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**VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

Faculty: Mrs. Sonali Shah

CHAPTER 4: SHARE CAPITAL AND DEBENTURES

Section 43 to Section 72

[Exclusions: S. 44, 45, 60, 65, 72] read with the *Companies (Share Capital & Debentures) Rules, 2014*



INTRODUCTION

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. 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.

Shares and debentures are financial instruments of the company, together referred to as securities.

Shares are the company-owned capital. & **Debentures** are the borrowed capital of the company.

The person who holds the ownership of the **shares** is called as Shareholders (SH) & The person who holds the ownership of the **Debentures** is called as **Debenture** holders. (DH)



SHARE CAPITAL

SHARE [S.2(84)]: Share means a share in the share capital of a company and includes stock.

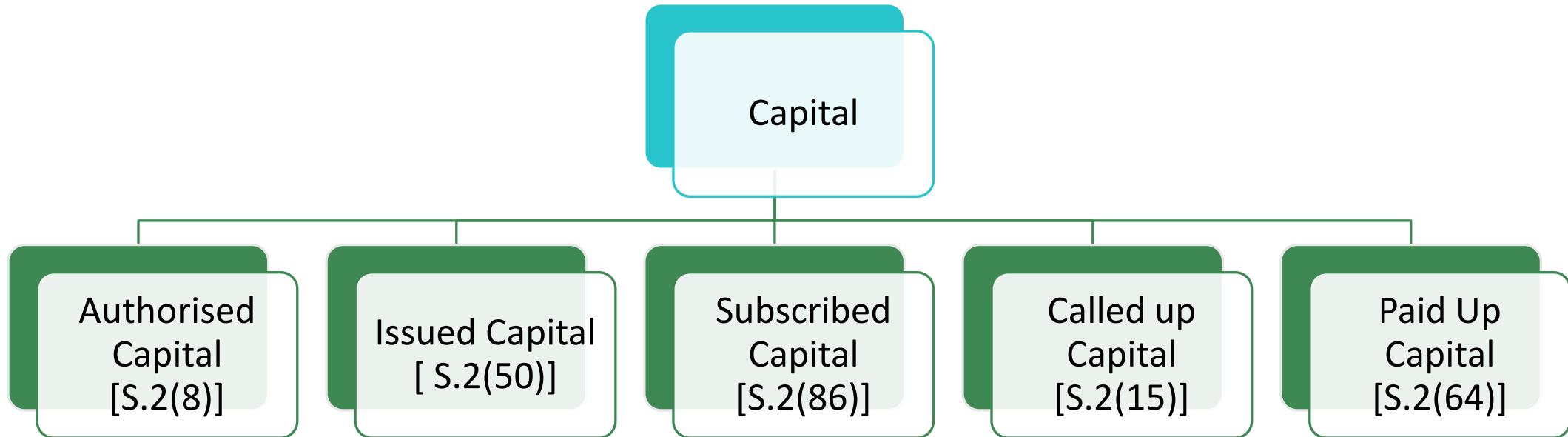
A share is the smallest unit into which the capital of the company is divided

Sun Bakers Limited has authorised share capital of ` 50.00 lacs. The face value of each unit of capital or 'share' is ` 10. In this case, it can be said that the company has 5.00 lacs shares of ` 10 each. When these shares (either in part or whole) are allotted to various persons, they, on the date of allotment, become shareholders of the company.

If a company undertakes to aggregate the fully paid up shares of various members as per their requests and merge those shares into one fund, then such fund is called 'stock. Therefore, 'stock' is a collection or bundle of fully paid-up shares.

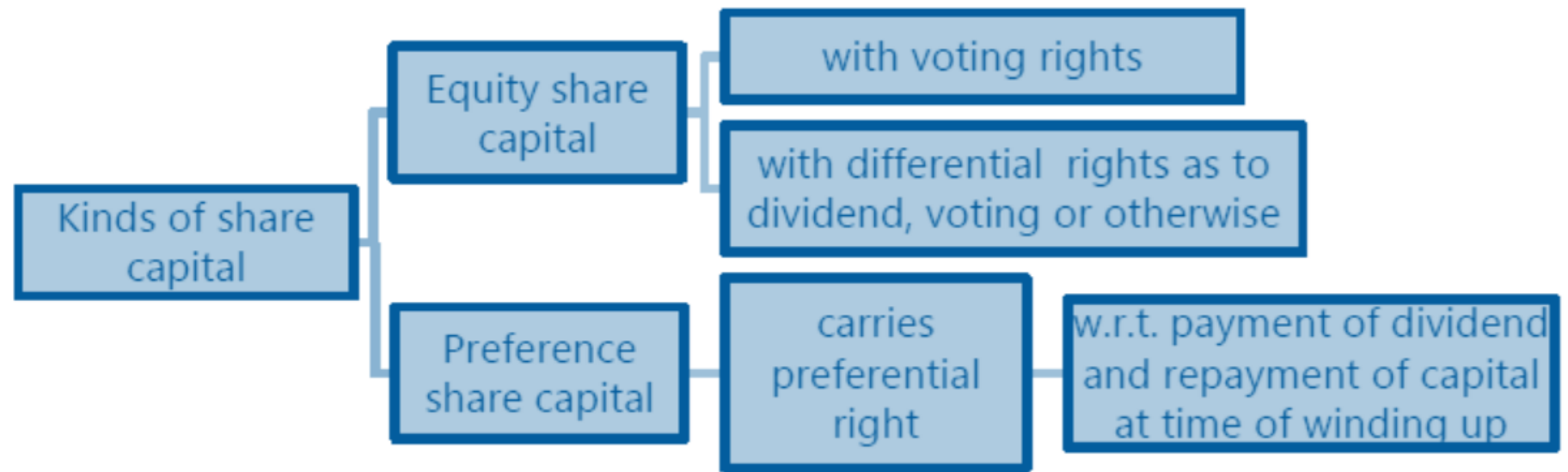


CLASSIFICATION OF CAPITAL





KINDS OF SHARE CAPITAL [Section 43]



In case of private company.- Section 43 shall **not apply** where memorandum or articles of association of the private company so provides. However, the exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.



KINDS OF SHARE CAPITAL [Section 43]

Preference Share Capital: "**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;



KINDS OF SHARE CAPITAL [Section 43]

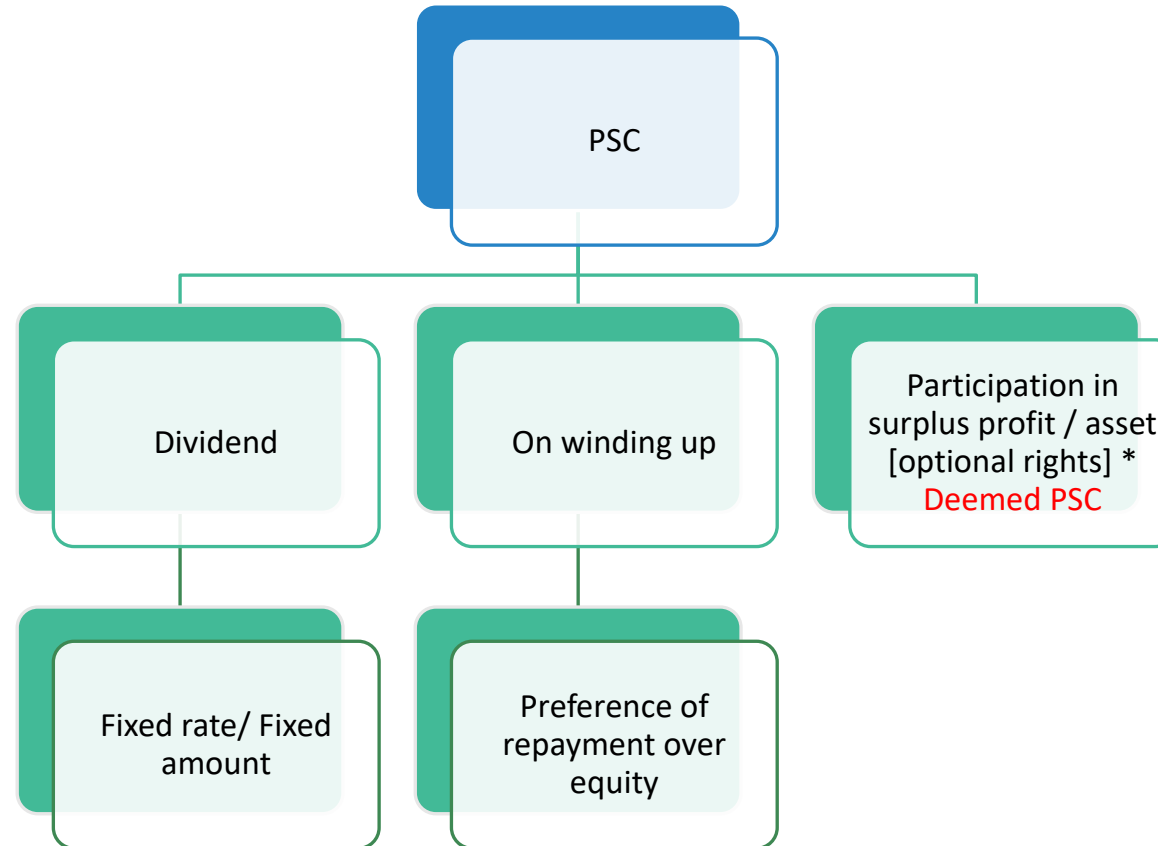
Deemed Preference Share Capital:[Explanation III to Section 43]

The capital will be deemed to be preference share capital whether or not it has either or both of the following rights:

- A. In addition to preferential rights to dividend, it has a right to participate with the equity share capital in surplus profit in the case of payment of dividend.
- B. In addition to the preferential rights to the repayment of the amount, it has a right to participate with the equity share capital in any surplus asset which may remain after the entire share capital is repaid in the case of winding up.



KINDS OF SHARE CAPITAL [Section 43]





KINDS OF SHARE CAPITAL [Section 43]

“Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

Equity Shares are the main source of raising the funds for the firm. All equity shareholders are collectively owners of the company and they have the authority to control the affairs of the business. It is a form of partial or part Ownership in the company in which shareholders bear the highest business risk. Ownership in the company is depending on the % of shares they hold. Equity shares are also called as ordinary shares. The Equity shareholders get the profit of the company in the form of dividend but the rate of dividend is not fixed as it fluctuates according to profits i.e. more profit: more dividend and vice versa.



KINDS OF SHARE CAPITAL [Section 43]

EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

Rule 4 of the *Companies (Share capital and Debenture) Rules, 2014* contains provisions which need to be followed while issuing equity shares with differential rights. These are stated as under:

(i) Conditions for the issue of equity shares with differential rights: According to Rule 4 (1), a company limited by shares may issue equity shares with differential rights as to dividend, voting or otherwise, if it complies with the following conditions, namely:

- a. the **articles of association of the company** authorizes the issue of shares with differential rights;



KINDS OF SHARE CAPITAL [Section 43]

- B. the issue of shares is **authorized by an ordinary resolution** passed at a general meeting of the shareholders. **Where the equity shares of a company are listed on a recognized stock exchange**, the issue of such shares shall be **approved by the shareholders through postal ballot**;
- C. the **voting power** in respect of shares with differential rights of the company **shall not exceed seventy-four per cent of total voting power** including voting power in respect of equity shares with differential rights issued at any point of time;
- E. the company has **not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year** in which it is decided to issue such shares;



KINDS OF SHARE CAPITAL [Section 43]

- F. the company has **no** subsisting **default with respect to payment of a declared dividend** to its shareholders or **repayment of its matured deposits** or **redemption of its preference shares** or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- G. The company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;



KINDS OF SHARE CAPITAL [Section 43]

It is provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.

- H. The company has **not been penalized by Court or Tribunal during the last three years of any offence** under the Reserve Bank of India Act, 1934 (RBI), the Securities and Exchange Board of India Act, 1992 (SEBI), the Securities Contracts Regulation Act, 1956 (SCRA), the Foreign Exchange Management Act, 1999 (FEMA) or any other special Act, under which such companies being regulated by sectoral regulators.



KINDS OF SHARE CAPITAL [Section 43]

(ii) Contents of Explanatory statement: Rule 4 (2) states that the explanatory statement to be annexed to the notice of the general meeting or of a postal ballot shall contain various matters like particulars of the issue including its size, details of differential rights, etc.

(iii) Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights: Rule 4 (3) specifies that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice versa*.

(iv) Disclosure in the Board's Report: According to Rule 4 (4), the Board of Directors shall, *inter-alia*, disclose the specified particulars in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed.



KINDS OF SHARE CAPITAL [Section 43]

(v) Rights to the holders of the equity shares with differential rights: Rule 4 (5) states that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares, etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

(vi) Particulars of shares to be maintained in the register of members: Rule 4 (6) provides that where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.



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