CASE LAWS (General Meeting)

For CS Inter + CS Executive } + CA/CS
CA Inter + PE-II + PCC } FINAL

1.) Consent for shorter Notice u/s 171

Re. Self help
Industrial Estate Pvt. Ltd.

⇒ It was held that post consent for shorter notice granted in the General Meeting by all the members of the Company - validates the special resolution though such resolution is already passed in the General Meeting.

2.) Provision of Section-171 is mandatory or directory

Qus:- Is an AGM with a shorter notice and without obtaining consent in form-22A valid?

Ans:- There are different views regarding this qus.

(a) Yes – AGM is Valid ⇒ Shailesh Harilal Shah Vs. Matushree Textile Ltd. — Bombay H.C. (1994)
(Sec-171 is Directory)

(b) No – AGM is invalid ⇒ Kuldeep singh Dhillan Vs. Paragon Utility financers Ltd. — P. and H. HC (1988)
(Sec-171 is mandatory)

(C) Yes - AGM is Valid

{Soma Lingappa Shiva Putrappa Mugabasav
Vs.
Shree Renuka Sugars Limited.}

Karnatka H.C. (2002) - Sec-171 is directory.

Conclusion

⇒ It seems Bombay & Karnatka H.C. has taken better view & Sec-171 is directory in nature & not mandatory.

3.

Ques:- Can 2 AGM's be convened on a single day?

Ans:- Yes, it is possible.

Ques:- Can we give single notice of two AGMs. ?

Ans:- Yes, it is possible

(a) Israicl Vs. Atlas engineering Ltd.

(b) In Re:- Feener Institute of preventive medicines

(c) Calcutta chemicals Limited
Vs.
Chandra Roy.

4.

Ques:- Is it necessary to hold A.G.M even if the company ceased to carry on business. ?

Ans:- Yes, It is necessary to hold the AGM till the Company is woundup. {Madan Gopal day
Vs
State of West Bengal.}

5. Re. Haycraft Gold Reduction and Mining Co. Ltd.

A notice of AGM was issued by M.D. or C.S. without the authority of the board. It was held that the AGM was valid if Board of Directors rectify the notice before the AGM is held.

6. Question: Can an insolvent ~~person~~ member sign the requisition to call an Extra-ordinary Gen. Meeting (EGM)

Balkrishan Gupta
Vs.
Swadeshi Polytex Limited

⇒ It was held that he can sign the requisition as the voting power remains with him but monetary benefits are transfered to official assignee or the receiver.

7. A.D. Chaudhary
Vs.
Mysore Paper Mills Limited

⇒ Where the court has issued an injunction order agaist the company and by reason of such order or board of directors are unable to call an EGM. Then the proper course of action would be such that to request the court allow the convening of EGM.

(8.) Sikkim Bank Limited
Vs.
R.K. Chaudhary.

⇒ If the General Meeting is not held at the venue mentioned in the notice and the notice of change of the venue is not given to any member then such meeting is invalid.

(9.) Sec 186 Impracticability in calling the meeting.

M.R.S. Chettiar
Vs.
Manickaveles Chettiar
(Madras H.C.)
(1951)

⇒ It was held that closure of Registered office is not a case of impracticability.

(10.) R. Rangachari
Vs.
S. Supplah.
(Supreme Court.)

⇒ S.C. held that u/s 186. the impracticability may be either in calling, holding or conducting the G.M., however if C.L.B. steps in holding of GM for which notices are already issued by B.O.D. then it cannot merely appoint chairman and hold and conduct GM. In such a situation, C.L.B. shall issue a fresh notice and call, held and conduct G.M. from the very initial stage.

(11.) Janki Printers Private Limited

vs.

Hadar Press Limited. C.L.B. (P.B.) (2000)

⇒ CLB held that meeting can in its discretion wait for longer then half an hour and proceed with the business where the quorum is complete. There would be nothing wrong if the chairman come later then half an hour and called the meeting to proceed and the quorum was complete on its arrival. CLB held that there was no infirmity in the meeting.

(12.) Re: United Western Bank Limited

⇒ It was held that a proxy cannot appoint the body corporate as further proxy.

Question :- Of which state stampduty shall be payable on proxy form? Example:- • Regd. office in Bombay
• Member reside at Delhi

Does Stamping of Delhi, Haryana possible?

(13.) Fire stone Tyre & Rubber Co. Ltd.

vs.

Synthetatic & Chemicals Ltd.

⇒ It was held that proxy form executed by member in one state though bearing revenue stamp of other state is possible.

• GENERAL MEETING •

(14) T.V. Mathew

vs.

Nadi Kaara Agro Processing Ltd.

⇒ Time limit for convening A.G.M. as per Companies Act 1956 → 31.05.2001. However AGM was postpone to 16.07.2001 on 25.06.2001. Some of the membership got changed. The AGM was convened on 16.07.2001

2 Question arises

(i) Whether AGM can be delayed.

(ii) Who shall exercise the voting power on 16.07.2001 – the original members or the transferee of shares?

Answer:- The Original Member shall exercise voting power.

Now :- C.L.B. after this case in 2002 reversed the earlier decision in the Case of United western Bank Ltd.

In Re :- United Western Bank

⇒ The decision was that only new shareholder would be allowed to come at the meeting.

(15) Namita Gupta

vs.

Chachar Native Stock Exchange Co. Ltd.

⇒ The result of show of hand will become invalid. if the chairman refuses the valid demand for poll.

(16.) H.V. Jayaram Vs. ICICI

⇒ Non issue of share certificate → Supreme court held that cause of action would arise at the place where Regd. office of the Company is situated.

(17.) B.P.L. Sanyo Technology Ltd. and others
Vs.
Rahul Agarwal

⇒ Transfer deed in favour of "A" son of "B".
Company send share certificate to "A" son of "C".

- "A" son of "C" transfer the shares to a Bank.

Court held that Bank should surrendar the share certificate and if it does not do so Company shall cancel the share certificate and issue fresh certificate in favour of "A" son of "B.".

(18.) Nandita Jain Vs. Benett Coleman & Co.

⇒ C.L.B. held that a minor applying through his guardian for being registered as a member was entitled to be registered as a member, if the shares are fully paid up and application is signed by the natural Guardian.

DEBENTURE

Borrowing ultra vires the company – Remedies available to lender under equity (and not in common law)

(19.) (i) Blackburn Building Society Case

⇒ Under the equitable doctrine of restitution he can obtain an injunction provided he can trace and indentify the money lent and any property which the company has bought with it.

(20.) (ii) FIR Bank's Executors
Vs.
Humphreys

⇒ Where the money of an ultra vires borrowing have been used to pay off lawful debts of the company he would be subrogated to the position of creditors paid off and to that extent would have the right to recover the loan from the Company.

(iii) Sue the directors for breach of warranty of authority.

(21.) Krishna Kumar Rohtagi and others
Vs.
State bank of India and others.

⇒ In cases where the dir. borrows the fund without having authorised by the Co. and the money have been used for the benefit of the Co. The Co. Cannot repudiate its liability to repay the money. This is the borrowing intra vires the Co. but ultra vires the directors. The Lender would be safe if he prove – he advance the loan in good faith & without the Knowledge that limit imposed have been exceeded.

Section - 111 + 111A Transfer of Share

(22) Nirmal Kumar
vs.
Jaipur Metal and Electrical Limited

⇒ It was held that the Company cannot refuse to register the transfer of shares in favour of a person on the suspicion that when such person will attend AGM of the Co. as member he will create nuisance.

(23) Rangpurtea Association
Vs.
MaKKan Lal.

⇒ Directors cannot refuse to register the transfer on the grounds that the proposed transferee has made the attempt to windup the Company in past.

Question:- Can the board of directors refuse to register tran. of shares in favour of proposed transferee on the ground that he is a business rival?

Answer:- (24) Bajaj Auto Ltd. V/s. N.K. Farodia [1972]

⇒ Supreme Court held that Company Can deny.

However in case of :-

(25) Macdowells + Co. Ltd.
Vs.
SHAW WALLACE & Co. Ltd. [2002]

⇒ C.L.B. held that Co. was not entitled to contend that a business rival should not be allowed to buy share in the Co. nor the petitioner's conduct disentitled it to apply for registration of shares in its name.

Qus:- where the share tran. committee is delegated the power to register the tran. of shares then whether such committee has inherent power to refuse to register the transfer of share.

Ans:- No. (26.) T.N. KuriKas

Vs.

Premier Tyre Ltd.

⇒ It was held that share tran. Committee has no such inherent power to refuse to register the tran. of share.

DIVIDENDS

(27.) Khushaldas Patel

Vs.

H.K. Adhyarn

⇒ The dividend is payable to the shareholder whose names appears in the register of members on the appropriate date even though prior to that date he has sold the shares and the transfer deed in respect thereof has not been lodged with the company.

The company is not bound to pay to pay dividend to the purchaser even though the transactions between the seller and purchaser has been completed.

* However, if share transferdeed has been lodged with the company and it has not yet been registered then Section- 206 A shall come ~~it~~ into operation.

28. Section-207 Hanuman Prasad Gupta
Vs.
Hira lal

⇒ On posting of dividend warrant or cheque, the post office becomes the agent of shareholder and the loss of dividend warrant during transit thereafter is at the risk of the shareholder.

29. NEPC India Limited
Vs.
ROC

⇒ It was held that to invoke penal provisions under Sec-207 the complaint must be filed with in 1 year of the issue of show cause notice. In view of Sec-468 of Cr. P.C. 1973 a complaint u/s 207 filed more then one year after the date of issue of show cause notice shall be prima facie be time barred.

30. Hanuman Prasad Gupta
Vs.
Hira lal

⇒ It was held by the Supreme Court that failure to pay dividend or post the div. warrant would arise only at the place of registered office of the Co. and the court having jurisdiction over that place can alone could have jurisdiction to entertain the complaint.

Payment of Dividend out of Capital

31. Verner
Vs.
General + Commercial Investments Trust Ltd.

⇒ If the Memorandum of Association or Artical give power to the company to pay dividend out of capital, such a power shall be invalid + ultravires.

32. Towers Vs. African Tug. Co.

⇒ Where the shareholder receives the dividend paid out of capital and they had the full knowledge that dividend being paid out of capital they cannot keep the dividend with themselves and have to return the amount received to the company.

33. In Re. Filts Croft Case.

⇒ Where a misrepresantation was made to the shareholders by the directors that the dividends were being paid out of profits while they were actually paid out of capital, the shareholders would not be accountable and the directors would be accountable to the Company.

OPPRESSION & MISMANAGEMENT

34. Vijay Kumar Chopra

Vs.

Samachar Ltd.

⇒ It was held that if all the ingredients of Section-8 of Arbitration Act, 1996 are satisfied then even matters covered by Section 397 or 398 can be referred for arbitration.

35. Bhadresh Kantilal Shah

Vs.

Asia Magottea International

⇒ Where the Company itself is not a party to arbitration agreement i.e. agreement is between the individual members, then the matters related to Co. affairs finding the place in Sec. 397/398 cannot be reffered to arbitration.

Facts:- A company had two dominant group of shareholders. Some SHs of one such group which controlled the Co. till the recent past made the petition to the court u/s 433 (f). Citing the cases of dead lock in management, two petitioners were facing the charges of financial irregularities at the time of making the application.

36. Case:- Kapil N. Mehta Vs. Shree Laxmi Moters ltd.

⇒ Court held that the given matter should have sought the relief u/s 397/398 read with Section-402 and same is not maintainable u/s 433 (f) of Companies Act, 1956.

37. World wide Agencies (P) Ltd & another
Vs.
Mrs. Margret T. Desor and others

⇒ The legal representative of the deceased member whose name is appearing on the register of members is entilled to file a petition U/S 397 and 398. It would be wrong to insist that the name of legal representative be first put on the register before he can move on application U/S 397, 398.

38. Needle Industries (India) Limited
Vs.
Needle Industries (Neway) India Hotels Limited

⇒ S.C. held that issue of shares to foreign shareholders would amount to violation of the provisions of FERA and directives of RBI, declining to make such issue would not amount to oppression.

39. A.K. Puri
Vs.
Devidas Gopal Krishna Ltd.

⇒ Pendency of petition U/S 397 & 398 is not sufficient ground for staying proceeding of winding up.

(40.) Re:- Hindustan Co-operative Society Ltd.
An attempt to force new and more risky object upon unwilling minority may in circumstances amount to oppression.

(41.) Gannasamb bandam
Vs.
Tamilnad Transport Coimbatore (P) Ltd.

⇒ where there are 2 Groups of shareholders in the Co. and they are holding 55% and 45% voting power and are convening their Gen. Meeting and Board Meeting separately. Such a situation is a situation of deadlock and not of oppression.

(42.) Kalinga Tubes Limited
Vs.
Shanti prasad Jain

⇒ The mere loss of faith in the majority shareholder's cannot be considered as oppression on minority SHs.
Oppression should be continuing one and not isolated one.

(43.) Raja Mudhri Electricals Ltd.
Vs.
Shanti Prasad Jain

⇒ Subsequent withdrawal of consent by some members, does not prohibit C.L.B. to go on with the application. These members cannot make the allegation that they were misled by other members.

By: Ankur Garg
Company Secretary.