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SERIES 518

Acceptance of Loan before filing of 20A Allowed or not?

(23rd December 2019)

MCA has come with New Section 10A inserted after Section 10 by Companies (Amendment) Ordinance, 2018 dated 02.11.2018 and same has been inserted in Companies (Amendment) Act, 2019

Extract of law:

As per 10A, a company having SHARE CAPITAL incorporated after ordinance i.e. after 02.11.2018 shall not commence its business or exercise any borrowing powers unless,

- A declaration is filed by the directors in e-form Form No. INC-20A within 180 days from date of incorporation of company with ROC that 'every subscriber to the MOA has paid the value of the shares agreed to be Taken by him".

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Common questions amongst many professionals are:

Q. "Whether a company can accept loan from directors, shareholders etc before filing of 20A?"

Q."Whether company can accept loan from directors for opening of bank account before filing of 20A?"

Therefore, in this editorial, author will strive to answer the following questions including above mentioned:

- Whether Subscription money can be received in cash?
- Whether company can commence any business or file for any tender before filing of 20A?

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i) Whether a company can accept loan directors, shareholders etc before filing of 20A for any purpose like opening of bank account?

If a company incorporated with share capital of Rs. 10K and minimum required for opening of bank account in specific company is Rs. 25K. At this situation company face difficulty to open bank account. Then question arise whether loan from director can be taken to open bank account of the Company.

Language of Law: As per 10A, a company having SHARE CAPITAL incorporated after the 'Ordinance' i.e. 02.11.2018, shall not commence its business **or exercise any borrowing powers unless**; a declaration is filed by the directors in e-form Form No. INC-20A.

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As mentioned in 10A to exercise borrowing power company is required to file 20A (declaration of commencement of business). The term Borrowing power includes acceptance of loan from any one i.e. whether Directors, Shareholders etc.

Therefore, one can opine that as it is specifically restricted under Section 10A that company can't exercise borrowing power before filing of declaration in e-form 20A. *Therefore, it is very clear that no company can accept loan from any one before filing of 20A, even for the purpose of opening of bank account also.*

However, if any company accepts loan before filing of 20A then company is liable for following Penalty:

- **Penalty On Company:** the company shall be liable to a penalty of fifty thousand rupees.

- **Penalty on Officer in Default:** every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees

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ii) Whether Subscription money can be received in cash

As per Companies Act, 2013, it is nowhere mentioned that subscription money should be received in Bank account of Company. Therefore, one can opine that Company can receive subscription money in cash also and book the same in books of accounts of Company.

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iii) Whether company can commence any business or file for any tender before filing of 20A.

As per section 10A, a company having SHARE CAPITAL incorporated after ordinance i.e. 02.11.2018 shall not **commence its business** or exercise any borrowing powers unless; a declaration is filed by the directors in e-form Form No. INC-20A.

One can opine that section 10A specifically restricts commencement of business before filing of 20A i.e. declaration of commencement of business. Therefore, is can be deduced that the companies even can't apply for any tender or business proposal before filing of 20A.

iv) What are the attachments of e-form INC-20A?

- In case of subscription money received in Bank Account, attachment shall be copy of Bank Statement.
- In case of subscription money received in cash, attachment shall be a declaration along with copy of books of accounts of Company.

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