Part - II of Ch-4 "Share Capital and debentures"

Sec. 52 to 55

Sec. 52 : Application of premium recd. on issue of shares

Sec. 53 : Prohibition on issue of shares at discount

Sec. 54 : Issue of Sweat Equity shares

Sec. 55 : Issue and Redemption of Preference Shares

(vi) Application of premium recd. on issue of shares (Sec. 52):

(a) Premium received on issue of securities shall be credited to "Securities Premium A/c".

(b) "Securities Premium A/c" can be utilized for:

i) Issue of unissued shares of company to members as fully paid bonus shares.

(ii) writing off the preliminary expenses of the company.

(iii) writing off the expenses of commission paid or discount allowed on issue of any shares/debentures of the company.

(iv) providing premium payable on redemption of preference shares or debentures of the company.

(v) purchase of its own shares or debentures u/s 68.

(viii) Prohibition on issue of shares at discount (Sec. 53):

(a) Company shall not issue shares at a discount except in case of issue of sweat equity shares u/s 54.

(b) Any share issued by a company at a discount shall be Void.

(c) Penalty for contravention:

- Company and officer in default shall be liable to a penalty which may extend to amount equal to the amount raised through the issue of shares at a discount or ₹ 5 lakh, whichever is less.
- Company shall be liable to refund all monies received with interest @ 12% p.a. from the date of issue of such shares to the persons to whom such shares have been issued.

(ix) Issue of Sweat Equity Shares (Sec. 54):

(a) Meaning of Sweat Equity Shares:

Equity shares issued by a company to its directors/Employees:

- at a discount; or
- for a consideration (other than cash) for providing their know-how or other IPR or other value addition, by whatever name called.

(b) Conditions to be fulfilled:

(i) Sweat Equity shares must belong to a class of shares already issued.

(ii) Issue of sweat equity shares is authorised by a special resolution.

(iii) Resolution must specify : (a) No. of shares

(b) Current market price

(c) Consideration, if any

(d) Class of director/Employees, to whom such shares are to be issued.

(iv) If shares are listed on a recognised stock exchange, issue of sweat equity shares shall be made in accordance with SEBI Regulations.

(v) In case of unlisted equity shares, issue of sweat equity shares shall be in accordance with prescribed rules (Rule 8).

Rule 8 of Companies (Share Capital and Debentures) Rules, 2014: (for unlisted companies)

(i) Issue is authorised by special resolution.

(ii) Special resolution shall be valid for making allotment within a period of 12 Months.

(iii) Limit: Issue of sweat equity shares in a year shall not exceed 15% of the paid-up ESC or ₹ 5 Crores, whichever is higher.

Issue at any time shall not exceed $\boxed{\text{25\% of paid-up ESC}}$

Ex: Paid-up ESC: $\boxed{\text{50 Crores}}$ ✓

Year 2022-23: $\boxed{\text{7 Crores}}$

Year 2023-24: $\boxed{\text{5.5 Crores}}$

(a) ₹ 5 Crore.
(b) ₹ 7.5 Crore.
(c) ₹ 5.5 Crore. ✓
(d) ₹ 8.55 Crore.

- (25% of 50 Cr − 7 Cr.) = 5.5 Crores.
- Higher of 5 Crores or 15% of 50 Crores. = 7.5 Cr.

Note: In case of a start-up company, issue of sweat equity shares is allowed to the extent of 50% of paid-up capital, for a period upto 10 years of incorporation.

(iv) Lock in period: 3 years from the date of allotment.

(v) Other provisions: – reading from book –

(ix) Issue and Redemption of Preference Shares (Sec. 55):

(A) Issue of Irredeemable Preference shares : Not allowed

(B) " " Redeemable Preference shares : is allowed subject to following conditions :

(1) Issue is authorised by AOA.

(2) Maturity period of preference shares shall not exceed 20 years.

[Note: 30 years allowed if company is dealing in Infrastructural projects provided redemption of ≥ 10% of preference shares per year is made from 21st year onwards or earlier.

(3) Issue is authorised by special resolution.

(4) Company has no subsisting default in redemption of preference shares issued earlier or in payment of dividend due on any preference shares.

(C) Redemption of Preference Shares :

(i) Redemption can be made out of profits available for distribution as dividend or out of proceeds of fresh issue made for this purpose.

(ii) Only fully paid up shares shall be redeemed.

(iii) If shares are redeemed out of profits, a sum equal to nominal amount of shares redeemed be transferred to CRR A/c. [Purpose of CRR is to keep the capital intact]

B/s.

50

20 New Equity

20 CRR

Paid up Capital : (E) 50 lacs

" " " (P) : 20 lacs

G.R / P&L A/c : 40 lacs

Liabilities (lenders) : 120 lacs

Debt Equity : 120 : 110

Debt Equity : 120 : 70 (50+20)

Debt Equity : 120 : 50

2.4 : 1

(iv) Premium, if any payable on redemption shall be provided out of profits of the company or out of securities premium a/c.

(D) Remedies available if company not able to redeem the P. shares:

- Company may with the consent of holders of 3/4 th in value of such preference shares and with the approval of Tribunal on a petition made to it in this behalf

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Issue further preference shares equal to amount due for redemption including dividend thereon, in respect of unredeemed preference shares.

- On Issue of such further preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

- In respect of persons who have not consented to issue of further preference shares, Tribunal shall order for the redemption forthwith.

Example: Preference shares due for redemption = 20,00,000
O/s dividend = 2,00,000
Company not able to redeem.

(i) Tribunal approval.
(ii) Preference shareholders holding not less than 75% value - Consent
Consent given by 30 P. S/h holding 18,00,000 Value.
(iii) New P. Shares issued for 90% of outstanding = 19,80,000
(1800000 + 180000)
(iv) Remaining S/h - get the red^m Amount in Cash.