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 promotor holding.

③ To provide an additional exist 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

ⓐ Free reserves

ⓑ Securities Primium Account

ⓒ Proceeds of fresh issue of securities or other specified ~~of~~ securities

NOTE BB shall ~~allotted~~ 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 F.Y shall not exceed 25% of its total paid up equity capital in that F.Y.

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

↓ 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

- From
  - Existing SH
  - or
  - open Market.
- 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.
- Extinction 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 insolvent within 1 year.

SEBI → Listed

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* Practical Example of Maximum Buy Back -

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

Equity share capital = ₹ 75 lakhs
[75000 × ₹ 100]

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

Free Reserves = ₹ 100 lakhs.

→ Max BB - ₹ 100 lakh (P.U.S.C) + ₹ 100 lakh (FR) = 200 lakh × 25%
= ₹ 50 lakh

SR

Max equity BB in any F.Y = ₹ 75 lakh × 25%
= 18.75 lakh

BR

(75 lakh (P.E.S) + 100 lakh (F.R.)) × 10% = ₹ 17.5 lakh

Practical Example of Debt equity ratio 2:1

Max BB Amount = 25% [P.U.S.C + FR]

= 25% [10+10]

= ₹ 5 lakh

Suppose Co is BB @ ₹ 50/ share.

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

↓

company can BB

Max 10000 shares

Maximum post BB ratio

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

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

Suppose, Debt is 38 lakh

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

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

→ ① SR is not required to be passed - since the buyback shall not exceed 10% of aggregate P.U.S.C and free reserve.

② Within 1 year of passing of resolution for buy back.

③ Twice the aggregate P.U.C → Free reserve after such buyback.

Ex -

London Ltd
GM → ORdinary Resolution
↓
Buyback 30% of its equity share capital

AoA
Empower Co. to buyback

$\boxed{\text{Proposal valid ?}}$

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

→ (i) As per Sec 68 of The Companies Act, 2013 no company shall purchase its own shares or other specified securities unless -

(a) The buyback is authorized by its articles.

(b) A SR has been passed at a GM of the authorising buy back.

Provided Nothing above shall apply to a case where —

(i) The buy back is 10% or less ~~than~~ of the total paid up equity capital and free reserves of the co.; and

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

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

(i) 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 shares capital which exceeds the statutory selling of 25% of total paid up equity capital.

(ii) 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]

SR

on 15th Jan 2018

SR for BB of own shares

source of BB

Proceeds of earlier issue of equity

AoA

Empower

5th Jan 2019

BB 80% of equity shares

Whether Proposal is in order ?

What if date of BB revised to 25th Jan 2019

% of BB = 25%

?

Quantum of BB ?

Which fund to utilise ?

Coling period ?

→ (a) As per sec 68 (2) (c) of Co. Act, 2013 BB of E S 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 of 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.

SS1

Prohibition on buying own shares.

No company (Public / Pvt) shall buy its own shares.

SS4

The right of co. to redeem the Pref. share shall not be affected.

SS2

Giving financial assistance for purchase of shares.

General Rule

① No public company shall give financial assistance for purchase of its own shares or of its holding company.

② The restriction applies to every kind of financial Assistance, whether it is direct or indirect, and whether it is given by way of loan, guarantee, security or otherwise.

SS3

Exception

Financial Assistance is Permitted.

ⓐ Lending money by a banking company in the ordinary course of business.

ⓑ → The provision of money by co.
- → In accordance with any scheme.
- → approved by company throug SR;
- → for the purchase of Fully paid up Shares
- → In the co or its Holding co.
- → Being a purchase of shares by the trustees.
- → for the benifit of employees.

SS5

Co. Fine
- Min - 1 lac
- Max - 25 lac

OID
- Imprisonment - 3 yrs
- Fine - same like co.

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

553 - Exception

ⓒ

ⓐ 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

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

&

ⓑ 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 pvt 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]

Manish Ltd → Bhaskar [Finance Manager]

Salary of ₹ 40000 / month

To buy 500 Partly paid up equity shares of ₹ 1000 each

Rajesh Export Ltd

Decide to given loan ₹ 8 lakh

Whether BR valid ??

→ 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 ₹ 30000 / 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 its 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

S63(1)

Sources of Bonus Issue

Company may issue fully paid up bonus shares out of -

- (a) Free reserves
- (b) Securities Premium A/c
  &
- (c) capital redemption reserve A/c.

NOTE - Bonus share shall not be issued by capitalising the reserves created by the revaluation of assets

S63(2)

Condition for issuing Bonus shares.

- **Power in Articles**
- **Recommendation of the Board.**
  - → Bonus shares can be issued only if the board recommends such an issue.
  - → A co. which has once announced the decision of its board recommending a bonus issue, shall not subsequently withdraw the same. (Rule 14)
- **Ordinary Resolution**
  - Issue of Bonus share possible only if authorization to issue ~~by~~ bonus share is obtained by passing an OR in GM.
- **No default in statutory dues**
  - (Employees PF, Gratuity & Bonus)
- **No defaults in debts**
  - Principal + Int amt or deposit.
- **Issued to existing members only**
- **Bonus shares must be fully paid up**
- **Existing shares to be fully paid up.**

S63(3)

Bonus shares shall not be issued in lieu of dividend.

Ex - ABC Ltd [Nov 18]

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

Wheter 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

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

* Defination of sweat equity shares

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

ⓐ At a discount ; & or

ⓑ 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

SS 1

Prohibition

→ Issue of shares at discount is Prohibited

→ The prohibition applies to all company. [Public / Pvt]

NO Prohibition on issue sweat equity Shares at discount.

Issue of SES doesn't fall u/s 53

A co. may issue SES at discount u/s 54

SS 2

Any issue of shares at a discount shall be void.

SS 2 A

No prohibition on issue of shares at a discount in case of conversion of debt.

Notwithstanding anything contained in SS1 & SS2, a co. may issue shares at a discount to its Creditor when -

→ Its debt is converted into shares

→ In Accordance with debt restructuring scheme

→ As per guidelines or directions or regulation specified by RBI under RBI Act, 1934 or Banking (Regulation Act), 1949.

SS 3

→ Co & OTD

Amt raised through issue of shares at discount or ₹ 5 lac whichever is lower.

→ Company

Refund all money + Int @ 12% p.a

Period of Int from the date of issue of shares to the date of refund.

Sec 54- Issue of sweat Equity shares.

SS1

Over riding effect to Sec 53 + Authorization for issue.

1. Sweat equity share must belong to a class of share already issued by the company.
2. Issue of sweat equity shares must be authorize by passing SR.
3. SR shall specify the following particulars:-
   - (a) No. of shares
   - (b) Current Market price.
   - (c) Consideration if any.
   - (d) The class of directors or employees to whom sweat equity shares to be issued.

SS2

Same provisions applicable.

1. The rights, limitation, restriction and provisions, as are applicable to equity shares, shall apply to sweat equity shares.
2. The holder of SES shall rank Paripasu (in equal standing) with the holders of other equity shares.

Issue of SES to Whom?

only to its directors or employees

Employee means

- (a) Permanent employee of co working in India or o/s India
- or (b) Director of the co, whether whole time director or not.
- (c) An employee or director under (a) or (b) of subsidiary, in India or o/s India OR of a holding company of the company.

Time limit for making Allotment

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

Locking Period

For period of three yrs from the date of Allotment

Limit on sweat equity shares

- (a) In one F.Y 5 cr or Not more than 15% of existing P.U.E.S.C [higher com issued]
- (b) At any time shall not exceed 25% existing P.U.E.S.C

For start up the limit is 50% upto 5 years from DO Incorp.

Sec 62 - Further issue of share capital

SS 1

Applicability of Sec 62. } Co. having share capital + Issue further shares

ⓐ Offer of further shares to existing shareholders -

1) Offer period → Min 15 & Max 30 days.
2) Right of Renouncement → Authorized in/unless AOA prescribe otherwise.
3) Deemed declined of offer.

ⓑ Offer of further shares to Employees.

- By SR under ESOS
- By OR under ESOS in case of IFSC & Pvt company.

ⓒ Offer of further shares to any person.

- By SR.

~~SS 2~~

SS 2

Dispatch of letter of offer.

→ At least 3 days before opening of the issue.

SS 3

Allotment of shares on Account of conversion of loan or debentures into shares.

SS 4

Allotment of shares on account of conversion of loans or debentures into shares upon order of the Govt. [In public interest]

+

Appeal by Co. to the tribunal.

SS 5

Terms of conversion

- → Financial Position of Co
- → Terms of issue of deb
- → Rate of Int. payable
- → Other matter that is necessary.

SS 6

Alteration of MOA.

- → Stand Altered
- → Stand Increased

55 1 (a)

Further shares shall be offered to the existing equity shareholder in proportion to the paid ~~sha~~ share capital held by them.

Subclause (i)

① Further shares shall be offered to the existing equity shareholder 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 shareholder atleast 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 member 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.

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

Disposal of shares if offer is not accepted -

The shares which remain unsubsribed by the existing shareholder may be disposed off by BOD in such manner which is not disadvantagious to the shareholder 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 -

ⓐ Terms of issue of such debentures contained a term for conversion; and

ⓑ The term of issue of such debenture were approved by passing SR.

S54 - Allotment of shares on account of conversion of loan or debenture into shares upon order of Govt.

Order of Govt ~~directing~~ 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

ⓐ The Govt may make such an order even if there is no term for conversion.

ⓑ The term of conversion must appear reasonable to Govt.

ⓒ 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. 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 uniformaly 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 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 Rights -

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

51 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 ~~of~~ 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) (6)

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
600000	₹ 10	₹ 60 lakh.
5 lakh Diff	same	50 lakh diff.

Increase in Authorized share capital

(b)

No. of shares	F.V	Amt. of share capital
10,00000	₹ 1	₹ 10,00,000
100000	₹ 10	₹ 10,00,000
Diff.	Diff	Same.

Consolidate and divide - Larger Amt.

1000000 × $\boxed{₹ 1}$ = ₹ 10,00,000

100 000 × $\boxed{₹ 10}$ = ₹ 10,00,000.

(d)

No. of shares	F.V	Amt. of S.C.	Paid value
100000	₹ 10	₹ 10,00,000	₹ 8.
		Same	Same
10,00,000	₹ 1	₹ 10,00,000	₹ 80 paise.

Contained in capital clause of MOA.

Sub divided - smaller Amount

Proportion of amount $\boxed{\text{paid up}}$ on shares.

→ [Before Alteration] ₹8

→ ₹ 80 paise [After Alteration]

Amt. remaining $\boxed{\text{unpaid}}$ on shares.

→ ₹ 2 [Before Alteration]

→ ₹ 20 [After Alteration]

shall $\boxed{\text{remain same}}$ 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 amount of the shares so cancelled.

Sec 61(1)(e)

Cancellation ✓
Diminution ✓ } of shares.
Reduction ✗

(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	—

$\boxed{\text{shares - stock}}$

Sec - 66 (1) (a)

I - Extinguishment

ACT Ltd

100000 X F.V = ₹ 10 = 10,00,000.

100000 X P.U = ₹ 6 = 6,00,000

$\boxed{\begin{array}{c}100000 \times \text{U.C.V} = ₹\ 4/\text{share}. \\ \text{Extinguish}.\end{array}}$

100000 X

II Reduction

$\underbrace{100000}_{\text{No. of shares}} \times \underbrace{10}_{\text{F.V}} = ₹\ 10,00,000$

$100000 \times \underbrace{₹\ 6/\text{share}}_{\text{P.U.}} = ₹\ 600000$

$100000 \times \underbrace{\cancel{₹\ 10}\ ₹\ 7/\text{share}}_{\text{F.V}} = 700000$

100000

Sec 6(1)(b)(ii)

ACT Ltd

B/S

ESC	10 Lac	Bank	15 lac
Loan	20 lac		

100000 × ₹10 fully paid

With Extinguishment

B/S

ESC	₹4 lac	Bank	₹9 L
Loan	₹20 L		

100000 × ₹6/share

= 600000

F.V = ₹10/share

↓

F.V = ₹4/share

100000 × ₹4 / fully paid

Without Extinguishment

B/S

Esc	₹4 lakh	Bank	9 L
Loan	₹20 L		

100000 × ₹6/share

= 600000

F.V = ₹10/share

↓

F.V = ₹10/share

100000 × ₹4

[Partly paid]

Sec 61 (1)(b)(i)

XYZ Ltd

B/S

Before Cancellation

ESC	₹ 10 Lac	Bank	₹ 12 L.
Loans	₹ 20 L.	P/L A/c	₹ 4 lac

100000 X ₹ 10/ each - fully paid up

After Cancellation

E/C	₹ 6 lakh	Bank	12 Lac
Loan	₹ 20 lac	P/L	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.

SS1

Confirmation of tribunal
+
SR - GM
+
Modes of reduction.

Proviso → No default w.r.t deposit.

SS2

Notice by the tribunal to CG, ROC, SEBI and creditors
+
Representation By CG, ROC, SEBI and Creditors within 3 Months of notice.
+
If no objection received within 3 Month → Presumed no objection to reduction.

SS3

Tribunal shall secure int. of creditors → The tribunal may make an order if it satisfy that every Creditor. –

ⓐ Has given his consent; or
ⓑ Has been discharged; or
ⓒ Has been given security.
+
Accounting treatment must be in confirmity in Acc standard as specified in Sec 133.

SS4

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

SS5

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.
+
Registeration by ROC and Certificate to that effect.

SS6

Non applicability of this sec on buy back

SS10

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

Refer 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
Nature.	Stock Means a bundle of Shares express in lumpsum. It mean aggregate of fully Paid up shares of member merged in one Fund.	A share a smallest unit into which the capital of co. is divided.
Time of Issue.	A co. cannot issue a stock in very begining. i.e A co. can not make an original issue of stock.	Shares can be issue in First instance.
Paid up value	stock shall be always fully paid.	shares may be fully Paid or partly paid.
Nominal value.	A stock has no nominal value	Shares has nominal value.
Transfer in fraction	Stock can be transferred in fractional Amt.	shares can not be transferred in fractional Amt.
Distinctive Number	stock has no distinctive no.	Every share has Des' no. except in depository
Authorization for issue.	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 it distinctive number.

, Exception - Shares held in depository system shall not have distinctive number.

Sec 46 - Share Certificate read with Sec 56

↓

Sec 2 (55)

Defination of Member

i) Every subscriber to Memorandum

\+

name entered in register of member.

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

\+

name entered in ROM.

iii] Every person - name - Register of benificial owner in the records of depository.

Sec 46 - share Certificate

SS 1

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**: It shall be affixed in the presence of person required to sign the certificate.
- ~~Common seal~~: every certificate shall be signed by 2 director or by director & CS if any.
- **In case of OPC** → Directors or CS or any other person → authorized by board.

SS 2

Duplicate share certificate → Can be issued if it is

- Proved that the SC has been lost or destroyed;

OR

- Defaced, mutilated or torned & → surrender to Company.

→ Listed → within 45 days
→ Unlisted → within 3 Months

of submission of complete document with the complete document.

SS 3

Rules by CG

- → Manner of issue of share certificate (SC)
- → manner of issue of duplicate SC.
- → form of SC.
- → Particulars to be entered in SC
- → other matters.

SH-1

Sec 46

S54

Shares held in D-mat form

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

S55

Penalty

Company

No less than 5 times of FV of shares

Max - 10 times of FV or 10 cr ↑

OID

Liable u/s 447.

56 - Transfer and Transmission of securities.

S56 - 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.

SS1 → Transfer deed. (SH-4)
+
Execution of Transfer deed
+
Submission of documents within 60 days of execution
+
What if transfer deed is lost or delievered after 60 days? (May register with indemnity Bond).

SS2 → Transmission of shares in favour of legal representatives.

SS3 → Right of transferee to object to their transfer.

- When is notice required. → If –
  a] The transfer deed is submitted to co. by transferor.
  AND
  b] The shares are Partly paid up.
- Right of Transferee. → Right to object within 2 weeks.
- Registeration of Transfer → If transferee fails to object within 2 weeks the co. may register the transfer.

SS5 → Transfer of securities by legal representative.

Subsection - 1 conclusion

1) Transfer deed - SH4 + share certificate + letter of allotment.
2) Execution of Transfer deed.
→ 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 (Tranfer 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 letter 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 (e.g. 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.

S 56 - Transfer 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 expenditure is not the holder of such security.
- as if the legal representative were the holder of such security.

x Death —500 shares.→

Mrs. x — Application →

\+

Share certificate

\+

Death certificate

\+

Affidavit

\+

Indemnity Bond

\+

NOC by other legal representative.

\+

Expenses of investigation.

Transfer	Transmission
① Voluntary	① By operation of law.
② SH-4 - Transfer deed.	② Intimation
③ Stamp Duty.	③ No stamp duty
④ May or may not have consideration.	④ No consideration.
⑤ In favour of any person.	⑤ In favour of nominee only.

IMP # Sec 58 - Refusal to register transfer or transmission of securities.

SS 1

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?

→ Transferor & Transferee;

OR

→ Person giving intimation of Transmission

Content of notice

Reason for refusal to register the transfer or transmission

Time limit for sending notice.

within 30 days from which the -

1) Transfer deed

OR

2) Intimation of transmission was delivered to the company.

SS 3

Appeal against Refusal.

Appeal to whom?

- The appeal may be filed before tribunal.

Appeal by whom?

- Transferee; or
- Person giving intimation of Transmission.

Time limit

Within 30 days of receipt of notice of refusal

What if notice of refusal is sent by co?

↓

Within 60 days of delivery of Transfer deed or intimation of Transmission

Sec 58

SS4

Appeal against Refusal

1. To whom and by whome
   Same as SS(3)
   Against public company

Time limit

- Notice of refusal sent by G.
  → 60 days of refusal.
- Notice not sent by Co.
  → 90 days of delivery of document.

Ground of Appeal

Company has without sufficient cause refused to register the transfer or transmission of securities.

SS5

order of Tribunal.

→ The tribunal shall heare the parties to appeal.

→ Tribunal may dismiss the appeal

→ Tribunal may, by order, direct that transfer or transmission shall be registered by company.

→ The company shall comply ~~all~~ such order within 10 days of receipt of order of tribunal.

→ The tribunal may direct the Co. to pay damages, if any, sustained by any aggrieved party.

SS6

Punishment for Contravention

- Imprisonment
  - Min - 1 yr
  - Max - 3yr
- & Fine
  - Min - 1 lac
  - Max - 5lac

Appeal provision

Intimating person / Transferee.

Time line

Public Ltd	Pvt Ltd.
60 days	within 30 days of receipt of refusal.
90 days	If notice not receive the 60 days of delivered transfer deed or Intimation

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.

Defination of debentures.

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

Sec 2(30) - Debentures

Includes

Debenture Stock

Bonds

Any other instrument by co.

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

→ Debenture, holder 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.	Debentures
① capital V/S Debt.	Represents the capital of company	Represents the indebetness 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.	✓	✗
⑦ Purchase of own sec or.	✓	✓
⑧ security for payment.	No security is created in favour of shareholders	Generally, securities is created here.
⑨ Trust deed	✗	✓
⑩ Redemption	Equity - Irredeemable Preferance - Reedemable	may be both.
⑪ conversion	can not converted into any other security	may be converted into share if the terms of issue so provide.
⑫ Repayment in winding up.	Repaid after all liabilities	Get priority over shares.

Sec 71 Debentures

- **SS 1** → Issue of Convertable debentures.
  - → Provided such issue is approved by passing SR in GM.
- **SS 2** → No voting Rights.
- **SS 3** → Issue of secured debentures
  - → **Rule 18**
    - (a) ~~Debe~~ Duration of debentures
      - shall not exceed 10 years
      - Exceeding 10 years but not exceeding 30 yrs.
        - (i) Co. engaged in setting up infrastructure Projects.
        - (ii) Infrastructure finance co.
        - (iii) Infrastructure debt fund-[NBFC]
        - (iv) Co. permitted by minister of dept. of CG or RBI or NHB or any other authority
    - (b) Co. may create charge on asset of CASH ← Co, Associate, Subsidiary, Holding.
    - (c) Co. shall appoint Debenture trustee.
- **SS 4** → Mandatory creation of DRR.
- **SS 5** → Appointment of debenture trustee. → MANDATORY
  - → Company Issuing a Prospectus for d debentures
  - → Co. makes an offer of debentures to its members exceeding 500.
- **SS 6** → Duties and function of Debenture trustees.
  - → ① Protect interest of deb. holder.
  - ② Redress the Grievance of debenture holder

Section 71

S97 → Liability of Debenture trustees.

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

S58 → Duty to make payment.

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

Page no. - 157 of chart book

Sec59 - Rectification of Register of Member.

Sec 59

SS 1

Right to appeal for rectification of register of member.

- Grounds for appeal
- Who may appeal
- Appeal to whom

SS 2

order of tribunal

The tribunal -

→ Shall hear the parties to appeal

→ May dismiss the appeal

→ May, by order, direct rectification of the record of the depository or the register of members.

→ May direct the Co. to pay damages if any sustained by any person aggrieved.

SS 3

Right to transfer not restricted.

– Sec 59 shall not restrict the right of holder of security, to transfer such security.

→ Any person acquiring such security Shall be entitled to voting rights unless the voting right suspended by order of tribunal.

SS 4

Application to tribunal to set right the contravention of any law.

* 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 ommited in the ROM; or
3) Default or unnecessary delay is being made in entering in the register of member, 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 o/s India as may be specified by CG by notification.

59 - Application to tribunal to set right the contranvention of any law

① Applicability of Sec 59 (4) -

Sec 59 sS4 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(4)

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 register or records.

Sec 72 - Nomination of Securities / Power to Nominate

SS 1 → Applicability (All companies) + optional + Nomination by whom.
→ Any holder of securities
→ By all joint holders acting collectively. - SS2

SS 3 → Overriding effect of sec 72

SS 4 → 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 -

(a) cancelled in the prescribed manner (by filing form no SH14); or

(b) 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, any right in the securities, not with standing anything contained in —

(a) Any other law for the time being in force; or

(b) 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 -

(a) Repayment of deposit or interest payble there on.
(b) Redemption of debentures.
(c) Redemption of preferance share.
(d) Payment of dividend to any shareholders.
(e) 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 remedies and period of three years has lapsed after such default ceased to subsist.

(2) other prohibitions -

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

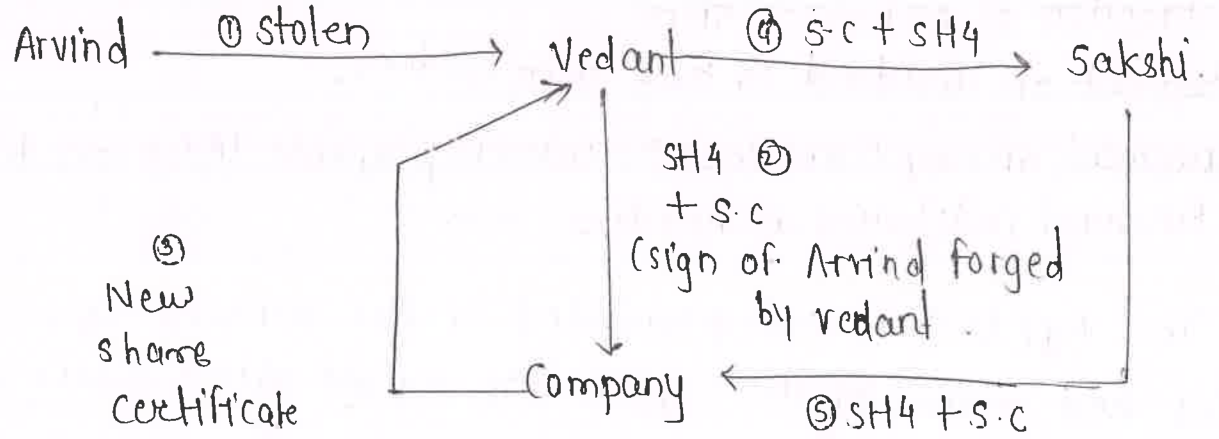
(a) Through any subsidiary co. including its own subsidiary co.; o
(b) through any investment co. or group of investment company

(3) 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 -

(a) Sec 92 (Filing of Annual return);
(b) Sec 123 (provision related to declaration of dividend); or
(c) Sec 127 (Payment of dividend within 30 days);
(d) Sec 129 (Provisions related to financial statement).

Forged Transfer -



* Forgery in law is 'Nulity and void'

* Meaning

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

* Effect of forged transfer

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

② In simple words forged transfer leaves the ownership of shares exactly where it was i.e ownership remains with true owner and he remains entitled to all the benifits 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 registered in his name, sold 200 equity shares to Mr. C. Mr. B and Mr. C were not aware of forgery. What are right of Mr. A, Mr. B and Mr. C against the company?

→ Rights 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 estopped from 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 Primium A/c

③ Transfer - Sum equal to nominal value.

④ CRR

⑤ Endure - Unissued shares, fully paid bonus shares.

---

sec 60 - Publication of authorised, subsribed 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 subsribed 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 primium received on issue of shares

Ⓐ Application of primium received on issue of shares.

Meaning of securities primium A/c

If shares issued above face value. The extra proceeds above face value is security primium.

Utilisation of primium.

① Issueing fully paid bonus shares.
② For buy back of shares u/s 68
③ Write off preliminary expense
④ Write off the expenses ~~paid~~ and commision paid or Discount allowed or issued for share and debentures.
e.g Underwriting commision or redemption of debenture.

⑤ Primium on redemption of preferance shares.

Sec 43 - kinds of share capital.

- Equity share capital
  - with voting right.
  - with differential voting right.
- Preferance share capital
  - Preferance as to payment of dividend
  - Preferance as to repayment of capital at the time of winding up.

Legal requirements for issue of shares with differntial 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 severn 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 filling financial statements and annual return in immediately preceeding 3 financial year.

⑤ Co. has not contravened any provision of FEMA Act, 1999, SEBI Act 1992, SCRA Act 1954, RBI Act 1934, in immediatey preceedi[ng] 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.

(f) Co. should not have defaulted in payment of pref. dividend, loans of PFI or state financial institution or interest there on or statutory dues of employees or transfer to IEPF.

However if co. makes default good, then after 5 years from end of F.Y in which the default make goods co. may issue equity shares with DVR.

Sec 47 - Voting Rights.

Equity shareholder.
Have right to vote on every resolution placed before the company

Preferance shareholder.
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 reductions of share capital,

* voting of pref shareholders on every matter

If the dividend to pref. shareholder 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

(a) 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 preferance shares (P.N - 147)

Basis	Member	Shareholder.
① Defination	Defined into 2 (55)	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 Memoran-dum	A person who signs MOA is deemed to be a member from the date of registeration of the company	A person who signs the MOA becomes a shareholder only when the shares are actually alloted 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 transfer 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 subsribing to Memorandum.

By Allotment of shares

By transfer

By transmission.

By becoming a benificial owner of shares.

* capacity to become a member

a) Minor ✓

b) company ✓

c) cooperative society ✓

d) Trade union ✓

e) Partnership firm ✗ (except Sec 8 Co]

f] HUF ✗

g] Trust ✓

h] Joint holders ✓

i] foreigner ✓ (as per FEMA Act, 1992]

j] Govt ✓ (President or Goveenor]

k] Insolvent ✗ (untill discharge).

l]

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 Primium 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 - ommitted
19] sec 61 - Alteration of share capital
20] sec 66 - Reduction of share capital
21] sec 62 - Further issue of share capital
22] sec 63 - 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 A/c
26] sec 70 - Prohibition for buy back in certain circumstances
27] sec 71 - Debentures
28] sec 72 - Power to Nominate
29] sec 64 - Notice to be given to registrar for Alteration of share capital.