

Certificate of Shares (Sec 46) [Part-1]

1. Legislative Background

As per the notes to the clause of the Companies Bill, 2011, “this clause corresponds to section 84 of the Companies Act, 1956 and seeks to provide that a certificate issued by a company shall be prima facie evidence of the title of the person to such shares. It provides the manner for issuance of duplicate share certificate and the particulars to be entered in the register of members. If a company issues duplicate shares with an intention to defraud public, penal provisions for fraud would be attracted for such violations.”

Shares defined as a legal document that is issued to show proof of any ownership in a business. [*Black Law Dictionary 9th edition page no. 1500.*] Therefore, in the context of a company, it can be said that a share certificate means a document issued by the company to its member which is an evidence of ownership of shares.

2. Share certificate as Prima Facie Evidence

As per section 46(1) of the Act, a certificate, issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Effective from 29th May 2015, i.e. on or after the commencement of the Companies (Amendment) Act, 2015, the requirement of affixing common seal on the certificate of share is made optional for companies which do not have a common seal as per their articles.

Further, in case the shares are in dematerialized form, the record of the depository shall be treated as the prima facie evidence of the interest of the beneficial owner.

In the case of Satish Chand Sanwalka and Ors. v/s Tinplate Dealers Association (1998)93 Comp Cas 70 CLB, it is quoted by CLB that the petitioners are in possession of the share certificates issued in their name collectively indicating that they are holders of 4,132 partly paid shares. Thus, the first limb of Section 399 [of the Companies Act, 1956] is prima facie established that they are members of the company, notwithstanding their names having been omitted from the register of members. Even though Shri Sarkar contended that, as per Section 164 [of the Companies Act, 1956], the register of members is prima facie evidence of matters contained therein, yet, as per Section 84 [of the Companies Act, 1956], the share certificate is prima facie evidence of title of a

shareholder to the shares indicated therein. We are of the view that, in the normal circumstances, the provisions of both the sections can go together, but, when a dispute arises, the prima facie evidence through share certificates under Section 84 [of the Companies Act, 1956] gets precedence over the prima facie evidence of the register of members under Section 164 [of the Companies Act, 1956], for the reason that the register of members, being under the control of the company, is susceptible to manipulations.

3. Principle of Estoppel

The Principle of Estoppel shall be applicable in case of share certificate. The share certificate once issued by the company is binding on the company in two ways first as estoppel as to title and second as estoppel as to payment. The relevant and famous case of Dixon v. Kennaway & Co. (1900) 1 Ch 833. Once the share certificate is issued in the name of a person, it is a declaration by the company that person named in the share certificate is having valid title on the shares of the company and the company is estopped from denying his title on the shares. Second, as estoppel as to payment, in other words, once the share certificate is issued by a company to any person, it is a valid proof that the amount mentioned in the share certificate has been paid by the owner of the share. *Burkinshaw vs Nicholls* (1877), 3 App. Cas.1004 which decided that where a company issues a certificate to the effect that certain shares were fully paid up, it may be estopped from denying their being paid up as against anyone acting upon such certificate in good faith.

4. Share certificate to be issued after Board Resolution

As per rule 5 of the Companies (Share Capital and Debentures) Rules, 2014, every company having share capital, share certificate can only be issued in pursuance of a resolution passed by the Board i.e. under the express authority of the Board for issue of share certificate and on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares, however, in case the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

Once the issue of share certificate has been authorised by the Board, authority to the directors of the company to sign the same in terms of sub rule 3 of rule 5 of the Companies (Share Capital and Debentures) Rules, 2014, can be given either by the Board or by the committee of the Board.

With respect to proving about the loss of share certificate, the primary responsibility is on the shareholder, whose share certificate has been lost. However, in a disputed case, the Bombay High Court, in *Nafan B.V. Vs SAF*

Yeast Company Pvt Ltd and Ors. [LSI-796-HC-2015-(BOM)], High Court perused Section 84 of Companies Act, 1956 and Articles provisions (relating to 'share certificates'), and observed that no attempts were made by respondent company to ascertain the factum of lost certificate before issuing any duplicate certificates, and concluded that such issuance was a part of design to remove petitioners from company.

5. Format of Share Certificate

Rule 5(2) of the Companies (Share Capital and Debentures) Rules, 2014 share certificate is required to be in Form SH-1. The rule prescribed that such format should be in Form SH-1 or as near thereto.

6. Content of Share Certificate

As per the format of the share certificate i.e. Form SH-1, the following are the contents of the share certificate:

1. On the front of the share certificate

- a. Name of the company;
- b. Corporate identity number;
- c. Address of the registered office;
- d. Nominal value per share;
- e. Amount paid-up per share;
- f. Register Folio Number;
- g. Certificate Number;
- h. Name of the holders (including the joint holders);
- i. Number of share held in words and in number;
- j. Distinctive numbers from to;
- k. Date of issue of share certificate;
- l. Signatory of directors and secretary/any other authorized person;

2. On the reverse of the share certificate

- a. Name of the Transferor;
- b. Name of the Transferee;
- c. Number of shares;
- d. Date of share transfer;
- e. Signature of the authorized signatory

7. Signing of Share Certificate

As per sub-rule 3 of rule 5 of the Companies (Share Capital and Debentures) Rules, 2014, the share certificate is required to be signed as under:

Other than OPC		OPC	
If the company has the common seal	If the company does not have the common seal	If the company has the common seal	If the company does not have the common seal
<p>Option 1:</p> <ul style="list-style-type: none"> Two directors* of the company duly authorized by the Board or the Committee of Board if the committee has been authorized by the board; and the secretary or any person authorized by the board for the purpose 	<p>Option 1:</p> <ul style="list-style-type: none"> Two directors* <p>Option 2 :</p> <ul style="list-style-type: none"> a director and company secretary where the company has appointed a company secretary 	<p>Option 1:</p> <ul style="list-style-type: none"> signed by one director or <p>Option 2:</p> <ul style="list-style-type: none"> a person authorised by the of Directors of the company for the purpose and the Company Secretary, <p>Option 3:</p> <ul style="list-style-type: none"> any other person authorised by the Board 	<p>Option 1:</p> <ul style="list-style-type: none"> signed by one director or <p>Option 2:</p> <ul style="list-style-type: none"> a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, <p>Option 3:</p> <ul style="list-style-type: none"> any other person authorised by the Board

*It is further prescribed that if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole-time director.

8. Signing share certificate by way of facsimile signature

Explanation to Rule 5(3) of the Companies (Share Capital and Debentures) Rules, 2014 provides that a director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed. However, share certificate cannot be signed by means of rubber stamp.

The facility to sign the share certificate by facsimile is available only to directors and not to any other person. The department of company affairs had replied in one of the queries that the directors can avail of the facility of using machine for affixing the signature in accordance with the terms and conditions mentioned in the said Rules. The reason why the secretary also is not permitted to avail the same facility is that there should at least be someone authorised by the board of directors to exercise due check and take responsibility that everything is all right [*Company News & Notes, July 1, 1963 issue*].

It is also provided that the director shall be personally responsible for permitting the affixation of his signature and the safe custody of any machine, equipment or other material used for the purpose.

9. Register of Members to contain the details of share certificate

Rule 5(4) of the Companies (Share Capital and Debentures) Rules, 2014 prescribed that particulars of every share certificate is required to be entered in the Register of Members maintained in accordance with the provisions of section 88 of the act along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

Also refer Satish Chand Sanwalka And Ors. v/s Tinplate Dealers Association (1998) 93 CompCas 70 CLB (supra).

(To be continued...)

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.