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LAW, ETHICS & COMMUNICATION

Test Code – I N J 2005

BRANCH - (MULTIPLE) (Date :21.05.2017)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

Answer-1 (A) :

The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

(5 Marks)

Answer-1(B)

According to section 8 (1) of the Companies Act 2013, the Registrar of Companies may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity, protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure: An association of persons intending to carry any or all or some of the activities mentioned in section 8 (1) as mentioned above, has to apply to the Registrar of Companies seeking its permission for being set up as a company under the Act. The central government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8 (1) without the addition of word "Limited" or words "Private Limited" as the case may be, to its name.

After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1). Under section 8 (2) a company registered under section 8 (1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.

(5 Marks)

Answer:2(B)

Section 9 of the Companies Act, 2013 provides that, from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued by the said name.

Accordingly, when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow:

- (i) The company becomes a **distinct legal entity**. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name.
- (ii) It acquires a life of **perpetual existence** by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up.
- (iii) Its **property is not the property of the shareholders**. The shareholders have a right to share in the profits of the company as and when declared either as dividend or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders.

(5 Marks)

Answer:2(B)

Every company has a right to alter its articles by following a simple process laid down in section 14 of the Companies Act, 2013.

Generally speaking the right of a company to alter its Articles is without and restriction. However, section 14 of the Act limits the right of the company to alter its Articles by imposing the following restrictions:

- (i) The alteration cannot override its Memorandum or in any way conflict with the provisions thereof.
- (ii) It cannot not be in violation of any provision of the Companies Act or any other statute.
- (iii) It cannot allow an activity which is illegal (as a company can be formed only for a lawful object).

An alteration to the Articles cannot increase the liability of its member which has been already defined in the Memorandum.

(5 Marks)

Answer:3(A)

A proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy is contained in section 23105 of the Companies Act, 2013 are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(5 Marks)

Answer:3 (B)

Voting through Electronic Means: According to Section 108 of the Companies Act, 2013, the Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. According to the rules provided on voting through electronic means:

- (1) *Every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meeting by electronic means.*
- (2) *A member may exercise his right to vote at a general meeting by electronic means and the company may pass any resolution by electronic voting system in accordance with the provisions of this rule.*

The expression "voting by electronic means" or "electronic voting system" means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

The expression "secured system" computer hardware, software and procedure that:

- (a) *are reasonably secure from unauthorized access and misuse;*
- (b) *provide a reasonable level of reliability and correct operation;*
- (c) *are reasonably suited to performing the intended functions; and*
- (d) *adhere to generally accepted security procedures.*

(5 Marks)

Answer:4(A)

Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who is a director, promoter or an expert shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

The Companies Act, 2013 lays down the punishment for the company and the responsible persons which includes directors, promoters, experts etc. but does not mention the legal remedies available to an aggrieved investor apart from the above mentioned compensation.

The remedy to an investor who has invested on the strength of the statements in the prospectus and such statements have turned out to be false or misleading, should also be assessed from the Indian Contract Act, 1872 which provides for various remedies for contracts induced by coercion, undue influence, misrepresentation, frauds or mistake. In the present case, Mr X has already purchased the shares which means the transaction has been completed, hence the option of rescinding it at his option does not arise. On the other hand Mr X can claim compensation for any loss or damage that he might have sustained from the

purchase of shares. But this is possible only if he has sustained any loss or damage which has not been mentioned in the case given above.

Hence, Mr X will have no remedy either against the company or the expert based on the facts of the case given.

An expert will not be liable for any mis statements in the prospectus under the following situations:

- (i) Section 26 (5): that having given his consent, he withdrew it in writing before delivery of the copy of prospectus for registration or
- (ii) Section 35 (2): that 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; An expert will not be liable in respect of any statement not made him in the capacity of an expert and included in the prospectus as such;

(5 Marks)

Answer:4 (B)

Free reserve- As per section 2(43) of the Companies act, 2013, "Free Reserves" means such reserves which as per the latest audited balance sheet of a company are available for distribution as dividend provided that :

- i.* Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise or
- ii.* Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value shall not be treated as free reserves.

(5 Marks)

Answer:5 (A)

PariPassu clause in a debenture means that all the debentures of that particular series are to be paid rateably, if, therefore, security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately. If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue, and if they are all issued on the same date they will be payable according to their numerical order. A company, however, cannot issue a new series of debentures so as to rank 'paripassu' with any prior series unless the power to do so is expressly reserved and contained in the document of offer.

Registration of charge: Under section 77 (1) of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation.

In terms of Rule 3 of the Companies (Registration of Charges), Rules 2014 for the registration of charge in respect of debentures the following documents should be submitted to the Registrar:

- a. The particulars of charge;

- b. Instrument for the creation or the modification of the charge;
- c. Application in prescribed Form

(5 Marks)

Answer:5 (B)

The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 201. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money

with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Dinesh shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.
- (ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Dinesh at the address outside India. Therefore, answer in the second case shall differ from the first one.

(5 Marks)