# Shares, Debentures; Transfer and Transmission

Subject – 1.2.5. Law of Investment and Foreign Exchange

For M.A. (Corporate Law) & Adv. Diploma (Corporate Law)

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# Share and Share Capital

- The capital of company is divided in a number of indivisible units of fixed amount.
- What is Share Capital?
  - Authorised Capital
  - Issued Capital
  - Subscribed Capital
  - Paid-up Capital

# Share – Meaning and Nature

- SC in CIT v Standard Vacuum Oil
  - "…a share in a company is meant not any sum of money but an interest measured by the sum of money and made up of diverse rights conferred on its holders by the articles of the company which constitute a contract between him and the company."
- It is an interest measured by a sum of money for the purpose of liability and also for mutual covenants.
- It is regarded as goods under the Sale of Goods Act, 1930
- Share Certificate?
- Shree Gopal Paper Mills Ltd v CIT

# Share – Stock

- Stock is the aggregate of fully paid-up shares of a member merged into one fund of equal value.
- A set of shares put together in a bundle.
- Differences
  - Nominal Value
  - Distinctive Number
  - Direct/Original
  - Partly Paid?
  - Transfer in fractions
  - Denomination

# Share – Types

- Equity
  - With Voting
  - With Differential Rights
- Preference
  - Participating and Non-Participating
  - Cumulative and Non-Cumulative
  - Redeemable and Irredeemable
  - Convertible and Non-Convertible

# Debenture

Section 2 (30)
No legal definition ?
Loan
Rights?

# Debenture - Types

- Redeemable and Irredeemable
- Convertible
  - FCD
  - NCD
  - PCD
  - CCD?
- Bearer

# Transfer -Restriction on Transfer - Refusal to Register

- Section 56
- Private Company – By definition can have restrictions.
- Pre-emptive right
- Section 58
- Public Company ? [S.58(2)]
- Remedy – Tribunal
- What should the Tribunal consider?
  - When can it Interfere?

# Based on Delavenne v Broadhurst

- Ting-toe is a member in a private company, Dongji. The AoA of Dongji contained a provision which permitted the member to transfer the shares to outsider only if no existing member accept them at face-value. After failing to find any internal buyer, Ting-toe sold his shares to Hinamiko.
- When the share transfer form is sent along with the necessary documents, the BoD refused to register the transfer.
- Ting-toe approached the Tribunal
- What should the tribunal do?

# Based on Smith and Fawcett Ltd.

- Kilory Pvt. Ltd issued its share capital equally to its two directors. The AoA contained the following:
- *‘The directors may at any time in their absolute and uncontrolled discretion refuse to register any transfer of shares.’*
- When one director died his son, Mr. Aligory, tried to get the shares bequeathed registered in his name. The other director refused to register the transfer unless some shares are sold to him. He wanted to have a dominating position.
- Aligory approached the tribunal.

# Grounds for Interference

- Mala fide Refusal
- Inadequacy of Reasons
- Irrelevant Consideration

# Inherent Powers?

- No. The directors have no inherent powers to refuse.
- Discretion does not mean a bare affirmation or negation of a proposal.
- It implies just and proper consideration of the proposal in the facts and circumstances of the case.
- Directors will (should) act for the paramount interest of the company.
- Need bona-fide and not arbitrary actions.
- Not even any collateral purposes.

# Three Significant Aspects

- Whether the directors acted in the interests of the company?
- Whether they acted on wrong principle?
- Whether they acted with an oblique motive?