

# Prospectus II

## Issue of Securities at a Premium

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities. Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account”

# Utilisation of Securities premium

In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

- (a) issuing fully paid bonus shares to members;
- (b) writing off the balance of the preliminary expenses of the company;
- (c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- (d) for the purchase of its own shares or other securities under section 68

# PROHIBITION TO ISSUE THE SHARES AT DISCOUNT

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

A company may issue shares at a discount to its creditors when its debt is converted into shares

Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued

## Issue of sweat equity shares

Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

- (a) the issue is authorised by a special resolution passed by the company;
- (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

# CONCEPT OF ALLOTMENT OF SECURITIES

Section 39 of Companies Act, 2013 deals with Allotment of Securities.

- 1) Allotment of any securities of a company offered to the public for subscription shall be made only when the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument
- 2) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment, within thirty days thereafter

3) Alongwith Form PAS-3 a certified list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees, shall be attached

4) The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security.

In cases where the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the SEBI, the amount received as above shall be returned. The application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum