<u>Calls, forfeiture and re-issuance of shares</u>

CALLS

Board Meeting resolution is required for raising calls

A company issuing shares to its members calls the money due on shares at intervals depending upon the funds requirements for implementing the project, whereas the shareholders also prefer to pay the amount on their shares in installments.

As per **Section 292(1)(*a*)** power to make calls is a general power of board and exercised by the Board in its meeting by means of a 'resolution'. The Board, in making a call, must observe the provisions of the articles, otherwise the call will be invalid, and the shareholder is not bound to pay. A call is a demand upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. The balance may be payable as and when called for in one or more calls. The prospectus and the articles of a company generally specify the amount payable at different times, as call(s).

A call may also be made by the liquidator in the course of winding up of the company.

CALL IS A DEBT DUE TO THE COMPANY

Under section 36(2) of the Act all moneys payable by any member to the company on the shares held by him under the memorandum or articles is a debt due from him to the company. In the event of default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares if the call is not paid. The liability of members is enforceable only after a proper notice which is called 'call letter' is given to him in accordance with the articles.

PRE CONDITIONS OF A NOTICE FOR PAYMENT OF CALLS

A proper notice must be given, and the notice must specify the amount called up, the date for payment and place and to whom it is to be paid. It may be emphasised that the time and place at which the call has to be paid are essential ingredients of a valid call. Apart from this rule, "in making call, care must be taken that the directors making it are duly appointed and qualified, the meeting of the directors has been duly convened, proper quorum was present, and that the resolution making the call was duly passed and specifies the amount of the call, the time and place of payment. A proper resolution must be passed at a meeting of the Board. Moreover, the call must be made uniformly on all shares relating to the same class.

The Board resolution must state the amount, time and place of payment. Otherwise, the resolution will be defective and the call will be invalid.

In a decided case the directors of the company decided to make call and passed two resolutions therefor. None of the resolutions specified the date and time of payment. The blanks were filled subsequently by the secretary who sent the notice. The call notice was held to be invalid.

A call notice which does not specify time of payment is not valid but in case of directors who were present in meeting where resolution for call was adopted, plea of want of notice is not available.

The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of the directors, the call will be invalid.

Call on same class of shares must be made on uniform basis

According to section 91 of the Companies Act, calls on same class of shares must be made on a uniform basis. Hence a call cannot be made only on some of the members unless they constitute a separate class. In other words there cannot be any discrimination between shareholders of the same class as regards amount and time of repayment of call.

Usually, articles of association of companies provides for the manner in which calls should be made. They follow the pattern set out in regulations 13 to 18 of Table A of Schedule I appended to the Companies Act, 1956.

Pre conditions for valid calls

While making calls the following basic requirements must be satisfied:—

(*i*) For each call at least 14 days' notice must be given to members.

(*ii*) Stock exchange(s) shall be advised of the proposal at least 2 days before the Board Meeting. The Stock Exchange(s) normally stipulates that no call shall be made payable within one month after the last call was made but not later than one year from the date of the issue.

(*iii*) An interval of thirty days is required between two successive calls and not more than twenty five per cent of the nominal value of shares can be called at one time. However, companies may have their own articles and raise the limit.

(*iv*) The Board of directors has the power to revoke or postpone a call after it is made.

(*v*) Provision for payment of call in installments can be made only by a resolution of Board.

(*vi*) Joint shareholders are jointly and severally liable for payment of calls.

(*vii*) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue. The directors are free to waive the payment of interest.

(*viii*) If, any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the articles.

(*ix*) A defaulting member will not have any voting right till call money is paid by him.

Receipt of payment in advance of calls

Section 92 of the Act provides that the directors may, if authorised by the articles, allow shareholders to pay up the amount in whole or in part if due on their shares before any call has been made, and may pay interest on the amount so paid in advance of calls.

Where the interest is agreed to be paid, it may be paid out of the capital, if profits are not available. The amount so paid is not refundable except, in winding up and such shareholders rank after creditors in respect of the advance, but in priority to the other shareholders.

The effect of the payment in advance of calls is that the shareholder's liability in respect of the calls or call is extinguished. But they will not be entitled to any voting right in respect of the moneys paid in advance of the calls. When, however, the calls are made and these moneys become presently payable, they will acquire the voting right.

The rate of interest permitted by the articles on such advance payment of calls is 6%. But it can be varied by the shareholders in general meeting.

Procedural steps for making calls on shares and calls in advance

(*a*) The proposal will be considered at a duly convened and properly constituted Board meeting.

(*b*) Resolution shall also be passed relating to bank accounts. A special call account may be opened for this purpose.

(*c*) The Board shall approve draft Call Letter. In case of listed companies, the call letter shall be approved by stock exchanges.

(*d*) Closure of register of members will be decided upon; otherwise a record date will be fixed and publish a notice under section 154 in that regard in the newspaper.

(*e*) If the shares are listed, particulars of the call shall be advised to the stock exchange immediately after the Board meeting.

(*f*) A call list will be prepared giving the following particulars:—

(*i*) No. of call letter.

(*ii*) Folio in register.

(*iii*) Name and address of member.

(*iv*) No. of shares.

(*v*) Total amount payable.

(*vi*) Date paid.

(*vii*) Remarks.

(*g*) The call letters shall be printed. They will have form of receipt to be signed by the bankers for delivery to members and acknowledgement for transmission to the company.

(*h*) The call letters shall be numbered consecutively.

(*i*) The call letters will be completed and posted to the members either by registered post or under certificate of posting. It may be noted that only registered holders may be made liable for the money due.

(*j*) Three copies of call notice will be sent to the stock exchange concerned at the same time as it is sent to members.

(*k*) Proper revenue stamps shall be affixed on the call letter.

(*l*) Once the call becomes payable, transfer of shares on which calls have not been paid should be temporarily withheld.

(*m*) The list and acknowledgements received from the company's bankers will be checked and particulars thereof entered in the call list.

FORFEITURE OF SHARES

Shares may be forfeited if call is not paid within the stipulated time

If a member fails to pay a valid call within the stipulated time, the company may sue him for recovery of the amount of the call after waiting for a reasonable period. But articles often provide for forfeiture of shares for non-payment of any call or installment of a call. Thus shares can be forfeited for non-payment of any call or installment of a call if and only if special and clear power in the articles is given to the directors to do so.

Where shares were forfeited for default in paying calls but, subsequently, these calls were proved to have been invalid, it was held that the forfeiture was entirely *ultra vires,* the directors and the company was not estopped from relying on the *ultra vires* nature of the act, and showing they had no power to do what they purported to do. Unless the articles of a company regulating calls on shares and forfeiture for default to pay the calls are strictly complied with, the acts of the directors will not be binding on the members as they are in the nature of penal provisions.

A forfeiture by a resolution passed at a meeting of the Board of directors at which proper quorum was not present would be invalid. But where one of the articles of a company provided that the directors of the company could increase the number of directors or could summon a general meeting of the company only if their member was at least three, but another article provided that the quorum necessary for the transaction of the business of directors shall be two, it was held that the forfeiture of shares declared by a meeting of two directors was valid.

A forfeiture of shares for non-payment of calls ought not to be lightly favored by the courts and a party aggrieved by it is entitled to rely on technicality of rule or regulation to invalidate it.

Article authorisation is necessary for forfeiture of shares

Where power is given in the articles, it must be exercised strictly in accordance with the regulations regarding notice, procedure and manner stated therein, otherwise the forfeiture will be void. The provisions of Table 'A' regarding forfeiture of shares are as under:

Regulation 29 provides that if a member fails to pay any call, or installment 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 installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

Regulation 30 state that the notice aforesaid shall specify 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 and should 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 will be liable to be forfeited.

Regulation 31 states that 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.

Regulation 32 says that a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. At any time before a sale or disposal as aforesaid, the Board may cancel by forfeiture on such terms as it thinks fit.

Regulation 33 provides that 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 moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

Further that the liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Regulation 34 provides that 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. The company may receive the consideration, if any, given for the share on any sale or disposal thereof.

The transferee shall thereupon be registered as the holder of the share. 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.

Regulation 35 provides that 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.

Circumstances in which Forfeiture of shares cannot be made

It was held in *Naresh Chandra Sanyal* v *Calcutta Stock Exchange Association Ltd*. (1971) that shares can be forfeited only of non-payment of calls and not for any other debt due from a member. Non-payment of calls is not the only reason for which shares can be forfeited; a company by its articles may provide for other grounds also.

Forfeiture can be effected by a Board resolution

Forfeiture will be effected by means of a Board resolution. Notice precedent to forfeiture must be given to the defaulting shareholder. In the matter of forfeiture of shares, provisions must be strictly observed.

It was held by the Supreme Court in *Public Passengers Service Ltd.* v *Khadar* 1966 the defect in the notice, though slight, invalidates it and is fatal to the forfeiture".

Intimation for forfeiture of shares

Further, articles generally provide that after the shares have been forfeited, an intimation is sent to the shareholder concerned and for sufficient reasons, the forfeiture may be annulled at the discretion of the Board of directors.

Forfeiture must be in the interest of a company

The power of forfeiture must be exercised *bona fide* and in the interest of the company. It should not be collusive or fraudulent.

Is cancellation of forfeiture possible?

In case defaulting shareholder approaches after forfeiture to cancel the forfeiture, the Board has been empowered to cancel such a forfeiture and claim due amount with interest.

Once forfeiture has been enforced, the contract between the company and the member comes to an end; there can be no subsequent recession of forfeiture without the shareholder's consent.

Original shareholders shall be liable for unpaid calls

If the articles so provide, the original shareholder shall remain liable for payment of unpaid calls for a period of three years from the date of forfeiture. However, a company cannot recover from him more than the difference between the amount payable and the amount received on forfeited shares.

Meanwhile the original shareholder may be discharged from all liability on the share, except that he will be put on the 'B' list in the event of the company going into liquidation within one year of the cessation of his membership. Articles, usually provide that where a share has been forfeited the member shall be liable for payment of the call, and this created a new obligation, he can be sued as an ordinary debtor.

Forfeited shares becomes property of a company

Forfeited shares become the property of the company, to this extent forfeiture involves a reduction in the paid-up capital till the shares are re-issued. Normally, therefore, companies re-issue them.

Re-Issue of Forfeited Shares

Where a company had lien on fully paid shares belonging to the deceased shareholder, it is obligatory on the company to give notice of its sale to the legal representative of the deceased shareholder, but if this is not done the sale would nevertheless be a valid sale.

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. Generally, such shares are re-issued at a discount which cannot exceed the amount already paid on such shares provided that the total of the sum paid by the original owner of the shares together with the re-issue price is not less than the par value. This is done by a Board resolution.

Surrender of Shares

The Companies Act, 1956 makes no provisions for surrender of shares. A company cannot accept surrender of shares and a shareholder who surrenders shares continues to be a member and a contributory.

It was held in *Naraindas Lahoredas, In re* (1934) that there can be no valid surrender of shares that are not fully paid.

Mere handing over of share certificates cannot constitute surrender of shares and a surrender of shares can be made if the articles give the directors power to accept a surrender of shares.