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

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

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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. These are

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.

SHARE VS. STOCK

SHARE

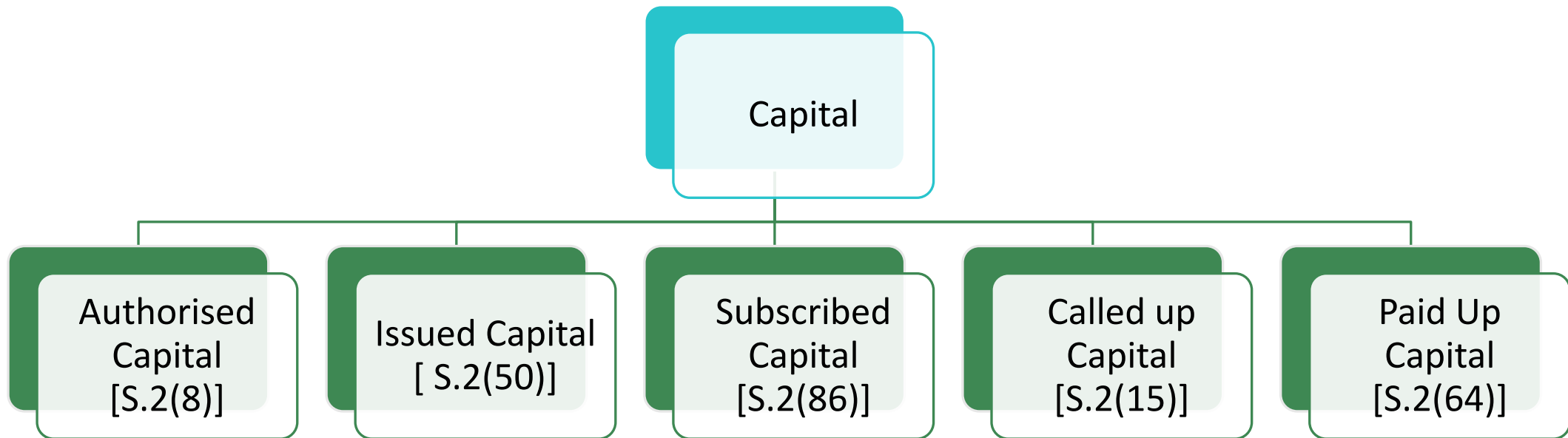
1. The share capital of the company is divided into small units having a certain face value, known as shares .
2. Share Can be issued in original
3. May be fully or partly paid
4. Are of fixed denomination
5. Has a definite number
6. Transferred in its entirety or in its multiples only.
7. Registration of share capital is compulsory

STOCK

1. 'stock' is a collection or bundle of fully paid-up shares.
2. Stock Cannot be issued in original but is obtained by conversion of fully paid-up shares.
3. Always be Fully paid
4. No such fixed denomination
5. No such number
6. Divisible into any amount and even transferred into fractional amount
7. Issued after passing OR if AOA permit

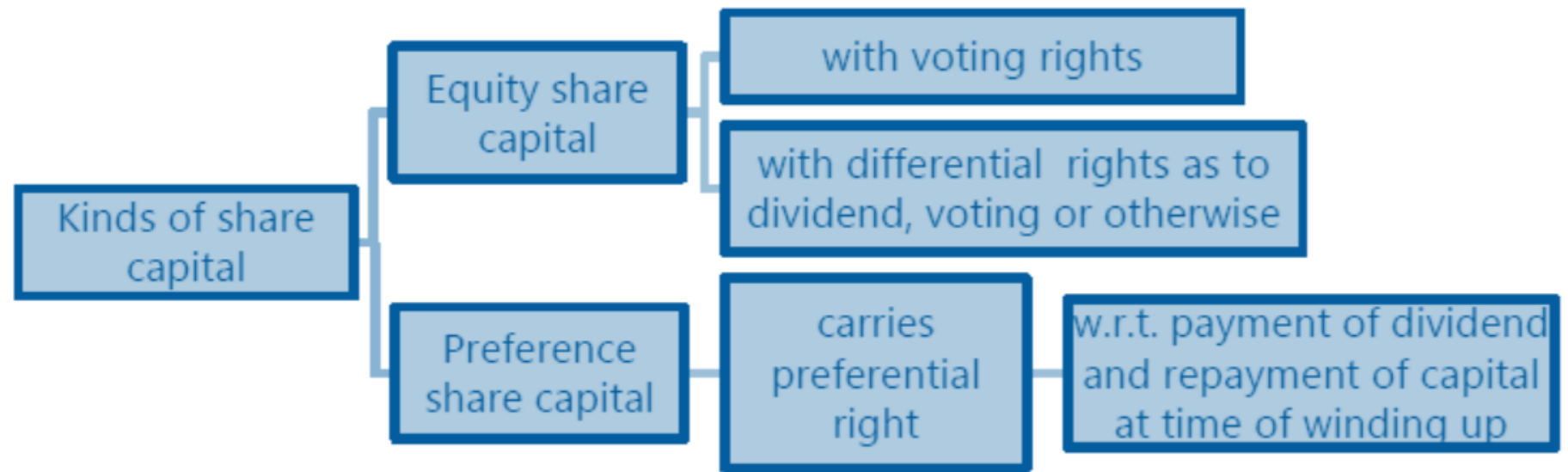


CLASSIFICATION OF CAPITAL





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]

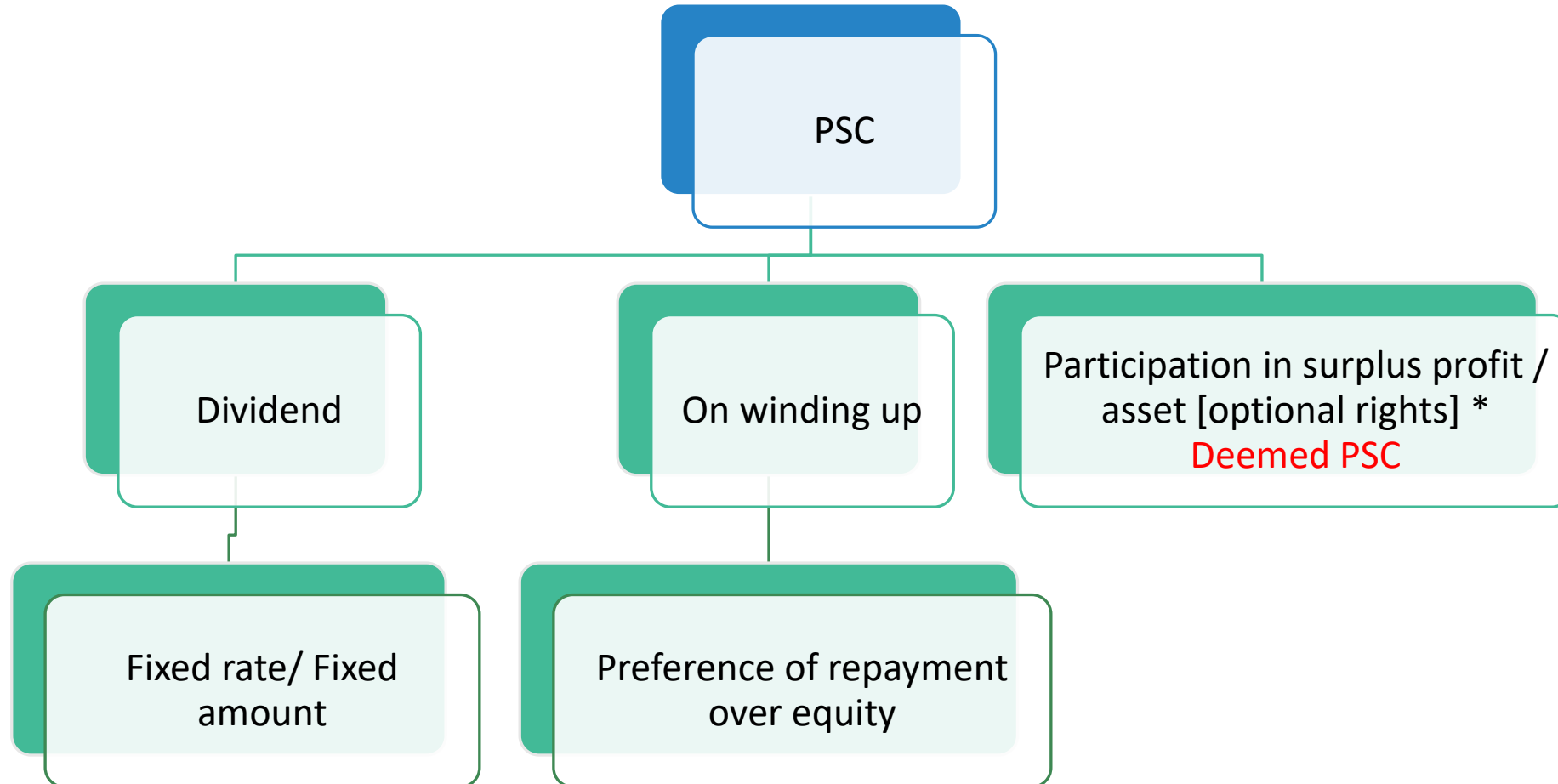
Deemed Preference Share Capital: [Explanation III to Section 43]

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.



NORMS RELAXED

- The Companies Act provisions amended to help entrepreneurs retain control even as they raise equity capital from global investors
- A cap of 26% of post issue paid up equity share capital raised to 74% of total voting power in respect of shares with DVRs of a company
- Requirement of distributable profits for three years removed for a company to be eligible to issue shares with DVRs



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.

SHARE CERTIFICATE [SECTION 46 r.w rule 5,6,7 of share capital and debenture rules 2014]

- Issued when the shares are issued in physical form in form SH-1. It specifies the name of the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid-up thereon
- **Authority to issue share certificate:-** Where a company issues any share capital, the share certificate of any share(s) held in the company shall be issued in pursuance of a resolution passed by Board of Directors [Rule 5(1) of the Companies (Share Capital and Debentures) Rules, 2014];
- **Conclusive evidence:** According to section 46 (1), a certificate, issued under the common seal (optional) , if any, shall be prima facie evidence of the title of the person to such shares.
- **Distinctive Number for each Share** —Every share in a company having a share capital shall be distinguished by its distinctive number (Section 45 of the Act). However, the said provisions are not applicable where the shares are held in dematerialised form;

SHARE CERTIFICATE

Signatures on Share Certificate (for companies other than One Person Company) —The share certificate, issued under the common seal, if any,

- shall be signed by two Directors or
- by a Director and the Company Secretary, wherever the company has appointed a Company Secretary.
- In case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate. [Section 46(1) of the Act read with Rule 5(3) of the Companies (Share Capital and Debentures) Rules, 2014];
- **For OPCs**, it shall be sufficient if the share certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose [Rule 5(3) of the Companies (Share Capital and Debentures) Rules, 2014];

SHARE CERTIFICATE

Director's Facsimile Signature on Share Certificate—A director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp. However, the Director shall be personally responsible for permitting the affixation of his signature and the safe custody of any machine, equipment or other material used for the purpose;

SHARE CERTIFICATE

Maintenance of Share Certificate Forms and related Books and Documents —

(i) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board of Directors, (ii) blank form shall be consecutively machine numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms, (iii) blank forms shall be kept in the custody of the Company Secretary (or such other person as the Board may authorise for the purpose). The said person shall be responsible for rendering an account of these forms to the Board of Directors, (iv) ***committee of the Board of Directors or appointed Company Secretary or duly authorised Director shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates;***

SHARE CERTIFICATE

Preservation of Books and Documents relating to Issue of Share Certificates —

The books and documents relating to the issue of share certificates (including blank forms of share certificates) shall be preserved in good order for not less than 30 years. However, in certain disputed cases, said documents shall be preserved permanently. All certificates surrendered to a company shall immediately be defaced by stamping or printing the word “cancelled” in bold letters and may be destroyed after the expiry of 3 years from the date on which they are surrendered. Share certificate shall be destroyed under the authority of a resolution of the Board of Directors and in the presence of a person duly appointed by Board of Directors [Rule 7(2) of the Companies (Share Capital and Debentures) Rules, 2014];

SHARE CERTIFICATE

Conclusive evidence: According to section 46 (1), a certificate, issued under the common seal (optional) , if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.

(2) Issue of Duplicate Certificate: Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate —

- (a) is proved to have been lost or destroyed; or
- (b) has been defaced, mutilated or torn and is surrendered to the company.

SHARE CERTIFICATE

The company shall comply with the following conditions w.r.t. (in writing) the issue of renewed or duplicate share certificate [Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014]:

- (i) In case of sub-division, consolidation, replacement (if share certificates are defaced, mutilated, torn or old, decrepit, worn out), the duplicate share certificate shall be issued after the original share certificate is surrendered to the company.
- (ii) Company may charge certain fees for issue of such share certificate;
- (iii) Company shall make necessary reference (e.g. “duplicate”, “subdivided”, “replaced”, “consolidated”, etc.) on the face of the fresh share certificate and in the Register of Members;

SHARE CERTIFICATE

(iv) Prior consent of the Board of Directors and payment of minimum fees (as decided from time to time) is required for issue of duplicate share certificate in lieu of certificates that are lost or destroyed. The Board of Directors shall direct the shareholder to furnish supporting evidence(s), indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced;

SHARE CERTIFICATE

Maintenance of Register of Renewed and Duplicate Share Certificates —(i) The company shall maintain Register of renewed and duplicate share certificates (with suitable cross-references to the Register of Members) at its registered office or at such other place where Register of Members is kept. (ii) Register of renewed and duplicate share certificates shall be preserved permanently and shall be kept in the custody of the Company Secretary of the company or any other person authorised by the Board for the purpose. For such authority, the Board shall pass necessary resolution. (iii) All entries made in the said Register of renewed and duplicate share certificates shall be authenticated by the Company Secretary or an authorised person. For such authority, the Board shall pass a resolution;

SHARE CERTIFICATE

(5) Punishment for issuing Duplicate Certificate of Shares with intent to Defraud: As per Section 46 (5), if a company with intent to defraud issues a duplicate certificate of shares, the punishment shall be as under:

- the **company** shall be punishable with **fine which shall not be less than five times the face value of the shares** involved in the issue of the duplicate certificate but which may extend to ten times the face value of such **shares or rupees ten crores whichever is higher**; and
- **every officer of the company who is in default shall be liable for action under section 447.**

SHARE CERTIFICATE

Timelines for Issue of Share Certificate —Unless prohibited by any provision of law or any order of Court, Tribunal or other authority, every company shall deliver the certificates of all securities within following timelines:

- (i) To subscribers of memorandum of association—within 2 months from the date of incorporation,
- (ii) To allottees (shares)—within 2 months from the date of allotment,
- (iii) To transferee—within 1 month from the date of receipt of instrument of transfer or intimation of transmission,
- (iv) To allottees (debentures)—within 6 months from the date of allotment.

If the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on its allotment [Section 56(4) of the Act].

SHARE CERTIFICATE

Timelines for Issue of Duplicate Share Certificate —In case unlisted companies, the duplicate share certificates shall be issued within 3 months from the date of submission of complete documents with the company. In case of listed companies, the duplicate certificate shall be issued within 45 days from date of submission of complete documents with the company. [Rule 6(2)(c) of the Companies (Share Capital and Debentures) Rules, 2014]

VOTING RIGHTS [S.47]

(i) Voting Rights of Members holding Equity Share Capital: Section 47 (1) states *that subject to the provisions of section 43, section 50 (2) and section 188 (1)-*

- *(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and*
- *(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.*

*In case of Nidhis, Section 47 (1) (b) shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholder.

VOTING RIGHTS [S.47]

(ii) Voting Rights of Members holding Preference Share Capital: According to *Section 47 (2)*, every member of a company limited by shares who is holding any preference share capital shall, in respect of such capital, have—

- **◆** a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares, and
- **◆** a right to vote on any resolution for the winding up of the company, or
- for the repayment or reduction of its equity or preference share capital.

On a poll voting right of **every PSH shall be in proportion to his share in the paid-up preference share capital of the company.**

VOTING RIGHTS [S.47]

(iii) **Proportion of Voting Rights:** According to First Proviso to Section 47 (2), the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

EXAMPLE: Suppose, a Company has a paid up capital of Rs. 150 comprising of Rs. 100 as paid up equity share capital (100 shares of Re. 1/- each) and Rs. 50 as paid up preference share capital (50 shares of Re. 1/- each). So, in this case the ratio of **paid up equity share capital to the ratio of preference paid up share capital becomes 2:1.**

VOTING RIGHTS [S.47]

Now, suppose if the Company comes up with the resolution for winding up. In that case, both equity and preference shareholders have a right to vote on the resolution. For instance, out of 100 equity shareholders, 90% vote against the resolution and the remaining 10% vote in favour. And, out of the 50 preference shareholders, 100% vote in favour of the resolution.

Now, counting of the votes will be done in the manner as mentioned below:

Out of 100 equity shareholders (which are 2/3 of the total shareholders)

90% (Voted against the resolution); The effective percentage of equity shareholders against the resolution will be calculated as $\frac{2}{3} \times \frac{90}{100} = 60\%$

10%(Voted in favour of the resolution); The effective percentage of equity shareholders in favour of winding up will be calculated as $\frac{2}{3} \times \frac{10}{100} = 6.67\%$

VOTING RIGHTS [S.47]

Out of 50 preference shareholders (which are 1/3 of the total shareholders)

100%(Voted in favour of the resolution); The effective percentage of preference shareholders in favour of winding up will be calculated as $1/3 \times 50/50 = 33.33\%$

Now, **out of total 150 shareholders (as calculated above)**

60% of the total shareholders are against winding up of the Company.

(6.67% + 33.33%) = 40% of the total shareholders are **in favour of winding up of the Company.**

VOTING RIGHTS [S.47]

(iv) Consequences when Dividends are not paid to Preference Shareholders: According to Second Proviso to Section 47 (2), where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, then such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Exemption to a Private Company- Section 47 shall not apply to a private company, 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. Thus, Private company could be more innovative in terms of voting rights if permitted by their Articles of Association.

VARIATION OF SHAREHOLDERS RIGHT

[S.48]

(1) Variation in Rights of Shareholders with Consent: According to Section 48 (1), 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,—
 - (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
 - (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

VARIATION OF SHAREHOLDERS RIGHT

[S.48]

It is 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.

(2) No Consent given for Variation: According to Section 48 (2), 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 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.

VARIATION OF SHAREHOLDERS RIGHT

[S.48]

(3) Application to Tribunal: Proviso to Section 48 (2) states that an application under this section shall be made **within twenty-one days after the date on which the consent was given** or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) Decision of Tribunal: According to Section 48 (3), the decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

(5) Filing of copy of order with Registrar: 48 (4) states that the company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar

VARIATION OF SHAREHOLDERS RIGHT

[S.48]

(6) Punishment for Default: According to Section 48 (5), where any default is made in complying with the provisions of this section, the punishment shall be as under:

- • **company:** It shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees;
- • **every officer of the company who is in default:** He shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

CALL ON SHARES[SECTION 49]

When the shares are partly paid-up, the company issuing them can make calls, asking the shareholders to pay the amount 'called up' in respect of such partly paid-up shares.

As per Section 49, these calls have to be uniformly made and there should be no differentiation for a given class of shareholders.

As per Explanation to Section 49, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class (i.e. the provision is not applicable in case where different amounts are paid for a same class of shares).

CALLS IN ADVANCE [SECTION 50] & PAYMENT OF DIVIDEND [SECTION 51]

As per Section 50, a company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up (i.e. if authorised by the articles, a company is permitted to keep advance subscription or call money received in advance).

However, a member of a company limited by shares shall have no voting right in respect of the 'advance amount' paid by him on 'calls' till the amount is duly called up

According to Section 51, the company is permitted to pay dividends in proportion to the amount paid-up on each share, if so authorised by the articles.

CALLS IN ADVANCE [SECTION 50] & PAYMENT OF DIVIDEND [SECTION 51]

Example: Moon Star Machineries Limited is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member even if no part of that amount has been called up by it. 'Anand', a shareholder, deposits in advance the remaining amount due on his partly paid-up shares without any calls being made by the company.

In view of the authorisation given by the Articles, Moon Star Machineries Limited is permitted to accept the advance amount received on unpaid calls from Anand. In other words, this is a valid transaction.

CALLS IN ADVANCE [SECTION 50] & PAYMENT OF DIVIDEND [SECTION 51]

Example: Coriander Masale Limited has issued 10,00,000 equity shares of ₹ 10 each on which ₹ 6 per share has been called till allotment and the first and final call of ₹ 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of ₹ 10 per share. In the upcoming extra-ordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares.

However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of first and final call. The restriction will continue till the amount is duly called up by the company.

ISSUE OF SHARES AT PREMIUM

When a company issues shares at a price higher than their face value, the shares are said to be issued **at premium** and the differential amount is termed as premium.

EXAMPLE: A share having face value of ` 10 is issued at a price of ` 14. The amount over and above the face value of ` 10 is called premium. Where the issue price is lower than the face value of the shares, such issue of shares is regarded as being issued at discount and the differential amount is known as discount.

It is generally issued by companies which have an excellent financial record, are well managed and have a great reputation in the market. The aggregate amount of the premium received from the issuance of shares at premium is credited to a separate account which is known as the **Securities Premium Account**. The premium amount is usually collected at the time of share allotment.

APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES

Section 52 reads as:

(1) 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.

APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES

(2) Notwithstanding anything contained in sub-section (1), 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.

APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), 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.

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT [SECTION 53]

“At a discount” means at a price less than the nominal value

Section 53 reads :

- (1) Except as provided in section 54, a company shall not issue shares at a discount.*
- (2) Any share issued by a company at a discounted price shall be void.*
- (3) Where a company contravenes the provisions of this section, **the company shall be punishable** with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and **every officer who is in default** shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.*

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT [SECTION 53]

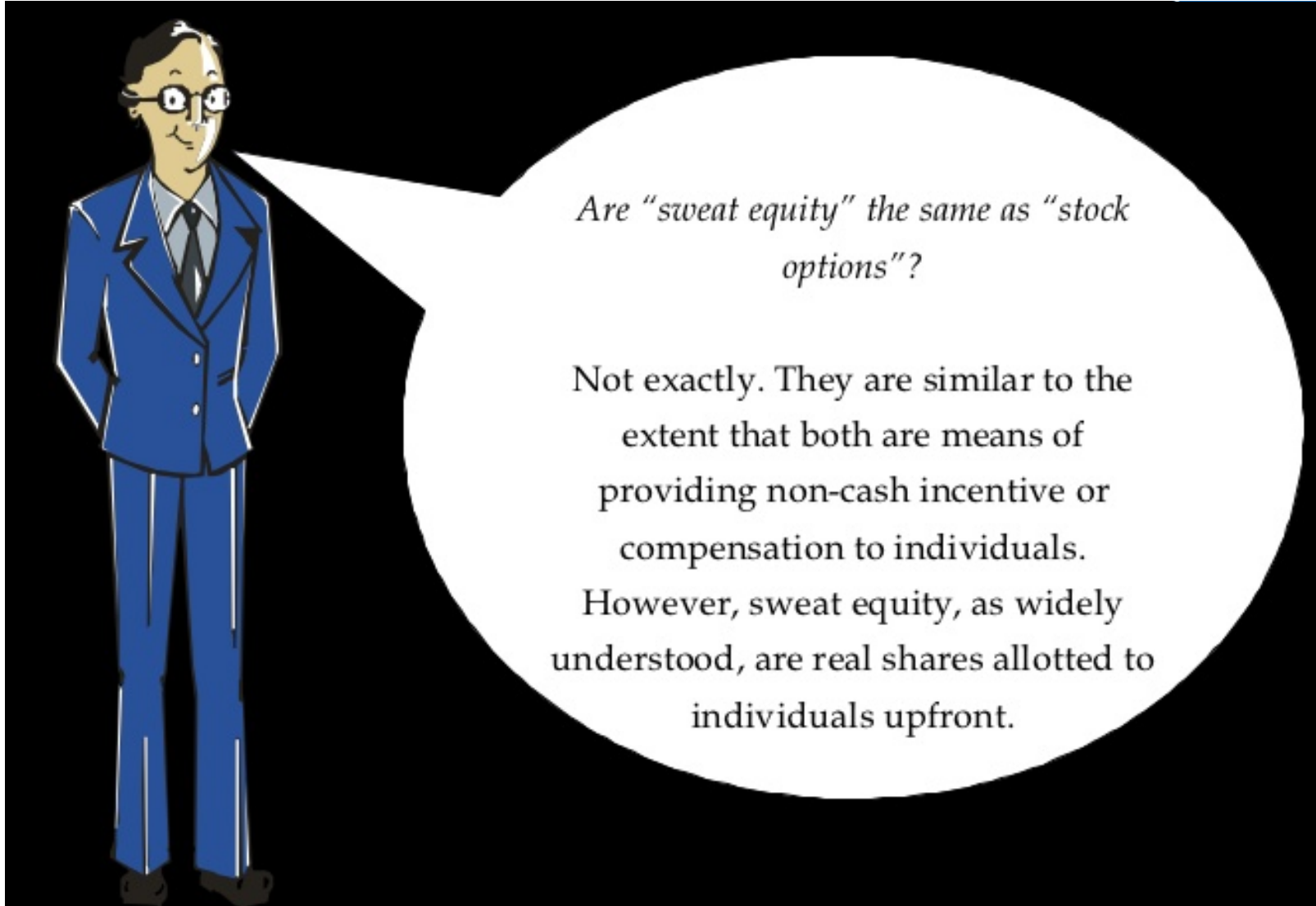
EXCEPTION: Section 53 (2A) states that notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

Note: the restrictions mentioned in Sections 52 and 53 apply only in respect of issue of shares (either equity or preference shares) but not to the issue of any debt related products like bonds or debentures whose pricing is mostly governed by YTM (yield to maturity) considerations

ISSUE OF SWEAT EQUITY SHARES[S.54]

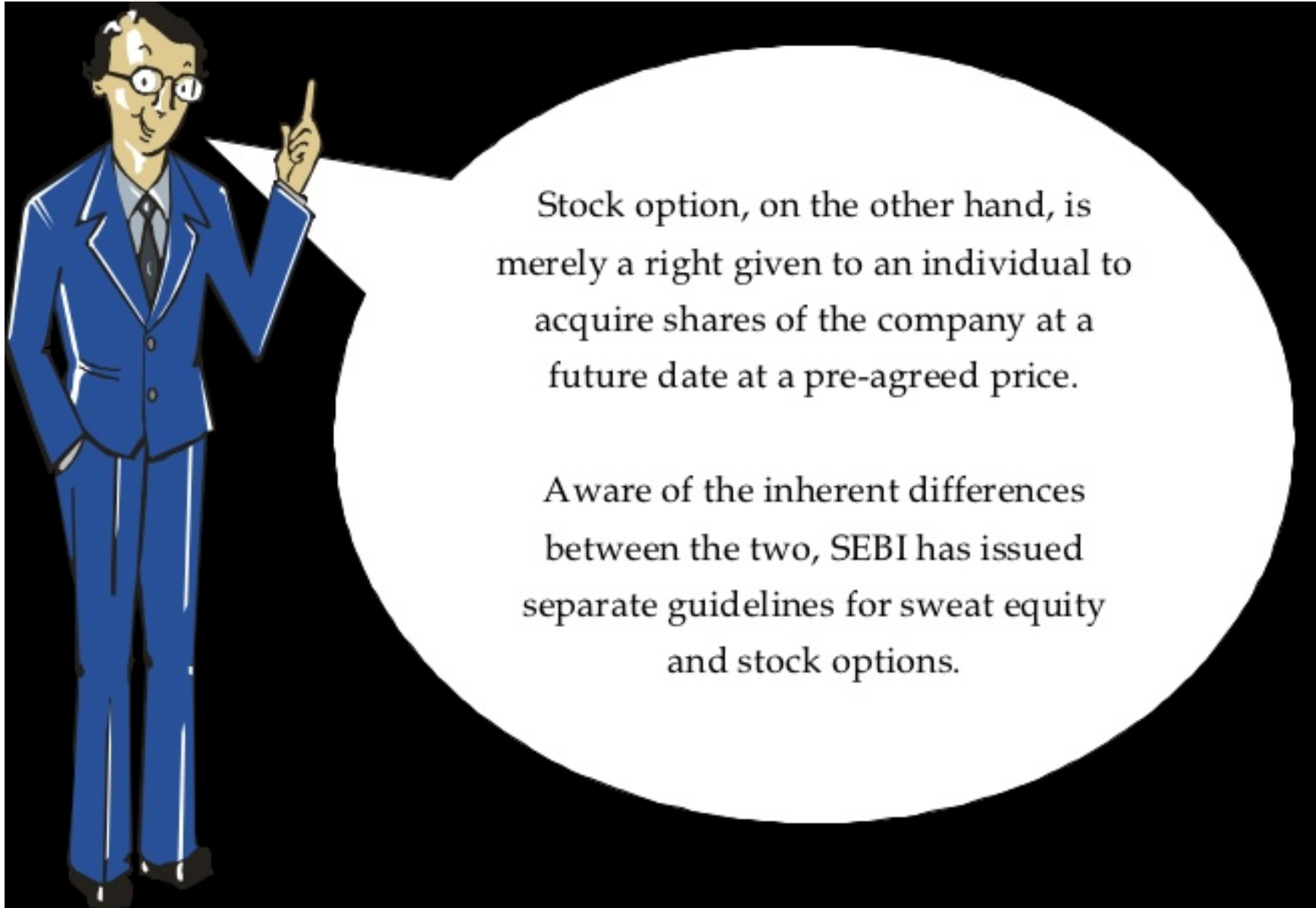
Meaning of 'sweat equity shares': As per Section 2 (88), the term '**sweat equity shares'** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

For instance, if a person works for creating patents for a company, then the company can issue equity (shares) to him, instead of paying cash. It could be issued for many other things too such as the person providing technical know-how, brand rights or similar value additions to the company.



Are “sweat equity” the same as “stock options”?

Not exactly. They are similar to the extent that both are means of providing non-cash incentive or compensation to individuals. However, sweat equity, as widely understood, are real shares allotted to individuals upfront.



Stock option, on the other hand, is merely a right given to an individual to acquire shares of the company at a future date at a pre-agreed price.

Aware of the inherent differences between the two, SEBI has issued separate guidelines for sweat equity and stock options.

ISSUE OF SWEAT EQUITY SHARES

Condition for Issue of ‘sweat equity shares’: According to Section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (a) the **issue is authorised by a special resolution** passed by the company;
- (b) 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;**
- (C) 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 Rule 8 of the Companies (Share and Debentures) Rules, 2014.

WHO CAN BE ISSUED SWEAT EQUITY SHARES

The sweat equity shares shall be issued to the following **category of employees** which includes:

- Permanent employee of the Company whether working in India or outside India;
- Director of the Company, whether a whole-time Director or not;
- Employee or Director as mentioned above of a Subsidiary in India or outside India, or of a Holding Company of the Company.

ISSUE OF SWEAT EQUITY SHARES

Meaning of 'Value additions': The expression 'Value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

Time line for allotment of sweat equity shares: The allotment of sweat equity shares shall be made within a period of **12 months** for the date of passing of Special Resolution

ISSUE OF SWEAT EQUITY SHARES

QUANTUM OF ISSUE OF SWEAT EQUITY SHARES:

<u>For One time:</u>	The Company shall not issue Sweat Equity Shares for more than 15% of existing paid-up share capital or issue value of shares Rs.5,00,00,000/- (Rupees Five Crores), <u>whichever is higher.</u>
<u>For lifetime:</u>	The Company shall not issue Sweat Equity shares for more than 25% of the paid-up Equity Capital at any time.

However, in case of a startup company it is provided that it may issue sweat equity shares not exceeding fifty per cent of its paid-up capital up to five years (ten years w.e.f. 05-06-202016) from the date of its incorporation or registration.

ISSUE OF SWEAT EQUITY SHARES

LOCKIN PERIOD: : Rule 8 (5) states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Valuation of Sweat Equity Shares: Rule 8 (6) mentions that the sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

Valuation of IPR/know-how/value additions to be done by a Registered Valuer: According to Rule 8 (7), the valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

ISSUE OF SWEAT EQUITY SHARES

Treatment of non-cash consideration: According to Rule 8 (9), where the sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company:

(a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

ISSUE OF SWEAT EQUITY SHARES

Disclosure in the Directors' Report: Rule 8 (13) states that the Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the specified details of issue of sweat equity shares.

Maintenance of Register: According to Rule 8 (14), the company shall maintain a Register of Sweat Equity Shares in Form No. SH. 3. It shall be maintained at the registered office of the company or such other place as the Board may decide.

Sweat equity shareholders to rank *pari passu* with other equity shareholders: According to Section 54 (2), 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.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

Types of PS

On the basis of dividend

On the basis of convertibility

On the basis of redeemability

Cumulative

Non –
cumulative

Participatory

Non
Participatory

Convertible

Non-
Convertible

Redeemable

Ir-
redeemable
(cant be
issued)

TYPES OF PREFERENCE SHARES

Convertible and Non Convertible

- **Convertible shares** possess an option or right whereby they can be converted into an ordinary equity share at some agreed terms and conditions.
- **Non-convertible shares** simply does not have this option but has all other normal characteristics of a preference share.

Redeemable and Irredeemable

- **Redeemable preference share** has a maturity date on which date the company will repay the capital amount to the preference shareholders and discontinue the dividend payment.
- **Irredeemable preference shares** does not have any maturity date. The dividend of these shares is fixed.

Participating and Non Participating

- **Participating preference shares** has an additional benefit of participating in profits of the company apart from the fixed dividend.
- Other preference shares who do not participate are called **non participating preference shares**

Cumulative and Non Cumulative

- **Cumulative Shares** - The dividends are accumulated and therefore paid before anything paid to equity shareholders.
- **Non – Cumulative** - If company does not pay dividend in current year, claim of preference shareholder is lost to that extent.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(i) Company to issue only Redeemable Preference Shares: A company limited by shares shall not issue any preference shares which are irredeemable.

(ii) Term of preference share:

- A company limited by shares may, if **so authorised by its articles**, issue preference shares which are liable to be redeemed within **a period not exceeding twenty years** from the date of their issue.
- **Exception:**
 - Such preference shares are issued for infrastructure projects as specified under schedule VI
 - The company shall redeem, at the option of such PSH, 10% of such preference shares beginning 21st year onwards or earlier, on proportionate basis.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

According to Rule 9 (1) of the Companies (Share Capital and Debentures) Rules, 2014, **the issue of preference shares has to be authorized by passing a special resolution in the general meeting of the company.** Further, at the time of such issue of preference shares, the company should not have subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.

Maintenance of Register: Rule 9 (4) requires that if a company issues preference shares, the Register of Members maintained under Section 88 shall contain the particulars in respect of such preference shareholder(s)

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(iv) Preference Shares to be redeemed out of the Profits only(sources of redemption) : No such shares shall be redeemed except out of **the profits** of the company which would otherwise be **available for dividend or out of the proceeds of a fresh issue of shares** made for the purposes of such redemption.

(v) Only fully paid Preference Shares are to be redeemed: No such shares shall be redeemed unless they are fully paid.

(vi) Transfer to CRR Account: Where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve (CRR) 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 Capital Redemption Reserve Account were paid-up share capital of the company.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(vii) Payment of Premium in case of prescribed Class of Companies: In case of 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, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.

The premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

In a case not meeting above criteria, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

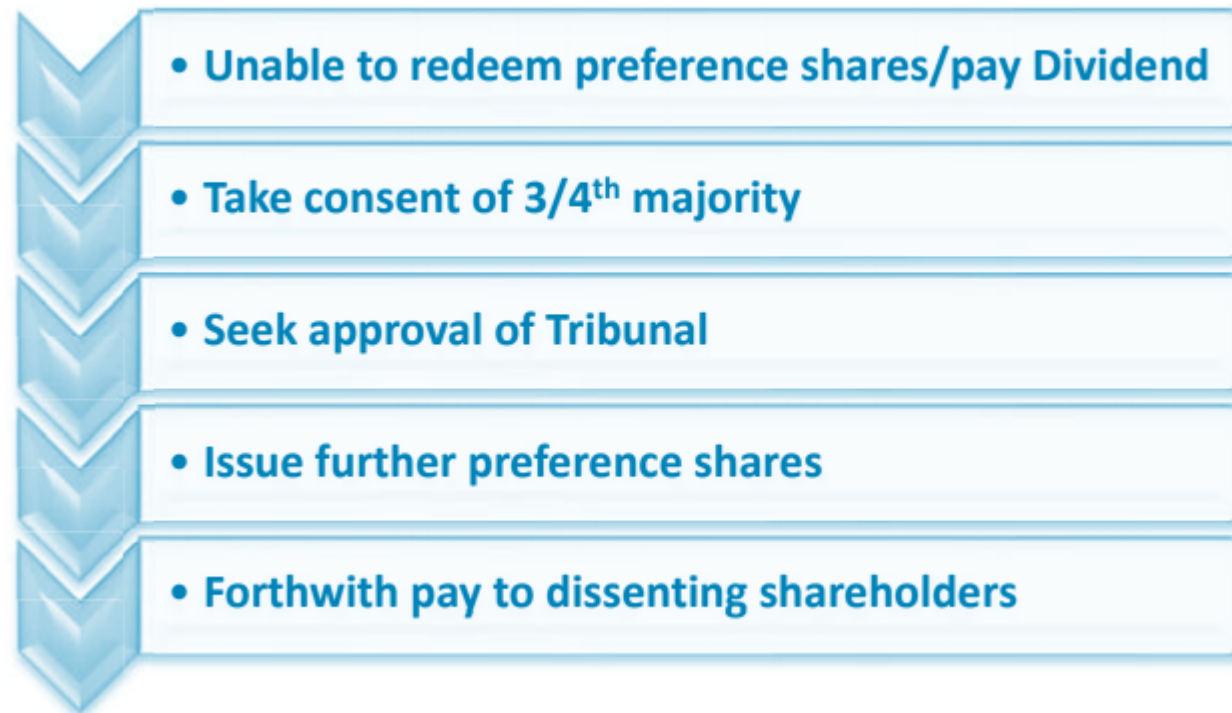
(viii) Issue of further Redeemable Preference Shares if a Company is unable to redeem existing preference shares or pay dividend: According to Section 55 (3), where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of 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.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

It is 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.



PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

Note: According to the Explanation given, the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

Utilisation of CRR Account: According to Section 55 (4), the capital redemption reserve account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.



THANK YOU