pen ACCLAIMS

Volume 29, December 2023 ISSN 2581-5504

"Laws in Relation to Securities, Shares, and Debenture in Corporate India"

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Abstract

In India the relating to the security, share, and debentures is a movable property of the company in which people have invested. These are mostly transferable in nature to the other member. The share is one of important source of the company to raise the finance in the market. The member who hold share in the company are called shareholder in the company. The debenture is the instrument which is mostly used to raise the loan capital in the company. The person who hold the debenture are called Debenture- Holder. Share has been defined in 2(84) of the company act, 2013. Under sec 45 of the act it is clearly said that all the share are to be distinguished by the appropriate number. Law relating to the security are given in the Security contract (regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and Depositories Act, 1996. If we talk about debenture it is derived from the Latin word 'Debree' which means 'to borrow'. Section 2(30) of companies act, 2013 has defined the debenture as the company stock, bonds, and any other asset of the company which the company can use to raise the loan. The law relating to all the three instrument are very much clear and codified under Indian Law.

Keywords- Share, Security, Bonds, Debenture, Company Act, 2013

Introduction

The law relating to the share, security and debenture in India is very much codified and clear. If there is any dispute relating to the any instrument the tribunal and court look into the matter provide the proper justice. In the case of "Commissioner of Income Tax v/s Standard Vacuum Oil Company" says that the share which is hold by the share holder is not just for raising financial matter but also for the propose of knowing the amount of interest in the company. The share is also to measure the responsibility of the shareholder in the company. The Security and Exchange Board of India is responsible to look after the company who provide there security to the people. If there is a dispute relating to the security of the company then SEBI provision are to be dealt. Debenture are particularly the instrument which is issued by the company when company need to raise large amount of loan then the company issue the debenture which is given to the public and public get some amount of stock in the company.

The law relating to all of the above matter is followed by the company if not the person whose right has been violate can file a suit against the company. It is very important to make law relating to the companies because the companies are the developing hand of the country and it is the duty of the country to organize the legal process of the company so that the company can follow the norms and regulation and no violation shall be done on behalf of the company. And if there is a void situation then the company has to be dealt with the legal procedure of the act. By making this the India has made the working of company very smooth procedure. Corporate law are basically the law which governor the right, conduct of companies, organization, relations and businesses. The starting of the era relating to the company law was traced by with the British time period. In year 1844 the English Companies Act was made and which was the inspiration for the British legislation to make law relating to company in India and the law codified in the year 1850 for the registration of joint stock companies. After it in the year 1866 another law on company's regulation was codified. In the year 1882 there was amended made in the law made in 1866.

After in 1913 the new law was codified and was in working till the time period of 1956. After it the committee was made in the 1950 as India attended the independence in the committee the head was HC Bhabha. On the upbringing of the committee the new act was formed in the year 1956. The act contain total section 658 and 14 was total number of schedule.

At the present time the act of 2013 is working on the company's law, rules, regulation, relation. Present act is containing total section 470, chapter 29, and 7 schedules. The people who hold the debenture are called Debenture- Holder. Share has been defined in 2(84) of the company act, 2013. Under sec 45 of the act it is clearly said that all the share are to be distinguished by the appropriate number. Law relating to the security are given in the Security contract (regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and Depositories Act, 1996. If we talk about debenture it is derived from the Latin word 'Debree' which means 'to borrow'. Section 2(30) of Companies act, 2013 has defined the debenture "as the company stock, bonds, and any other asset of the company which the company can use to raise the loan."[1] The law relating to all the three instrument are very much clear and codified under Indian Law.

According to chief Justice Marshall, "A company is a person artificial, visible, intangible and existing only in the eye of law. Being a mere creation of law, it possesses only the properties which the charter of its creation confers upon either expressly or as incidental to its very existence."

The company issues the debenture when it realises it needs a sizable amount of financing; after that, investors buy stock in the company. The company raises capital by issuing the debentures.

The term "security" refers to a group of financial instruments, such as stocks, bonds, and other securities. It is crucial to the growth of the nation's economy, which makes it very significant. Every type of investor, including individuals, businesses, and governments, can make an

[1] Companies Act, 2013, available at: www.mca.gov.in

investment in securities. In order to prevent any improper functioning, the law was created to regulate it properly. Additionally, the security market investors are protected.

Laws Relating to Share

The word share has been defined under section 2(84) of the Companies Act, 2013 which in basic sense means that share is the capital of the company which is given to the public and the person who hold the share is called the shareholder[2]. The share also include the stock. The stock is share until it is clearly mention in the express or implied ways. Companies Act, 2013 is chapter 4 dealing with the shares. Section 43 to 72 are deal with share capital and debenture.

Kinds of Share

There are two type of the share in the company's act which is mentioned under section 43.

- Preference Share Capital

This is a type of capital which any company has made limited by the share. In a simple means the share which is issued by the company is limited to the part which is issued and the rate of payment of the dividend is fixed.

- Equity Share Capital

The equity share is the reference to the company which are limited by share. It's the kind of share which is not preference share of the company. The equity share has following feature which are-

- That the person who have the equity share has the right to votes.
- The person who is having the equity right has the different right from the prefenerce share holder they have dividend right, right to vote, and many other which time to time is recommended by the rule and regulation.

Certificate Issued for the Share Holder

The certification is issued by the company. The share certificate is issued under section 46 of the Companies Act. The certificate which is issued shall contain the seal of the company and if needed then signature of two director is done and if not then one director and the secretary of the company. The certificate shall also have the specification about the share because it is the prima facie evidence which is given in case of any type of dispute.

In case of the fact that the original certificate which was issued has been destroyed or has been lost by the person without any negligence on his part then the new duplicate certificate shall be

[2] Definition of Shareholders under Companies Act, 2013, available at: www.mca.gov.in

issued to that person. And if the certificate has been torn or defaced then the original shall be surrendered by the person in company then the duplicate certificate will be issued.

If the share which is in depositary form then the company shall mention it in the certificate so that it can become the evidence for the proof in case of any type of dispute.

- **Voting Right Given to the Share Holder**

The voting right which is given to the share holder is given under section 47 of the Companies Act, 2013. Has we have talk about the fact that the voting is given to the person who is having Equity Share in the company, they have right to vote in case of every resolution which is passed by the company. The Preference Share holder does not have voting right in general but in case of the resolution can be passed by the company the share holder of preference share get the right to vote.

- **Punishment for the Personation of Shareholder**

It is given in Section 57 tries to personate as owner of the share which he does not hold it then the person shall be punished with the imprisonment of not less then one year which can be increased to 3 year and the fine rupees one lakh to five lakh rupees.[3]

Law Relating to Security

The security is referred to the word which include the stock, bonds, and other financial object. It is very important because it has the role of development of economic condition of the country. The security is the type of financial investment in the all type can invest which include the individual, companies and government. The law was made to regulate it in the proper manner so that no improper functioning shall be done. And the protection to the people who invest in the market of security.

Under section 2 of Security Control Regulation Act, 1956 the security include 'share, scrips, bonds, stock, debenture stock, debenture and many other investment security.'[4]

Reason for Regulation of Security

There are many factors which a person can give for what reason there shall be the set of rules and regulation for the security.

[3] Chapter IV- The Companies act, 2013, available at: www.ibclaw.in
[4] Securities contracts (Regulation Act), 1956 available at: www.sebi.gov.in

- **To Avoid the Fraud**

The one of the main reason for the regulation in security market is that there shall be no fraud in case of buying or selling of the security. Proper details of the security shall be given to the holder. And there shall be clear transparency in the market and fair insurance of investment.

- **Prevent Market Manipulation**

The market shall be regulated in such a manner so that there shall no manipulation in case of investment in the security. The market of security should maintain the integrity so that there shall on illegal activity in the market.

- **Access to Capital**

The capital generation in the market by giving the investor stable and mannerly market. It also encourage the investor to invest in market and create the huge market and the capital shall be raise in huge amount.

- **Confidence in Market**

The confidence of investor in the market shall be brought so that the investment can be done. The law on the regulations make the market of the securities very much stable for the development of the economy. The companies should also have the regulation for managing the procedure for the investment in the company.

- **Ensuring the Investor**

The rule should be made in such a fact that the law relating to the development of the fair market for the investor to summit the fund. The proper and fair regulation will help to create the balance environment of the market of security and all the investor get the proper protection by the law which is made by the government for the safeguard.

Laws Which are Related to Regulate Security in India[5]

There some specific law on the management of security market. This law regulate each and every work of the security.

- **Securities and Exchange Board of India**

The SEBI was made in the year 1988 it was the non- statutory body for the purpose of regulating the security which prevail in India. After four year SEBI has become the autonomous body and was given the status of statutory body by the parliament. This all happen in the year 1992.

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[5] Ibid

The main function of the SEBI is to govern the function of market of security. It was made to bring the balance in the market and does not create any hassle in the market. The law was made to protect the public whose money is invested in the companies. The company has to make the proper law and regulation and has to all the step for the development of the economy. The law was the protector of the investor who invest money. The SEBI manage all the function that take place in the security market.

- **Security Contract (Regulation) Act, 1956**

It was made in the year 1957 by asset of the parliament of India. The law in this act was basically made for the avoidance of the extra and undesirable transaction in security market. It also provide the protection to the member who have invested in the market of security and want there money to be secure. The law was basically for the government service person who have work hard for the government. This act also look after the fact that there are certain point which the company has to disclose in the market. This are the material fact which a person require to know before investment.

- **Depositories Act**

This law was made for the regulation of work of the person who are intermeddle between the company and investor. This act was made to look after the smooth working of holding and trading in security market in India.

- **Prevention of Money Laundering Act**

The law was codified in the year 2005. The object of the act was to make the prevention of money. The act was inspired by the general assembly of United Nation. It was brought into the consideration of United Nation in the political declaration of year 1998. In which the member state of the Unites Nation has to make the law relating to the prevention of money- laundering in the country.

The law which are associate with the security market are made to look after the rules and regulation on which the companies work the inter-meddle do. The law was made to protect the investor who invest in the company for the investing purpose and want their money to be safe and secure.

In case of Manoj Gokulchand Seksaria V/S State of Maharashtra,[6] the apex court held that “the settlement authority must first look after the matter in the proper sense then after quash the petition.”

[6] CR. WRIT PETITION NO. 245 OF 2020

Laws on Debenture

It is the word which find its origin from the latin word "debree" which means 'to borrow'. The debenture are issued by the company at the time when company know that it need a huge some of loan then the company issue debenture and then the people invest in the company. The debentures are issued and the capital is raised by the company.

In the landmark judgment of Bombay High Court, in case of Laxman Bharomji vs emperor, the court said that "the debenture are issued by the company against the raising of loan. The loan which is taken by the company shall made repayment. So the person who have invested in the company are entitled to the repayment of the money and is also entitled to get the interest in the money which was given as the loan to the company."

Under Section 71 of the Companies Act, 2013- "the important clause in which all point relating to debenture is mentioned."

The company which is issuing the debenture shall issue it with the option to convert it into the share. It is the option of the company to do it in wholly or in partly. The debenture which are issued by the company shall not the voting right. The voting right are not given to the person who has taken debenture.

The debenture which are issued by the company if is of secured then all the terms and condition are to be fulfilled by the company as prescribed. A debenture is more important market of finance for the company has it raises the loan for the company in a huge amount. The debenture is an instrument which is issued by the company for the loan and the certificate which is issued to the investor is a prove that the company will repay the amount to the investor with the interest.

The method to issue the debenture is as similar to the issue of share. The debenture are collected by the public on the same valve and sometime on the discount value amd have to paid back on same valve with interest to the investor by the company.

Debenture are considered as the movable property of the company. It is given in the way of issuing the certificate of debt which is issued by the company only. The certificate which is issued shall contain all the important point because it work as the important evidence for the investor. The laws which are made are made to protect the right of investor.

Recommendations

One of the most widely accepted methods of increasing the association's financial resources is the issue of debentures. It is the back's fundamental source of energy. Every association is given the opportunity to obtain their articles, which resolve the best far-reaching reaches of

Volume 29, December 2023 ISSN 2581-5504

borrowings. The Chiefs must drill the ability to earn money and grant debentures (whether inside or outside of India) during a properly organised assembly.

If the association exceeds the whole amount specified in the Articles or does not comply with the authority imposed on it by the Articles, it is a super infection procuring and is thereafter void. An assurance approved by the association's meeting while there is a question cannot be used to support ultra viral borrowings.

If an occurrence of ultra-virulent borrowings were to occur, the lender would have three options for correction:

1. Injunction and Recovery,

2. Subrogation, and

3. Suit against Directors.

A debenture is a document issued by a corporation with its seal as a statement of a commitment to the owner that often arises from credit and is almost always secured by a charge. Debentures come in a variety of forms, including convertible debentures, enrolled and transit debentures, guaranteed and insecure or stripped debentures.

Conclusion

If the company does not adhere to the law in all of the aforementioned matters, the person whose rights have been violated may file a lawsuit against the company. Making laws governing corporations is crucial because they are the engine of a nation's economic growth. As such, it is the responsibility of the state to set up the corporate legal system so that corporations can adhere to rules and regulations and commit no violations on their own. Additionally, if there is a void situation, the company must follow the act's legal process. With the help of this, India has greatly streamlined business operations.

The share is also used to gauge a shareholder's level of involvement in the business. The company that provides security to the public is under the supervision of the Security and Exchange Board of India. If a dispute arises regarding the company's security, SEBI provisions must be followed. Debentures are a special type of instrument that a company will issue when it needs to raise a sizable amount of capital. The public is given a debenture in exchange for a portion of the company's stock. Shareholders are those who own shares, which are the company's capital that is made available to the general public. The stock is also included in the share. The stock is a share until it is expressly or implicitly mentioned. The rules and regulations on which the companies operate in the security market are protected by the laws related to that market. The law was created to protect investors who put money into a business with the intention of making investments and who want their money to be safe and secure.

According to Haney, “A company is an incorporated association, which is an artificial person created by law, having separate entity with a perpetual succession and a common seal.”[7]

Under Section 47 of the 2013 Companies Act, the shareholder is granted the right to vote. As we've discussed, the right to vote is granted to anyone who owns equity shares in the company, and they can exercise that right for any resolution that the business passes. Although the owner of a preference share does not typically have the right to vote, they do so in the event that the company is able to pass a resolution.

[7] Vishnu Raj 2021, Corporate law and business regulation(company), Kannur University available at: www.studocu.com