

4

CHAPTER

Share Capital and Debentures



LDR Questions

Q. 8 Q. 12 Q. 13 Q. 15 Q. 18 Q. 19 Q. 21 Q. 23 Q. 26 Q. 32 Q. 33 Q. 39

ICAI Module Descriptive Questions

Section 52 - Application of Premium Received on Issue of shares

1. Walnut Foods Limited has an authorized share capital of 2,00,000 equity shares of ₹100 per share and an amount of ₹2 crore in its Securities Premium Account as on 31-3-2024. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please give your advice.

Solution:

Amount lying to the credit of Securities Premium Account is required to be utilised for certain prescribed purposes.

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this Section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Section 54 - Issue of sweat equity shares

2. Trisha Data Security Limited was incorporated just a year ago with a paid-up share capital of ₹200 crore. Within such a small period of about year in operation, it has earned sizeable profits and has topped the charts for its high employee-friendly environment. The company wants to issue sweat equity to its employees. A close friend of the CEO of the company has told him that the company cannot issue sweat equity shares as minimum 2 years have not elapsed since the time company commenced its business. The CEO of the company has approached you to advise about the essential conditions to be fulfilled before the issue of sweat equity shares, especially since their company is just about a year old.

Solution:

Sweat equity shares of a class of shares already issued.

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is authorised by a special resolution passed by the company;
- (ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Trisha Data Security Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make any difference that the company is just about a year old, because there is no such age (time since commencement of business) requirement under section 54.

Section 55 - Issue & Redemption of Preference shares

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

Solution:

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

with the consent of the holders of three-fourths in value of such preference shares, and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

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

In view of the provisions of section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. ₹10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Section 56 - Share Certificate

4. Ramesh, a resident of New Delhi, sent a transfer deed duly signed by him as transferee and his brother Suresh as transferor, for registration of transfer of shares to Ryan Entertainment Private Limited at its Registered Office in Mumbai. He did not receive the transferred shares certificates even after the expiry of four months from the date of dispatch of transfer deed. Is there any liability of company and officer in default in the said matter?

Solution:

According to section 56 (4) of the Companies Act, 2013, every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further, as per section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Section 58 - Refusal of Transfer

5. Mr. Nilesh has transferred 1000 equity shares of Perfect Vision Private Limited to his sister, Ms. Mukta. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nilesh or Ms. Mukta within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

Solution:

The problem given in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee

or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mukta being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Section 61 - Alteration of Share Capital

6. The Directors of Mars Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

Solution:

Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

- (iii) convert all or any of its paid-up shares into stock and reconvert that stock into fully paid shares of any denomination.
- (iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;
- (v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration. The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution as per section 61 (1) of the Companies Act, 2013.

Section 62 - Further Issue of Share Capital

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

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

Solution:


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

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

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

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

Section 62

-  **8. Shilpi Developers India Limited owed to Sunil ₹10,000. On becoming this debt payable, the company offered Sunil 100 shares of ₹100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013**

Solution:

Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Section 63 - Bonus Shares

- 9. Shankar Portland Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2024 showed the following position:**

1. Authorized Share Capital (25,00,000 equity shares of ₹10/- each) ₹2,50,00,000
2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹10/- each, fully paid-up) ₹1,00,00,000
3. Free Reserves ₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Solution:

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

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend. For the issue of bonus shares Shankar Portland Cement Limited will require reserves of ₹50,00,000 (i.e. half of ₹1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Section 67 - Prohibition for Financial Assistance

10. OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of ₹4,00,000 to its Human Resource Manager Mr. Surya Nayan, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹40,000 per month, to buy 500 partly paid-up equity shares of ₹1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Solution:

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a director or Key Managerial Personnel;

(b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.

(c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Surya Nayan is not a Key Managerial Personnel of the OLAF Limited. Further, he is drawing a salary of ₹40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of ₹1000 each of OLAF Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OLAF Limited in granting a loan of ₹4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

- i. The amount of loan is more than 6 months' salary of Mr. Surya Nayan, the HR Manager. It should have been restricted to ₹2,40,000 only.
- ii. The loan to be given by OLAF Limited to its HR Manager Mr. Surya Nayan is meant for purchase of partly paid shares.

Section 68 - Buy back

11. State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

Solution:

According to section 68 (6), where an unlisted public company has passed a special resolution under section 68 (2) (b) or the Board has passed a resolution under item (ii) of the proviso to section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

Section 71 - Debentures

12. What are the provisions of the Companies Act, 2013 relating to the appointment of



'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

- (i) A shareholder who has no beneficial interest.
- (ii) A creditor whom the company owes ₹499 only.
- (iii) A person who has given a guarantee for repayment of amount of debentures issued by the company?

Solution:

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

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of

debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

- (i) beneficially holds shares in the company;
- (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are as follows:

- (i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
- (ii) A creditor whom company owes ₹499 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

RTP, MTP and PYQ Descriptive Questions

Section 43 Equity Shares with DVR

13. To prevent excessive concentration of control among a group of shareholders, describe with the help of an example how the Companies Act, 2013, imposes limits and regulates the voting power of shares with differential rights (equity shares)? (MTP May 25)



Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issue(d) (MAY 2018)

Solution:

Equity shares with differential voting rights(DVR)

Sec 43 Companies Act, 2013, allows companies to issue equity shares with differential voting rights (DVRs), which provide different voting power compared to ordinary equity shares. However, to prevent excessive concentration of control in the hands of a few shareholders, the Act places specific restrictions on the total voting power that can be assigned to DVR shares.

Conditions to issue shares with differential rights-

- (i) The issue of shares with differential rights must be authorised by the articles
- (ii) Must be authorised by passing 'OR' in general meeting. However, where equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by shareholders through postal ballot
- (iii) The voting power w.r.t such shares shall not exceed 74% of the total voting power including voting power in respect of equity shares with differential rights issued at any point of time.
- (iv) The company has not defaulted in filing financial statements and annual returns for 3 immediately preceding financial years.
- (v) The company has no subsisting default w.r.t.
 - (a) Payment of declared dividend; or
 - (b) Repayment of matured deposits or interest on deposits; or
 - (c) Redemption of debentures or interest on it; or
 - (d) Redemption of preference shares.
- (vi) The company has not defaulted in –
 - (a) Payment of dividend on preference shares; or
 - (b) Repayment of term loan from Public Financial Institution or State Level Financial Institution or Scheduled Bank; or
 - (c) Dues w.r.t statutory payment relating to its employees; or
 - (d) Crediting the amount in IEPF to C.G.
 - i. However, a company may issue shares with differential rights upon expiry of 5 years from the end of F.Y. in which such default was made good.
- (vii) The company has not been penalized by Court or Tribunal during last 3 years of any offence under –
 - (a) Reserve Bank of India Act, 1934; or
 - (b) Securities and Exchange Board of India Act, 1992; or
 - (c) Securities Contracts (Regulation) Act, 1956; or
 - (d) Foreign Exchange Management Act, 1999; or
- (viii) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.

Example to understand the above rule.

Hind Ltd. has 2,000 total shareholders, including:

Regular Equity Shareholders (with normal voting rights) DVR Shareholders (with differential voting rights)

Step 1: Understanding Voting Power Distribution

Let's assume Hind Ltd. issues DVR shares where each shareholder has twice the voting power compared to regular equity shareholders.

Regular Equity Shareholders = 600 shareholders → 600 votes

DVR Shareholders = 400 shareholders → Each holding 2 votes → 800 votes
Total Voting Power in the Company

$$= 600 + 800 = 1,400 \text{ votes}$$

Step 2: Applying the 74% Rule

74% of 1,400 total votes = 1,036 votes

The DVR shareholders collectively hold 800 votes, which is below 1,036 votes. Hence this provision strikes a balance by allowing companies to issue differential voting rights shares and restrict the over concentration of power with dominating few group of peoples. By capping DVR voting power at 74%, the company ensures that the control is not excessively prejudiced in favor of DVR shareholders.

Section 48 - Variation of Rights

- 14.** Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights. **(RTP NOV 2018) (MTP NOV 2017)**

Solution:

Variation in rights of shareholders with consent According to section 48 of the Companies Act, 2013-

- (i) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class if authorized by MOA/AOA and such variation is not prohibited by the terms of issue of the shares of that class:
- Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
- (ii) Application to Tribunal: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal within twenty-one days after the date on which the consent was given or the resolution was passed to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Section 48

- 15.** The share capital of Lego Ltd. is divided as under:



- (i) Authorised Share capital: Rs. 10,00,000
- (ii) Rate per share: Rs. 100
- (iii) Number of equity shares: 8,000
- (iv) Number of 10% preference shares: 2,000

Lego Ltd. wants to vary the rights attached to the preference shares. Lego Ltd. has obtained the consent of 1600 preference shareholders. However, 350 preference shareholders have not given consent to such variation.

In the light of the provisions of the Companies Act, 2013, advise does the non- consenting shareholders of Lego Ltd. have any rights for not bringing into effect the variation of their rights.

(MTP NOV 2017)

Solution:

Hint – Law similar to previous question above

Conclusion: In present case, since 1600 out of 2000 i.e 80% consented in writing about variation which is more than 75% , Lego ltd can vary the rights attached to the preference shares.

Since 350 out of 2000 i.e more than 10% are dissenting shareholders they may apply to tribunal.

Section 48

- 16.** Moringa Ltd. initially issued preference shares with a fixed 10% dividend. Later, the company decided to reduce the dividend rate to 8%, as the company's profit margins declined in the last two quarters. Some preference shareholders opposed this change, arguing that their rights were being altered unfairly. The company, however, claimed that the change was valid under its Articles of Association. Will Moringa Ltd. be able to proceed with the change. What legal provisions under the Companies Act, 2013, govern such variations in shareholders' rights, and what procedural requirements must be followed? **(MTP May 25)**

Solution:

Law: When a company modifies or alters the rights associated with a specific class of shares, it must comply with Section 48 of the Companies Act, 2013, to ensure fairness and transparency as follows:

1. There should be a provision in the Company's Articles of Association (AOA) or Memorandum of Association (MOA) permitting the variation of class rights. If there is no such provision, the terms of the issue of preference shares must not prohibit such a variation.
2. The company must obtain written consent from the holders of at least 75% of the issued shares of that class of affected shareholders (preference shareholders in this case).
3. Alternatively, a special resolution approving the variation must be passed at a separate class meeting of preference shareholders.
4. If the change in preference share rights affects equity shareholders, then three-fourths of such equity shareholders must also approve the variation.
5. Shareholders holding at least 10% of that class who did not consent or vote in favor of the resolution can apply to the Tribunal. The variation will only take effect if confirmed by the Tribunal.

Conclusion: In present case, Moringa Ltd. cannot alone reduce the preference dividend from 10% to 8% without taking $\frac{3}{4}$ rth majority or passing special resolution. Therefore such variation is invalid and affected shareholders may challenge the decision in the Tribunal.

Section 50 - Calls in advance

- 17.** Sujeev, a shareholder, holding 2000 shares of ₹100 per share of Touchwood Pharma Ltd. The company has called and collected ₹60 per share. Sujeev has paid ₹40 per share (the balance amount not yet demanded by the company) as calls in advance. At the time of annual general meeting of the company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.

Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013. **(RTP May 2016) (MTP NOV 2017)**

Solution:

According to Section 50 of the Companies Act, 2013,

- (i) a company may, if so authorized by the Articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares by him, even if no part of that amount has been called up.

The amount so received or accepted is described as payment in advance of calls.


- (ii) When a company receives payment in advance of calls the shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable [Section 50)].

Conclusion: Therefore, according to the above provisions:

Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

As per the provisions of law, the amount received in advance of calls is not refundable. However, Sujeev is entitled to claim interest on the amount of the call to the extent payable according to the Articles of Association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.

Section 52 - Application of shares at premium

-  **18.** Navni Ltd. has accumulated a significant amount in its securities premium account. The company is considering different ways to utilize these funds. Advise the directors of the company on the application of the securities premium account as per the provisions of the Companies Act, 2013. (MTP Sept 24)

Or

Walnut Limited has an authorized share capital of 1,00,000 equity shares of ₹100 per share and an amount of ₹3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. (RTP MAY 2019)

Or

State the purposes for which the securities premium account can be utilized?

(5 Marks) (MTP Sep. 23)


Solution:

Application of Premium received on Issue of Shares

The provisions of the Companies Act, 2013, allow the companies to apply securities premium account for:

- (a) Issue of fully paid bonus shares;
- (b) Writing off the preliminary expenses;
- (c) Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);
- (d) Premium payable on the redemption (of any preference shares or of any debentures); or
- (e) Buy-back (purchase of its own shares or other securities under section 68).

Section 54 - Sweat Equity Shares

-  **19.** Alpha Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of ₹200 crore. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue

sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 5 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

(MTP Jan 25)(RTP MAY 2019) (MTP MAY 2019)
(MTP MAY 2020) (MTP Nov 24) (5 Marks)

Solution:

Law : Sweat equity shares are the shares that are issued by a company to its employees or directors at a discount or for consideration, other than cash. These shares are given as a reward for their contribution to the company's growth, such as providing intellectual property, technical expertise, or other valuable services. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

The issuance of sweat equity shares is regulated under Section 54 of the Companies Act, 2013, along with the Companies (Share Capital and Debentures) Rules, 2014.

1. the issue is authorised by a special resolution passed by the company;
2. the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
3. where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,
5. Maximum Ratio to Other equity capital - 25% of PAID-UP equity share capital (PUESC) of the Company at any time except in start-up company it can be upto 50% for first 10 years
6. The sweat equity shares issued shall be locked in i.e non-transferable for a period of 3 years from the date of allotment.
7. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

Conclusion: In present case, Alpha Limited can issue sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old. A friend of the CEO is incorrect as there is no provision in companies act or rules which deny companies to issue sweat equity shares after certain period from commencement of business.

Section 54

20. XYZ Tech Solutions Limited is a growing technology company that has seen significant contributions from its employees and directors in the development of a ground breaking software product.

To reward these key contributors, the board proposed issuing sweat equity shares to certain employees and directors. XYZ Tech Solutions Limited already has issued ordinary equity shares but has never issued sweat equity shares before.

The company has a paid-up equity share capital ₹20 crore. The company has proposed to issue sweat equity shares worth ₹4 crore of face value. The company's board has drafted a special resolution outlining the proposed issuance of sweat equity shares and including specific details, such as the number of shares, the current market price, consideration (if any), and the classes

of directors and employees eligible to receive the shares. The company has approached you to advise them about the issue of the said sweat equity shares, in line with the provisions of the Companies Act, 2013. (RTP Jan 25)

Solution:

Law: Law similar to above question

Conclusion: In the given question, the company has proposed to issue sweat equity shares to the tune of ₹4 crore. However, the maximum limit to which it can issue such shares is- Higher of:

- (a) 15% of the issued paid up share capital, i.e. ₹3 crore, or
- (b) 5 crore

Thus, company can issue sweat equity shares to the tune of ₹5 crore. However, the company cannot issue such shares more than 25% of the paid-up equity capital = 25% of ₹20 crore= ₹5 crore.

Hence, the company can issue sweat equity shares of ₹4 crore.

Section 54

21. Innovative Ltd. is a start-up by a few qualified professionals, which was incorporated in 2014.



The Company is booming and favoring the younger generation to work. The Capital Structure of the Company is as follows: 6 Marks (May 23)

Particulars	I N R (Crores)
Authorised Share Capital 100,00,000 Equity Shares of Z 10 Each	10
Issued, Subscribed and Paid-up Share Capital 50,00,000 Equity Shares of ₹10 Each	5
Share Premium	1
General Reserve	3.52
Profit & Loss Account	1.58

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

Solution:

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

The company seeks your advice with reference to the provision of issue of sweat equity shares company under the Companies Act, 2013.

- (i) Whether size of issue of sweat equity shares was appropriate?
- (ii) Whether lock-in period was justifiable?

Law : Sweat equity shares are the shares that are issued by a company to its employees or directors at a discount or for consideration, other than cash. These shares are given as a reward for their contribution to the company’s growth, such as providing intellectual property, technical expertise, or other valuable services. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

The issuance of sweat equity shares is regulated under Section 54 of the Companies Act, 2013, along with the Companies (Share Capital and Debentures) Rules, 2014.

Maximum Limit: To prevent excessive dilution of ownership, the law imposes certain limits on the amount of sweat equity shares a company can issue. As per Sub-rule 4 of the Companies (Share Capital and Debentures) Rules, 2014, a company can issue sweat equity shares within the following limits:

- (i) **Annual Limit:** The company can issue sweat equity shares up to the higher of the 15% of the existing paid-up equity share capital, or Shares worth ₹5 crore.
- (ii) **Overall Limit:** At any point in time, the total sweat equity shares issued (including all previous issues) cannot exceed 25% of the total paid-up equity share capital of the company. Except 50% for start up company upto 10 years
- (iii) **Lock in period:** The sweat equity shares issued shall be locked in i.e non- transferable for a period of 3 years from the date of allotment.

Conclusion:

In present case,

- (i) Company wants to issue 30% equity shares of ₹10 which is 15 lakh shares of rs 10 each at rs 5 which is of 1.5 cr (allowed within the maximum sweat equity share limit of 5 cr in a year), also it is a start up company so they can have ratio to total paid up equity upto 50% for first 10 years , so considering both the factors size of equity shares is appropriate.
- (ii) Lock in period of 5 years is not justified as maximum lock in period can be upto 10 years.

Section 54

22. One X Ltd., a technology-based company, has a paid-up equity share capital of ₹40 crore.

The company previously issued sweat equity shares worth on ₹8 crore and now plans to issue an additional ₹7 crore this year.

Describe sweat equity shares, and to whom are they issued? What is the overall maximum limit to issue sweat equity share, and does the proposed issuance exceed the limit? (MTP May 25)

Solution:

Law: Law same like above question except lock in period

Conclusion: In the present case the paid-up share capital of the company is ₹40 crore. The company has previously issued sweat equity shares worth ₹8 crore and now plans to issue ₹7 crore more this year. So according to annual limit imposed, 15% of ₹40 crore is ₹6 crore. The fixed limit is ₹5 crore. So considering the higher value in the current financial year, company can issue up to ₹6 crore in sweat equity shares.

Secondly, as per the overall limit imposed to issue sweat equity shares is 25% of Paid-Up Capital. So 25% of ₹40 crore is ₹10 crore. Previously the company issued sweat equity shares worth ₹8 crore. Since the company has already issued ₹8 crore worth of sweat equity shares, it cannot issue more than ₹2 crore under the 25% overall limit.

However, according to the annual limit, the company can issue shares worth ₹6 crore, but can issue further more upto ₹2 crore in sweat equity shares while staying within overall legal limits. Yes, proposal to issue an additional ₹7 crore this year exceed the limits. Hence if the company wants to issue more sweat equity shares, it will have to increase its paid-up equity share capital to expand the permissible limit.

Section 55 - Redemption of Preference Shares

23. Vardha Ltd., a textile company, had issued 5,00,000 preference shares of ₹100 each in 2015, which are now due for redemption in 2025. The company has retained earnings of ₹3 crore and free reserves of ₹2 crore.



Being an expert, you are asked to recommend possible options that the management can avail as regard redemption of shares according to the provisions of the Companies Act, 2013?

(MTP May 25)

Solution:

Law: The redemption of preference shares is governed by Section 55(2) of the Companies Act, 2013, which outlines specific conditions for redemption and payment of premium on redemption, if any. In the given case, the company can redeem the preference shares out of the following sources:

1. Out of profits that would otherwise be available for dividend distribution.
2. From the proceeds of a fresh issue of shares, specifically made for the purpose of redemption.
3. Where such shares are proposed to be redeemed out of the profits of the company, the sum to be redeemed, shall be transferred to a reserve, called Capital Redemption Reserve (CRR). The Capital Redemption Reserve (CRR) is a mandatory reserve that must be created when preference shares are redeemed using profits or free reserves. The amount to be transferred to CRR should be equal to the nominal value of the shares redeemed.
4. However, if the company issues fresh equity shares to fund the redemption, it is not required to create a CRR since the redemption is backed by new capital inflow. Once created, the CRR is treated with the same sanctity as paid-up share capital.

Conclusion: Since the company has retained earnings of ₹3 crore and free reserves of ₹2 crore, it can opt for redemption from these sources. Alternatively, it can issue new equity shares to raise funds for redemption. Hence in the present case, the company has two options, firstly if it redeems shares using profits and reserves, it must transfer ₹5 crore to CRR and secondly if it issues fresh equity shares, it does not need to create CRR.

Section 56 - Transfer and Transmission of Securities

- 24.** Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

(MTP MAY 2020)

Solution:

Law: According to the Companies Act, 2013,

Where the company has registered the transferee as a member on the basis of a forged transfer, following shall be the consequences:

- (i) A forged transfer is nullity. It does not give the transferee (Mr. B) any title to the shares. The original owner can compel the company to restore his name on the ROM.
- (ii) The company shall cancel the share certificate issued to the transferee and remove the name of transferee from the ROM.
- (iii) Where the transferee has already transferred the shares to an innocent purchaser:
 - (a) They shall claim damages from the company. The company shall have right to recover damages from the person who had deposited the forged transfer deed.
 - (b) Instead new purchaser can directly sue person who has done forgery.

Conclusion: A forged transfer is nullity Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.). In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name.

However, Mr. B and Mr. C being innocent purchaser can claim damages from the company. The company shall have right to recover damages from the person who had deposited the forged transfer deed or alternatively sue person who has done forgery

Section 61 - Alteration of share capital

25. The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altere(d) (MTP NOV 2019)

Solution:

Alteration of Capital

Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital
- (ii) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled
- (iii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum; .

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner

- (v) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination.

Procedure:

- (i) The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution.
- (ii) Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration.

Section 61

26. Shenoy Limited is a company with an authorized share capital of 20,00,000 equity shares of ₹100 each. At the Annual General Meeting (AGM), the shareholders proposed to reduce the face value of each share from ₹100 to ₹10 and correspondingly increase the number of shares from 20 lakh to 2 crore, keeping the total authorized share capital unchanged. Analyse whether the request of the shareholders is considerable and if so, how can the company alter its share capital as per the provisions of the Companies Act 2013? (RTP May 25) (RTP Nov 23)

Solution:

Law: According to section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Procedure:

- (i) The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution.
- (ii) Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration.

Conclusion: In the given situation, shareholders of Shenoy Limited, in the AGM requested the company to reduce the face value of each share (from ₹100 to ₹10) and increase the number of shares than fixed by the memorandum (i.e. from 20 Lakh to 2 crore).

According to the above provision, Shenoy Limited, having authorized capital of 20,00,000 equity shares (face value ₹100 each) can reduce the face value of each share to ₹10 each and increase the shares to 2,00,00,000 [thereby keeping the total amount of authorized share capital to ₹20,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders can be considered.

The company has to alter its memorandum in its general meeting as per the procedure contained in section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Section 62

- 27. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders? (RTP NOV 2018)**

Solution:

Issue of Further Shares:

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

- (a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer,

(c) if any shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Section 62

28. Mr. Shashidhar holding shares in Green Ltd., wants to renounce the right issue offer in favour of Mr. Tuli. However, Mr. Tuli is currently not holding any share in Green Ltd. Analyse the given situation in the light of the provisions of the Companies Act, 2013.

(MTP NOV 2017)

Solution:

Law: According to section 62(1)(a)(ii), where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer.

The offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person member or not; and the notice referred to in clause (i) of section 62(1)(a) shall contain a statement of this right, unless the articles of the company otherwise provide.

Conclusion: Therefore, Mr. Shashidhar can renounce the shares offered to him in rights issue in favour of Mr. Tuli unless the articles provide otherwise.

Section 62

29. Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

(MTP MAY 2018)

Solution:

Law: According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to –

- (i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
- (ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Conclusion: Since, in the given case Dhyan Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, Dhyan Dairy Ltd., if it is authorised by a special resolution, may issue shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Section 62

30. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013 Mars India Ltd. owed to Sunil Rs.1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs.100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. (MTP NOV 2018)

Solution:

Law: Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Conclusion: In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

Section 63 - Bonus shares

31. Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:

- Authorized Share Capital (25,00,000 equity shares of face value of ₹10/- each) ₹2,50,00,000
- Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹1,00,00,000
- Free Reserves ₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

(RTP NOV 2020) (RTP MAY 2021) (MTP MAY 2018) (MTP May 24)

Solution:

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

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account.

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

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- (i) it is authorised by its Articles;
- (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
- (vi) it complies with conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

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

Conclusion: For the issue of bonus shares surya ltd will require reserves of ₹50,00,000 (i.e. half of ₹1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Section 63

32. ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:



1. Equity shares capital (3.00 lakhs equity shares of ₹10 each)	30.00 lacs
2. Free reserves	5.00 lacs
3. Securities Premium Account	3.00 lacs
4. Capital redemption reserve account	4.00 lacs
5. Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:

- (i) Whether company can give bonus shares in the ratio of 1:3?
- (ii) What if company decide to give bonus shares in the ratio of 1:2? (NOV 2018)

Solution:

Law: Same like above questions

Conclusion: As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00 + 3.00 + 4.00) out of which bonus shares can be issued and the total share capital is ₹30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹10 lakhs (i.e., $1/3 \times 30.00$ lakh) which is well within the limit of available amount of ₹12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.

- (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹15 lakhs (i.e., $1/2 \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2

Section 66 - Reduction and Alteration

33. The Authorized share capital of SSP Limited is ₹5 crore divided into 50 Lakhs equity shares of ₹10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹10 each to ₹8 each and to carry out the following proposals:



- (i) Reduction in Authorized Capital from ₹5 crore divided into 50 Lakhs equity shares of ₹10 each to ₹4 crore divided into 50 Lakhs equity shares of ₹8 each.
- (ii) Conversion of 30 Lakhs partly paid-up equity shares of ₹8 each to fully paid up equity shares of ₹8 each there by relieving the shareholders from making further payment of ₹2 per share.

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013. **(MTP MAY 21) (5 Marks)**

Solution:

- (i) Reduction in Authorized Capital from ₹5 crore divided into 50 Lakhs equity shares of ₹10 each to ₹4 crore divided into 50 Lakhs equity shares of ₹8 each. – is alteration of share capital so follow procedure of sec 61(refer book)
- (ii) Conversion of 30 Lakhs partly paid-up equity shares of ₹8 each to fully paid up equity shares of ₹8 each there by relieving the shareholders from making further payment of ₹2 per share.

It is reduction of share capital so follow procedure of sec 66 which is as follows-

- (i) Special Resolution - The reduction in share capital shall be made only by passing a Special Resolution.
- (ii) Application to Tribunal - The reduction in share capital shall be subject to confirmation by the Tribunal on an application by the company.
- (iii) Representation from CG, ROC, Creditors - The Tribunal shall give notice of every application made to it;
- (a) to the Central Government (power delegated to Regional Directors)
- (b) to the Registrar and
- (c) to the Securities and Exchange Board, in the case of listed companies, and
- (d) the creditors of the company
- (iv) Time limit for representation -Tribunal shall consider the representations (if any) made by them within a period of three months from the date of receipt of the notice.
- (v) Order of Tribunal - Tribunal when satisfied that The debt or claim of every creditor of the company has been either discharged, determined , secured or consent is obtained and accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in Section 133 makes a order confirming reduction on terms and conditions deems fit.
- (vi) Deliver NCLT's order with Roc within 30 days of receipt of copy of order. (vii)Registrar on receipt, shall register the same and issue a certificate to that effect

Section 67 - Prohibition for financial assistance

34. K Limited, a subsidiary of Old Limited, decides to give a loan of ₹4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹30,000 per month, to buy 500 partly paid-up equity Shares of ₹1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

(RTP MAY 2020) (MTP NOV 2018) (MTP NOV 2020)

Solution:

Law: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares.

Conclusion: In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹30,000 per month and took loan taken to buy 500 partly paid up equity shares of ₹1000 each in K Ltd.

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

- (a) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹1.8 Lakh.
- (b) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Section 67

35. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

(RTP NOV 2018) (MTP MAY 2017) (5 Marks) (MTP M 21)

Solution:

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares.

Section 67

36. Silk Segment Private Ltd. (SSPL) is a wholly owned subsidiary of Silk Block Ltd. (SBL), a listed public limited company. The Board of Directors of Silk Segment Private Ltd. have collectively decided upon the proposal to grant loans of ₹15,00,000 and ₹20,00,000 to Mr. Sohan and Ms. Subarna respectively for the purchase of fully paid-up shares in Silk Segment Private Ltd.

(3 + 2 = 5 Marks) (Jan25)

Mr. Sohan is the Deputy Marketing Manager of Silk Segment Private Ltd. with a monthly salary of ₹1,00,000; whereas Ms. Subarna, a qualified Chartered Accountant, is the Chief Financial Officer of Silk Segment Private Ltd. with a monthly salary of ₹2,00,000.

(Jan 25)

Solution:

In view of the provisions of the Companies Act, 2013, decide:

- (i) Whether the proposed loans to Mr. Sohan as well as Ms. Subarna can be disbursed by the company keeping in view that Silk Segment is a private limited company?
- (ii) Whether the answer would be different in case only 25% shares of SSPL are held by SBL?

Law:

- (i) No public company can give financial assistance to purchase:
 - (a) Its shares or
 - (b) Of its holding company

Except Giving of loans by company to its employees (other than directors / KMP) for an amount not exceeding their 6 months of salary / wages.

Sec. 67 is not applicable to a private company satisfying the following conditions:

- (a) No other body corporate has invested any money in such company.
- (b) The borrowing of such private company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or 50 crore; whichever is less.
- (c) Such company is not in default in repayment of such borrowings subsisting at the time of making transaction under Sec. 67.

Conclusion : In present case

- (i) As SSPL is pvt company who is wholly owned subsidiary of Silk Block Ltd. (SBL) a public limited company so it is deemed to be public company. Therefore, it cannot give loan of 15 lac to sohan as sohan's salary is 1 lac per month, so he can get maximum 6 months salary i.e upto 6 lac rs. Also, company cannot give loan of 20 lac rs to subarna of Rs 20 lac as subarna is CFO i.e KMP of company and company cannot give loan to its KMP.
- (ii) No, our answer would be same, Although only 25% shares of SSPL as now it will not be deemed to be public company, but sec 67 applies to private company in which a body corporate has invested any money so restriction of giving loan is not applicable to SSPL

Section 68 - Buy back

- 37. Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares. (MAY 2019)**

Solution:

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

- (1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-

- (a) through any subsidiary company including its own subsidiary companies; or
- (b) through any investment company or group of investment companies; or
- (c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.

- (2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Section 68

38. “The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions.” Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

(MTP May 24)

Solution:

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

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

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

Section 68

39. Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹50,00,000.



The company is planning to buy-back shares to the extent of ₹4,50,000. The company approaches you for advice with regard to the following:

- (a) Is special resolution required to be passed?
- (b) What is the time limit for completion of buy-back?
- (c) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

(MAY 2018)

Solution:

Law: According to sec 68, A company may purchase its own shares or other specified securities, if met with the following conditions, namely:

- (i) The buy-back is authorised by its articles;
- (ii) A special resolution authorising the buy-back is passed in general meeting of the company.
- (iii) A special resolution is not necessary where The buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company; and Such buy-back has been authorised by the Board resolution passed at its meeting

Conclusion: In present case,

- (i) Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹4,50,000 i.e less than 10% so board resolution is required and not special resolution.
- (ii) Every buy-back shall be completed within 1 year from the date of passing the special resolution or board resolution authorising the buy-back.
- (iii) After the buyback, the ratio between the debts (secured and unsecured) owed by the company should not be more than twice the paid-up capital and free resources of the company.

Section 68

40. XYZ Company Ltd, at general meeting of members of the company pass an ordinary resolution to buy-back 30% of its equity share capital. The Articles of the company empower the company for buy-back of equity shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of companies own shares be executed.

Examine:

- (i) Whether company's proposal is in order?
- (ii) Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its equity share capital?

Solution:

Law: According to sec 68, A company may purchase its own shares or other specified securities, if met with the following conditions, namely:

- (i) The buy-back is authorised by its articles;
- (ii) A special resolution authorising the buy-back is passed in general meeting of the company.
- (iii) A special resolution is not necessary where The buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company; and Such buy-back has been authorised by the Board resolution passed at its meeting.
- (iv) A company may buy-back its own shares or other specified securities out of :
 - (a) Free Reserves ; or
 - (b) Securities Premium Account ; or
 - (c) Proceeds of fresh issue of shares or other specified securities (but not of same kind of shares issued earlier)
 - (d) Maximum Number of ES that can be bought back - = 25% of Total No. of ES

Conclusion: In Present case,

- (i) Company's proposal is not in order as company need special resolution instead of ordinary resolution and company cannot buy back more than 25% of Total No. of ES and third violation is that company decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares however it can use fresh issue of shares
- (ii) In case the company instead of 30% decide to buy-back only 20% of its equity share capital even then company has violated with laws related to resolution and source of payment.

