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LAWS

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BRANCH - (MULTIPLE) (Date :11/12/2016)

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Answer-1 (a) :

Regulation 26 of the SEBI (ICDR) Regulations, 2009 prescribes the conditions to be fulfilled for issue of shares. As per the said regulation, an issuer may make an initial public offer, if:

- (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets. Further that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project. The limit of 50% on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale.
- (b) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.
- (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each).
- (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
- (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

(4 Marks)

In the given case,

- (a) The net tangible assets of the company as per the last three audited balance sheets as on 31st March, 2005, 2006 and 2007 were Rs. 4.00 crores, Rs. 4.50 crores, and Rs. 5.00 crores respectively. It satisfies the requirements of clause (a) as above as during each of the preceding three full years, it has net tangible assets, more than Rs. 3 crores and out of which the monetary assets are not more than 50 % of the net tangible assets. (In this case it has monetary assets less than Rs. 50 lacs).
- (b) The net worth of the company during the three preceding years was at least Rs. 1 crore in the preceding three full years. (paid-up capital since 1st April, 1999 is Rs. 3 crores and net worth as at 31st March, 2005 was Rs. 5.00 crores).
- (c) The aggregate of the proposed issue and all previous issues made in the same financial years does not exceed 5 times its pre-issue net worth. (Rs. 20 crores is the proposed issue and pre-issue net worth is Rs. 5 crores as on 31st March, 2007).
- (d) It is stated in the problem that the revenue earned by the company under its activity (chemical) the new name is more than from the old activity (engineering, it satisfied the condition (e) as stated above.

Hence Star Chemicals & Engineering Ltd. can proceed to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium.

(4 Marks)

Answer-1 (b) :

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required:

- (i) In respect of item No. (i), i.e., payment of commission on exports under Rupee StateCredit Route, such payment is prohibited and the same is included in First Schedule tothe Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- (ii) ¹Foreign Exchange for business trip upto US\$ 2,50,000 can be obtained by anyindividual. If a person wants to exceed this limit, then prior permission of ReserveBank of India is required for the purposes given under the Third Schedule asamended by the Foreign Exchange Management (Current Account Transactions)Amendment Rules, 2015. In respect of item (ii), since the amount involved is lessthan US \$ 2,50,000, Mr. F can obtain the foreign exchange without obtaining the permission of Reserve Bank of India.

(3 Marks)

¹As per the Notification no G.S.R. 426(E) dated 26th May 2015 through the ForeignExchange Management (Current Account Transactions) Amendment Rules, 2015,Individuals can avail of foreign exchange facility for the purposes given in schedule III within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit,shall require prior approval of the Reserve Bank of India.

- (iii) The type of payment as envisaged in item No.(iii) is covered under Second Schedule to theForeign Exchange Management (Current Account Transactions) Rules, 2000 and forremitting of prize money exceeding US\$ 1,00,000 for sports activity abroad other thanInternational, National or State level body will require the prior permission of the Central Government. (Ministry of Human Resource Development – Department of Youth Affairs andSports). Since the amount involved in item No. (iii) of the question is more than US\$ 1,00,000and Mr. F is not an International, National or State level body, he has to obtain the permissionof the Central Government before remitting the prize money of US\$ 2,00,000.

In all the cases, where remittance of Foreign Exchange is allowed, either by general orspecific permission, the remitter has to obtain the Foreign Exchange from an AuthorisedPerson as defined in Section 2(c) read with section 10 of the Foreign ExchangeManagement Act, 1999.

(2 Marks)

Answer-2 (a) :

- (a) Section 21A of the Securities Contracts (Regulation) Act, 1956 describes the provisions regarding delisting of securities by a recognised stock exchange.
 - (1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground or grounds asmay be prescribed under this Act: Provided that the securities of a company shallnot be delisted unless the company concerned has been given a reasonableopportunity of being heard.
 - (2) A listed company or an aggrieved investor may file an appeal before the SecuritiesAppellate Tribunal against the decision of the recognized stock exchange delistingthe securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the provisions of sections 22B to 22E ofthis Act shall apply, as far as may be, to such appeals; Provided that the SecuritiesAppellate Tribunal may, if it is satisfied that the company was prevented bysufficient cause from filing the appeal within the said period, allow it to be filedwithin a further period not exceeding one month. MNC Ltd. may be advisedaccordingly.

(3 Marks)

- (b) (i) Power of the Central Government to suspend business at a Stock Exchange:Section 12, Securities Contracts (Regulations) Act, 1956.
If in the opinion of the Central Government an emergency has a risen and for thepurpose of meeting of the emergency the Central Government considers it expedient so to do, it may,

by Notification in the Official Gazette, for reasons to beset out therein, direct a recognized stock exchange to suspend such of its business for such period not exceeding 7 days and subject to such conditions as may be specified in the notification, and if in the opinion of the Central Government the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time. Provided that where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the Governing Body of the recognized Stock Exchange has been given an opportunity of being heard in the matter.

(ii) **Grant of recognition to stock exchanges - Conditions: Section 4(2), SCRA, 1956**

The conditions may include, condition relating to:

- (1) qualification for Membership of the Stock Exchange.
- (2) manner in which contracts shall be entered into and enforced as between members.
- (3) representation of the Central Government on the Stock Exchange (not exceeding 3 nominated by the Central Government.)
- (4) maintenance of Accounts of members and their audit by Chartered Accountants wherever audit is required by the Central Government.

(5 Marks)

Answer-2 (b) :

Procedure relating to enforcement of security interest (Section 13 of SARFAESI Act, 2002): Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of section 13. This notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3 Marks)

Sub-section (4) of section 13 provides that if the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:-

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;
- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(3 Marks)

Answer-3 (a) :

In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1. when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.
2. when the Central Govt. feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

(3 Marks)

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

1. Contention of share holders shall be tenable since the %age of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.
2. In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.

(3 Marks)

Answer-3 (b) :

"Money laundering" does not mean just siphoning of fund: Money Laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.

Prevention of Money Laundering Act, 2002 has been enacted with aim for combating channelling of money into illegal activities.

(2 Marks)

Significance and Aim of Prevention of Money Laundering Act, 2002: The preamble to the Act provides that it aims to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an Amendment Act, 2009 was passed. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changers, money transfer service providers and credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, have been brought under the reporting regime of the enforcement authorities. It also checks the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source. The new law would check misuse of "proceeds of crime" be it from sale of banned narcotics or breach of the Unlawful Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 have enabled India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

(4 Marks)

Answer-4 (a) :

Rule of Ejusdem Generis: The term ejusdem generic means of the same kind or species. Simply stated the rule means where any Act enumerates different subjects, general words following specific words are to be construed with reference to the words that precede them. The general words are to be taken as applying to

things of the same kind as the specific words previously mentioned unless there is something to show that a wider sense was intended. Thus the rule of 'ejusdem generis' means that where specific words are used and after these specific words, some general words are used, the general words would take their colour from the specific words used earlier (eg) where an Act permitted keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wide animals like lions and tigers, but would only mean domesticated animals like horses, etc.

(3 Marks)

However, there are certain cases/circumstances on which this rule cannot be applied in the interpretation of statutes. The general principle of 'ejusdem generis' applies only where the specific words are all of the same nature. When they are of different categories, then the meaning of general words following these specific words remain unaffected. These general words would not take colour from the earlier specific words.

Again if the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

Further, the Courts have a discretion whether to apply the 'ejusdem generis' doctrine in a particular case or not. For instance, the 'just and equitable' clause in the winding up, powers of the Court is held to be not restricted by the first five situations in which the Court may wind up a company.

(3 Marks)

Answer-4 (b) :

Remedy against order of SEBI:

ABC Limited was penalized by the SEBI. The following remedies are available to the Company:

(1) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board may prefer an appeal to the Securities Appellate Tribunal. Such appeal shall be filed within 45 days from the date on which a copy of the order of the Board was received. However, the Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within the said period of limitation.

(3 Marks)

(2) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by the decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order on any question of law arising out of such order. The Supreme Court may entertain such appeal even after the expiry of said period of limitation for a future period not exceeding sixty days, if there was reasonable cause for such delay.

(2 Marks)