

INTENSIVE STUDY COURSE ON COMPANIES ACT, 2013

CHAPTER IV SHARE CAPITAL AND DEBENTURES

Read with
Companies (Share Capital & Debentures) Rules, 2014

June 12, 2015 (Friday)

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Organized by WIRC jointly with J. B. Nagar CPE Study Circle

SECTION 43 – KINDS OF SHARE CAPITAL

- Company Limited by shares have 2 kinds of share capital :
 1. **Equity Share Capital** – means all Share Capital which is not Preference Capital:
 - (a) With Voting Rights
 - (b) With Differential Rights as to Dividend, Voting or otherwise (Rule 4)
 2. **Preference Share Capital** – Share Capital of the company which carry or would carry Preferential Rights as to payment of dividend and repayment in case of winding up or repayment of capital

SECTION 43 – KINDS OF SHARE CAPITAL

- Rule 4: Equity Shares with Differential Rights
- Articles of the Company shall authorize such Issue;
- Ordinary Resolution shall be passed by the Shareholder's mandatory Postal Ballot in case of listed companies
- Company has no subsisting default in the payment of the declared dividend/repayment of deposits, redemption of preference shares
- Company has not been penalized by court or Tribunal in last 3 years under RBI Act, SEBI Act, SCRA, FEMA, etc
- Explanatory Statement to be attached along with the NOTICE giving the details such as number of shares, details of differential rights, reasons of issue, price, basis of price, voting right percentage, diluted EPS, pre and post shareholding pattern, etc.

SECTION 44- NATURE OF SHARES OR DEBENTURES

The Shares or Debentures or any other Interests of any Member of a Company shall be a Movable Property Transferable in the manner provided by the articles of the Company

SECTION 45 – NUMBERING OF SHARES

- Every share in the Company shall be distinguished by its Distinctive Numbers
- **Exception:** A share held by a person whose name is entered as holder of Beneficial Interest in such Shares in the records of Depository [popularly known as Demat Shares]

SECTION 46 – CERTIFICATE OF SHARES

- A Certificate, issued under the Common Seal **(if any)** of the Company, specifying Shares held by any person, shall be prima facie evidence of its title
- Duplicate certificate may be issued if (i) certificate is lost or destroyed or (ii) defaced, mutilated or torn and is surrendered to the Company
- **Where the Shares are held in Demat Form, record of the depository is the prima facie evidence of the interest of the beneficial owner**
- If company issues duplicate certificate with intent to defraud, company shall be punishable with fine of 5 to 10 times of the face value of shares involved or Rs. 10 Crores whichever is higher and every officer shall be liable for action under Section 447
- Share Certificate to be issued in the Form No. SH-1

SECTION 46 – CERTIFICATE OF SHARES

- Signed by Two Directors authorized by the Board or the committee of the Board
- Maintain the details of certificates issued in the Register of Members
- Rule 5, 6 and 7 is applicable
- Passing of the Resolution required in the Board Meeting;
- Surrender of Letter of Allotment or fractional coupons to be collected and kept on record
- In case of Unlisted Companies, duplicate Share Certificates shall be issued within a period of 3 months and in case of Listed Companies within a **period of 45 days**
- Particulars of every duplicate certificate issued shall be maintained in Form No. SH 2

SECTION 47 – VOTING RIGHTS

- Equity Shareholders have right to vote on every Resolution
- Voting Rights on a poll shall be in proportion to his share in the total equity share capital of the company
- Preference Shareholders have a right to vote only on the Resolutions which directly affect the Rights attached to their Preference Shares and any Resolution for Winding up or for the Repayment/Reduction of Share Capital and his Voting Rights on a Poll shall be in proportion to Preference Share Capital
- The proportion of the Voting Rights of Equity Shareholders to the Voting Rights of the Preference Shareholders shall be in the same proportion of their Share Capital

Exception: Where dividend is unpaid to the Preference Shareholders for 2 years or more than they will be at par with Equity Shareholders as far as Voting Rights are concerned

SECTION 47 – VOTING RIGHTS

- **Restriction on Voting Rights: Section 106**
- Partly paid up shares carry no voting rights if specified in Articles of the Company
- **Voting by Show of Hands : Section 107**
- Voting at the General Meeting is done by show of hands unless a poll is demanded or there is e-voting
- Declaration of the same is done by the Chairman of the Meeting and recorded in the Minutes
- **E-Voting : Section 108 and Rule 20**
- Every listed company or a company having at least 1000 Shareholders shall provide for e-voting facility

SECTION 47 – VOTING RIGHTS

- “**voting by electronic means**” or “electronic voting system” means a ‘secured system’ based process of display of electronic ballots, Recording of Votes of the Members and the Number of Votes polled in favour or against, such that the entire voting exercised by way of Electronic means gets registered and counted in an Electronic Registry in an Centralized Server with adequate ‘cyber security’

Procedure:

- (i) the notices of the meeting to be sent by registered post or speed post ; or registered e-mail id; or courier service
- (ii) the notice shall be placed on the website of the company,
- (iii) Notice shall contain in the business to be transacted
- (iv) Process of voting, login ID, time and schedule of e-voting must be stated

SECTION 47 – VOTING RIGHTS

- (v) Facility to be created for generating password and for keeping security and casting of vote in a secured manner;
- (vi) An advertisement to be published, at least five days before the date of beginning of the voting period, in Regional and English Language Newspaper
- (vii) the e-voting shall remain open for at least one day and not more than three days:
- (viii) one scrutinizer is appointed who can be Practicing Chartered Accountant/Cost Accountant/Company Secretary or an advocate, but not as an employee of the company and results declared along with the scrutinizer's report

SECTION 47 – VOTING RIGHTS

- **Demand for poll: Section 109 and Rule 21**
- A poll may be Ordered by the Chairman of the Meeting suo moto
- By the Members present in Person or by Proxy, having **not less than 10% of the total voting rights** or holding shares worth **Rs. 5.00 Lacs** or such higher amount as may be prescribed
- The Chairman of the Meeting appoints Scrutinizer and Report given by the Scrutinizer in Form No. MGT 13 and polling papers are in Form no. MGT 12
- The result of the poll is the decision of the Meeting for the Resolution

SECTION 47 – VOTING RIGHTS

- **Postal Ballot : Section 110 and Rule 22**
- Send Notice to all the shareholders, along with a draft Resolution
- An advertisement shall be published
- Appoint one scrutinizer and scrutinizer report be prepared
- A Resolution is required to be passed by the majority of the shareholders by postal ballot including e-voting
- Following items of business transacted only by Postal Ballot Voting:
 - i) alteration of the Object/Main Object Clause
 - ii) alteration of Articles of Association in relation to Insertion or Removal of provisions relating to Buy-back of Shares
 - iii) change in place of registered office outside the local limits
 - iv) issue of shares with differential rights as to voting or dividend
 - v) buy-back of shares

SECTION 48 – VARIATION OF SHAREHOLDER’S RIGHTS – YET TO BE NOTIFIED

Rights of a particular class of shares may be varied with -

1. Consent in writing of at least 3/4th holder of issued shares of that class; or
2. By passing a Special Resolution at a Meeting of the shareholders of such class, provided authorized by Articles;

Provided such variation contained in Memorandum and Articles of the company OR in case of absence in Memorandum and Articles, such variation is not prohibited by the terms of the issues of shares of that class

3. If 10% or more did not consent to the variation of their rights then, they may **apply to Tribunal** for cancellation of such variation. Decision of Tribunal is binding and has to be filed by Company with ROC in 30 days
4. If variation of one class of the shareholder affects the rights of any other class, the consent of 3/4th of such other class shall also be obtained

Penalty: Minimum Rs. 25k extendable to Rs. 5.00 Lakhs; imprisonment upto 6 months

SECTION 49- CALLS ON SHARES OF SAME CLASS TO BE MADE ON UNIFORM BASIS

- Calls for further share capital on shares of same class are to be made on uniform basis
- Share of same nominal value on which different amounts have been paid – up shall not be deemed to fall under the same class

SECTION 50 – COMPANY TO ACCEPT UNPAID SHARE CAPITAL ALTHOUGH NOT CALLED UP

- If authorized by Articles, the Company can accept from its Members whole or a part of unpaid amount, even if no part is called up
- Such Member shall not be entitled to any Voting Rights in respect of the amount paid until that amount has been called up

SECTION 51 - PAYMENT OF DIVIDEND IN PROPORTION TO AMOUNT PAID UP

If authorized by Articles, the Company can pay Dividends to the Members in proportion to the amount paid up on each share

SECTION 52 - APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES

- In case the Company has issued Shares on Premium, the sum equal to the premium received on such shares should be transferred to “ Securities Premium Account”.
- Securities Premium Account may be applied by Companies who complies with Accounting Standards prescribed under Section 133:
 1. Issue of fully paid Bonus shares;
 2. **Writing off Preliminary Expenses;**
 3. **Writing off the Expenses, Commission paid or discount allowed on Shares (Sweat Equity) & Debentures;**
 4. Buy-back of Shares or Securities;
 5. **Premium payable on redemption of Redeemable Preference Shares/Debentures**

SECTION 53- PROHIBITION ON ISSUE OF SHARES AT DISCOUNT

- **Shares can be issued at discount only in case of Sweat Equity**
- **Except above, any Share issued by company at discount shall be void**
- **Penalty - Minimum fine of Rs. 1,00,000, extendable to Rs. 5,00,000 and every officer in default imprisonment of upto 6 months or fine or both.**

SECTION 54 – ISSUE OF SWEAT EQUITY SHARES

- **Sweat Equity Shares** means ‘such Equity shares as are issued by a Company to its Directors or Employees at a Discount for consideration other than Cash, for providing their know how or making available rights in the nature of Intellectual Property Rights or Value Additions by whatever name called’
- Should be authorized by a Special Resolution (valid for 12 months)
- Such Resolution shall specify the Number of Shares, Current Market Price, Consideration (if any), class or classes of Directors/Employees to whom such shares are issued
- Justification and Principal Terms and Conditions should also be specified in the Explanatory Statement
- At least one year should have elapsed from the date of commencement of business

SECTION 54 – ISSUE OF SWEAT EQUITY SHARES

- Listed Company shall follow SEBI Regulations
- Shall rank pari passu with other Equity Shares
- Rule 8 is to be complied with:
 - Valuation by a Registered Valuer
 - Non-cash transactions-treatment in accordance with the Accounting Standards
 - Disclosure in the Directors Report
 - Disclosure of Diluted EPS pursuant to issue of Sweat Shares
 - Register of Sweat Equity Shares issued (Form No. SH 3)
- **Not applicable to issue of Sweat Equity Shares by Foreign/Overseas Subsidiary of Indian Company**

SECTION 55 – ISSUE AND REDEMPTION OF PREFERENCE SHARES

- No company shall issue Irredeemable Preference Shares
- If authorized by Articles, the Company can issue Preference Shares Redeemable within 20 years
- Preference Shares can be issued for Infrastructural Projects beyond 20 years, subject to redemption of such percentage of shares as may be prescribed on an Annual Basis at the option of such Preference Shareholders
- Conditions for Redemption of Preference Shares :
 1. Out of Profits of the Company or Out of proceeds of Fresh Issue of Shares
 2. Must be fully paid-up
 3. Sum equal to nominal amount to be transferred to Capital Redemption Reserve Account, if redeemed out of Profits (companies whose financial statement complying with AS prescribed under Section 133)

SECTION 55 – ISSUE AND REDEMPTION OF PREFERENCE SHARES

As per Rule 9 :

1. Special Resolution shall be passed
2. No default in redemption of Preference Shares issued before or in payment of Dividend on Preference Shares issued in the past

Exception: if consent of 75% in value of Preference Shares available with the approval of the Tribunal, company can issue Redeemable Preference Shares equal to amount due including Dividend. However, Company shall redeem Shares of those Preference Shareholders who have not consented

3. Listing of Preference Shares on Stock Exchanges can be done by complying with SEBI Regulations

SECTION 55 – ISSUE AND REDEMPTION OF PREFERENCE SHARES

Preference Shares can be redeemed only on the terms on which they were issued or as varied after approval of shareholders. They may be redeemed –

- a. At fixed time or happening of event;
- b. on Company's opinion;
- c. on shareholder's opinion

Rule 10 – Company engaged in infrastructural projects can issue preference shares for 20 years but not more than 30 years subject to redemption of minimum 10 % from 21st year onwards on a proportionate basis, at the option of Preference Shareholders

SECTION 56 – TRANSFER AND TRANSMISSION OF SECURITIES

- **Transfer of securities held in physical form shall be in Form No. SH.4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within 60 days from the date of such execution along with the Certificate of Securities**

Provided where instrument of transfer has been lost/not delivered within 60 days, company may register transfer on such indemnity as Board decides

- A company shall not register a transfer of partly paid-up shares, unless the company has given a Notice in Form No. SH. 5 to the Transferee and the Transferee has given NOC for such transfer within Two Weeks of its receipt of Notice
- Rule 11 is applicable

SECTION 56 – TRANSFER AND TRANSMISSION OF SECURITIES

- A Transmission of interest in shares of a company, of a deceased Member of the company, made by the Legal Representative/Legal Heir of a deceased Member shall be considered as transmission of shares by operation of law. This transmission will be registered by a company in the Register of Member
- Provisions of transmission are given in model Articles of Association in Table 'F' of Schedule-I
- Documents required for transmission are-
 - a. Death Certificate, b. Succession Certificate , c. Probate, d. Specimen signature of the successor
- No Stamp Duty in case of Transmission
- Share Certificate on Transmission be delivered in one month

SECTION 57 – PUNISHMENT OF PERSONATION OF SHAREHOLDER

If any person deceitfully personates as an owner of any security or interest in a Company or share warrant or Coupon issued and thereby obtains/attempt to obtains such Security/interest/share warrants/Coupons or receives or attempt to receive any money due to any such owner, shall be **punishable with imprisonment for at least 1 year extendable up to 3 years with fine of at least Rs. 1 lakh extendable to Rs. 5 lakhs**

SECTION 58 – REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL

- If a Private Company refuses to register the transfer or transmission of securities, it shall give Notice of refusal stating the reasons to the Transferor and the Transferee **within 30 days** of the receipt of instrument of transfer
- Transferee can appeal to the **Tribunal against the notice within 30 days** of receipt of such Notice or **within 60 days** from the date of delivery of instrument, if no notice is received
- In public Company, securities are freely transferable
- In case of refusal without sufficient cause by a Public Company, transferee can appeal to Tribunal within **60 days** of such refusal or **90 days** from the date of delivery of Transfer Instrument

SECTION 59 – RECTIFICATION OF REGISTER OF MEMBERS

- If the name of the person, without sufficient cause, Entered or unnecessarily Omitted or Delay is made then the person aggrieved can apply **before the Tribunal or to a Competent Court outside India** in case of a Foreign Member/Debenture holder residing outside India, for rectification of the Register
- Directions of Tribunal or Competent Court, as the case may be, is binding
- Voting Rights on such Shares will continue in the hands of the holder of the Securities unless suspended by the Tribunal
- Penalty: Minimum Rs. 1.00 Lakhs extendable to Rs. 5.00 and/or imprisonment upto 1 year

SECTION 60 – PUBLICATION OF AUTHORIZED, SUBSCRIBED AND PAID-UP CAPITAL

- Any Notice, Advertisement, or other Publication, Business Letter, Bill Head, etc. that contains amount of Authorized Capital, shall also contain subscribed and paid up amount of capital in the equal position
- **Default in complying attracts fine of Rs. 10,000 to a Company and Rs. 5000 to Directors or any person involved**

SECTION 61 – POWER OF LIMITED COMPANY TO ALTER ITS CAPITAL

- Company, if authorized by its Articles, may alter its Memorandum in General Meeting:
 1. To Increase Authorized Share Capital
 2. To Consolidate or Divide Share Capital
 3. To Convert fully paid-up Shares into Stock or re-convert Stock into fully paid-up Shares
 4. To Sub-divide Shares
 5. To Cancel Shares (not reduction)-which at the date of passing Resolution have not been taken or agreed to be taken
- **Approval of Tribunal is required in Consolidation and Division which causes changes in voting % of shareholders**

SECTION 62 – FURTHER ISSUE OF CAPITAL

Company can increase its Subscribed Capital by issue of further shares–

1. To Existing shareholders in proportion to their holding i.e. Rights Issue on following conditions:

a. Offer made by Notice (through Regd Post/Speed Post/Electronic mode) specifying the number of shares and limiting the time of 15 to 30 days. Notice shall be sent at least 3 days in advance

If 90% of the members of a Private Company give their consent then the above period may differ (amended on 5th June 2015)

b. Offer be deemed to include a right exercisable by the person concerned to renounce the shares offered to him

c. After expiry of time in Notice, Board is free to dispose of which is not disadvantageous to the shareholder's and the Company

SECTION 62 – FURTHER ISSUE OF CAPITAL

2. To Employees under ESOS subject to passing of **Ordinary Resolution (amended on 5th June, 2015)**
3. To any persons, as authorized by special resolution (Private Placement), if the price of Share is determined by the Valuation Report

Exceptions:

1. Shall not apply to increase of subscribed capital caused by exercise of an option to convert debentures issued/loans raised if the Members have approved such debentures/loans through special resolution
2. Debentures issued or loans obtained from any government and such government considers it necessary to convert such debt in the public interest

However, if such conversions not acceptable to company then company may appeal to the tribunal within 60 days

SECTION 62 – FURTHER ISSUE OF CAPITAL

- No private placement of Securities if:
 - Approval from Members not received;
 - Offer made to more than 200 persons in any FY;
 - Exemption for ESOPS, QIBs and Employees in the number;
 - Value of the invitation or offer is less than INR 20000;
- Full details of the Bank Account to be maintained of the Applicant from which bank account the subscriptions is received;
- Complete records of private placements to be kept as per the Form PAS-5 and maintained by the Company;
- Copy of PAS-5 to be filed along with PAS-3 and in case of listed companies copy to be given to SEBI within 30 days;

SECTION 62 – FURTHER ISSUE OF CAPITAL

Employee Stock Option Scheme ('ESOS'):

The Company can issue shares by way of further issue by offering shares to the Employees under ESOS

Definition – 2(37) of Companies Act, 2013

“The option given to the Directors, Officers or Employees of a company or of its holding company or subsidiary company or companies, if any, which gives such Directors, Officers or Employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price”

“Employee” means-

- (a) a permanent employee of the company within India or outside
- (b) A Director of the company, whether a Whole Time Director or not
- (c) An employee of a subsidiary within India or outside or of a Holding Company/ Associate Company

SECTION 62 – FURTHER ISSUE OF CAPITAL

As per Rule 12

- Company, other than a listed company, which is not required to comply with SEBI(ESOS) Guidelines, shall follow :
- Pass a special resolution
- The company shall make disclosures in the Explanatory Statement annexed to the Notice-
 - (a) the total number of Option to be granted;
 - (b) identification of classes of Employees;
 - (c) the appraisal process for determining the eligibility of Employees
 - (d) the requirements of vesting and period of vesting;
 - (e) the exercise price or the formula
 - (f) the exercise period and process of exercise,
 - (g) the Lock-in period
 - (h) the method used to value its options; (i) the conditions of lapse of vested options

SECTION 62 – FURTHER ISSUE OF CAPITAL

INELIGIBLE PERSON: An Independent Director, An Employee who is a Promoter or a Person belonging to the Promoter Group or A Director who directly/indirectly holds >10% of the Shares of the company

Other Points:

- Employees shall not have right to dividend or vote till shares are issued on exercise of option
- Option granted to Employees shall not be transferable to any other person nor be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner
- No person other than the Employees shall be entitled to exercise the option
- In the event of death, all the options granted shall vest in the legal heirs or nominees of the deceased employee
- The Register of Employee Stock Options shall be maintained and shall be authenticated by the CS of the Company or authorized person
- For Listed Companies, the ESOS shall be issued, in accordance with the Regulations of SEBI

SECTION 63 – ISSUE OF BONUS SHARES

- **Applicable to private companies also**
- **Can be done on fulfillment of following condition:**
 - (a) authorization by its Articles;**
 - (b) shareholders approval in a General Meeting;**
 - (c) no default in payment of interest or principal in respect of fixed deposit or debt securities issued;**
 - (d) Partly paid Shares, if any outstanding are to be made fully paid**
 - (e) no default in payment of statutory dues of the employees, and**
 - (f) such conditions as may be prescribed**

SECTION 63 – ISSUE OF BONUS SHARES

Bonus Shares can be issued out of:

- (i) Free Reserves;**
 - (ii) Securities Premium Account; or**
 - (iii) Capital Redemption Reserve Account**
- **Bonus Shares cannot be issued out of Revaluation Reserve**
 - **The Bonus Shares shall not be issued in lieu of dividend**
 - **The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same**
 - **Rule 14 is applicable**

SECTION 64 – NOTICE OF TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL

The Company shall file notice in **Form SH-7** with ROC in 30 days along with an altered memorandum, in case of:

1. Alteration of its Share Capital
2. Order of Central Govt for increasing authorized capital
3. Redemption of Redeemable Preference Shares
4. Penalty: Rs. 1000 each day or Rs. 5.00 Lakhs whichever is lower

SECTION 65- UNLIMITED COMPANY TO PROVIDE FOR RESERVE SHARE CAPITAL ON CONVERSION INTO LIMITED COMPANY

An Unlimited Company having Share Capital, by a resolution for registration as a Limited Company shall-

1. Increase nominal amount of its Share Capital by increasing the nominal amount of each of its Shares
2. Specified portion of its uncalled Share Capital shall not be capable of being called up except in the event and for the purpose of the Company being wound up

SECTION 66 – REDUCTION OF SHARE CAPITAL (YET TO BE NOTIFIED)

COMPANIES ACT, 1956	COMPANIES ACT, 2013
Section 100-105	Section 66
There was no such restriction	Bars reduction if deposits/interest are in arrears
Petition for reduction has to be made in Court	Petition for reduction has to be made in Tribunal
There is no such requirement	Tribunal has to give notice of every application made to it to Central Government and SEBI (in case of listed companies)
Court orders to add “and reduced” to the name of the Company for certain period, after reduction	Tribunal does not order to add “and reduced” to the name of the Company for certain period, after reduction
There is no such provision	Reduction of capital does not apply to buy-back of its own securities by a Company

SECTION 67- RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES

- No Company shall buy its own shares unless the consequent Reduction of Share Capital is effected under the provisions of the Act
- **No public Company shall give loan, guarantee, provision of security, any financial assistance for purchase or subscription of shares of the company or Holding Company**

SECTION 67- RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES

Exceptions:

- (i) Lending of money by Banking Company in ordinary course of business
- (ii) Any Scheme approved by the Company through Special Resolution, in case of Shares held by Trustees for the benefit of the Employees or Shares held by the Employees
- (iii) Loans by a Company to its Employees other than its Directors & KMPs
- (iv) Private Companies having no corporate shareholder (amended on 5th June 2015)**
- (v) If the borrowing from Banks or FIs or Body Corporate less than 2 times of paid-up Share Capital or Rs. 50.00 Crores whichever is lower (amended on 5th June 2015)**

Penalty: Minimum Rs. 1.00 Lakh and Maximum 25.00 Lakhs with imprisonment upto 3 years

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SECURITIES (BUY BACK)

BUYBACK OF SECURITIES

The Company can buy-back its Securities out of-

- (a) Free Reserves;
- (b) Securities Premium Account; or
- (c) Proceeds of the Issue of any Shares or other Specified Securities:

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

Restrictions of Buyback-

- No buy-back of any kind of Shares/specified securities shall be made out of the proceeds of an **earlier issue** of the same kind of shares/specified securities.
- No company shall Buyback unless-
 - (a) the Buy-back is authorized by its Articles;
 - (b) a special resolution has been passed at a general meeting and the Buy-back is 25% or less of the aggregate of paid-up capital and free reserves%
 - (c) Buy-back is ten per cent. or less of the total paid-up equity capital 10%and free reserves (including securities premium account) and such Buy-back has been approved by the Board of the Company:-

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

- (d) Debt Equity Ratio post Buy back = 2:1
- (e) all the shares/specified securities for Buy-back are fully paid-up;
- (f) the buy-back of the shares/specified securities listed on any recognized Stock Exchange is in accordance with the SEBI regulations;
- (g) No offer of buy-back under this sub-section shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any
- (h) The Notice of the Meeting at which the Special Resolution is proposed to be passed shall be accompanied by an Explanatory Statement (Refer Rule 17)

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

Every Buy-back shall be completed within a period of one year from the date of passing of the special resolution

- The Buy-back may be-(a) from the existing shareholders or securities holders on a proportionate basis; (b) from the open market; (c) by purchasing the securities issued under ESOP/Sweat Equity
- The Company shall before making such buy-back, file with the Registrar and the SEBI, a declaration of solvency signed by at least Two Directors

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

- The Company shall extinguish and physically destroy the shares or securities so bought back within 7 days of the last date of completion of buy-back
- Company shall not make a further issue of the same kind of shares or other securities within 6 months., except - Issue of Shares or Convertible Securities already issued
- Penalty- Minimum Rs. 10.00 Lakhs extendable to Rs. 3.00 Lakhs and every officer shall be punishable with imprisonment for a term which may extend to 3 years.

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

RULES 17

The Explanatory Statement shall contain:

- (a) the Date of the Board Meeting at which the proposal for Buy-back was approved
- (b) the Objective of the Buy-back;
- (c) the class of shares or other securities;
- (d) the Number of Securities to be bought back
- (e) the Method of Buy-back;
- (f) the price at which to be bought back and its basis;
- (g) the Maximum amount to be paid for the Buy-back and the Sources of funds

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

(h) the Time-Limit for the Completion of Buy-back;

(i) (i) the aggregate shareholding of the Promoters and Directors, where the promoter is a company and of the Directors and KMPs, as on the date of the notice convening the General Meeting;

(ii) the aggregate number of equity shares **purchased or sold** by persons mentioned above during a period of 12 months preceding the date of the Board Meeting approving the Buy-back and from that date till the date of Notice convening the General Meeting;

(iii) the Maximum and Minimum Price at which purchases and sales referred above were made along with the relevant date

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

(j) if the persons mentioned in (i) sub-clause (i) above intend to tender their shares for buy-back-

(i) the quantum of shares proposed to be tendered;

(ii) the details of their transactions and their holdings for the last twelve months prior to the date of the Board Meeting;

(k) A confirmation that there are no defaults in repayment of deposits, interest payment thereon, redemption of debenture or payment of interest thereon or redemption of preference shares or payment of dividend thereon or repayment of any term loan or interest payable thereon to any FIs or banks

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

(1) a confirmation that the Board of Directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-

(i) On the date of General Meeting the company the financial condition of the Company shall be sound to discharge its debt

(ii) the Company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and

(iii) the Directors have taken into account the liabilities

(m) Company Auditor's Report addressed to the Board Stating:

(i) They have enquired into Company's State of Affairs

(ii) The amount of the permissible capital payment for the securities is properly determined

(iii) That the audited accounts on the basis of which calculation with reference to buy back is done are not more than 6 months old

(iv) the Board of Directors have formed the opinion on reasonable ground and the company shall not be rendered insolvent within a period of 1 year

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

- Company shall file with the ROC a Letter of Offer in Form No. SH.8
- Company shall file with the ROC, along with the Letter of Offer, and in case of a listed company with the ROC and SEBI, a Declaration of Solvency in Form No. SH.9 along with fees and shall be duly signed by at least 2 Directors, one shall be Managing Director
- The Letter of Offer shall be dispatched to the Shareholders/Security holders immediately within 21 days of filing the same with the ROC
- The Offer shall remain open for 15 days to 30 days
- The acceptance of shares shall be on proportionate basis.
- Verifications of the offers received shall be done within 15 days from the closure of the offer
- Opening a Separate Bank Account and Deposit therein, amount, payable as consideration for the shares tendered for buy-back

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

- Company shall within 7 days of the time shall make payment of consideration in cash or return the share certificates to the shareholders whose securities have not been accepted/partly accepted
- Company shall ensure that-
- (a) the letter of offer shall contain true, factual and material information and shall not contain any misleading information
- (b) the company shall not issue any new shares including bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer
- (c) the company shall confirm in its Offer the Opening of a separate bank account adequately funded for this purpose

SECTION 68 – POWER OF COMPANY TO PURCHASE ITS OWN SHARES (BUY BACK)

- (d) the company shall not withdraw the Offer once it has announced
- (e) the company shall not utilize any money borrowed from Banks or FIs for the purpose of Buying back
- The company, shall maintain a register of shares bought-back in Form No. SH.10
- The register of shares to be bought-back shall be maintained at the registered office of the company
- The entries in the register shall be authenticated by the Company Secretary or Board of Directors
- After the completion of the Buy-back, filing with ROC and SEBI, a return in the Form No. SH.11 and a certificate in Form No. SH.15 should be annexed

SECTION 69- TRANSFER OF CERTAIN SUMS TO CAPITAL REDEMPTION RESERVE ACCOUNT

- Where a Company purchases its own securities out of free reserves or securities premium account, sum equal to nominal value of shares purchased is transferred to Capital redemption reserve account and shall be disclosed in the Balance Sheet
- Capital redemption reserve account can be applied by the Company for issue of Shares as Bonus

SECTION 70- PROHIBITION FOR BUY-BACK IN CERTAIN CIRCUMSTANCES

- Company shall not Buy-back its Securities-
 1. Through any subsidiary company
 2. Through any investment company
 3. If default is made in repayment of deposits or interest payment thereon, redemption of debentures or Preference Shares or payment of dividend, repayment of term loan or interest payable thereon to any FIs or Banks
- **Prohibition on buyback continues till 3 years after defaults ceased to subsist**

Section 71- Debentures

- **A company can issue Fully or Partly Convertible Debentures, with the shareholders approval through Special Resolution**
- Debentures with voting rights can't be issued
- Secured and Unsecured Debentures can be issued
- Secured Debentures may be issued subject to prescribed rules
- Contract with the Company to take up and pay for any Debentures of the Company may be enforced by a Decree for Specific Performance
- **Appointment of Debenture Trustee required where debentures are issued to more than 500 Members;**
- In case of insufficiency of Assets, Debenture Trustee to file petition before the Tribunal
- Rule 18 is applicable

SECTION 72- POWER TO NOMINATE

- **Every holder of securities** may nominate any person to whom his securities shall vest in the event of his death
- In case of joint holding, joint holders can together nominate any person
- The nominee shall on the death of the holder of Securities or on the death of the joint holders become entitled to all the rights in the Securities
- Where the nominee is a minor, holder of the Securities may nominate any person to become entitled to the Securities in the event of death of the nominee during his minority