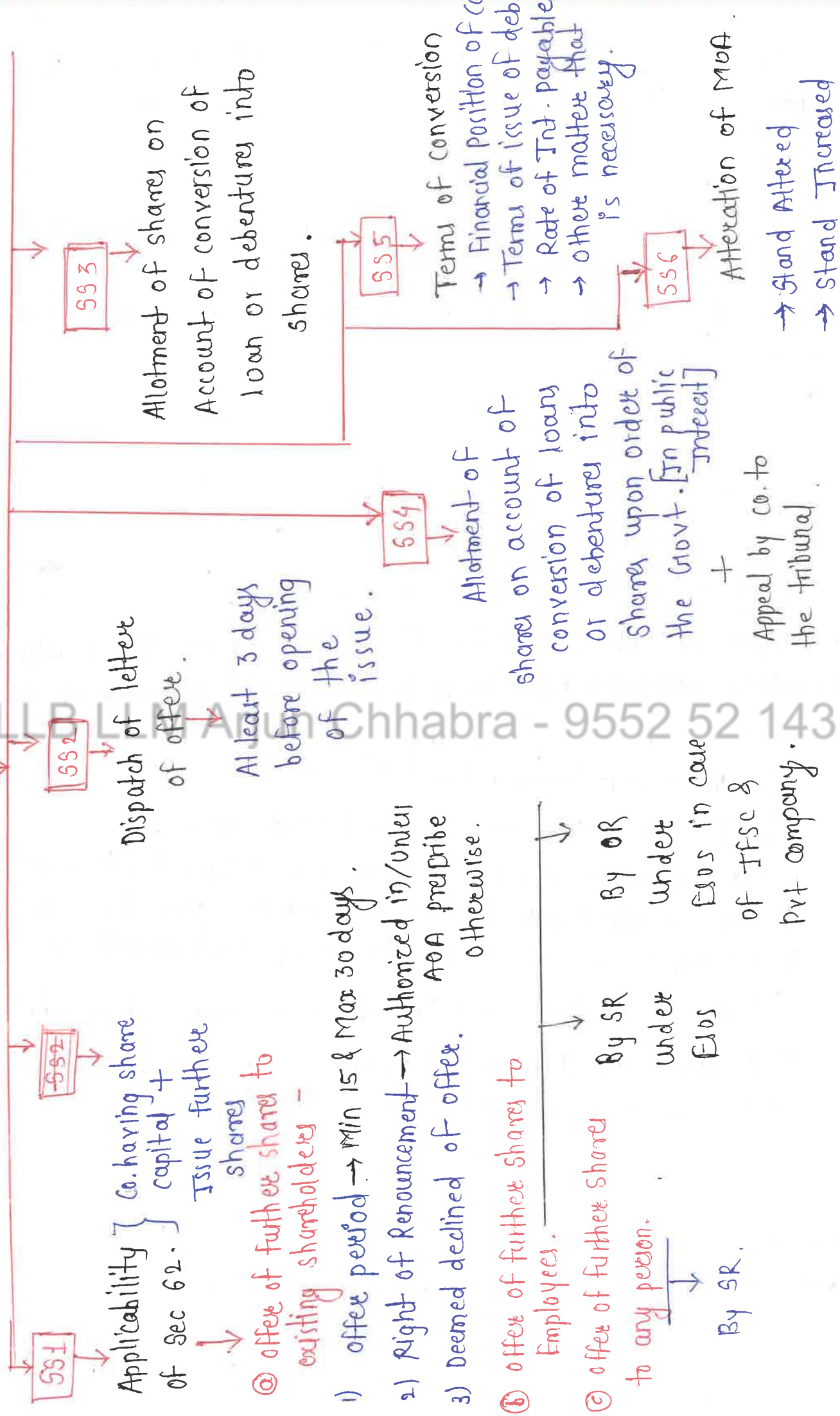
For period of three yrs from the date of Allotment

Limit on sweat equity shares

- ① In one F.Y. 5% or Not more than 15% of existing P.U.E.S.C
- ② At any time shall not exceed 25% of existing P.U.E.S.C

For start up the limit is 50% upto 5 years from D.O.I.

Sec 62 - further issue of share capital



further shares shall be offered to the existing equity shareholders in proportion to the paid up share capital held by them.

Subclause (i)

① Further shares shall be offered to the existing equity shareholders by sending to each of them a letter of offer.

② The letter of offer shall be dispatched to all the existing shareholders by -

- Ⓐ Registered post ; or
- Ⓑ Speed post ; or
- Ⓒ Electronic Mode ; or
- Ⓓ Courier ; or
- Ⓔ any other mode having proof of delivery.

③ The letter of offer shall be dispatched to all the existing shareholders at least three days before of the opening of issue.

④ The letter of offer shall specify -

- Ⓐ The no. of shares offered ;
- Ⓑ The Time (Min - 15 days, and Max - 30 days]
· within which the offer may be accepted [However, in case of pvt. co. if 90% of the members give their consent in writing or in electronic mode, The period lesser than 'Minimum 15 days' and 'maximum 30 days' shall apply.

Ⓒ A statement that if the offer is not accepted within the time specified in the letter of offer, the offer shall be deemed to have been declined.

Ⓓ A statement that every shareholder has a right to renounce the shares offered to him to any person [unless the articles restrict such right].

Disposal of shares if offer is not accepted -

The shares which remain unsubscribed by the existing shareholders may be disposed off by BOD in such manner which is not disadvantageous to the shareholders and the company.

Subsection - 3

Nothing in sec 62 shall restrict the power of company to allot the shares on account of conversion of loans or debentures into shares, provided that -

- (a) Terms of issue of such debentures contained a term for conversion; and
- (b) The term of issue of such debenture were approved by passing SR.

554 - Allotment of shares on account of conversion of loan or debenture into shares upon order of Govt.

order of Govt concerning conversion Any govt may make an order that :-

debenture issued to that Govt by company; or
Loans obtained from that Govt. by a company
shall be converted into shares in that company.

Terms of Conversion

- (a) The Govt may make such an order even if there is no term for conversion.
- (b) The term of conversion must appear reasonable to Govt.
- (c) The Govt shall have due regard to -

- 1] Financial position of company.
- 2] The terms of issue of debentures or loan, as the case may be.
- 3] Rate of Int payable.
- 4] other matters as may be necessary.

Conditions for Making order of conversion -

- only if it is necessary in the public interest

Alteration of Memorandum -

If -

The order of the govt. has the effect of increasing the authorized share capital of the company, then -

The memorandum of co. shall stand altered and the authorized share capital of the co. shall stand increased by the amount of debenture or loan converted into the shares.

Appeal by Company to the Tribunal -

If the terms of the conversion is not acceptable to company, The company may prefer an appeal within 60 days from the date of communication of order.

Sec 49 - calls on shares of same class to be made on Uniform Basis.

① Uniform call - A call shall be made uniformly on all the shares falling under same class.

② Meaning of Same class -

The shares on which different amount have been paid up shall not be deemed to be the share falling under same class.

Sec 50 - calls in Advance .

Meaning of calls in Advance .

A Member may, on his own, pay to the company whole or part of the amount remaining unpaid on the shares held by him, even if no part of that amount has been called. Such amount is referred to as 'calls in advance'.

Power to Accept calls in Advance .

Specific power is required in Articles to accept the calls in advance.

voting Right -

- A member is not entitled to any voting right in respect of 'calls in Advance' until that amount has been called up.

5] Payment of Dividend in proportion to Amt paid up -

- i) Generally, dividend is paid as a proportion of nominal value of shares.
- ii) However, the articles of company may provide that the dividend shall be paid in proportion to the amount paid up on each shares.
- iii) As per regulation 83 of Table F, The dividend shall be paid in proportion to the amount paid up on each share.

Case I - Karan was holding 5000 equity shares of ₹ 100 each of M/s. Future Ltd. A final call of ₹ 10 per share was not paid by Karan. M/s Future Ltd declared dividend of 10%.

Examine with reference to relevant provision, the amt of dividend Karan should receive.

Ans -

→ Karan holds shares of nominal value of ₹ 500000 Having a paid up value of ₹ 4.5 lakh.

Karan is entitled to receive a dividend of ₹ 45000 if the articles of the company containing a provision that the dividend shall be paid in the proportion to the paid up value of each share or the co. has adopted regulation 83 of Table F.

Section 61

↓
Power of limited company to alter its share capital.

↓
① Limited - S.C

② Authority AOA

③ GM - OR

④ (a) - (e)

⑤ Notice - SH7

ROC

within 30 days

from

+

Copy of Altered

MOA

Section 66

↓
Reduction of share capital

↓
① Confirmation of tribunal

② GM - SR

③ (a) - (b)

④ RSC.

Section 64

↓
Notice to be given to register for alteration of share capital.

↓
① Sec 61 (1)

↓
a - e

② Section 62 (4) (b)

③ Redeem Pref. shares

④ SH-7 within 30 days

↓
+
Altered copy

↓
ROC.

Section 61 (1)

(a) No. of shares	F.V / N.V	Amount of share capital	
100000	10 ₹	₹ 10 lakh	] - 50 lakh diff.
5 lakh	] - same		
600000		₹ 10	₹ 60 lakh
Increase in Authorized share capital			

(b) No. of share	F.V	Amd. of share capital	
10,00,000	₹ 1	₹ 10,00,000	] - same.
100000	₹ 10	₹ 10,00,000	

Consolidate and divide - longer

$$1000000 \times \boxed{₹ 1} = ₹ 10,00,000 \text{ Amt.}$$

$$100000 \times \boxed{₹ 10} = ₹ 10,00,000$$

(d) No. of shares	F.V	Amd. of s.c.	Paid value
100000	₹ 10	₹ 10,00,000	₹ 8.
Contained in capital clause of MOA.		] - same	] - same
1,00,000	₹ 1	₹ 10,00,000	₹ 80 paise.

Sub divided - smaller Amount

Proportion of amount paid up on shares.
[Before Alteration] ₹ 8
₹ 80 paise [After Alteration]

Amt. remaining unpaid on shares.
₹ 2 [Before Alteration]
₹ 20 [After Alteration]

shall remain same as was before such alteration.

e)

No. of shares	f.v	Amt. of S.C.	No. of shares issued by co.
100000	₹ 10	₹ 1000000	70000
70000	₹ 10	₹ 700000	70000

Not been taken

or

to be taken by any person.



cancel shares

Which have not been taken or agreed to be taken by any person



Cancel

← Diminish the amt of its share capital by the sec 6(1)(e) amount of the shares so cancelled.

Cancellation
Diminution
Reduction

} of shares.

✓
✓
X

(c) No. of shares	F.V	Amt of S.C	P.V.
100000	₹ 10	₹ 10,00,000	₹ 10.

Reconvert
stock shares

No. of shares	F.V	Amt	P.V
—	₹ —	₹ 10 Lakh	—

shares - stock

Sec - 68 (1) (a)

I- Extinguishment

ACT Ltd

$$100000 \times \text{F.V} = ₹ 10 = 10,00,000.$$

$$100000 \times \text{P.V} = ₹ 6 = 6,00,000$$

$$100000 \times \text{U.C.V} = ₹ 4/\text{share}$$

Extinguish.

$$100000 \times$$

II Reduction

$$100000 \times ₹ 10 = ₹ 10,00,000$$

↓ ↓

No. of shares F.V

$$100000 \times ₹ 6/\text{share} = ₹ 6,00,000$$

↓

P.V.

$$100000 \times ₹ 7/\text{share} = ₹ 7,00,000$$

↓

P.V

100000

#Sec (a)(b) (1)

ACT Ltd

B/S

ESC	40 Lac	Bank	15 Lac
Loan	20 lac		

100000 X ₹ 10 fully paid

With
Extinguishment
B/S

Without
Extinguishment
B/S

ESC	₹ 4 lac	Bank	₹ 9 L
Loan	₹ 20 L		

ESC	₹ 4 lakh	Bank	9 L
Loan	₹ 20 L		

$$100000 \times ₹ 6 / \text{share} = 600000$$

$$F.V = ₹ 10 / \text{share}$$

↓

$$f.v = ₹ 4 / \text{share}$$

100000 X ₹ 4 / fully paid

$$100000 \times ₹ 6 / \text{share} = 600000$$

$$F.V = ₹ 10 / \text{share}$$

↓

$$f.v = ₹ 10 / \text{share}$$

100000 X ₹ 4
[Partly paid]

XYZ Ltd

B/S

Before
Cancellation

ESC Loans	₹ 10 Lac ₹ 20 L.	Bank P/L Alc	₹ 12 L. ₹ 4 lac
--------------	---------------------	-----------------	--------------------

100000 X ₹ 10 / each - fully paid up

After
Cancellation

ESC Loan	₹ 6 lakh ₹ 20 lac	Bank P/L	12 Lac NIL
-------------	----------------------	-------------	---------------

F.V = ₹ 10 / share.

100000 X ₹ 6 / share

F.V = ₹ 10 / share.

Liability Extinguish = NO.

100000 X ₹ 6 / share

fully paid

F.V = ₹ 6 / share.

Liability Extinguish - yes.

Sec 66 - Reduction in share capital.

551

Confirmation of tribunal
+ SR - GM
+ Modes of reduction.
Proviso → No default w.r.t deposit

552

Notice by the tribunal to Ct, ROC, SEBT and creditors

+

Representation by Ct, ROC, SEBT and creditors within 3 months of notice.

+

If no objection received within 3 months

3 months

Presumed no objection to reduction.

553

Tribunal shall secure ind. of creditors

The tribunal may make an order

if it satisfy that every creditor -

(a) Has given his consent; or

(b) Has been

discharged; or

(c) Has been

given security.

Accounting treatment

must be in conformity in Acc standard as specified in Sec 133.

554

Publication of order of tribunal in a manner prescribed by tribunal.

555

Obligation of CO to deliver certified true copy of the order of tribunal, and minutes approved by tribunal to ROC within 30 days of receipt of order.

+

Registration by ROC and certificate to that effect.

556

Non applicability of this sec on buy back.

5510

If any officer of the company acting fraudently he shall be under section 447.

Refree chart P.N-152 of chart book

Special Note -

- Cancelling paid up share capital is Reduction.
- Cancelling uncalled share capital is also reduction.
- Cancelling unsubscribed share capital is Alteration.

Difference between stock and shares

Basis	Stock	Shares
<u>Nature</u>	Stock Means a bundle of shares express in lumpsum . It mean aggregate of fully Paid up shares of members merged in one fund.	A share a smallest unit into which the capital of co. is divided .
<u>Time of Issue</u>	A co. cannot issue a stock in very beginning. i.e. A co. can not make an original issue of stock.	Shares can be issue in first instance.
<u>Paid up value</u>	stock shall be always fully paid.	shares may be fully Paid or partly paid.
<u>Nominal Value</u>	A stock has no nominal value	Shares has nominal value.
<u>Transfer in fraction</u>	Stock can be transferred in fractional Amt.	shares can not be transferred in fractional Amt.
<u>Distinctive Number</u>	stock has no distinctive no.	Every share has Des' no. except in depositary
<u>Authorization for issue</u>	A company may convert its fully paid shares into stock only if Authorized in AOA.	No. Authorization in article required for issue.

Sec 44 - Nature of shares.

The shares and debenture shall be—

- a) Movable property
- b) Transferable in the manner provided by the articles of the company.

Sec 45 - Numbering of shares.

- Every share shall be distinguished by its distinctive number.
- ↳ Exception - Shares held in depository system shall not have distinctive number.

Sec 46 - Share Certificate read with Sec 56



Sec 2 (55)

Definition of Member

i) Every subscriber to Memorandum

+

name entered in register of members

ii) Every other person writing agree to become member of Company.

+

name entered in ROM.

iii) Every person - name - Register of beneficial owners in the records of depository.

Sec 46 - Share Certificate

SS1

Meaning

A share certificate is prima facie evidence of the fact that the person named thereon is the owner of such no. of shares as are specified therein.

Signing Requirement

Common Seal

~~Common seal~~

It shall be affixed in the presence of person required to sign the certificate.

every certificate shall be signed by 2 director or by director & co if any.

In case of OPC
Directors or co or any other person
↓
authorized by board.

SS2

Duplicate share Certificate

Can be issued if

it is

Proved that the SC has been lost or destroyed;

Defaced, mutilated or torn &

→ Surrendered to Company.

Listed

within 48 days

unlisted

within 3 months.

of submission of complete document with the complete document.

SS3

Rules by CG

- Manner of issue of share Certificate (Sec).
- manner of issue of duplicate SC.
- Form of SC.
- Particulars to be entered in SC
- other matters.

SH-1

§§4

Shares held in
D-mat form

The record of depository
is the prima facie
evidence of the interest of
beneficial owner i.e. no need
to issue share certificate.

§§5

Penalty

Company

OID

No less than
5 times of FV
of shares

Liable
u/s
447

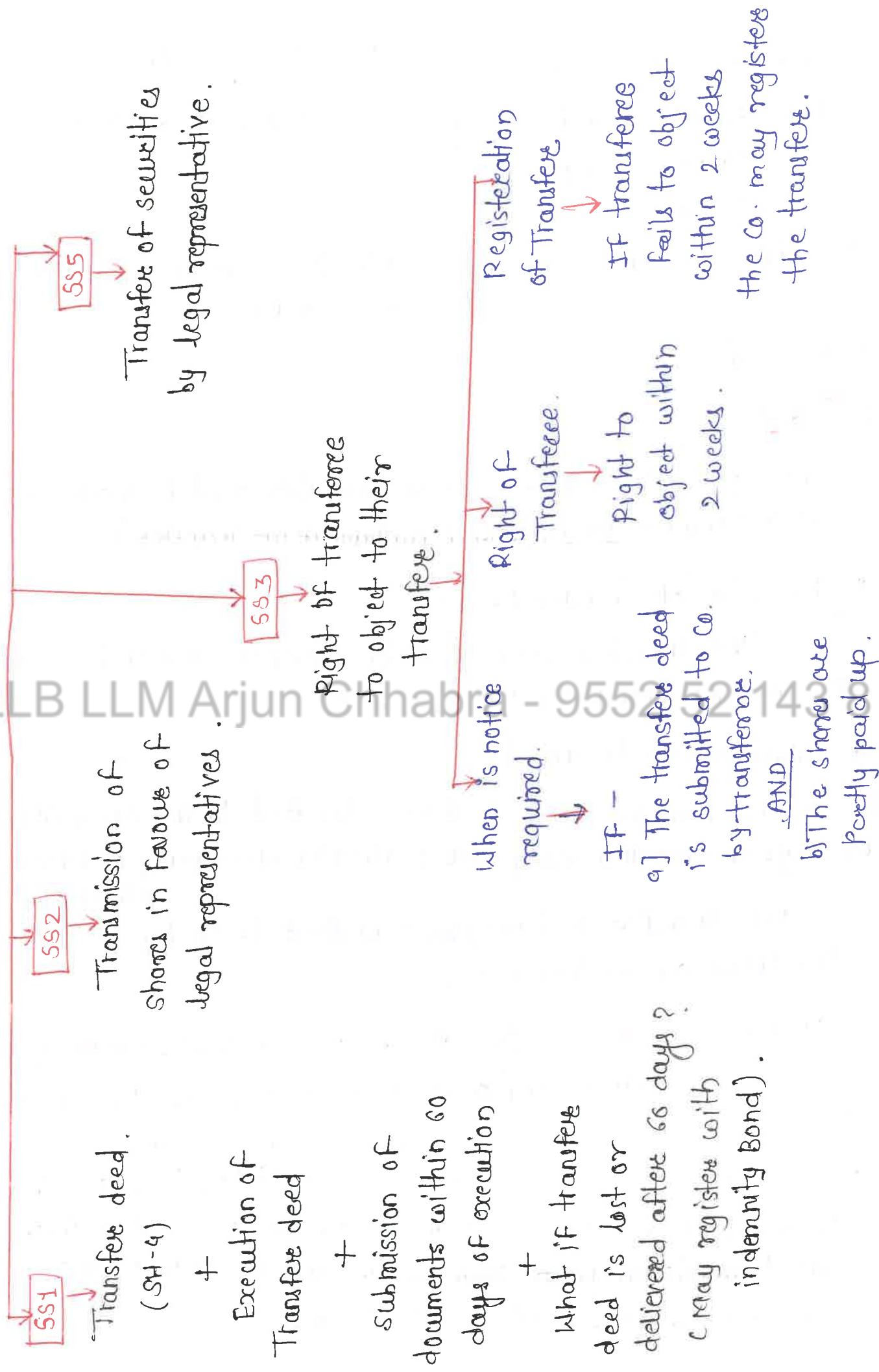
Max - 10 times of
FV or } ↑
10 cr

56 - Transfer and Transmission of Securities

§§4 - Time limits for delivery of certificate.

- (a) Subscriber to memorandum within 2 months
of incorporation
- (b) Allotment of shares - within 2 months of Allotment.
- (c) Allotment of Debentures - within 6 months
of allotment.
- (d) Transfer or Transmission of securities -
within one month of receipt of transfer
or intimation of

Sec 56 - Transfer and Transmission of securities.



Subsection- 4 conclusion

- 1) Transfer deed - SH4 + share certificate
- 2) Execution of Transfer deed. + letter of allotment.
 - Date, stamp &
 - sign.
- 3) submission of document → within 60 days of execution of company.

* Detailed Provision

1) Transfer Deed

- The application for transfer of securities must be made in form SH-4 (Transfer deed / form / Instrument of transfer).

* Execution of Transfer Deed -

The transfer deed shall be stamped, dated & executed (signed by transferor & transferee).

* submission of document.

- The transfer deed shall be submitted to the co. within 60 days of execution along with certificates of security or letters of Allotment.
- The transfer deed may be submitted to co by the transferor or transferee.

② Transmission of shares in Favour of legal representatives

Where any person acquires any right to securities by operation of any law (eg. nominee or official receiver by order of court), the co. may register the transmission of shares in favour of such person if co. receives intimation of transmission from such person, and in such a case, no transfer deed shall be necessary.

555 - Transfers of securities by legal representative.

In case of death of holder, of any security, the transfer of such security by the legal representative of the deceased shall be valid -

- even though the legal representative is not the holder of such security.
- as if the legal representative were the holder of such security.

Death → 500 shares

Mrs. X → Application

+ share certificate

+ death certificate

+ Affidavit

+ Indemnity Bond

+ Noc by other legal representative

+ Expenses of investigation.

Transfer

- ① Voluntary
- ② SH-4 - Transfer deed.
- ③ stamp Duty.
- ④ May or may not have consideration.
- ⑤ In favour of any Person.

Transmission

- ① By operation of law.
- ② Intimation
- ③ No stamp duty
- ④ No consideration.
- ⑤ In favour of nominee only.

ITP # Sec 58 - Refusal to register transfer or transmission of Securities.

Refusal to register

the transfer or transmission by private company.

Compulsory issue of Notice.

→ If a pvt co refuses (in pursuance of any power under its articles or otherwise) to register.

→ Transfer of any Securities; or

→ Transmission of any Securities.

It shall give a notice of such refusal.

Notice to whom?

→ Transferee & Transferee;

or Person giving intimation of Transmission;

Time limit for sending notice.

within 30 days from which the -

1) Transferee died or

2) Intimation of transmission was delivered to the company.

Content of notice.

Reason for refusal to register the transfer or transmission

Appeal to whom?

- The appeal may be filed before tribunal.

Appeal against Refusal.

Appeal by whom?

- Transferee; or
- Person giving intimation of Transmission.

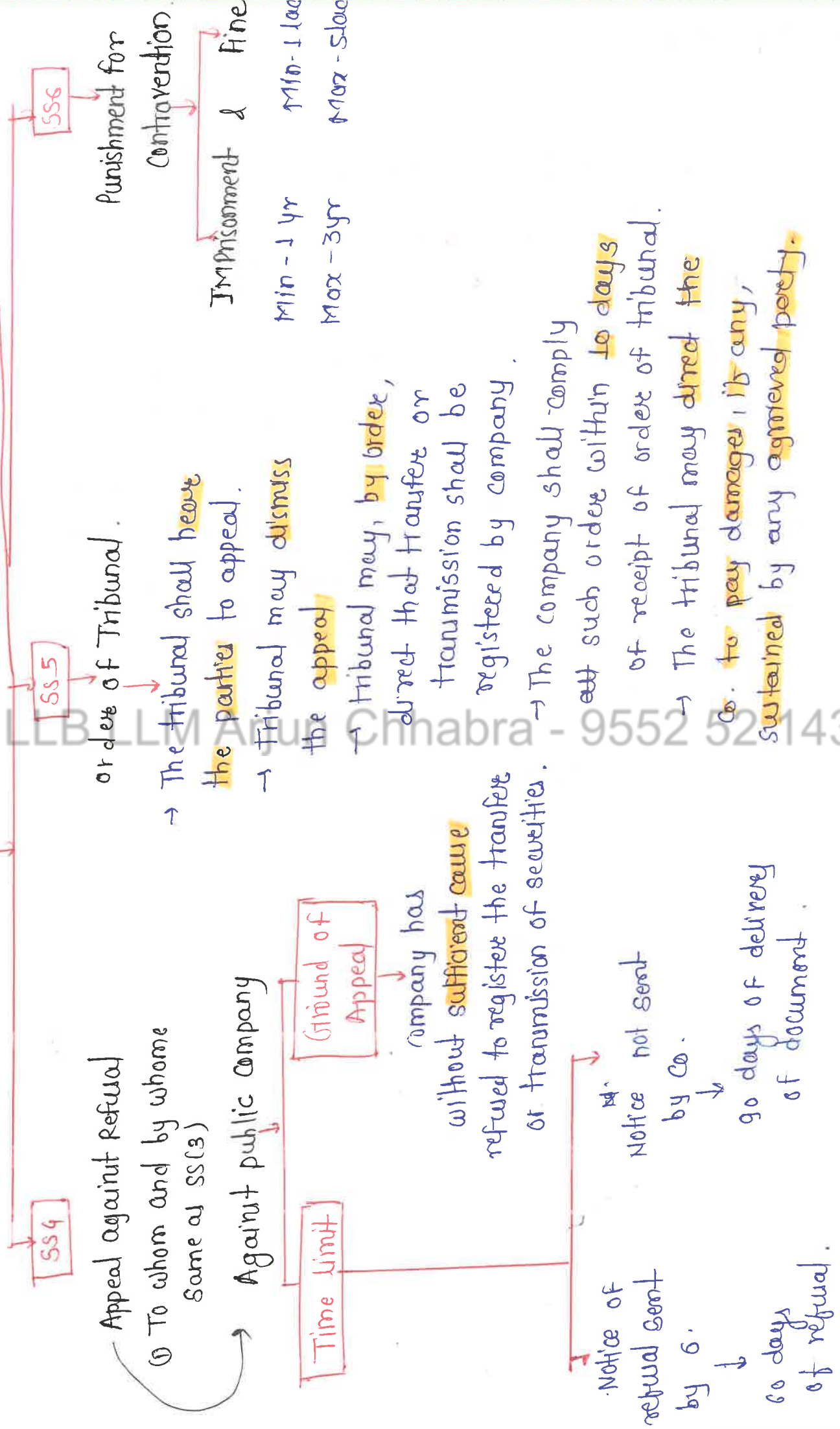
Time limit

within 30 days of receipt of notice of refusal
What if notice is sent by co?
↓
within 60 days of delivery of Transferee deed or intimation of Transmission

553

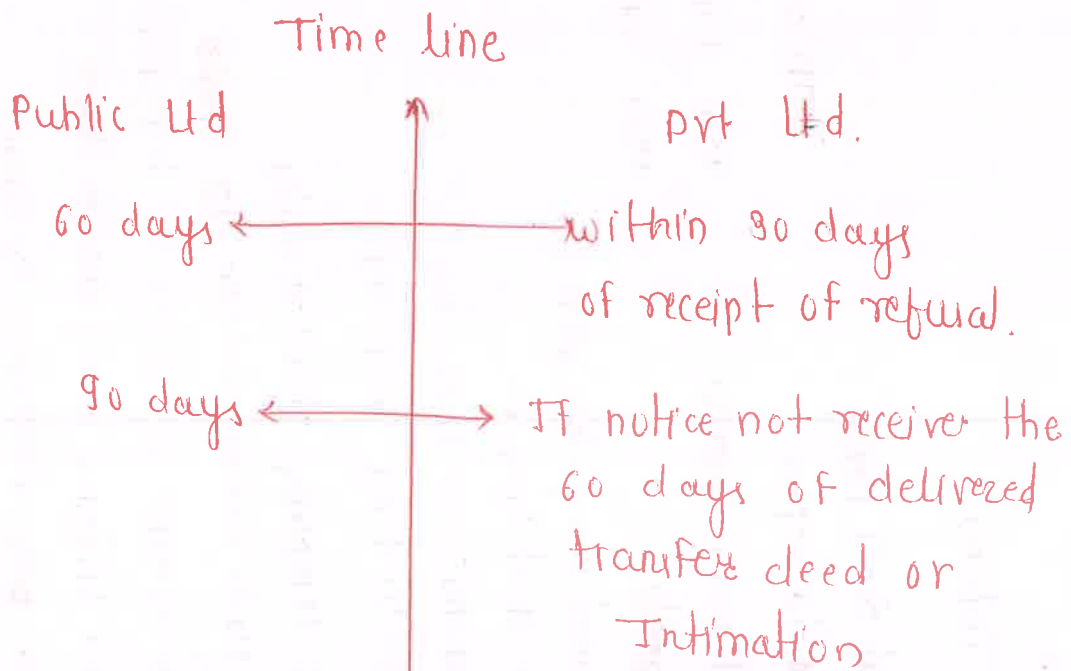
551

Sec 58



Appeal provision

Intimating person / Transferee.



CS LLB LLM Arjun Chhabra - 9552 52 143 8

NCLT

↓ order

within 10 days of passing of order

↓
co. Compliance.

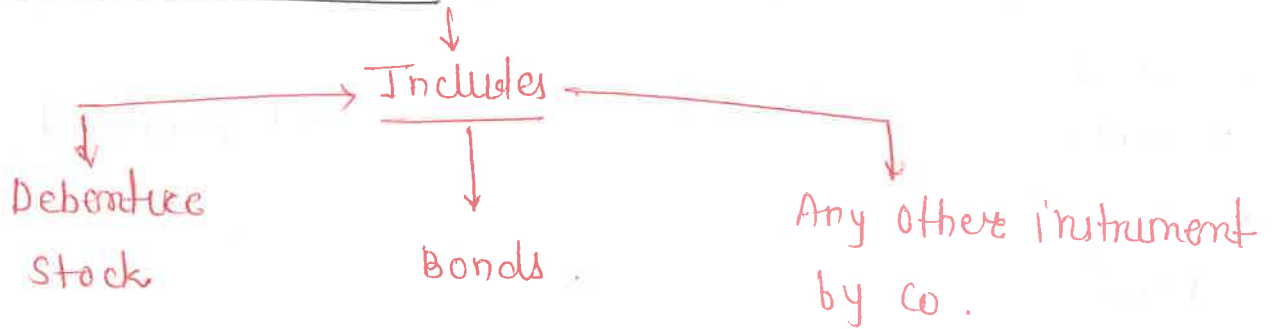
Sec 71 - Debentures read with sec 2(30)

↓
Legal provision w.r.t
debentures.

↓
Definition of
debentures.

[Bonds → When Co. takes loan from bank &
Issues an instrument its called bond]

Sec 2(30) - Debentures



Evidencing Debt, whether constituting
charge on the asset of co. or not.

- Debenture, holders are creditors of company.
- No debenture can carry any voting Right.
- The debenture specifying the payment of specified sum payable at certain rate of Int.

Basis	Shares.	Debt
① Capital V/s Debt.	Represents the capital of company	Represents the indebtedness of company.
② form of return.	Dividend ↓	Interest. ↓
③ Legal effect	Appropriation of profit	Charge on profit
④ Variation in Return	D. varies with quantum of profit	Int. fixed irrespective of quantum of profit
⑤ Issue at discount.	Prohibited	Not prohibited.
⑥ Voting Right.	✓	X
⑦ Purchase of own sec. or.	✓	✓
⑧ security for payment.	No security is created in favour of shareholders	Generally, security is created here.
⑨ Trust deed	X	✓
⑩ Redemption	Equity - Irredeemable Preference - Redeemable	may be both.
⑪ conversion	can not converted into any other security	may be converted into shares if the terms of issue so provide.
⑫ Repayment in winding up.	Repaid after all liabilities	Get priority over shares.

```

graph TD
    Root(( )) --> SS1[SS1]
    Root --> SS2[SS2]
    Root --> SS3[SS3]
    Root --> SS4[SS4]
    Root --> SS5[SS5]
    Root --> SS6[SS6]

    SS1 --> SS1_T["Issue of Convertible debentures"]
    SS1_T --> SS1_P["Provided such issue is approved by passing SR in G.M."]

    SS2 --> SS2_T["No voting Rights"]
    SS2_T --> SS2_P["Issue of secured debentures"]
    SS2_P --> Rule18[Rule 18]

    SS3 --> SS3_T["Issue of secured debentures"]
    SS3_T --> SS3_P["Debt of debentures shall not exceed 10 years but not exceeding 30 yrs."]
    SS3_P --> SS3_P1["Co. engaged in setting up infrastructure projects"]
    SS3_P1 --> SS3_P2["Infrastructure finance co."]
    SS3_P2 --> SS3_P3["Infrastructure debt fund-[NBFC]"]
    SS3_P3 --> SS3_P4["Co. permitted by minister of dept. of CG or RBI or NH&B or any other authority"]

    SS4 --> SS4_T["Mandatory creation of DRR"]
    SS4_T --> SS4_P1["Company issuing a prospectus for debentures"]
    SS4_T --> SS4_P2["Co. makes an offer of debentures to its members exceeding 500"]

    SS5 --> SS5_T["Appointment of debenture trustee"]
    SS5_T --> SS5_P1["Mandatory"]
    SS5_T --> SS5_P2["Co. makes an offer of debentures to its members exceeding 500"]

    SS6 --> SS6_T["Duties and function of Debenture trustees"]
    SS6_T --> SS6_P1["Protect interest of deb. holder"]
    SS6_T --> SS6_P2["Refrain the interference of debenture holder"]
  
```

The flowchart details the provisions of the Companies Act, 2013 regarding debentures. It starts with a central line branching into four main sections: 1. Issue of Convertible debentures (SS1), 2. No voting Rights (SS2), 3. Issue of secured debentures (SS3), and 4. Mandatory creation of DRR (SS4). Each section further branches into specific rules and provisions, such as 'Provided such issue is approved by passing SR in G.M.' for convertible debentures, and 'Mandatory' for the creation of DRR. The flowchart concludes with 'Duties and function of Debenture trustees' (SS6) and 'Appointment of debenture trustee' (SS5).

Issue of Convertible debenture

→ No voting Rights

Issue of seized debt

- Debt of debentures shall not exceed 10 years
- Exceeding 10 years but exceeding 30 yrs.

① Co. engaged in setting up infra projects.

iii) Infrastruktur deckt Band-[NBFC]

⑥ Co^{+} may create charge on a net by CH_3H 

Co Associate
Substitu
Molay n

Issue of seized debt

toey creation
of DRR

Appointment of
debenture
trustee.

MANDATORY

Issuing a prospectus for debentures

an offer of
debentures to
its members
exceeding 5

Duties and function of Debenture Trustees.

② Refers the

grivance of debenture holder.

Section 71

§ 97

Liability of
Debtors trustees.

If DT's is guilty
of Trust or fails to
show the care and
diligence, he shall be
liable for damages.

§ 98

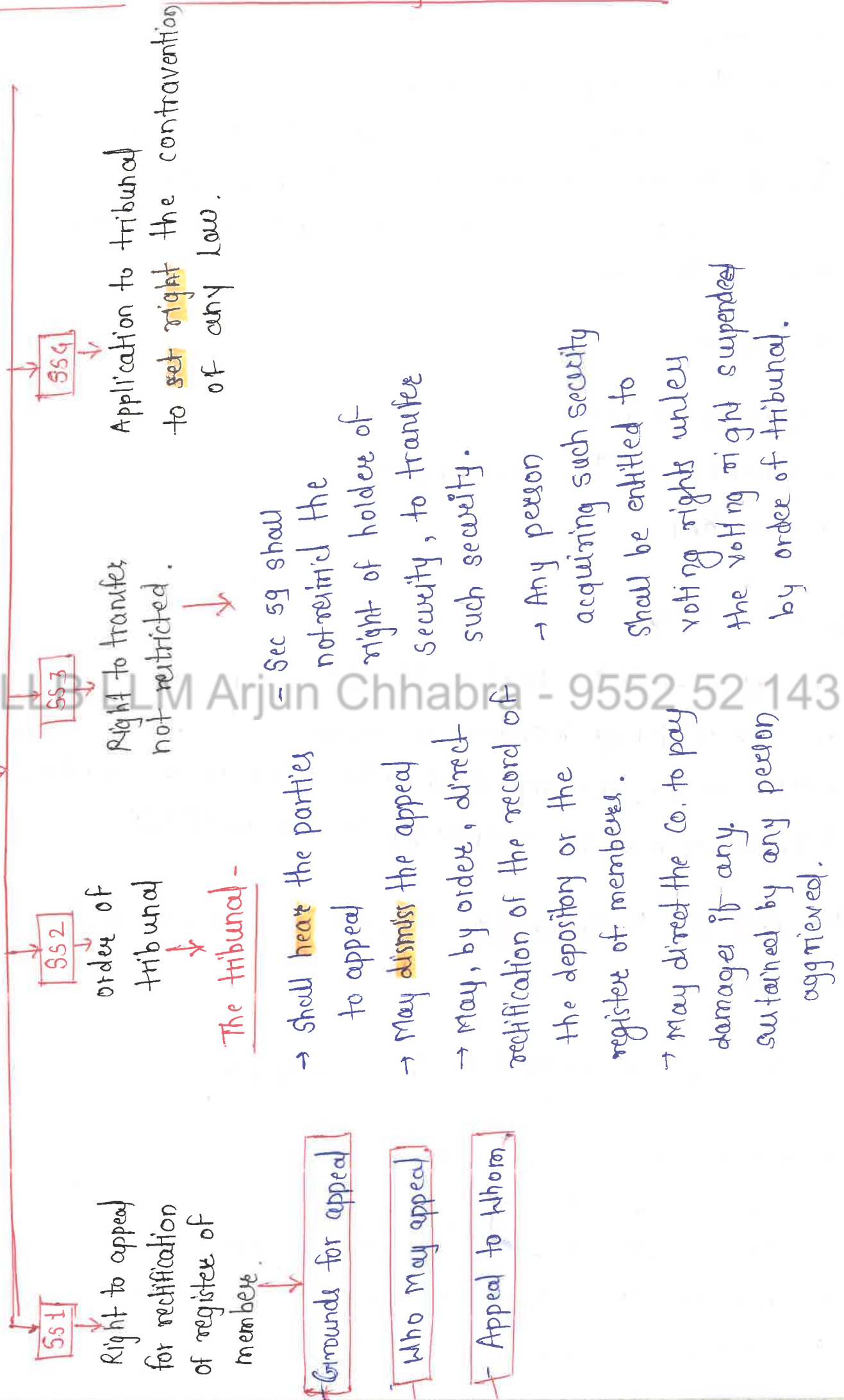
Duty to make
payment.

[Disqualification → who can't be deb. trustee]

Page no. - 157
of Chart book

Sec 59 - Rectification of Register of Members.

Sec 59



* Grounds for Appeal

Without any sufficient cause -

- 1) The name of any person is entered in the RoM; or
- 2) The name of any person is omitted in the RoM; or
- 3) Default or unnecessary delay is being made in entering in the register of members, the fact of any person having become / ceased to be a member.

* Who may appeal-

- 1) The person aggrieved; or
- 2) Any member of the company; or
- 3) The company.

* Appeal to Whom -

- 1) The appeal shall be filed with the tribunal.
- 2) In case of foreign members or debenture holders residing outside India, the appeal shall be filed in a competent court or in India as may be specified by CCI by notification.

[§54] - Application to tribunal to set right the contravention of any law

① Applicability of Sec 59 (a) -

Sec 59 §54 is attracted where a transfer of securities is affected by the Co, but such transfer was in contravention of provision of -

- 1) The Companies Act, 2013; or
- 2) The Securities Contract Regulation Act, 1956; or
- 3) The Securities & Exchange Board of India, 1992; or
- 4) Any other law for time being in force.

② Right Conferred: Sec 59(c4)

Right to make an application for rectification of registers and records, and to set right the contravention.

③ Application by Whom -

- Company
- The depository
- The depository participate
- The Securities & Exchange Board
- The holder of the securities

④ Application to Whom - Tribunal

⑤ Order of Tribunal

The tribunal may direct the company or the depository to set right the contravention and rectify its registers or records.

Sec 72 - Nomination of Securities / Power to Nominate

SS1

Applicability
(All companies)
+

Optional

+

Nomination

by

whom.

→ Any holder of securities

→ By all joint holders acting collectively. - SS2

SS

SS3

Overriding effect
of Sec 72

SS4

Who can be a
nominee.

Sec 72(4) - Who can be nominee -

- Any person may be named as nominee.
- A minor may be named as nominee, if some other person is appointed in prescribed manner. (By filing form no. SH3) to become entitled to securities in the event of death of the holder of security during minority of the minor.

Variation or cancellation -

At any time, a nomination may be -

- Ⓐ cancelled in the prescribed manner (by filing form no SH14); or
- Ⓑ varied in the prescribed manner (by filing form no SH14).

Consequences in case of death -

- ① In case of death of the holder of security, all the rights in the security shall vest in nominee.
- ② In case of securities held by two or more persons jointly all the rights in the security shall vest in nominee only if all the joint holders die.
- ③ No person other than the nominee shall be entitled to right in the securities, not with standing anything contained in -
 - Ⓐ Any other law for the time being in force; or
 - Ⓑ Any will made by holder of security.

70 - Prohibition for buy back in certain circumstances

① Prohibition in case of defaults of payment.

No company shall directly or indirectly buy back its own shares or other specified securities, if default is made by the company in -

- Ⓐ Repayment of deposit or interest payable there on.
- Ⓑ Redemption of debentures.
- Ⓒ Redemption of preference share.
- Ⓓ Payment of dividend to any shareholders.
- Ⓔ Repayment of any term loan or interest payable there on to any financial institution or Bank.

NOTE - The Buy back is not prohibited if the default is remedied and period of three years has lapsed after such default ceased to subsist.

Ⓔ Other prohibitions -

No co. shall directly or indirectly buy back its own shares or other specified securities -

Ⓐ Through any subsidiary co. including its own subsidiary co.; or

Ⓑ through any investment co. or group of investment company

Ⓕ Prohibition in case of non compliances -

No co. shall directly or indirectly buy back its own shares if it has not complied with the provisions of -

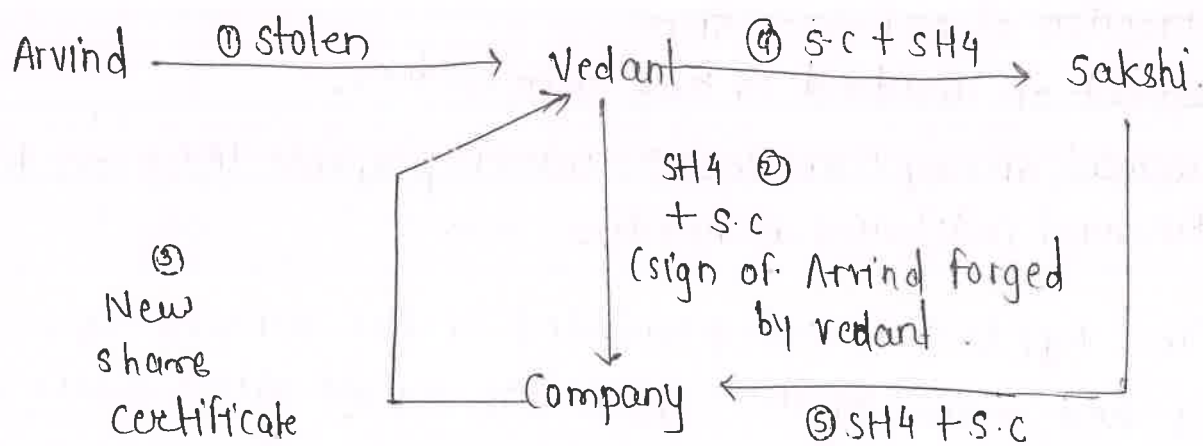
Ⓐ Sec 92 (Filing of Annual return);

Ⓑ Sec 123 (provision related to declaration of dividend); or

Ⓒ Sec 127 (Payment of dividend within 30 days);

Ⓓ Sec 129 (Provisions related to financial statement).

Forged Transfers -



* Forgery in law is 'Nullity and void'.

* Meaning

- forged transfers means transfers of shares on the basis of transfer deed on which transferor signature is forged.

* Effect of forged transfers

① A forged transfer is void ab initio i.e. nullity i.e. without any legal effect..

② In simple words forged transfers leaves the ownership of shares exactly where it was i.e. ownership remains with true owner and he remains entitled to all the benefits in respect of shares.

Case law

A holding 500 equity shares in XYZ Ltd and those shares were acquired by B. but the signature of A on the transfer deed was forged.

Mr. B after getting the shares in his name, sold 200 equity shares to Mr. C. Mr. B and Mr. C were not aware of forgery. What are rights of Mr. A, Mr. B and Mr. C against the company?

→ Right of Mr. A

He can compel the company to restore his name in RoM.

Liability of Mr. B

B is liable to compensate the loss caused to the company since he had lodged forged transfer deed even though he was not aware of the forgery.

Rights of C

The company can refuse to register C as a member. The company is liable to C since the company had issued the share certificate to B and therefore the company shall stop denying the liability accruing to itself from its own default.

Sec 69 - Transfer of certain sum to capital redemption

reserve A/c

The company -

- ① Purchase its own shares.
- ② Source - free reserves and Securities Premium A/c
- ③ Transfer - Sum equal to nominal value.
- ④ CRR
- ⑤ Enduse - Unissued shares, fully paid bonus shares.

Sec 60 - Publication of authorised, subscribed and paid up capital.

Where in any document of co. which contains a statement of the amount of authorised share capital of co, such document shall also contain a statement IN AN EQUALLY PROMINENT POSITION AND IN EQUALLY CONSPICUOUS CHARACTER of the amount of the capital which has been subscribed and amount is paid up.

Sec 57 - Punishment for personation of shareholder

If any person deceitfully (fraudently) personates as an owner of any security and thereby obtains any money from the person, he shall be punishable -

Imprisonment

Min - 1 yr

Max - 5 yr

Fine

Min - 1 lakh

Max - 5 lakh

Sec 52 - Application of premium received on issue of shares

① Application of premium received on issue of shares

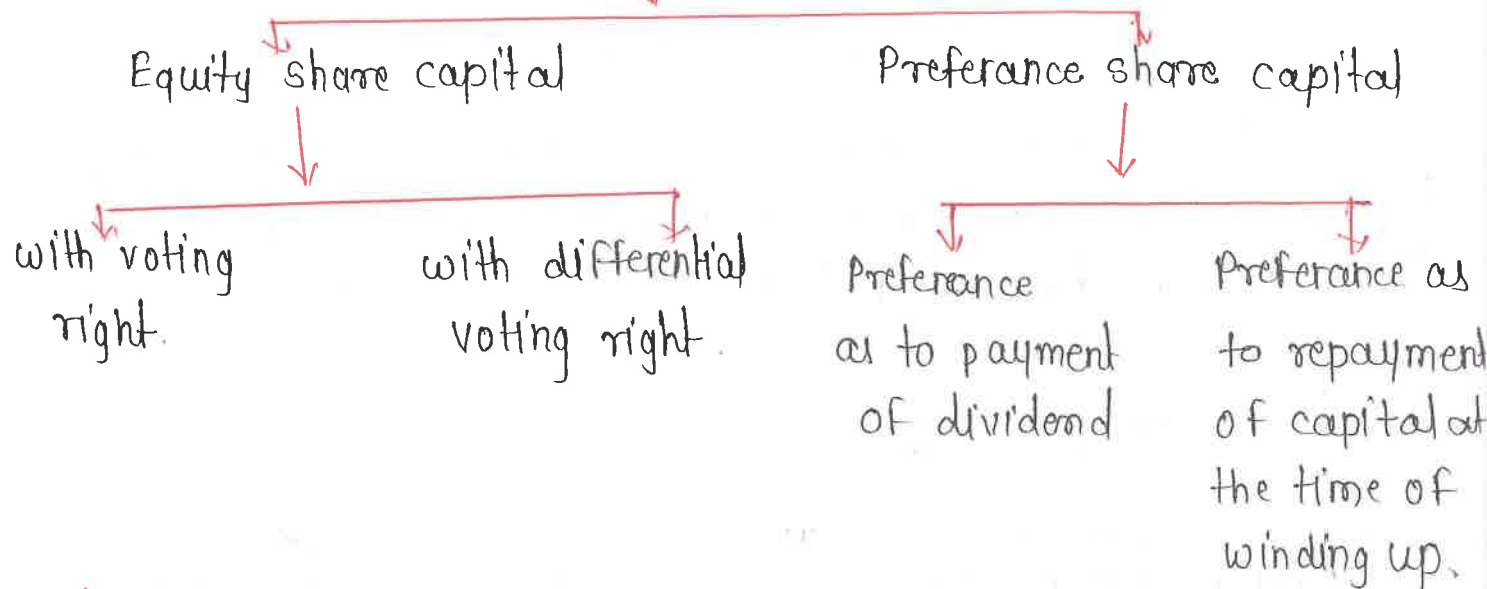
Meaning of securities premium A/c

If shares issued above face value. The extra proceeds above face value is Security Premium.

Utilisation of premium

- ① Issuing fully paid bonus shares.
- ② For buy back of shares u/s 68
- ③ ~~Write~~ Write off preliminary expense
- ④ Write off the expenses ~~paid~~ and commission paid or discount allowed or issued for share and debentures.
e.g Underwriting commission or redemption of debenture.
- ⑤ Premium on redemption of preference shares.

#sec 43 - kinds of share capital.



Legal requirements for issue of shares with differential voting Right.

Applicability

- ① On Unlisted public company
- ② Private company.
- ③ Listed company to extent it is not consistent with SEBI guidelines.

Above co. can issue equity share with DVR only when several conditions are satisfied.

- ① AoA must authorize issue of DVR
- ② OR in GM
- ③ Differential share can have voting rights max 74% of total voting right.
- ④ Co. has not defaulted in filing financial statements and annual return in immediately preceeding 3 financial years.
- ⑤ Co. has not contravened any provision of FEMA Act, 1999, SEBI Act 1992, SCRA Act 1954, RBI Act 1934 in immediately preceeding 3 f.y.
- ⑥ There is no subsisting default in repayment of deposit & debenture or int. there on or equity dividend or Pref. share capital.

7. Co. should not have defaulted in payment of pref. dividend, loans of PFT or state financial institution or interest there on or statutory dues of employees or transfers to TEPF.

However if co. makes default good, then after 5 years from end of f.y in which the default made good, co. may issue equity shares with DVR.

Sec 47 - Voting Rights.

Equity shareholders.

Have right to vote on every resolution placed before the company

Preference shareholders.

Every pref. shareholder shall have right to vote. -

① on such resolution which directly affects the right.

② on any resolution for winding up of company.

③ on any resolution for the repayment or reduction of share capital.

* voting of pref shareholders on every matter

If the dividend to pref. shareholders is not paid for two years or more then every pref. shareholder shall have right to vote on every resolution placed before the co.

* Applicability

① Sec 47 is applicable to all company whether pvt ltd or ltd.

However the provisions of Sec 47 shall not apply to pvt co. whose MOA or AOA so provides.

Sec 48 - Variation of share holder's right.

P.N - 142

sec 55 - Issue and redemption of preference shares

P.N - 147

Basis	Member	Shareholder.
① Definition	Defined into 2 (S5)	Shareholder not defined in Companies Act, 2013
② Meaning	Member generally means a person whose name is entered in ROM.	SH means a person who holds shares in a company.
③ Nature of Co.	Every co. shall have min. no. of members.	only a co. having share capital can have share holder.
④ Subscriber to Memorandum	A person who signs MoA is deemed to be a member from the date of registration of the company.	A person who signs the MoA becomes a shareholder only when the shares are actually allotted to him.
⑤ Transferor of shares until change in the register	A transferor of shares continues to be member until his name is removed from register of Member.	Where a person transfers his shares, he immediately ceases to be a shareholder even though his name continues to appear in the ROM.

* Modes of acquiring of Membership

By subscribing to Memorandum.

By Allotment of shares

By transfer

By transmission.

By becoming a beneficial owner of shares.

* capacity to become a member

a) Minor ✓

b) company ✓

c) cooperative society ✓

d) Trade union ✓

e) Partnership firm X (except Sec 8 Co)

f) HUF X

g) Trust ✓

h) Joint holders ✓

i) foreigners ✓ (as per FEMA Act, 1992)

j) Govt ✓ (President or Governor)

k) Insolvent X (until discharge).

□

Coverage of Sec under this chapter

- 1] Sec 43 - kinds of share capital.
- 2] Sec 44 - Nature of shares and debentures.
- 3] Sec 45 - Nature and Numbering
- 4] Sec 46 - Certificate of shares.
- 5] Sec 47 - voting rights.
- 6] Sec 48 - Variation of SH's right.
- 7] Sec 49 - calls on share of same class to be made on uniform basis.
- 8] Sec 50 - company to accept unpaid share capital, Although not called up.
- 9] Sec 51 - Payment of dividend in proportion to amt. paid up.
- 10] Sec 52 - Application of Premium received on issue of shares.
- 11] Sec 53 - Prohibition on issue of shares at discount.
- 12] Sec 54 - Issue of sweat equity shares.
- 13] Sec 55 - Issue & redemption of pref share.
- 14] Sec 56 - Transfer & Transmission of securities.
- 15] Sec 57 - Punishment for personation of shareholder.
- 16] Sec 58 - Refusal to register transfer or transmission of securities.
- 17] Sec 59 - Rectification of register of member.
- 18] Sec 60 - omitted
- 19] Sec 61 - Alteration of share capital
- 20] Sec 66 - Reduction of share capital
- 21] Sec 62 - Further issue of share capital
- 22] Sec 68 - Issue of bonus share.
- 23] Sec 67 - Restriction on purchase by co. or giving loan by it for purchase of its shares
- 24] Sec 68 - Power of co. to purchase its own securities.
- 25] Sec 69 - Transfer of certain sums to capital redemption reserve.
- 26] Sec 70 - prohibition for buy back in certain circumstances
- 27] Sec 71 - Debentures
- 28] Sec 72 - Power to Nominate
- 29] Sec 74 - Notice to be given to registrar for Alteration of share capital.