UMESCHANDRA COLLEGE

SEMESTER-II

INDIAN COMPANY LAW

Unit 4: SHARE CAPITAL & DEBENTURE[No of classes 16 / Marks 16]

Share, Share Capital - Types and Definition, Allotment and Forfeiture, Calls on Shares, ESOP, Buyback, Sweat Equity, Bonus, Right, Capital Reduction, Share Certificate, D-mat System, Transfer and Transmission, Redemption of Preference Shares, Debenture – Definition, Types, Rules Regarding Issue of Debenture.

STUDY MATERIALS

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Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The share capital may be altered or increased, subject to certain conditions. A company's share capital may be divided into small shares of different classes. The different classes of share capital and the rights attached to these classes are different.

TYPES OF SHARE CAPITAL

Share capital can be of following types.

- **Authorised Share Capital** – is the maximum amount of shares a company is allowed to issue to shareholders. The same is to be mentioned in the memorandum of association.
- **Issued Capital** – the capital a company issues from time to time that the public can subscribe for.
- **Subscribed Share Capital** – is that part of the authorised share capital which is for the time being, being subscribed by the members of the company.
- **Called-up Share Capital** – shares are issued to investors with an understanding of payment to be done on a later day. Shares are issued in this way to relieve the burden on the investor and increase the capital the company can obtain.
- **Paid-up Share Capital** – the actual amount of money a company receives from investors from those that have subscribed for shares.

A share of a company is one of the units into which the capital of a company is divided. Shares can be described as a financial instrument issued by the company to raise funds. Thus, a share is the smallest unit of the company's overall net worth.

Definition:

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 "share" means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Example: So if the total capital of a company is 6 lakhs, and such capital is divided into 6000 units of Rs 100/- each, then this one unit of amount 100 is a share of the company. The person who holds such shares is thus a member of the company and is known as a shareholder.

The Two Kinds Of Share (Sec 43)

Equity Shares

Equity share is a share that is simply not a preference share. So shares that do not enjoy any preferential rights are thus equity shares. They only enjoy equity, i.e. ownership in the company.

The dividend given to equity shareholders is not fixed. It is decided by the Board of Directors according to the financial performance of the company. And if in a given year no dividend can be declared, the shareholders lose the dividend for that year, it does not cumulate.

Equity shareholders also have proportional voting rights according to the paid-up capital of the company. Essentially it is one share one vote system. A company cannot issue non-voting equity shares, they are illegal. All equity shares must come with full voting rights.

Equity shareholders share profits or losses incurred by the company. Equity shares are divided into:

1. Equity shares with voting rights
2. Equity share capital with differential voting rights(voting rights or dividend rights)

Preference Share Capital – shares issued by a company that carry preferences with regard to:

1. Payment of dividend
2. Repayment of amount of share capital

Preference Shares

A preference share is one which carries two exclusive preferential rights over the other type of shares, i.e. equity shares. These two special conditions of preference shares are

- A preferential right with respect to the dividends declared by a company. Such dividends can be at a fixed rate on the nominal value of the shares held by them. So the dividend is first paid to preference shareholders before equity shareholders.
- Preferential right when it comes to repayment of capital in case of liquidation of the company. This means that the preference shareholders get paid out earlier than the equity shareholders.

Other than these two rights, preference shares are similar to equity shares. The holders of preference shares can vote in any matters directly affecting their rights or obligations.

Preference shares can actually be of various types as well. They can be redeemable or irredeemable. They can be participating (participate in further profits after a dividend is paid out) or non-participating. And they may be cumulative (arrears in demand will cumulate) or non-cumulative.

The differences between equity and preference shares are:

Basis	Equity Shares	Preference Shares

Dividend	Dividend is paid after all liabilities have been cleared	Priority over equity shareholders
Capital	Capital is repaid after all other shareholders and debts are cleared.	Priority over equity shares
Rate of Dividend	Fluctuating	Fixed
Voting Rights	Equity shares carry voting rights	Normally do not carry voting rights
Arrears of Dividend	No rights on claim of previous years dividend	Generally dividend gets accumulated until paid except in the case of non-cumulative preference shares

Meaning of Preference Shares: Meaning of Preference Shares:

Preference Shares are not defined in the Definition part of the Companies Act, 2013. However it has been defined in Section 43 of the Companies Act, 2013 as below:

Explanation (ii) to section 43 of the Companies Act, 2013 (‘the Act’) defines the term Preference Shares.

“Preference Share Capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Further, as per Explanation (iii) to section 43, when a certain class of shares has either of the following features, the same shall be deemed to be preference shares.

a) in addition to the preferential right to receive dividend, the shareholders have a right to participate either fully or to a limited extent in the capital not having preferential treatment

b) in addition to the preferential repayment of share capital in the event of winding up, the shareholders are entitled to participate either fully or to a limited extent in the surplus capital of the company available

Kinds of Preference shares:

There are Seven kinds of preference shares:

i. Redeemable Preference Shares:

Redeemable preference shares are those shares which are redeemed or repaid after the expiry of a stipulated period.

ii. Cumulative Preference Shares

Preference dividend is payable if the company earns adequate profit. However, cumulative preference shares carry additional features which allow the preference shareholders to claim unpaid dividends of the years in which dividend could not be paid due to insufficient profit.

iii. Non-cumulative Preference Shares

The holders of non-cumulative preference shares will get preference dividend if the company earns sufficient profit but they do not have the right to claim unpaid dividend which could not be paid due to insufficient profit.

iv. Participating Preference Shares

Participating preference shareholders are entitled to share the surplus profit of the company in addition to preference dividend.

v. Non-participating Preference Shares

Non-participating preference shareholders are not entitled to share surplus profit and surplus assets like participating preference shareholders.

vi. Convertible Preference Shares

The holders of convertible preference shares are given an option to convert whole or part of their holding into equity shares after a specific period of time.

vii. Non-convertible Preference Shares

The holders of non-convertible preference shares do not have the option to convert their holding into equity shares i.e. they remain as preference share till their redemption.

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