BUYBACK OF SHARES - A COMPARATIVE ANALYSIS

Mohammed Fardeen Yusuf*

INTRODUCTION

The concept of buy-back can be understood as a company buying back its shares that have previously been issued, acting as a key to opening the doors of financial instability. The moment a company reissues the shares is to be called a buyback and also the purchase is made again by the company in terms of shares. Now in brief the concept of buyback works as if the company makes an offer to the investors for the reacquiring of the shares at a minimum price which is held by the investors or else those shares that have been acquired by the company in the recent months. It is calculated on the basis of the premium by which more investors are attracted depending on the monetary power of the company indicating the safeguarding of the economic stocks acquired by the company. So it plays an important role by which the company can rely on buyback made on equity in compliance preference shares. This concept of buyback does not require the preference share to be prior redeemed to its acquisition as it is a part of the buyback of shares.

The company tends to have a bulk of excess cash that can also be disbursed among its shareholders by applying this concept of buyback of shares. The company holding the share capital which is included in stocks from which a share is derived, a quarter or the whole share capital is to be mentioned as a share in relation to the part of the shareholder in the company. The share capital gets its recognition only when it is said to be issued by the company which is further acquired by the shareholders as its sole fixed value is with the shareholder[1].

Now the shareholders have their shares upon the subscription made so they can further make no claim over those shares again the only way is to transfer the shares back to acquire the finances back. It is supported by the Companies Act, 2013 in helping the shareholder by which they can realize the money back by the selling of shares, and the process that includes the selling and buying back of shares can be called as buying back of shares.

*BA LLB, FOURTH YEAR, ANDAMAN LAW COLLEGE.
[1] Companies Act 2013, s 2(84)

UNDERSTANDING THE CONCEPT

As stated above, it acts as an economic tool for its implication of purchasing the own shares of the company from the shareholders who acquire it and hence be termed as buying back of shares. The repurchasing of shares by a company includes both equity as well as preference shares. The mode of reversing the issuance of shares by a company can be called a buyback of shares further making an offer to the investors who own the shares at a particular price. The company can buy back its shares under mentioned conditions:

Firstly, when the mentioned exchange on the price of stocks of the company does not reveal the actual profit from shares. Secondly, the accumulation of funds is not possible by the company so it applies the concept of buyback of shares to acquire the finances, and thirdly The promoters are increasing the shareholding of the company by way of promotion

CONDITIONS FOR BUYBACK OF SHARES[2]

Buyback of shares can be made by the company or other specific types of surety assets only when there is a buyback properly authorized according to the articles of the company as bypassing a special resolution in the company in general meeting for further authorizing its buyback. It is said to be less than 10% or less than the total equity from the reserves of the bank which should also be authorized in the resolution passed in the meeting, but it should also be within a limit of 25% or less than the capital from the reserves of the company depending upon its equity in the financial year placing the buy back at a ratio of 2:1 range.

SOURCES FOR BUYBACK OF SHARES

As per the provisions mentioned in the act, the buyback of shares can only be acquired by its free reserves, company premium assets, or shares containing its proceeds or specific assets or securities. The further acquisition of buyback of shares is by the net proceeds of a specific type of issuance of shares but also affects the concept of buyback so it can be used for another kind of security[3].

[2] Companies Act 2013, s 68
[3] Companies Act 2013, s 68(2)

ADVANTAGES OF BUYBACK OF SHARES[4]

The consumption of resources which are in companies having excellent financial resources and hence profitable can utilize the resources and capital to minimize the equity shares.

The Buyback was made upon the upcoming capital market by increasing its value of shares in a bearish market. It will help the company to maintain the market price of its shares.

The rise in the market price as of buyback also leads to a rise in the per-share earnings, which ultimately leads to a high in the share price as of the market leading to the demand for the shares and increasing the stake of promoters in the company.

The excess funds must be made into proper utilization as there are no arising profits for the company given extra capital power. The only way to utilize it is for the welfare of the company by way of disbursing it among the shareholders other than by any means of utilization.

Other advantages include depicting the boost in the number of promoters who acquire shares but are cancelled, disbursement of rewards to the shareholder at a very high price as compared to the market price, and providing safeguards providing by increasing the promoters against a hostile takeover.

RESTRICTIONS TO BUYBACK OF SHARES

The restrictions which act as a watchdog for the company is not liable to get the buyback of mentioned securities by various means which include the subordinate companies with its own subordinate companies, the company misappropriation on the annual returns in matters of dividend and finances, the investment which is made by the company itself or other companies or if there is any misconduct in making payments to the deposits of preference shares, debentures or the paying of dividend.

LAWS FOR THE BUYBACK OF SHARES

It was first introduced in the case of Trevour vs. Whitworth[5] which came to a conclusion by the House of Lords in which Lord Watson made a statement to restrict the companies from the

[4] Amish Kumar, 'BUY-BACK OF SHARES COMPANY LAW 2013'(*Legal Service India)* <https://www.legalserviceindia.com/legal/article-6063-buy-back-of-share-company-law-2013.html> accessed on 14th August 2023

[5] Trevor v Whitworth (1887) 12 App Cas 409

unlimited powers of buying back shares mentioning that if such restrictions are not made then the company will regulate the movement of shares in an irregular manner affecting the actual price of shares in the market. At last, critically affects the shareholders and those who are in the long term depending on public money. It is also stated that a company having limited share capital or a company that has a limited guarantee of acquired share capital can use the power of acquiring back its own company shares unless it affects the dissolving of share capital[6]. It clearly overlaps the previous section which had some changes so it depicts that there was a need to put restrictions upon a company in relation to the usage of unlimited powers of buyback of shares existing since 1956. But it was only limited to the year 1999 when the government passed the Companies (Amendment) Act which once again allowed companies to buy back their own shares with certain conditions inserting several sections in the old act[7] which are replaced in the new act[8]. It has been clearly mentioned in the act[9] that for the buying back of shares a company is subject to certain conditions from its free reserves or other kinds of securities. The said section is a ruling clause that has the potential to override any provision of the act. Further continued by another section[10] requires the company the transfer the shares that are equal to the amount and value of securities to the Capital Redemption Reserves. Another section[11] specifically mentions a complete restriction upon the buyback of the securities by the company.

OTHER MODES FOR BUYBACK OF SHARES

The special resolution sent to the company for authorizing the buyback of shares should be filed before the company registrar in the form named Form No. (SH-8) with the specified fees and that form letter with the assent of a minimum of 2 directors of the company one as the managing director and other members on behalf of the board of directors. The other thing to be filed by the company upon solvency with the registrar in the form (SH-9) that is to be signed by a minimum 2 company directors, one being the managing director who upon verification from the affidavit towards the buyback which is for the purpose of guaranteeing the solvency.

[6] Companies Act 2013, s 67
[7] Companies Act 1956, s 77A,77AA and 77B
[8] Companies Act 2013, s 68, 69 and 70
[9] Companies Act 2013, s 68
[10] Companies Act 2013, s 69
[11] Companies Act 2013, s 70

As soon as the completion of the buy-back takes place then the securities must be destroyed in the time of 7 days since the buyback took place[12]. After the buyback is made then the company is placed upon restriction to not place its shares on buyback once again within 6 months. And also will issue bonuses and further discharge the obligation that is made in relation to the warrants.

METHODS FOR BUYBACK OFFERS

Now apart from modes, there are certainly other methods as well including Fixed-price tender offers that particularly speak about the shareholder's will to either hold the no of shares or sell those specified shares as allotted by the company at a specific price so that no shareholder is given privilege and equality prevails among all despite of minor and major stakes of the company. And another method persists in the buying which is done by the company in the open market and further buys back its own shares in which a bulk number of shares is to be acquired in the given time.

COMPLETE PROCEDURE FOR BUYBACK OF SHARES

The Company declared a meeting for the board of directors should be convened by sending the General Meeting notice with a special resolution that is to be passed accompanied by a statement explaining the particulars that are to be mentioned accordingly[13] should be disclosed and the Notice must include the details regarding the materials facts, the need for buyback, class of the securities which is to be brought back, an investment made on the buyback and the specified time limit in which the buyback is to be completed.

After filling the form (MGT-14) to the company registrar and is notified (within 30 days) after the special resolution is passed at EGM altering the AOA together with amending the vitality of AOA. Letter of Offer is to be made (Form SH-8) as the buy-back of shares is made before and should be in compliance with the Registrar of Companies in e-form of SH-8 containing the offer letter, and the Letter of Offer will get passed over to the shareholders of the company which is to be with Registrar of Companies after its filing, within compliance of the methods as prescribed[14]. The offer Period takes place in which a minimum period of 15 days is open for the offer and letter of offer to the shareholders that shall not exceed more than 30 days as the

[12] Companies Act 2013, s 68(7)
[13] The Companies (Share Capital and Debentures) Rules, 2014, s 68(3) (a – e) and r 17(1) (a – n)
[14] The Companies (Share Capital and Debentures) Rules 2014, r 17 sub-rule 10

offer letter is dispatched to the shareholder. Then the declaration of Solvency is made and Form SH-9 is to the Registrar of Companies to be filed within the company, attaching the offer letter, the solvency is to be declared and be filed in e-Form (SH-9), and verification of an affidavit is made to the solvency to guarantee for at least a year after the complete buyback procedure. The proper offer is only accepted in case the of shares that are given to the shareholders is higher as compared to the total amount of shares and is to be purchased back by the company, so the shareholder makes an acceptance and shall be in proportion to the total number of shares which are bought back after the offer is made. After the buy-back offer a separate account of finances is to be created by the company as soon as possible and a deposit is to be made in that separate account, the sum, made after the buyback of shares with the consideration given in exchange

After the verifications of the offer to be received within the time period of fifteen days from the date of closing of the offer by the verification made by the company, the shares or other assets that are to only be accepted unless any further information that includes and to be within twenty-one days from offer takes place on the date of closure. Only after the offer is made within seven days from its verification. The further extinguishment of Shares takes place in which an extinguishment is to be made by the company and destroy the shares that are bought back after buyback within seven days. A registration is to be made (Form SH-10) for the buyback in which the Company shall require the maintenance of a register of shares that have been filed in the same form and further to be attached to another Form (SH-11). Further return of Buy-Back which includes (Form SH-11) is to be submitted along with the further buyback to be returned in (Form SH-11) that is to be attached with the Compliance Certificate with one Form SH-15, by the 2 Directors and including a Managing Director of the, if any. MCA E-FORMS[15]:

- (MGT-14)

- (SH-8)

- (SH-9)

- (SH-11) other documents as required:

[15] Pooja Toshniwal,'BUY BACK OF SHARES AS PER COMPANIES ACT 2013' (*Tax Guru*,17th June 2022) < https://taxguru.in/company-law/buy-shares-companies-act-2013.html> accessed on 15th August 2023

- Certified Copy from the Board Resolution;

- Buyback Notice;

- Special Resolution on a certified copy with an Explanatory Statement;

- In case of a Declaration of Solvency must be with affidavit.

- Last 3 years' financial details that are audited;

- Certificate of Declaration with auditor reports;

- The company promoters' details;

- The nature of shares and other assets acquired back defined in (SH-10);

- The holders of securities buyback to be in compliance;

- Compliance Certificate mentioned in (SH-15);

- Before and after buy-back to the holders of securities;

- Directors declaration to be made on completing the buyback;

- Documentation of Assets and Liabilities (is not to exceed more than six months from the date on which the offer document is made). Hence, through this article, I try to cover the analysis made towards the buyback of shares and several defined provisions regarding the cause.[16]

CONCLUSION

At last, the conclusion speaks about the overall Indian companies who make an announcement on the buyback towards a less valuable place of their securities in the financial market that is being well supported upon the availability of the required economic strength which is available. The buyback of shares plays a major role in dominating the market share pricing ratio which can easily mislead the shareholders like the offering of a premium that is made in the aspect of buyback and announcement of an exit opportunity towards the shareholders in another hand giving a higher pedestal to the company for the extinguishment of shares in the times of today and use them again in future. Further prevention of mergers and takeovers helps in the

[16] *Ibid*

prevention of mobilization by not affecting the consumer well-being making an important aspect of the buyback of shares and shareholders must consider their views if any new purchasing of shares is made in the company which specifically involves the procedure of buyback.