Securities Premium Account: Permitted Utilisation under Section 52 of the Companies Act, 2013

In corporate law, a company may issue shares at a price higher than their nominal or face value. The premium generally represents the value of the company above its nominal/face value. Face value is simply the nominal value assigned to the share; it does not necessarily represent the actual economic value of the share. For Eg. Strong business/profits, Significant assets, Valuable intellectual property/brand, Established market position and customer base.

Accordingly, the issue of shares at a premium enables the company to raise capital at a price that may more closely reflect the underlying value and prospects of the business, rather than merely its nominal share value.

What is Securities Premium?

From a legal and accounting perspective, the amount received by a company in excess of the face value of its shares is recognized as securities premium. For instance, where a share having a face value of ₹10 is issued at ₹15, the amount of ₹5 received over and above the face value constitutes the securities premium.

The securities premium is credited to the Securities Premium Account and is subject to specific statutory provisions governing its utilization. Under Section 52 of the Companies Act, 2013, the amount standing to the credit of the Securities Premium Account may be utilized only for the purposes specifically permitted under the Act.

In accordance with the applicable provisions of the Companies Act 2013, the amount lying in the Securities Premium Account may be utilized for the purposes stated below:

1. Issue of Fully Paid Bonus Shares

The Securities Premium Account may be utilised for the issue of fully paid-up bonus shares to the members of the company.

Bonus shares represent additional shares issued to existing members without requiring any further payment from them. In this context, the amount standing to the credit of the Securities Premium Account may be capitalised for the purpose of issuing fully paid-up bonus shares, subject to compliance with the applicable provisions governing the issue of bonus shares.

Such utilisation effectively converts an amount forming part of the company's capital reserves into paid-up share capital through the issue of bonus shares.

2. Writing off Preliminary Expenses

The Securities Premium Account may also be utilised for writing off certain preliminary expenses incurred by the company.

Preliminary expenses may arise in connection with the incorporation and establishment of a company and may include expenses such as registration fees, legal charges, stamp duty and other costs associated with setting up the corporate entity.

The utilisation of securities premium for this purpose is, however, subject to the applicable statutory conditions and accounting requirements. Accordingly, the mere availability of a balance in the Securities Premium Account does not, by itself, permit unrestricted adjustment of any expenditure against such account.

3. Writing off Certain Commission, Discount or Expenses

The Securities Premium Account may further be utilised for writing off certain costs and expenses associated with the issue of securities, including:

- commission paid on the issue of shares;
- commission paid on the issue of debentures; and
- discount allowed on the issue of shares or debentures.

This provides a statutory mechanism for adjusting certain issue-related costs against the securities premium generated from securities issued by the company.

4. Providing for Premium Payable on Redemption

Where a company is required to pay a premium upon the redemption of redeemable preference shares or debentures, the Securities Premium Account may be utilised for providing for such premium, subject to the applicable statutory requirements.

This provision assumes significance where the terms of issue of the securities require the company to redeem them at an amount exceeding their nominal value. The Securities Premium Account may, in such circumstances, serve as a source for providing for the premium payable on redemption.

The utilisation, however, must be undertaken in accordance with the terms of issue of the securities and the applicable provisions of the Companies Act, 2013.

5. Buy-Back of Shares or Other Securities

The Securities Premium Account may also be utilised in connection with the buy-back of the company's own shares or other specified securities, in accordance with the provisions of Section 68 of the Companies Act, 2013.

It is important to appreciate that the availability of securities premium does not, in itself, confer an unconditional right upon a company to undertake a buy-back. The company is required to independently comply with the conditions, limitations, procedural requirements and other applicable provisions governing buy-back under the Companies Act, 2013 and the rules made thereunder.

Accordingly, utilisation of securities premium for a buy-back must be considered in conjunction with the overall statutory framework applicable to the proposed buy-back transaction.

Consequences of Improper Utilization

The securities premium is subject to statutory restrictions. Accordingly, an unauthorized utilization may result in non-compliance with the Companies Act, 2013 and could expose the company and the persons responsible to consequences prescribed under the applicable provisions of the law.

Depending on the nature of the violation, the consequences may include statutory penalties, regulatory action and other legal consequences. The precise consequence will depend on the provision breached and the facts and circumstances of the particular case.

It is therefore important for companies to ensure that any proposed utilization of securities premium is reviewed before the transaction is undertaken, rather than attempting to regularize an improper utilization afterward.

Conclusion

The Securities Premium Account, as governed by Section 52 of the Companies Act, 2013, plays a vital role in maintaining the capital structure and financial discipline of a company. Since the amount collected as premium is treated as a capital receipt rather than trading profit, the law restricts its use to specific purposes such as issuing bonus shares, writing off preliminary expenses, providing premium on redemption of preference shares or debentures, and facilitating buy-back of securities. Any utilization beyond these permitted purposes must follow the stringent procedure applicable to reduction of share capital, thereby safeguarding the interests of shareholders and creditors. Thus, the Securities Premium Account not only ensures transparency and accountability in the company's financial dealings but also upholds the fundamental principle of capital maintenance that underlies corporate law.