

An Analysis on the "Issue and Redemption Of Preference Shares"

navneet k. arora & co.
COMPANY SECRETARIES

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Proprietor 's Profile at a Glance

Navneet K. Arora & Co., Company Secretaries

BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3rd March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21st July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20th November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

An overview- Issue and Redemption Of Preference Shares

- Preference Shares are shares which have preference over Equity shares for payment of dividend or return of capital.
- Preference shares allow an investor to own a stake in the issuing company with a condition that whenever the company decides to pay dividends, the holders of the preference shares will be the first to be paid.
- Dividend payment of the preference shareholders is fixed and if somehow company liquefies, the owners of the preference shares will be the first one to get their money back after the company has paid back its debt.
- Preference shares also have a right to participate or in part in excess profits left after been paid to equity shares, or has a right to participate in the premium at the time of redemption. But these shares do not carry voting rights.
- There are different kind of preference shares available, such as cumulative and non cumulative preference shares, redeemable and non-redeemable preference shares, convertible and non-convertible preference shares, participating and non participating preference shares.

Issue and Redemption Of Preference Shares

❖ **Extract of the relevant provisions prescribed in Section 55 of the Companies Act, 2013 as under:-**

Section 55. (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.

(2) A company limited by shares may, if so authorized 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 subject to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders:

Provided further that—

(a) 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;

(b) no such shares shall be redeemed unless they are fully paid;

(c) 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 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; and

Issue and Redemption Of Preference Shares

(d) (i) 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:

Provided also that 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.

(ii) in a case not falling under sub-clause (i) above, 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.

(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:

Issue and Redemption Of Preference Shares

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.

(4) The capital redemption reserve account may, notwithstanding anything in this section, 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.

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Issue and Redemption Of Preference Shares

❖ **Relevant Rules / Procedure in the Companies (Share Capital and Debentures) Rules, 2014 as under:-**

(1) A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions, namely:-

- (a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company,
- (b) the company, at the time of such issue of preference shares, has no 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.

(2) A company issuing preference shares shall set out in the resolution, particulars in respect of the following matters relating to such shares, namely:-

- (a) the priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
- (b) the participation in surplus fund;
- (c) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
- (d) the payment of dividend on cumulative or non-cumulative basis.
- (e) the conversion of preference shares into equity shares.
- (f) the voting rights;
- (g) the redemption of preference shares.

Issue and Redemption Of Preference Shares

- (3) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall, inter-alia, provide the complete material facts concerned with and relevant to the issue of such shares, including-
- (a) the size of the issue and number of preference shares to be issued and nominal value of each share;
 - (b) the nature of such shares i.e. cumulative or non - cumulative, participating or non - participating , convertible or non - convertible
 - (c) the objectives of the issue;
 - (d) the manner of issue of shares;
 - (e) the price at which such shares are proposed to be issued;
 - (f) the basis on which the price has been arrived at;
 - (g) the terms of issue, including terms and rate of dividend on each share, etc.;
 - (h) the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
 - (i) the manner and modes of redemption;
 - (j) the current shareholding pattern of the company;
 - (k) the expected dilution in equity share capital upon conversion of preference shares.
- (4) Where a Company issues preference shares, the Register of Members maintained under section 88 shall contain the particulars in respect of such preference share holder(s).

Issue and Redemption Of Preference Shares

- (5) A Company intending to list its preference shares on a recognized stock exchange shall issue such shares in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.
- (6) A Company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-
- (a) at a fixed time or on the happening of a particular event;
 - (b) any time at the company's option; or
 - (c) any time at the shareholder's option.

Issue And Redemption Of Preference Shares By Company In Infrastructural Projects

- ❑ A Company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

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Instrument Of Transfer

- ❑ 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 not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.
- ❑ 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.

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Thanking you

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