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SUBJECT- LAW

Test Code – CIM 8434

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ANSWER -1

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

ANSWER -2

ANSWER –A

Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

(5 MARKS)

ANSWER –B

As per Rule 3 of *the Companies (Incorporation) Rules, 2014*, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

(2.5 MARKS)

According to the above provisions, following are the answers to the given circumstances:

- (i) Where, if the promoters increase the paid up capital of the company by Rs. 10.00 lakh during 2017-2018 i.e., to Rs. 55 lakh (45+10= 55), MNO (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by the MNO by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.
- (ii) Where if the turnover of the MNO during 2017-18 was Rs. 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e, Rs. 2 crore for voluntarily conversion of MNO (OPC) into any other kind of company.

(2.5 MARKS)

ANSWER -3

ANSWER –A

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

(3.5 MARKS)

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

(1.5 MARKS)

ANSWER –B

The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the **wrongful act** of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of **sixty** days of such refusal or where no intimation has been received from the company, within **ninety** days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the **transfer** or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct **rectification** of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

(4 MARKS)

In the present case Ms. Mukta **can make an appeal** before the tribunal and claim damages.

(1 MARK)

ANSWER -4

ANSWER –A

By not repaying the deposit of Rs. 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- *Punishment for the company:* City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than Rs. one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to Rs. ten crores.
- *Punishment for officer-in-default:* Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakhs but which may extend to **Rs. two crores**.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (*Punishment for fraud*).

(5 MARKS)

ANSWER –B

Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis statements.

The only situations when a director will not incur any liability for mis statements in a prospectus are as under :

- (a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true

or the inclusion or omission was necessary.

- (b) No civil liability for any mis statement under section 35 shall apply to a person if he proves that:
- (1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(4 MARKS)

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

(1 MARK)

ANSWER -5

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 recognized 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*,

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.

(4 MARKS)

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

According to section 76 (1) of the Act, an “eligible company” means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an ‘eligible company’, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a), an ‘eligible company’ shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of ‘eligible company’.

Thus, ABC has to ensure that acceptance deposits from members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium of the company.

(5 MARKS)