

CC 2.1 Chg

COMPANY LAW

Unit 4

SHARE CAPITAL AND DEBENTURES

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. 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.

NATURE OF SHARES

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) "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.

Share, debentures or other interest of any member in a company shall be movable property. It shall be transferable in any manner provided for in the articles of association of the company. A member may transfer any "other interest" in the company in the manner provided in the articles. For example rights attached to a member in a guarantee company such as membership interest, suspension of membership or assignment of interest may be made transferable by making a provision in the Articles of the company.

TYPES OF SHARE CAPITAL

A. *Equity Share Capital*

Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:

- (a) equity share capital—
 - (i) with voting rights; or

- (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

“Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital. As per section 43 (a) equity share capital may be divided on the basis of voting rights and differential rights(DVR) as to dividend, voting rights or otherwise according to the rules.

A DVR share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in voting rights can be achieved by reducing the degree of voting power. It is ideal for long term investors, typically small investors who seek higher dividend and are not necessarily interested in taking a voting position.

The Companies (Share Capital and Debentures) Rules, 2014 (hereinafter referred to as Rules) provide that no company whether it is unlisted, listed or a public company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

- (a) the articles of association of the company authorizes the issue of shares with differential rights;
- (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders:

Provided that 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 shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the company having consistent track record of distributable profits for the last three years;
- (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;
- (f) the company has no subsisting default in the payment of a

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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;
- (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 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

The Rules as aforesaid clearly state that the company shall issue DVR shares only after approval from shareholder by passing a ordinary resolution. It further provides that a listed company 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.

The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 or of a postal ballot pursuant to section 110 shall contain the following particulars:

- (a) the total number of shares to be issued with differential rights;
- (b) the details of the differential rights;
- (c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the reasons or justification for the issue;
- (e) the price at which such shares are proposed to be issued either at par or at premium;
- (f) the basis on which the price has been arrived at;

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- (g) (i) in case of private placement or preferential issue –
 - (a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;
 - (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
- (ii) in case of public issue – reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
- (h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
- (i) the scale or proportion in which the voting rights of such class or type of shares shall vary;
- (j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
- (k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;
- (l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

The Rules further provide 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.

According to the Rules the Board's Report for the financial year in which the issue of equity shares with differential rights was completed shall include the following details with respect to DVR shares:

- (a) total number of shares allotted with differential rights;
- (b) details of the differential rights relating to voting rights and dividends;
- (c) the percentage of the shares with differential rights to the

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total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

- (d) price at which such shares have been issued;
- (e) particulars of promoters, directors or key managerial personnel to whom such shares are issued;
- (f) change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
- (g) diluted Earning Per Share pursuant to the issue of such each class of shares, calculated in accordance with the applicable accounting standards;
- (h) pre and post issue shareholding pattern along with voting rights in the same specified format as given in explanatory statement.

The rules provide 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.

The company issuing equity shares with differential rights, shall ensure that the Register of Members contains all the relevant particulars of the shares so issued along-with details of the shareholders.

B. Preference Share Capital

The other type of share capital is the "Preference share capital". According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However 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.

With reference to any company limited by shares, Preference share capital 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;

Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

- (a) that in respect of dividends, in addition to the preferential rights to the amounts with respect to dividend, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
- (b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts aforesaid, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

SHARE CERTIFICATE

Every share in a company having share capital shall be distinguished by distinctive number. This section does not apply to shares held by a person as a beneficial owner in depository.

Section 46 of the Act declares that a certificate, issued by the company under the common seal of the company shall be prima facie evidence of the title of the person to such shares. Such certificate shall specify the shares held by any person. Where the shares are held in dematerialised form the record of the depository is the prima facie evidence of the interest of the beneficial owner.

Section 56 sub clause 4 provides that every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted—

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares.

The manner of issuance of a certificate of shares or the duplicate

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thereof, the form of such certificate, the particulars to be entered in the register of members are prescribed under Rules.

The manner of issuance of a certificate of shares the rules provide that no certificate of any share or shares held in the company shall be issued, except:

- (a) in pursuance of a resolution passed by the Board; and
- (b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

Every certificate of share or shares shall be in Form No. SH-1 or as near thereto as possible and shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid-up thereon.

The rules further provide that every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by:

- (a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and
- (b) the secretary or any person authorized by the Board for the purpose. Where a Company Secretary is appointed under the provisions of law, he shall be authorized for the purpose of this rule.

In companies wherein a Company Secretary is appointed under the provisions of the Act, he shall deemed to be authorised for the purpose of this rule. If the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director.

Further in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the

CALLS, FORFEITURE & REISSUANCE

Calls

According to section 49 of the Act, where any calls for further share capital are made on the shares of a class, such call shall be made on a uniform basis on all shares falling under that class. There cannot be any discrimination between shareholders of the same class as regards amount and time of repayment of call.

Usually articles of association provide for the manner in which the unpaid amount on shares. The pattern followed in this case is similar to as given in schedule I Table F provision 13 to 18. These provisions are as under:

13. (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

- (ii) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.
- (iii) A call may be revoked or postponed at the discretion of the Board.

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14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.
15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
16. (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent per annum or at such lower rate, if any, as the Board may determine.
(ii) The Board shall be at liberty to waive payment of any such interest wholly or in part.
17. (i) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.
(ii) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
18. The Board—
 - (a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and
 - (b) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent per annum, as may be agreed upon between the Board and the member paying the sum in advance.

According to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 if the issuer proposes to

receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue. If any allottee fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

Further it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency.

According to section 50 of the Act if 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.

A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him in advance until that amount has been called up.

A company if authorised by its articles may pay dividends in proportion to the amount paid-up on each share. In the case of preference shares, dividend shall be paid on fixed rate. In case of equity shares, dividend may be paid according to amount paid-up on the shares.(Section 51)

FORFEITURE OF SHARES

The provision with regard to forfeiture of shares is contained in Table F (Articles of Association of Company Limited by Shares). Provisions under Table F of the schedule I relating to forfeiture of shares are as under:

28. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
29. The notice aforesaid shall—
 - (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on

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or before which the payment required by the notice is to be made; and

- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.
30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
31. (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
- (ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.
32. (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
- (ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
33. (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
- (ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;
- (iii) The transferee shall thereupon be registered as the holder of the share; and
- (iv) The transferee shall not be bound to see to the application

TRANSFER, TRANSMISSION

The scope of transfer of securities have been widened under section 56 of the Act to include all the securities of the company and

* sub-sections not notified

the interest of a member in the company in the case of a company not having no share capital.

General Condition: The section provides that a company shall not register a transfer of securities, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed. Such form shall be

- duly stamped,
- dated and executed by or on behalf of the transferor and the transferee, and
- specify the name, address and occupation, if any, of the transferee.

Under the rules an instrument of 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 sixty days from the date of such execution. In the case of a company having no share capital, the provisions aforesaid rule shall apply to the interest of the member in the company.

Time period: Aforesaid form shall be delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Loss of instrument: Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period i.e. within sixty days from date of execution, the company may register the transfer on such terms as to indemnity as the Board may think fit.

Partly paid up Shares: The section provides that where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

According to Rules a company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH.5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

Transmission of shares: On receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted the company shall exercise its power to register the same. Further the section provides that the transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

Delivery of securities: The Company shall deliver the certificates of all securities transferred or transmitted within a period of one month from the date of receipt by the company of the instrument of transfer or, of the intimation of transmission.

Further the section provides where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Penal Provisions: The company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Refusal of Registration

Private Company

Section 58 of the Companies Act, 2014 in case a private company limited by shares refuses, to register the transfer of, or the transmission, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

Appeal: The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

Public Company

The securities or other interest of any member in a public company shall be freely transferable subject to the provision that any

contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

Where a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

Power of Tribunal: The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order;
or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Penal Provision : If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

DEBENTURES

Section 71 of the Act enables that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting. The section prohibits issue of debentures carrying voting rights.

A company may issue secured debentures subject to such terms and conditions as may be prescribed.

The rules in this regard provide that no company shall issue secured debentures unless it complies with the following conditions:

- (a) an issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;
- (b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
- (d) security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-
 - (i) any specific movable property of the company (not being in the nature of pledge), and/or
 - (ii) any specific immovable property wherever situate, or any interest therein.

The section provides that no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company

has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. In simple terms the company shall not issue prospectus to more than 500 hundred persons without appointing debenture trustee.

In this regard the Rules provide thus:

The company shall appoint debenture trustees after complying with the following conditions:

- (a) The names of the debenture trustees shall be stated in the prospectus or letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders.
- (b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.
- (c) No person shall be appointed as a debenture trustee, if he-
 - (i) beneficially holds shares in the company;
 - (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
 - (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
 - (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
 - (vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - (vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

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- (d) The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act. Where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
- (e) Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

The section provides that a debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed. The Rules provide it shall be the duty of every debenture trustee to-

- (a) satisfy himself that the prospectus or letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
- (b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
- (c) call for periodical status/performance reports from the company;
- (d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;
- (e) appoint a nominee director on the Board of the company in the event of:
 - (i) two consecutive defaults in payment of interest to the debenture holders; or
 - (ii) default in creation of security for debentures; or
 - (iii) default in redemption of debentures.
- (f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
- (g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

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- (h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
- (i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
- (j) do such acts as are necessary in the event the security becomes enforceable;
- (k) call for reports on the utilization of funds raised by the issue of debentures;
- (l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
- (m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
- (n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion. The liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three fourths in value of the total debentures at a meeting held for the purpose.

The Rules with respect to trust deed provide that:

- (a) A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and
- (b) A copy of the trust deed shall be forwarded to any member

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or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

With respect to meeting of debenture holder the rules provides thus:

The meeting of all the debenture holders shall be convened by the debenture trustee on-

- (a) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;
- (b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters. The rules provide that a trust deed in Form No. SH-12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures in other cases.

It has been provided in the Rules that the provisions relating to debenture trustees, shall not be applicable to the public offer of debentures.

Redemption of Debentures:

Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The Rules with regard to debenture redemption reserve account provide that the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

- (a) Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) Company shall create Debenture Redemption Reserve equivalent to at least 50% of the amount raised through the debenture issue before debenture redemption commences.

- (c) Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent of the amount of its debentures maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods:-
- (i) In deposits with any scheduled bank, free from any charge or lien;
 - (ii) In unencumbered securities of the Central Government or of any State Government;
 - (iii) In unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of Section 20 of the Indian Trusts Act, 1882;
 - (iv) In unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trusts Act, 1882.

The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above, provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on 31st day of March of that year.

- (d) In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) The amount credited to the Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.

Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon (This sub-section not notified)

Share Capital and Debentures

A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Penal Provisions: If any default is made in complying with the order of the Tribunal, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both (This subsection not notified).