**UNIT 4: Share Capital and Debenture**

Semester- II (UG)

Subject- Company Law

Topic-Voting Rights, Calls, Forfeiture &Reissuance of Shares

By- Dr. Sushita Chakraborty

Lecture no-2

**VOTING RIGHTS**

Section 47 of the Act provides that 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 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 member of a company limited by shares and holding preference share capital, shall have a right to vote only on

* Resolutions placed before the company which directly affect the rights attached to his preference shares.
* Any resolution for the winding up of the company
* For the repayment or reduction of its share capital. Voting right of holder of preference share capital shall be in proportion to his share in the paid-up preference share capital of the company. 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. Preference shareholders are entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such class of preference shares are in arrears for a period of two years or more.

**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.

**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.

(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 allotee 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 or before which the payment required by the notice is to be made.

(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.

(iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**34**. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified. According to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the issuer company needs to call all the outstanding subscription money within one year of allotment and if any allotee fails to pay the call money within the 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. The company derives its authority to forfeit shares through the Articles. Where the articles provide for forfeiture of shares with respect to manner of forfeiting shares, the company must comply with the same or else forfeiture shall be void.

**REISSUANCE OF SHARES**

Shares forfeited by a company may either be cancelled or reissued to another person at the discretion of the Board. Reissue of forfeited shares is a sale of shares and it does not amount to an allotment.

According to Secretarial Standard on Forfeiture of Shares the directors would fix a price for the forfeited share that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture.

In the case of a company whose shares are listed in a recognized stock exchange, re-issue of forfeited shares shall be as per Guidelines for Preferential Issue of the Securities and Exchange Board of India and the listing agreement.

**Reference:**

1. “ **Share Capital and Debentures**”, Companies Act 2013 published by **The Institute of Company Secretaries of India.**