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IPCC NOVEMBER 2016 EXAM

LAW, ETHICS & COMMUNICATION

Test Code - I N J 1 0 0 9

BRANCH - (Multiple) (Date :21/08/2016)

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Answer-1 (a) :

The House of Lords in **Salomon Vs Salomon & Co. Ltd**. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee. **(3 Marks)**

(1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore the whole idea of Mr. Foster was simply to split his income into three parts with a view to evade tax. No other business was done by the company. **(1.5 Marks)**

(2) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in **Re Sir Dinshaw Maneckji Petit AIR 1927 Bom.371** and **Juggilal vs. Commissioner of Income Tax AIR (1969) SC (932).** **(1.5 Marks)**

Answer-1 (b) :

A private company as per Section 2(68) cannot have more than 200 members, hence the current shareholding will not be an issue. The procedure for converting a public company will require:

(i) Passing of a Special Resolution authorizing the conversion and altering the articles so as to include therein the restrictions specified in Section 2(68) **(1 Mark)**

(ii) Changing the name clause of the Memorandum of the company by omitting the word "Private". **(1 Mark)**

(iii) Obtaining the approval of the Tribunal as required by Section 14(1). **(1 Mark)**

(iv) Filing of the documents along with a printed copy of the articles as altered with the Registrar within 15 days. [Section 14 (2)] **(1 Mark)**

Answer-2 (a) :

Under section 40 (1) of the Companies Act, 2013 every company making a public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges. Section 40 (2) further states that where a prospectus states that an application under subsection (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with. **(2 Marks)**

From the above it is clear that not only has the company to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer. **(1 Mark)**

Hence, under the Companies Act, 2013 by making the offer of shares before getting the approval from the stock exchanges, it has violated the provisions of section 40 and under section 40 (5) will be punishable with a fine which shall not be less than Rs.5 Lakhs but may extend to Rs.50 Lakhs and every officer in default shall be punishable with imprisonment for a term which may extend up to one year or with a fine of not less than Rs.50,000/- but which may extend up to Rs.3 Lakhs, or with both. **(1 Mark)**

Answer-2 (b) :

1) Change in the name of company: In the first instance, Indigo Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. Uranus Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed Form No.1A with the Registrar along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration. In case the name is available, the company has to pass a special resolution approving the change of name to Uranus Textiles and Industries Ltd. **(3 Marks)**

2) Thereafter the approval of the Central Government should be obtained as provided in Section 13(2) of the Companies Act, 2013. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar. The Registrar shall enter the new name in the Register in place of the former name13(3). The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.
(3 Marks)

Answer-3 (a) :

Red-herring Prospectus (Section 32 of the Companies Act, 2013): A red-herring prospectus means a prospectus which does not include complete particulars of the price or the quantum of securities offered therein [Explanation to Section 32]. Section 2 (70) of the Companies Act, 2013 defines a prospectus includes a red herring prospectus within its meaning. Hence, a red herring prospectus is a prospectus within the meaning of section 2 (70). **(1 Mark)**

Under section 32 (1) a public company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. Therefore, the issue of a red herring prospectus does not absolve a company from issuing a regular prospectus in accordance with the relevant provisions of the Companies Act 2013. **(1 Mark)**

According to section 32 (1) a company proposing to issue a red herring prospectus under subsection (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer. Section 32 (3) states that a red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus. **(2 Marks)**

Section 32 (4) states that upon the closing of the offer of securities, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board. **(1 Mark)**

On the basis of offers received, company will finalise the issue price and issue size and then close the offer. After closure of offer of securities, a final prospectus will be prepared stating the total capital raised whether by way of debts, or share capital and the closing price of securities and any other details as were not complete in red-herring prospectus. The prospectus will be filled with ROC and also with SEBI in case of listed company. **(1 Mark)**

Answer-3 (b) :

The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 101. 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 to 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. **(3 Marks)**

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

(i) The contention of Raju shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid. **(1 Mark)**

(ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Raju at the address outside India. Therefore, answer in the second case shall differ from the first one. **(1 Mark)**

Answer-4 (a) :

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the closing of its first financial year. **(1 Mark)**

Presuming that the first financial year of Low Esteem Infotech Ltd is for the period 1st April 2014 to 31st March 2015, the first annual general meeting of the company should be held on or before 31st December, 2015. **(1 Mark)**

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meetings, such power does not apply in the case of the first annual general meeting. Thus, the company and its directors will be liable under section 168 of the Companies Act, 1956 for the default if the annual general meeting was held after 31st December, 2004.

(3 Marks)

Answer-4 (b) :

1) Under section 103 (1) unless the articles of the company provide for a larger number, in case of a public company, five members personally present shall be the quorum for a meeting of the company, if the number of members as on the date of meeting is not more than one thousand. **(1 Mark)**

2) The case given in the question corresponds to the decision. This question was decided in **Sharp Vs., Dawes** wherein it was held that "The word meeting prima facie means coming together of more than one person." In this given case, only one shareholder was present and it was held that the meeting was not validly held. **(2 Marks)**

3) Further in **East Vs. Bennet Brothers Ltd. (1911)** it has been held that in case of a meeting of a particular class of members if all the shares of that particular class are held by one person, then that one person shall form the quorum. **(2 Marks)**

4) In the given case therefore, the applicable quorum will be 5 members and since all the shares are not held by one person but there are 50 members, no quorum is therefore present. The meeting and the resolution passed there shall not be valid. **(1 Mark)**

Answer-5 :

There is no restriction contained in the Companies Act, 2013 on the sale of shares at a premium, i.e, at a price higher than their nominal value.

However, SEBI guidelines have to be observed as they indicate when an issue has to be at a premium.

(1 Mark)

According to the guidelines issued by SEBI a company may offer shares to the public at a premium under the following circumstances:

1. The company or its promoter company has a minimum of three year consistent record of profitable workings;

2. The promoters take up at least 50% of the shares offered in the issue;

3. The entire issue is on the same terms including the premium charged;

4. The justification for the proposed premium is fully justified and explained in the prospectus.

(2.5 Marks)

The premium on any shares issued may either be received in cash or in kind. Section 52 (1) of the Companies Act, 2013 requires a company which issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account". **(1.5 Marks)**

Under section 52 (2) the Securities Premium Account may be applied by the company only for the following purposes:(a) Towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares; or(b) In writing off the preliminary expenses of the company; or(c) In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or(d) In providing for the premium payable on the redemption of any redeemable preference shares or debentures of the company; or(e) For the purchase of its own shares or other securities under section 68 of the Companies Act, 2013. **(3 Marks)**