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**IPCC NOVEMBER 2016 EXAM**

**LAW**

**Test Code - I N J 1 0 3 3**

**BRANCH - (MUMBAI) (Date : 29.05.2016)**

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**Answer-1 (a) :**

Section 2 (20) of the Companies Act, 2013 defines a 'company' as a company incorporated under this Act or under any previous company law. The most striking feature of the company form of organisation is that it comes into existence by a legal process called incorporation", whereby it acquires the unique characteristic of being a separate legal entity. In other words when a company is registered, it is clothed with a legal personality with the following features:

- a. Perpetual succession: A company is distinct and separate from its members who may die or change without affecting its continued existence until it is wound up on the grounds and in the manner as specified by the Act.
- b. Separate Entity: A company can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it.
- c. Limited Liability: For the debts of the company, its creditors can sue it and not its members whose liability is limited to the unpaid amount on shares held by them or the guarantees provided by them to contribute on the winding up of the company, depending on the type of company.
- d. As the company is an artificial person, it can act only through some human agency, viz., members and directors. The directors are responsible for the management and the administration of the affairs of the company on all matters except those which can be authorized by the members at general meetings in accordance with the various provisions of the Companies Act 2013. However, they are not the agents of the members of the company.
- e. Common Seal: Every company has a common seal which is affixed on documents and contracts in order to authenticate its formal acts. (6 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)
- (ii) Changing the name clause of the Memorandum of the company by omitting the word "Private".
- (iii) Obtaining the approval of the Tribunal as required by Section 14(1).
- (iv) Filing of the documents along with a printed copy of the articles as altered with the Registrar within 15 days. [Section 14 (2)] (4 Marks)

**Answer-2 (a) :**

According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and articles. (1.5 Marks)

Further, under Section 14 (1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may, by a special resolution, alter its Articles. (1 Mark)

Moreover, under section 14 (2) the company will be required to file within fifteen days the altered Articles with the Registrar along with necessary documents, such as the copy of the special resolution etc, and in such manner as may be prescribed. On receipt of all documents the Registrar shall register the same. (1.5 Marks)

Section 14 (3) further provides that any alterations in the Articles on registered will be valid as if they were in the original Articles. (1 Mark)

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of Brijesh will stand and Ajit will be terminated. (1 Mark)

**Answer-2 (b) :**

- 1) A change of registered office from the jurisdiction of one registrar to another does not involve an alteration to the Memorandum of a company as the location clause in the Memorandum merely

states the name of the state, which is not changed by such relocation. Hence, the provisions of section 13 which deals with the alteration of the Memorandum do not apply. (2 Marks)

- 2) However, according to section 12 (5) of the Companies Act, 2013 except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed from one city or town to another within the same state. In case of change of the registered office from the jurisdiction of one registrar to another such change must be confirmed by the Regional Director also, on an application made in this behalf by the company. He shall certify the registration within a period of thirty days from the date of filing of such confirmation. The certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate. [Section 12(6) &(7)]

(4 Marks)

**Answer-3 (a) :**

**Deemed Prospectus:** Under section 25 (1) of the Companies Act, 2013 any document by which an offer for sale of any securities is made to the public and the company allots or agrees to allot securities in terms thereof, then such document shall for all purposes, be deemed to be a prospectus and all enactments and rules of law as to the contents in a prospectus and as to liability in respect of mis-statements and omissions therein shall apply and shall have effect as they apply to a prospectus.

From the above provision it is quite clear that the deemed prospectus is not intended to be a document with any exceptions or concessions vis-a-vis a prospectus. It only broadens the scope of a prospectus to include not only the formal document issued as a prospectus but also all nature of communication made by the company with the intention of selling an issue. It is designed to prevent companies from making misleading statements through various documents, notices or circulars while keeping the formal prospectus document clean.

(4 Marks)

**When Prospectus need not be issued:** The issue of prospectus under Section 23 of the Companies Act, 2013 is not necessary in the following circumstances:

- (i) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to any securities.
- (ii) Where securities are offered through private placement by complying with the provisions related thereto in the Companies Act, 2013.
- (iii) Where securities are issued through a rights issue or a bonus issue in accordance with the applicable provisions of the Act and in case of listed companies also in accordance with the provisions of the rules and regulations made by SEBI in this behalf.

(2 Marks)

**Answer-3 (b) :**

**Issue of Further Shares:** Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

(1 Mark)

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

- (a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
- (c) If any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

(3 Marks)

**Preference Shareholders - whether (Further Issue of Capital) can be offered to:** From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed. (1 Mark)

**Answer-4 (a) :**

As per Section 2(13), Employee means any person other than an apprentice employed on a salary or wage not exceeding Rs. 10,000/- per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. From the above definition it is clear that an employee under the Act can be at managerial level, clerical level or workmen level. The criterion is the salary or wage limit of Rs. 10,000 per month. Employees who draw more than Rs. 10,000 per month do not fall within the definition of employee under this Act and hence are not eligible for bonus. (2 Marks)

1. Only criterion for deciding whether person is an employee or not is that salary should be less than Rs.10000/-. In this case, Rajesh although a peon will not be eligible as an employee. The reason being Salary being more than Rs.10000/- (1 Mark)
2. Act does not bifurcate Employee on the basis of position or type of work. Only criterion is Salary which should be less than Rs.10000/-. In this case, Ramu even though a MD in Private Limited Company would be considered as an employee. (1 Mark)
3. Even a workmen having salary more than the threshold limit i.e. Rs.10000/- will not be considered Employee as per the provision of The Payment of Bonus Act, 1965. (1 Mark)

**Answer-4 (b) :**

Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year and draws a salary of less than Rs. 10,000/- per month. [Section 2(13) read with Section 8]. If an employee is prevented from working and subsequently reinstated in service, employee's statutory right for bonus cannot be said to have been lost. Nor can the employer refuse to pay such bonus. [ONGC(V) Sham Kumar Sahegal (1995) ILLJ]. (2 Marks)

There are, however, certain disqualifications of an employee to claim bonus in an accounting year. An employee who has been dismissed from service for (a) fraud; or (b) riotous or violent behaviour while on the premises of the establishment; or (c) Theft, misappropriation or sabotage of any property of the establishment is not entitled for bonus. [Section 9]. (2 Marks)

An employee, under the Payment of Bonus Act, 1965 in the following cases is not entitled to bonus:

1. An apprentice is not entitled to bonus as he is not included in the definition of an employee under the Act as decided in the case [Wheel & RIM Co. v. Govt. of TN. (1971)].
2. An employee who is dismissed from service on the ground of misconduct as mentioned in Section 9, is disqualified for bonus of the accounting year in which he is dismissed (Pandian Roadways Corporation Ltd. v. Presiding Officer (1996) 2 CLR 1175 (Mad)). (2 Marks)

**Answer-4 (c) :**

As per Section 31 (A) of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, payable under the Act. when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restrictions imposed by Section 31A; (1 Mark)

- (a) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus. (1 Mark)

- (b) If the bonus payable under such agreement exceed 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages. **(1 Mark)**

In the given case NM Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of based on profits subject to the limit of 30% of their salary/ wages during the relevant accounting year. According to Section 31A the maximum bonus under this provision which can be given should not exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid upto 20% of the salary/wages. **(1 Mark)**

If the company, in the agreement, agrees to pay more than 20% then it is going against the provisions of the Payment of Bonus Act, 1965 and cannot be enforced. The employees of NM Ltd also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to deprive the employees of their right of receiving minimum bonus. Hence, the relief may be given by the court, by enforcing the payment of bonus to the employees, based on the production or productivity, as agreed, plus the minimum bonus payable under the Payment of Bonus Act, 1965, subject to a maximum of 20%. **(2 Marks)**