LL.B IV SEMESTER

SUBJECT – COMPANY LAW

TOPIC- SHARE AND SHARE CAPITAL

Shares

A share in the share capital of the company, including stock, is the definition of the term 'Share'. This is in accordance with Section 2(84) of the Companies Act, 2013. In other words, a share is a measure of the interest in the company's assets held by a shareholder. In this article, we will look at the different types of shares like preferential and equity shares. Further, we will understand certain definitions and regulations surrounding them.

The Memorandum and Articles of Association of the company prescribe the rights and obligations of shareholders. Further, a shareholder must have certain contractual and other rights as per the provisions of the Companies Act, 2013.

Section 44 of the Companies Act, 2013, states that shares or debentures or other interests of any member in a company are movable properties. Also, they are transferable in the manner prescribed in the Articles of the company. Further, Section 45 of the Act mandates the numbering of every share. This number is distinctive. However, if a person is a holder of the beneficial interest in the share, then this rule does not apply (example: share in the records of a depository).

According to Section 43 of the Companies Act, 2013, the share capital of a company is of two types:

1. Preferential Share Capital
2. Equity Share Capital

Preferential Share Capital

The preferential share capital is that part of the Issued share capital of the company carrying a preferential right for:

- Dividend Payment – A fixed amount or amount calculated at a fixed rate. This might/might not be subject to income tax.
- Repayment – In case of a winding up or repayment of the amount of paid-up share capital, there is a preferential right to the payment of any fixed premium or premium on any fixed scale. The Memorandum or Articles of the company specifies the same.

Equity Share Capital

All share capital which is NOT preferential share capital is Equity Share Capital. Equity shares are of two types:

1. With voting rights
2. With differential rights to voting, dividends, etc., in accordance with the rules.

In 2008, Tata Motors introduced equity shares with differential voting rights – the 'A' equity shares. According to the issue,

- Every 10 'A' equity shares have one voting right
- 'A' equity shares get 5 percentage points more dividend than the ordinary shares.

Due to the difference in voting rights, the 'A' equity shares traded at a discount to ordinary shares with complete voting rights.

Deeming of Capital as Preferential Capital

In certain cases, capital is deemed as preferential capital even though it is entitled to either or both of the following rights:

1. For dividends, apart from the preferential rights to amounts specified above, it can participate (fully or to a certain extent) with capital not entitled to the preferential rights.

2. In case of a winding up, apart from the preferential right of the capital amounts specified above, it can participate (fully or to a certain extent), with capital not entitled to preferential rights in any surplus remaining after repaying the entire capital.

Share Capital

The term capital usually means a particular amount of money with which a business is started. In Indian Companies Act, it has been used in different senses in various parts of the Act, but in general it means the money subscribed pursuant to Memorandum of Association of the Company. Capital, in fact, represents the assets with which the undertaking is carried on.

The sum total of nominal value of shares of a company is known as its share capital. In case of companies, the terms 'capital' and 'share capital' have been held to be synonymous. Capital to be stated in the Memorandum of Association and Articles of Association of the Company.

Types Share Capital:

The share capital of company may be of the following types:

1. Registered, Authorised or Nominal Capital:

The Memorandum of Association of every company has to specify the amount of capital with which it wants to be registered. The capital so stated is called Registered, Authorized or Nominal Capital. The Registered Capital is the maximum amount of share capital which a company can raise by way of public subscription.

2. Issued Capital:

The company may not issue the entire authorised capital at once. It goes on raising the capital as and when the need for additional fund is felt. So, issued capital is that part of Authorised/Registered or Nominal Capital which is offered to the public for subscription in the form of shares.

3. Unissued Capital:

The balance of nominal capital remaining to be issued is called Unissued Capital.

4. Subscribed Capital:

It is that part of “issued capital” for which applications are received from the public. The subscribed capital is allotted to the respective subscribers as per resolution passed by the directors of the company.

5. Called up Capital:
It is that part of subscribed capital which has been called up by the company. A company does not call at once the full amount on each of the shares it has allotted and therefore, calls up only such amount as it needs.

6. Uncalled up Capital:
It is the uncalled portion of the allotted capital and represents contingent liability of the shareholders on the shares.

7. Paid up Capital:
It is that part of called up capital against which payment has been received from the members on their respective shares in response to the calls made by the company.

8. Reserve Capital or Reserve Liability:

By Reserve Capital we mean that amount which is not callable by the company except in the event of the company being wound up. The company cannot demand the payment of money on the shares to that extent during its life time. Reserve capital may be created by means of a special resolution passed by the company in its General Meeting by three-fourths majority of those voting on it.

When once the Reserve Capital has been so created the company cannot alter its Articles of Association so as to make the reserve liability available at any time. The Reserve Capital cannot be charged as security for loans by the directors. It cannot be turned into ordinary capital without the order of the court. It cannot be cancelled at the time of reduction of capital.

9. Fixed Capital:
The fixed capital of a company is what the company retains in the shape of fixed assets such as land and buildings, plant and machinery, furniture, etc.

10. Circulating Capital:

The circulating capital is a part of subscribed capital which is circulated in business in the form of using goods or other assets such as book debts, bill receivables, cash, bank balance, etc.