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SUBJECT- COMPANY LAW

Test Code - CIM 8334

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ANSWER-1

- 1.B
- 2.D
- 3.B
- 4.B
- 5.C
- 6.A

ANSWER-2

ANSWER-A

Sweat equity shares of a class of shares already issued.

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is **authorised by a special resolution** passed by the company;
- (ii) the **resolution specifies the number of shares**, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are **listed on a recognised stock exchange**, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

(4 MARKS)

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

(1 MARK)

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

(1 MARK)

ANSWER-B

Under section 2 (70) of the Companies Act, 2013, "**prospectus**" means **any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.**

A prospectus is a **document inviting offers from the public**. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since X purchased shares through the stock exchange open market which cannot be said to have bought shares on the basis of prospectus. X cannot bring action for deceit against the directors. **X will not succeed.** It was held in the case of *Peek Vs. Gurney* that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

(4 MARKS)

ANSWER-3

ANSWER-A

Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to **obtain the rating** (including its net-worth, liquidity and ability to pay its deposits on due date) **from a recognised credit rating agency** for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within **thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders** in accordance with such rules as may be prescribed.

(3.5 MARKS)

Since, Ashish Ltd. has a net worth of Rs. 80 crores and turnover of Rs. 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

(1.5 MARKS)

ANSWER-B

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the **company contravenes any of the requirements or the conditions of this sections** subject to which a licence is issued or where the affairs of the

company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is **essential in the public interest, direct that the company be wound up** under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (iii) Where a licence is revoked and where the Central Government is satisfied that it is **essential in the public interest that the company registered under this section should be amalgamated with another company registered** under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(5 MARKS)

ANSWER-4

ANSWER-A

Alteration of Capital [Section 61 (1) read with section 13 of the Companies Act, 2013]: Under section 61 (1) a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting as under :

- (i) it may **increase its authorized share capital** by such amount as it thinks expedient;
- (ii) it may **consolidate and divide all or any of its share capital** of a larger amount than its existing shares
- (iii) **convert all or any of its paid up shares into stock and reconvert that stock into fully paid shares** of any denomination sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
- (iv) **cancel those shares which, at the time of passing of the resolution** in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(4*1 = 4 MARKS)

Section 13 provides for the procedure to be followed for alteration of the Memorandum, as under :

- a. A special resolution must be passed to effect the alteration. For this purpose a **Board Meeting must be held to convene a general meeting of the members** and all legal provisions in this behalf followed including the circulation of a detailed explanatory note on the proposed change along with the notice for the general meeting;
- b. The company must **file with the Registrar the special resolution passed by the company** to effect an alteration in the capital clause of the Memorandum;
- c. No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.

(2 MARKS)

ANSWER-B

Change in the name of company : In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the **company should file the prescribed Form No.INC.24 with the Registrar** along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

Thereafter the approval of the Central Government should be obtained as provided in Section 13(2) of the Companies Act, 2013. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar. The Registrar shall enter the new name in the Register in place of the former name 13(3). The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.

(4 MARKS)

ANSWER-5

ANSWER-A

- (1) **Meaning of Abridged Prospectus**: - According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- (2) **Circumstances under which the abridged prospectus need not accompany the application forms**: Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

- (i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (ii) Where the securities are not offered to the public.
- (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

(4 MARKS)

ANSWER-B

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above Rules are as under:

- (a) The payment of such commission shall be authorized in the company's articles of association;
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates. **In view of the above, the decision of Unique Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.**

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

(6 MARKS)