



INTER CA – MAY 2018

Sub - Corporate and Other laws

Topic - Company Law

Test Code – M38

Branch: MULTIPLE Date: 28.1.2018

(50 Marks)

Note: All questions are compulsory.

Question 1 (4 marks)

Refusal of registration and appeal against refusal : 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. (1 mark)

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 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal. (1 marks)

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 10 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.

In the present case Mr. Amar can make an appeal before the tribunal. (2 marks)

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)

According to Section 13 (1) of the Companies Act, 2013, a company may, by special resolution, and after complying with the procedure specified in this section alter the provisions of its Memorandum. (1 mark)

The Name Clause in the Memorandum states the name of the company. It can be changed in the following manner: (1 mark each)

1. Passing of the Special Resolution of members at a duly convened general meeting;
2. Hence, in order to convene the general meeting it will be preceded by a Board Meeting
3. The change in name must be in accordance with the provisions of Section 4 (2) and (3). These sub sections prohibit a company from registering with a name similar to an existing company's name or with names listed as undesirable by the Act.
4. After the approval of members the approval of the Central Government, must also be obtained.
5. The approval of the Central Government shall not be necessary when the name change is merely to delete or add the word "Private" before the word "Limited" in the name consequent upon conversion of the company from a public to a private company or vice versa;
6. The documents are required to be filed with the Registrar, who will then register the new name in place of the old name of the company and issue a fresh certificate of incorporation in the new name;
7. The new name will be effective only on and from the date of issue of the new certificate of incorporation by the Registrar as above.

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)

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. (2 marks)

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid. (2 marks)
