



## INTER CA – MAY 2018

Sub - Corporate and other laws

Topic - Company Law

Test Code – M6

Branch: MULTIPLE Date: 17.12.2017

(50 Marks)

Note: *All questions are compulsory.*

### Question 1 (4 marks)

The doctrine of Indoor Management is laid down in the *Royal British Bank vs. Turquand (1956) 6E&B 327* case in which the directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. **(2 marks)**

However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery. **(1 mark)**

In the instant problem, the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to Prem and thereby to Amar. Hence, Amar will not succeed in getting the share registered in his name. **(1 mark)**

### Question 2 (8 marks)

**Acceptance of deposits from members:** According to Section 73 (2) of the Companies Act, 2013 a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely :- **(7 marks)**

- (1) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (2) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- (3) depositing such sum which shall not be less than fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- (4) providing such deposit insurance in such manner and to such extent as may be prescribed;

- (5) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- (6) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.
- (7) Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form advertisement or in any document related to invitation or acceptance of deposits.

Hence Atul Ltd. can accept deposits from its members by following the above procedure. **(1 mark)**

### Question 3 (6 marks)

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. **(3 marks)**

Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxy, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of Member X, the proxy Z (and not Proxy Y) will be permitted to vote on his behalf. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting. **(3 marks)**

### Question 4 (4 marks)

- (i) The given statement is **Incorrect**.
- (ii) The given statement is **Incorrect**.
- (iii) The given statement is **Incorrect**.
- (iv) The given statement is **Incorrect**.

### Question 5 (8 marks)

**Shelf Prospectus:** Section 2 (70) of the Companies Act, 2013 defines a “Prospectus” and includes a red herring prospectus and a shelf prospectus within the definition of “Prospectus”. Further the explanation to section 31 of the Companies Act, 2013 defines a shelf prospectus as a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. **(1mark)**

Section 31 of the Act states that any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required. **(1mark)**

From the above, the key features of a shelf prospectus are as under: **(1mark each)**

- a. A shelf prospectus is a prospectus; hence it must comply with all the provisions of Section 26 of the Act which lays down the matters to be included in a prospectus and filing of the same with the Registrar. It must also comply with the other relevant and applicable sections of the Act to a prospectus.
- b. A shelf prospectus may be issued by a class of companies only if and subject to the regulations of SEBI;
- c. A shelf prospectus can have a validity of a maximum period of one year during which time the company may bring out a number of issue of securities, all covered by the same prospectus.
- d. The validity of a shelf prospectus of a maximum period of one year shall commence from the date on opening of the first offer.

A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus. **(1/2mark)**

However, under section 31 (2), a company shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or any previous offer of securities and the succeeding offer of securities and such other changes as may be prescribe, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus. **(1mark)**

Section 31 (3) states that where an information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be the prospectus. **(1/2mark)**

#### **Question 6 (8 marks)**

##### **Procedure for shifting registered office from one state to another:**

The Memorandum of a company includes a clause "Registered Office" which states the state in which the registered office of the company is situated.

Section 13 (1) of the Companies Act 2013, allows a company to change any of the clauses of its Memorandum by a special resolution of its members. In some cases the additional approval of the Central Government is necessary. **(2 marks)**

In order to the change its registered office from one State to another the Companies Act, 2013 lays down the following steps and procedure: **(6 marks)**

1. *Resolution of the Board of Directors:* The first step in changing registered office is that the board of directors must adopt a resolution to that effect and convene a general meeting of members in which the change is approved.
2. *Special resolution:* A special resolution must be passed by the company in the general body meeting of shareholders/members. [Section 13 (1)].
3. *Approval of the Central Government:* Under section 13 (4) the alteration of the Memorandum relating to the change of the registered office from one state to another shall not have any effect, unless it is approved by the Central Government on an application in such form and in such manner as may be prescribed. Here, the powers of Central Government are delegated to Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong. Hence, the company will have to make the required application after the name is approved by the members by special resolution;
4. *Disposal of application :* Under section 13 (5) the Central Government/Regional Director shall dispose of the application within 60 days and before passing its order, it may satisfy itself that the alteration has the consent of creditors, debenture holders and other

persons concerned with the company, or that adequate provisions have been made by the company either for the due discharge of their liabilities or adequate security has been provided for such discharge.

5. **Registration with Registrar:** Under section 13 (7) the company shall file a certified copy of the Central Government order approving the alteration with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same. The Registrar of the State where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration.

**Question 7 (8 marks)**

Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. **(1 mark)**

The rules framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures. **(1 mark)**

Further according to the rules, no person shall be appointed as a debenture trustee, if he-

- (i) Beneficially holds shares in the company;
- (ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) Has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

**(3 marks)**

Thus based on the above provisions answers to the given questions are:

- (i) A shareholder who has no beneficial interest can be appointed as a debenture trustee.
- (ii) A creditor whom company owes Rs.499 cannot be so appointed. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

**(3 marks)**

**Question 8 (4 marks)**

1. **Notice of Charge:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. **(2 marks)**
2. Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered. **(1 ½ marks)**
3. Thus, the contention of NRT Ltd. is correct. **(1/2 marks)**

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