PAPER – 3 : BUSINESS AND CORPORATE LAWS

Question 1

Answer any four of the following:

(a) X, a minor was studying in M.Com. in a college. On 1st July, 2005 he took a loan of Rs. 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth Rs. 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. (5 Marks)

(b) A contracts to sell B, by showing sample, certain quantity of rape-seed oil described as 'foreign refined rape-seed-oil'. The oil when delivered matches with the sample, but is not foreign refined rape-seed oil. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B. (5 Marks)

(c) Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:

(i) An apprentice;

(ii) An employee dismissed on the ground of misconduct;

(iii) A temporary workman;

(iv) A piece-rated worker. (5 Marks)

(d) A, B and C are partners in a firm. A introduces D to X as a partner in business. D, infact, was not a partner in the firm's business. D did not deny this statement. X advanced a loan of Rs. 20 lakhs to the firm. On firm's failure to repay the loan X wants to hold D responsible for the repayment of the above loan. Referring to the provisions of the Indian Partnership Act, 1932 decide whether X would succeed in recovering the loan from D. (5 Marks)

(e) J. a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether J has committed an offence under Section 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store). (5 Marks)

(f) Explain the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 relating to the liability of an employer in case of transfer of the establishment to another person. (5 Marks)

Answer

(a) Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act 1872 "If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person." Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

(b) B has a remedy to repudiate the contract. According to section 15 of the Sale of Goods Act, 1930, when the goods are sold by sample as well as by description, there shall be an implied condition that the goods shall correspond to the sample as well as description. In this case, A supplied refined rape oil which did correspond with the sample but was not correspond to the description of foreign refined rape-oil. Hence the B has the right to repudiate the contract.

(c) (i) An Apprentice is not entitled to bonus [Wheel RIM Co. Vs. Govt. of Tamil Nadu (1971)]

(ii) An employee dismissed on the ground of misconduct is disqualified for any bonus. [Pandian Roadways Corporation Ltd. Vs. Presiding Officer (1996)]

(iii) A temporary workman is entitled to bonus on the basis of the total number of days worked by him.

(iv) A piece-rated worker is entitled to bonus. [Mathurads Kani Vs. L.A. Tribunal (1958)]

(d) Yes, X can hold D responsible for the repayment of loan as he is the partner by Estopple or by holding out. Section 28(1) Indian Partnership Act, 1932 lays down this principle as follows: "Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person represented to be a partner does or does not know that representation has reached the person so giving credit." Hence D becomes a partner by holding out as he did not deny the statement given by A. Hence D is liable to make repayment of loan.

(e) The facts of the problem are identical with the facts of a case know as H.N.D. Mulla Feroze Vs. C.Y. Somaya julu, J(2004) 55 SCL (AP) wherein the Andhra Pradesh High Court held that although the petitioner has an legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instrument Act, 1881. Therefore X also is not liable for the cheque but legally liable for the payments for the goods.

(f) According to Section 17B of the Employee's Provident Fund and Miscellaneous Provisions Act 1952, where an employer in relation to an establishment, transfer that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly or severely be liable to pay the contribution and other sum due from the employer under any provision of this Act of the Scheme or the pension scheme, as the case may be, in respect of the period up to the date of such transfer. The liabilities of the transferee shall be limited to the value of the assets obtained by him by such transfer. The liability of transferor and transferee in relating to all the money due under the Act or the Scheme or pension scheme in case of the transfer of the establishment.

Question 2

(a) "The relationship of principal and agent (i.e. Agency) may be constituted by subsequent ratification by the principal." Examine the validity of the statement and state the requisites of a valid ratification in the light of the provisions of the Indian Contract Act, 1872. (5 Marks)

(b) A society; registered under the Multi-state Cooperative Societies Act, 2002 intends to issue non-convertible debentures to the general public. Referring to the provisions of the Multi-state Cooperative Societies Act, 2002 state whether a society registered under the Act is empowered to do so. (5 Marks)

Answer

(a) Where an agent does an act for his principal without his knowledge or authority or where he exceeds the given authority, the principal is not held bound by the transaction so made. However, Section 196 of the Indian Contract Act, 1872, permits the principal to ratify the act of the agent. According to this section "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority. "Agency in such a case is said to be constituted by ratification.

To be valid, a ratification must fulfill the following conditions:

(i) The agent must purport to act an agent.

(ii) The principal must have been in existence at the time the agent originally acted.

(iii) Ratification may be expressed or implied (Section 197).

(iv) No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective (Section 198).

(v) Ratification must be of the entire transaction. A contract cannot be ratified partially (Section 199).

(vi) Ratification of unauthorized act must not injure third person. (Section 200)

(vii) An illegal act cannot be ratified.

(viii) The person ratifying the act must have contractual capacity.

(b) According to the Section 67 of the Multi-State Co-operative Societies Act, 2002, a Multi State Co-operative Society may issue non-convertible debentures to the extent of 25% of its paid up share capital for the fulfillment of its objects on such terms and conditions as are mutually contracted upon. However, the total amount of deposits and loans received during any financial year shall not exceed ten times or the sum of subscribed share capital and accumulated reserves.

Question 3

(a) Explaining the provisions of the Indian Contract Act, 1872, answer the following:

(i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability ?

(ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability ?

(5 Marks)

(b) "Sharing of profits is only a prima facie, not a conclusive evidence of the existence of partnership." Examine the validity of the statement in the light of the provisions of the Indian Partnership Act, 1932 and state as to how would you determine whether a group of persons does or does not constitute partnership. (5 Marks)

Answer

(a) (i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case the B omits to supply the timber. Hence C is discharged from his liability.

(ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.

(b) It is true that sharing of profits of business is an essential element to constitute a partnership. But it is only a prima facie evidence but not a conclusive evidence of the existence of partnership. It is also true that the partners agree to share the profits of a business which is carried on by all or by one of them acting for all. However, the sharing of profits would not by itself make such person partner with the persons carrying on a business. Sharing of profits by the following person will not make them partners in the partnership firm:

(i) by a lender of money to persons engaged or about to engage in any business;

(ii) by a servant or agent as remuneration.

(iii) by widow or child or a deceased partner as annuity, or

(iv) by a previous owner or part owner of the business as consideration for the sale of goodwill or share thereof.

To determine whether a group of persons running a business does or does not constitute partnership, Section 6 of the India Partnership Act, 1932 has to be referred. According to Section 6 "In determining whether a group of persons is or is not firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together. It is very clear from this that in determining relationship between parties and ascertaining the existence of partnership all relevant facts such as follows are to be considered –

(i) There must be an agreement between two or more persons

(ii) There must be a business of partnership

(iii) The partners must have agreed to share the profits of business

(iv) The business must be carried on by all or any one of them acting for all. In other words there must be mutual agency between the partners. Existence of mutual agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. In this situation each partner is the principal as well as agent of the other partners.

Hence, in order to determine whether the relation of partnership exists between two or more persons or not, one should examine all the facts and circumstances as cited above.

Question 4

(a) Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930 ? Explain. (5 Marks)

(b) Explain the provisions of the Employees Provident fund and Miscellaneous Provisions Act, 1952 relating to the following and state:

(i) Whether the balance to the credit of Provident Fund Account of an employee is attachable by the decree of a Court ?

(ii) Whether the payment of contribution to provident fund of an employee, to be made by his employer, who has become insolvent, a preferential payment ? (5 Marks)

Answer

(a) Difference between Condition and Warranty

(i) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.

(ii) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.

(iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.

(iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

(b) (i) According to Section 10 of Employee's Provident Fund and Miscellaneous Provisions Act 1952, the amount standing to the credit of any member in the fund or credit of any exempted employee in provident fund shall not in any way capable or, being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member on the exempted employee.

The amount standing to the credit of the aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules vests in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or the exempted employee and shall also not be liable to attachment under any decree or order of any court.

(ii) According to Section 11 of the Employee's Provident Fund and Miscellaneous Provisions Act 1952, if the employer is adjudged as insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or employer's contribution must be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability thereof has accrued before this order of adjudication or winding up is made.

Question 5.

(a) B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case. (5 Marks)

(b) Explain the powers of the Board of Directors of a multi-state Cooperative Society, as conferred upon the Board under Multi-state Cooperative Societies Act, 2002. (5 Marks)

Answer

(a) Section 53 of the Negotiable Instrument Act, 1881 provides that a holder of negotiable instrument who derives title from a holder in due course has the right thereon of that holder in due course. Such holder of the bill who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards to the acceptor and all parties to the bill prior to that holder. In this case, it is clear that though D was aware of the fraud, he was himself not a party to it. He obtained the instrument from C who was a holder in due course. So D gets a good title and can recover from A.

(b) According to Section 49(2) of the Multi-State Co-operative Societies Act, 2002, the Board of Directors may exercise the following powers:

(i) to admit member;

(ii) to interpret the organizational objectives and set up specific goals to be achieved towards these objectives;

(iii) to make periodic appraisal of operations;

(iv) to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive;

(v) to make provisions for regulating the appointment of employees of the Multi-State Co-operative Society and the scales of pay, allowances and other conditions of service of, including disciplinary action against, such employees;

(vi) to place the annual report, annual financial statements, annual plan and budget for the approval of the general body;

(vii) to consider audit and compliance report and place the same before the general body;

(viii) to acquire or dispose of immovable property;

(ix) to review membership in other co-operatives;

(x) to approve annual and supplementary budget;

(xi) to raise funds;

(xii) to sanction loans to the members; and

(xiii) to take such other measures or to do such other acts as may be prescribed or required under this Act or the by-laws or as may be delegated by the general body.

Question 6

(a) Explain the provisions of the Payment of Bonus Act, 1965 relating to 'Minimum' and 'Maximum' amount of bonus payment to an employee, for an accounting year. (5 Marks)

(b) In what ways does the Cooperative Societies Act, 1912 restricts the powers of a society registered under the Act, to make loans to its members and to borrow money the reform? can such borrowings be made by a Society from non-members also ? Explain. (5 Marks)

Answer

(a) According to the Section 10 of the Payment of Bonus Act, 1965, subject to the other provisions of the Act, every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100 whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

In case of an employee who has not completed 15 years of age at the beginning of accounting year, he will be entitled to a minimum bonus which shall be 8.33% of the salary or wage during the accounting year or Rs. 60/- whichever is higher.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10 [State V. Sardar Dalip Singh Majilhia (1979)]

The maximum bonus payable to an employee in an accounting year is 20% of his salary/wages as defined under the Act.

(b) According to Section 29 of the Co-operative Societies Act, 1912, a registered society can make loan only to members, and with the general or special sanction of the Registrar, to another registered society.

A society with unlimited liability is prohibited from lending money on the security of movable property without the sanction of the Registrar. Lending of money on mortgage of immovable property by any registered society may be prohibited or restricted by the State Government.

According to Section 30 of the Act, savings of members must be accepted in preference to deposits from non-members, the section provides that deposits and loans from non-members shall be received only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Question 7

Answer any four of the following:

(a) The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company aurhorises the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 1956 examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd. (5 Marks)

(b) Explain the Provisions of Companies Act, 1956 relating to the establishment of Investor Education and Protection Fund. (5 Marks)

(c) XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 1956 for shifting its registered office as stated above ? Explain. (5 Marks)

(d) With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 1956 examine whether X's claim for damages is justified. (5 Marks)

(e) Explain the provisions of the Companies Act, 1956 relating to 'Resolutions requiring Special Notice'. State the resolutions that require 'Special Notice' under the Act.

(5 Marks)

Answer

(a) Under the provision of Companies Act, 1956 as contained in Section 17(1) a company is permitted to alter the objects to carry on some business which come under the existing circumstances may conveniently advantageously be combined with the existing law of the company.

In the light of the clause in the Memorandum of Association of the company which authorizes the company to carry on any other trade or business which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with the general business. Since the directors honestly believes that the transaction could be advantageously carried on an ancillary to the company's main objects, therefore, it was not ultra vires. (Bell Houses ltd. Vs. City Wall Properties Ltd.)

(b) Investor Education and Protection Fund (Section 205C)

Companies Act, 1956 vide Section 205C provides for the establishment of Investor Education and Protection Fund. There shall be credited to the fund the following accounts:

(i) Amounts in the unpaid dividend of the company's unclaimed for 7 years.

(ii) The application money received by companies for allotment of any securities and due forefund.

(iii) Matured deposits with companies.

(iv) Matured debentures with companies.

(v) Interest accrued on the amount stated in (i) to (iv) above.

(vi) Grants and donations given to the fund by the Central Government / State Government, companies or any other institutions for the purposes of the fund; and

(vii) Interest or other income received out of the investments made from the Fund (Section 205C(2)). The fund shall be utilized for promotion of investor awareness and protection of interest of investor in accordance with the rules as may be prescribed.

(c) According to Section 17A read with Section 146 of the Companies Act, 1956, the following procedure is to be followed by the company for shifting of the registered office of the company:

(i) A special resolution is required to be passed at a general meeting of the share holders.

(ii) Confirmation of Regional Director is to be obtained and for this company has to apply in the prescribed form.

(iii) The Regional Director shall convey his confirmation within four weeks from the date of receipt of the application.

(iv) Copy of the special resolution within 30 days and certified copy of the confirmation along with a printed copy of the altered memorandum of association must be filed with the Registrar of Companies within 2 months from the date of confirmation.

(v) Within one month of the filing, the Registrar of Companies shall certify registration, which shall be the conclusive evidence that all requirements with respect to alteration and conformation have been complied with.

(d) According to Section 62 of the Companies Act, 1956, every director, promoter and every person who is responsible for the issue of the prospectus containing false or untrue information are liable to compensate all those persons who subscribe to the shares on the faith of prospectus. It was held in the case of Peek Vs. Gurney that the above-mentioned remedy by way or damage will not be available to a person if he has not purchased the shares on the basis of prospectus. Since X purchased shares through the stock exchange open market which cannot be said to have bought shares on the basis of prospectus. X cannot bring action for deceit against the directors. X will not succeed.

(e) Special Notice (Section 190)

Section 190 of the Companies Act, 1956 deals with resolutions requiring special notice. Accordingly the section provides that where under any provision contained the Company Act or in the Acts, special notice is required to be given of any resolution, notice of intention to move the resolution should be given to the company, not less than 14 days clear days before the meeting at which it is to be moved.

Special notice is required to move, besides the resolution mentioned in the Articles, the following resolutions:

(i) a resolution appointing an auditor other than the retiring one. (Section 225)

(ii) a resolution providing expressly that the retiring auditor shall not be reappointed. (Section 225)

(iii) a resolution purporting to remove a director before the expiry of his period of office. (Section 284).

(iv) a resolution to appoint another director in place of the removed director. (Section 284)

Question 8.

(a) Distinguish between 'Reduction of Share Capital' and Diminution of Share Capital'.

(5 Marks)

(b) X had applied for the allotment of 1,000 shares in a company. No allotment of shares was made to him by the company. Later on, without any further application from X, the company transferred 1,000 partly-paid shares to him and placed his name in the Register of Members. X, knowing that his name was placed in the Register of Members, took no steps to get his name removed from the Register of members. The company later on made final call. X refuses to pay for this call. Referring to the provisions of the Companies Act, 1956, examine whether his (X's) refusal to pay for the call is tenable and whether he can escape himself from the liability as a member of the company. (5 Marks)

Answer

(a) (i) Reduction of capital may be a reduction in nominal capital, subscribed capital or paid up capital whereas diminution denotes a cancellation of that portion of the issued capital which has not been subscribed [Section 94(1) (e)]

(ii) Both require authorization by Articles but reduction of capital can be effected only by a special resolution whereas diminution can be effected by an ordinary resolution.

(iii) Reduction of capital needs confirmation by the court [Section 101] whereas diminution needs no such confirmation [Section 94(2)]

(iv) In case of reduction, Court (now Tribunal) may order the company to add the words 'and reduce' after its name [Section 102(3)] but no such order can be passed in case of diminution [Section 94]

(v) In case of diminution notice is to be given to the Registrar within 30 days from the date of cancellation, whereas in the case of reduction more detailed procedure regarding notice to the Registrar has been prescribed by section 103, though there is no such time limit as aforesaid.

(b) According to Section 164 of the Companies Act, 1956, the register of member is a prima facie evidence of the truth of its contents. The contents of the register of members are of decisive importance in determining as to who were the shareholders of the company at a crucial time. Accordingly, if a person's name, to his knowledge, is there in the register, he shall be deemed to be a member. In the given case X knows that his name is included in the register of shareholders and stands by and allows his name to remain, he is holding out to the public that he is shareholder and thereby he will be liable as shareholder.

Question 9.

(a) DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 1956, examine the validity of the meeting and the resolution passed thereat. (5 Marks)

(b) Who are entitled to get notice for the general meeting called by a Public Limited Company registered under the Companies Act, 1956 ? Does the non-receipt of a notice of the meeting by any one entitled to such notice invalidate the meeting and the resolution passed thereat ? What would be your answer in case the omission to give notice to a member is only accidental omission ? (5 Marks)

Answer

(a) This question was decided in Sharp Vs., Dawes case which provides that "The word meeting prima facie means coming together of more than one person." In this given case, only one shareholder present. This was not a meeting within the meaning of the Companies Act, 1956. According to Section 174 another requirement of valid meeting is the presence of a required quorum. Moreover, the section also says that "the members actually present shall be the quorum." The presence of one member may not be enough. This was not a valid meeting.

In East Vs. Bennet Brothers Ltd. (1911) it has been held that in case of a class meeting of all the shares of a particular class are held by one person, one person shall form the quorum. In the given case, since all the shares are not held by one person, no quorum is therefore present. The meeting and the resolution passed there shall not be valid.

(b) Notice of meeting shall be given -

(i) to every member of the company;

(ii) to the persons entitled to a share in consequence of the death or insolvency of a member;

(iii) to a auditor or auditors [Section 172(2)] and,

The company cannot take notice of the beneficial owners of shares who are, therefore, not entitled to notice, where, however, anyone is legally entitled to represent the members, such representative is entitled to receive the notice.

The private company, which is not, a subsidiary of a public company may prescribe, by its articles, persons to whom the notice should be given.

The non-receipt of notice or accidental omission go given notice to any member shall not invalidate the proceedings in the meeting [Section 172(3)]. However, omission to serve notice of meeting on a member on the mistaken ground that he is not a shareholder cannot be said to be an accidental omission. Accidental omission means that the omission must be not only designed but also not deliberate. [Maharaja Export Vs. Apparels Exports Promotion Council (1986)].

Question 10.

(a) When is an expert not liable for untrue statements in the prospectus issued by a company ? (5 Marks)

(b) Referring to the provisions of the Companies Act, 1956 state the mattes relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. What kinds of resolutions need to be passed to transact the 'ordinary Business' and the 'Special Business' at the Annual General Meeting of the Company ? Explain. (5 Marks)

Answer

(a) According to Section 62(3) of the Companies Act, 1956, an expert who would be liable by reason of having given his consent under Section 58 to the issue of the prospectus containing a statement made by him wouldn't be liable if he can prove:

(i) that having given his consent to the issue of the prospectus, withdrew it in writing before the delivery of a copy of the prospectus for registration, or

(ii) that after the delivery of a copy of the prospectus for registration but before allotment, he on becoming aware of the untrue statement withdrew his consent in writing and gave reasonable public notice thereof and the reasons therefore; or

(iii) that he was competent to make the statement and he had reasonable ground to believe, and did up to the time of allotment of the shares and debentures believe that the statement was true.

(b) Ordinary Business (Section 173)

In accordance with the provision of Companies Act, 1956 as contained in Section 172, the business to be transacted at an annual general meeting may comprise of:

(i) Ordinary Business: which relate to the following matters:

(a) Consideration of accounts, balance sheet and the report of the Board of Directors and auditors.

(b) Declaration of dividend.

(c) Appointment of Directors in place of those retiring; and

(d) Appointment of auditors and fixation of their remuneration.

(ii) Special Business: Any other business scheduled to be transacted at the meeting shall be deemed to be special business.

Ordinary business can be passed by an ordinary resolution. However, special business may be transacted either by passing ordinary resolution or special resolution, depending upon the requirements of Companies Act, 1956.