

Solved Scanner CS Executive Company Law Solution Paper-4

Ans-1 (i)

A Company has a statutory right to alter its articles of association. The procedure for alteration of articles is contained in Section 31 of the Companies Act, which states that a company can alter its articles by passing a special resolution. But care must be taken to ensure that the alteration must not conflict with the provisions of the Companies Act and the memorandum.

Ans-1 (ii)

A red - hearing prospectus is a prospectus which does not have complete particulars on the price of securities and quantum of securities offered. This means that in case is not disclosed, the number of shares and the upper and lower price are disclosed. A company filing a red - hearing prospectus with the Registrar of company without the price bond and, the issuer in such case will notify the floor price or a price bond by way of an advertisement are day before to the opening of the issue.

In the case of book building issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed.

Ans-1 (iii)

The department of company affairs [vide its letter dt 27.10.76] has clarified that in the absence of any Specific Provision in Section 215, the power of the directors to approve the annual accounts cannot be delegated to a committee of directors or some of the directors. It interalia, States that the approval annual accounts which are to be ultimately placed before the shareholder of the company is not to be treated as a routine or part of day-to-day work.

Ans-1 (iv)

The statement is correct Under Section 6(i) of the limited liability Partnership Act, 2008, every LLP shall have at least two partners.

According to Section 7 of the Limited Liability Act, provides that every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be resident in India, Under limited liability partnership in which all the partners are body corporate.

Ans-1 (v)

The term winding up and dissolution are sometimes erroneously used to mean the same thing. But there is a subtle difference between the two terms.

- (a) Winding up is a process and dissolution is its and result. In other words, winding up proceeds dissolution. This means that winding up is the prior stage and dissolution, the subsequent one.
- (b) On the commencement of winding up, the Corporate Status and Power of the Company continue. It is on dissolution that the name of the company is struck off the register of companies, and it ceases to exist.
- (c) Creditors can prove their debts in the winding up but not on the

dissolution of the company.

- (d) The liquidator appointed by the company or the court carries out the winding up proceedings but the order for dissolution can be passed by the court only.

Ans-2 (a)

- (i) (a)
- (ii) (c)
- (iii) (a)
- (iv) (b)
- (v) (d)

Ans-2 (b)

- (i) Public
- (ii) Preliminary / Pre incorporation
- (iii) Special
- (iv) Three years
- (v) 12 months

Ans-2 (c)

Modes for ascertaining the sense of general meeting.

There are various methods which can be adopted by the chairman to put the matter to vote in order to ascertain the wishes of the members, they are as follows :

- (i) By acclamation
- (ii) By voice vote
- (iii) By division
- (iv) By show of hands
- (v) By ballot
- (vi) By poll.

Ans-3 (a)

The term 'minutes' may be defined as a written record of the business transacted at a meeting. Section 193 imposes a statutory obligation on every company to keep minutes of the proceedings of every general meeting, every meeting of the Board of Directors, and meeting of every committee of the Board of Directors.

Entries should be made within thirty days of the conclusion of the meeting in books kept specially for that purpose, hereafter known as the minute Book.

The pages of the minutes book should be consecutively numbered and each page should be signed or initialed, and the least page of the record of proceeding of each meeting shall be dated and signed:

In the case of general meeting, by the chairman of the meeting or in the event of his death or inability, by a director duly authorised by the board for that purpose.

The minute book should be kept at the registered office of the company and

should be open for inspection by members (For atleast 2 hours each day) during business hours without any change.

Ans-3 (b) Right of Proxy :-

Section 176 (i) of the Companies Act provides that unless the articles of a company provide otherwise a proxy cannot vote except on a poll. However he may demand or join in demanding a poll, A proxy cannot speak at a meeting. Hence he can not take part in any discussion. The relationship between a shareholder and his proxy is that of a principal and agent, thus the proxy must act according to the wishes of the shareholder and cannot do otherwise.

Ans-3 (c)

Every A. GM must be held either at the registered office of the company during the working hours and on a day that is not a public holiday, there are no such restrictions in the act regarding the meaning of the Board of Directors. Thus, Board meeting may be held at any place and outside business hours according to the convenience of the directors under Section 288(i) of the Companies Act, 1956 adjourned Board meeting cannot be held on a public holiday.

If a meeting of the Board could not be held for want of quorum, then unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place or if that day is a public holiday, till the next succeeding day which is not a public holiday at the same time and place.

Ans-3 (d)

Please refer 04 Dec (1) (c) (e) on Page No. S-121

Ans-4 (a)

Please refer 2005 June 2 (c) and 07 Dec 3 (c) on Page No. S-129

Ans-4 (b)

The shares become transferable by mere delivery of the share warrant, which is treated as a negotiable instrument. The bearer of the share warrant is not a member of the company. However, if company's articles of association so provide, he may be treated as a member of the company for any purposes defined in the articles [Sec. 115 (5)].

So, in view of the above Layman is advised to transfer the share warrant by delivering the share warrant to the transferee, further he is not required to register the transfer of share warrant with the company.

Also, no stamp duty is payable on the transfer of a shares warrant.

Ans-4 (c)

Section 25 company :- A non-profit making company licensed Under Section 25 of the Companies Act, 1956. Can become a member of another company if it is authorised by its Memorandum of Association to invest into shares of the other company.

Insolvent as a member :- An insolvent cannot become member of a company,

but a member who becomes insolvent continues to remain a member, as long as his name appears on the register of members.

More appointment of an official receiver cannot deprive the person, whose name appears on the register of members of his right to vote at the meeting of the company.

Trade union as member :- A trade union registered under the Trade Union Act 1926. Can be registered as a member and can hold shares in a company in its own corporate name.

Pawnee :- In view of foregoing, a Pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member.

So, a pawnee cannot apply for membership of a company.

Ans-4 (d)

In case, the defaulting shareholder approaches the Board after forfeiture to cancel the forfeiture, the Board is empowered to cancel such forfeiture and claim due amount with interest.

Ans-5 (a)

The director draw travelling allowance from both the companies provided the amount does not exceed the expenses actually incurred him. He may, however, draw the sitting fee from each of the companies in full. [As clarified by Department of Company Affairs, source company news of notes, dated August, 1963].

So, in view of the above clarification-

(i) Abhay can draw travelling allowance from both the companies provided the amount does not exceed the expenses actually incurred him.

(ii) He is entitled to sitting fees fully from both the companies.

Ans-5 (b)

If a company is used as a means to evade tax, the court may disregard the corporate veil. In [Re Sir Dinshaw manakjee petit, A.I.R 1927 Bombay 371], The Supreme Court held that the court is entitled to lift the mask of corporate entity, If it is used for tax evasion or to circumvent tax obligations.

In such cases individual shareholders may be held liable to pay income tax.

In the given case, the facts are similar to the above mentioned Case. The reason to which the companies were formed by the assessee was purely and simply as a means of avoiding super tax and the companies were nothing more than the assessee herself.

Therefore, the court disregard the corporate veil and found that the companies were formed by the assessee for the purpose of avoiding tax.

Ans-5 (c)

According to Section 147 (4) (c) of the Companies Act, 1956, provides that the name of the company should be fully and properly mentioned on all

documents, instruments etc. If an officer of a company or any other person acts on its behalf and enters into a contract or sign a negotiable instrument without fully writing the name of the company, then such officer or person shall be punishable with fine which may extent to 5,000 Rs.

Therefore in the present situation, carefree is personally liable to the holder.

Ans-6 (i)

Distinction between Company and Corporation.

The term body corporate is much wider in concept than the word company because it includes :

- (a) Companies formed and registered under the Companies Act of 1956 that is all Indian Companies.
- (b) Companies incorporated outside India that is foreign companies.
- (c) Public financial Institution.
- (d) Nationalized bank.
- (e) Corporations formed under Acts of parliament.
- (f) Limited Liability partnership registered under the Limited Liability Partnership Act. 2008.

As per Section 2 (7), the term body corporate does not include :

- (a) Corporation sale
- (b) Co-operative Society Registered under any law relating to Co-operative Societies.
- (c) Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the official Gazette Specify in this behalf.

Ans-6 (ii)

Distinguish between nominal capital and subscribed capital :

Nominal Capital :- It means the sum stated in the memorandum of association as the capital of the company with which it is to be registered. The sum so stated is the maximum amount which the company can raise by issue shares. The amount is divided into shares of fixed denominations.

Subscribed Capital :- It is the Part of issued capital for which applications have been received from the public.

Ans-6 (iii)

Distinguish between share and stock.

Basis	Share	Stock
1. Nominal value	A share has a nominal value. It is Separate Unit.	A stock has no nominal value. It is lump sum holding.

2. Original issue	Shares are originally issued.	There can be no original issue of Stock.
3. Paid-up	Shares can be partly or fully paid-up.	Stock is always fully paid-up.
4. Denomination	All shares of a class are of equal denomination.	Stock may be of different denominations.
5. Procedure for issue	Registration of capital is necessary to issue shares.	Authority of the articles, the passing of an ordinary resolution.

Ans-6 (iv)

Distinction between whole time Chairmen and part time Chairman which are chaired by managing directors who are known as chairman-cum-managing director. We have also Board, which are chaired by directors who are not whole time directors. A chairman-cum-managing director is some times called a whole time-chairman.

Where as a chairman, who is not a whole time director of the company, is called part time chairman.

Ans-6 (v)

Distinction between insolvency of an individual / firm and winding up of a company.

- (a) In the case of insolvency, the whole of the insolvents property is taken out of his hands and rest in the court or the official assignee.
In the case of winding up, the property remain vested in the company, subject to being administered for the purposes of winding up as the company retains its complete existence.
- (b) In the case of insolvency, an insolvent individual can obtain his discharge and continue living and working free from burden of his debts.
On winding up, on the other hand, a company in liquidation cannot obtain its discharge and continue free from the burden of its debts.
- (c) In insolvency, the administration of the property by the official Assignee or the official receiver occurs if he is declared an insolvent by the Court.
On the other hand the directors powers by the liquidator occurs if the company is fully solvent. Winding up even of a solvent company can be proceeded with the aid of court, as in voluntary winding up.

Ans-7 (i) Incorrect :-

Reason :- The members of an unlimited company are not liable directly to the

creditors of the company, as in the case of partnership of a firm. Thus, in such a company, the liability of each member extend to the whole amount of the company's debt and liabilities.

But the members have the right to claim contributions from others.

(ii) Incorrect :-

Reason :- A promoter has no legal right to claim promotional expenses for his services unless there is a valid contract. Without such a contract he is not even entitled to recover his preliminary expenses.

(iii) Incorrect :-

Reason :- It is to be noted that all preference shares are cumulative unless expressly Stated to be otherwise cumulative preference share is a shares which confers the right on its owner to receive dividend for the past and current year out of future profits. The fixed dividend goes on a cumulating unless it is fully paid-up.

(iv) Correct.

Reasons :- A charge created orally would also require registration. The registration of a charge with the registrar of companies it self would show that the charge is created even if no instrument is created.

(v) Correct.

Reason :- Under Section 75(i) of the Companies Act, 1956, a company after allotment of its shares must file with the registrar of companies known as "Return of allotment" in the prescribed form No. 2, within thirty days of the allotment.

The Return must contain the following particulars :

- (i) The number and nominal amount of share allotted.
- (ii) The names, addresses and occupations of the allottees.
- (iii) The amount paid or due and payable on each share.

Ans- (vi) Correct.

Reason :- As per Section 55 of the Companies Act, 1956, prospectus must be dated and that date, unless the contrary is proved, be taken as the date of publication of the prospectus.

(vii) Incorrect.

Reason :- A company is required to obtain approval of the debenture trustee for distribution of dividend only in case of :

- (a) default in payment of interest on debentures ;
- (b) default in redemption of debenture ;
- (c) default in creation of securities as per the terms of issue of debenture.

(viii) Incorrect.

Reason :- Under Section 260 of the Companies Act, 1956, the Board of Directors are empowered, if so permitted by articles, to appoint additional directors. However, Such additional directors Shall hold office only up to the date of the next annual general meeting of the company.

Section 260 applies to all companies, public as well as private. [Needle industries (India) ltd. v/s Needle industries newly (India) holdings Ltd. AIR 1951 SC (1298).

Ans-8 (i) Disadvantages of corporate form of enterprises :-

There are certain disadvantages of a corporate form of enterprise. Some of these disadvantages are :-

- (a) **Formalities and expenses :-** Formation of a company is coupled with difficult and detailed legal formalities and procedure involving considerable amount of time and money.
- (b) **Greater tax burden :-** In few circumstances, the tax burden on a company is more than that in comparison to other form of business organization.
- (c) **Greater social responsibility :-** Having regard to the enormous powers conferred by the companies and the impact they have on the society, the companies are called upon to show greater social responsibility in their working.
- (d) **Detailed winding up procedure :-** The companies Act, 1956 provides elaborate and detailed procedure for winding - up of companies which is more expensive and more time consuming.

Ans- (ii) Remuneration of promoters.

A promoter must be remunerated for the initiative and effort he puts into launching a enterprise as a going concern. However, a promoter has no right to get compensated from the company for his services in promoting the company unless there is contract to that effect. In reality, a promoter takes remuneration for his Services in one of the following ways :

- (a) The promoter sells own properties for cash or fully paid up shares at a profit, provided full disclosures to this effect is made.
- (b) He has the option to buy certain number of shares in the company at part.
- (c) He may be given commission on the share sold.
- (d) The promoter is paid a lump sum by the company.

Ans- (iii) Alternate director :- u/s 313.

The Board of Directors may appoint an alternate director if authorized.

- (i) By the articles or
- (ii) By a resolution of the company at general meeting : An alternate director acts in the place of a director who is absent for more than three months from the state in which the board meeting are held. He can not held office for a period longer than the permissible to the original director, in whose place he has been appointed. He must vacate office on the return of the original director.

Ans- (iv)

Passing of resolution by postal ballot [Section 192 (A)]

A new section has been inserted by the companies (Amendment) Bill 2000 to

pass resolution through postal ballot. Following are the provisions for passing the resolution by postal ballot.

- (a) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may and in the case of resolutions relating to such business as the Central Government may, by notification declare to be conducted only by postal ballot, shall get any resolution passed by means of postal ballot.
- (b) Where a listed public company decides to pass any resolution by resorting to postal ballot, it shall give notice to all the shareholders, along with the draft resolution explaining the reasons thereof, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter.
- (iii) Where a resolution is assented to by requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Ans-8 (v)

Please refer 2008 June [7] (a) on Page No. S-166.