

How Preference shares capital form part of Net worth, within statutory prescription of Companies Act, 2013?

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Net worth of a company is the value of the assets a company owns, minus the liabilities they owe. It is an important metric to gauge a company's health and value, providing a useful snapshot of its current financial position. The concept of Network becomes more relevant in ascertaining transactional values in an amalgamation, specifically when one has to arrive at the swap ratios.

But, whether the Preference shares form part of Network, is an issue that gains relevance whenever one has to ascertain a company's Network for the purpose of any transaction whatsoever. In this Article we will see the manner in which the Companies Act, 2013 included convertible Preference shares into Network.

The Section 2(57) of the **Companies Act, 2013**, defines Network as–

*“Network means the aggregate value of the **paid-up share capital** and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;”*

Now, having seen the definition of Network (which stresses upon the term paid-up share capital) let's see how the Section 2(64) of the Companies Act, 2013, defines **paid-up share capital**–

*“means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of **shares** issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;”*

Hence we can say that the Companies Act, neither in 'Network' and nor in 'paid up share capital', specifically excludes 'preference share capital' or includes only 'equity share capital'. The paid up share capital, would mean an amount received as paid-up in respect

of shares issued by the company. The term shares had been defined under Section 2(84) of the Companies Act, 2013, **as**– “*share means a share in the **share capital** of a company and includes stock;*”.

The term ‘total share capital’ had not been defined under the Companies Act, 2013 but, the Central Government had in exercise of the powers conferred under sub clause (ix) of clause (76), sub-clause (iii) of clause (77) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, had made the **Companies (Specification of definitions details) Rules, 2014**. Definitions contained herein are applicable towards all terms under the Act, unless the context otherwise requires. As per Rule 2(1)(r) of the said Rules, Total **Share Capital**, “*means the aggregate of the –*

(a) paid-up equity share capital; and

*(b) convertible **preference share capital**;*”

This rule expressly brings convertible preference share capital within the definition of ‘Share Capital’, and further under the definition of ‘Shares’, ‘paid up share capital’ and the ‘Networth’.

Now interestingly, the Explanation (ii) to section 43 of the Companies Act, 2013 defines the term **Preference Shares as**–“*Preference Share Capital, with reference to any company limited by shares, means that **part of the issued share capital** of the company which carries or would carry a preferential right..*”

As already seen above the paid up share capital is an amount received as paid-up in respect of shares issued by the company. Hence, in this manner as well the Preference share Capital (**whether convertible or not**) is part of Paid up Share Capital and hence part of Networth of the company.

Going by the above discussed statutory prescription under the Companies Act, 2013, we can say that the Act specifically includes (Rule 2(1)(r) of the Specification of Definitions details Rules, 2014) ‘convertible preference shares’ within the definition of Networth, and inferably includes (Explanation (ii) to section 43) all kinds of preference share capital within the Networth.

Ideally, it had been a practice to safely exclude the preference share capital outside the Networth of the Company, but in existence of these statutory prescriptions under the Act surely in coming time we may see Amendments or specific judicial pronouncements (as to inclusion/exclusion of preference share capital into Networth).

Tags: [Companies Act](#), [Companies Act 2013](#)

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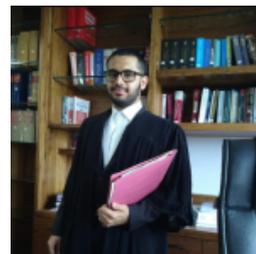
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