

PRACTICAL QUESTION & ANSWERS ON COMPANY LAW - FOR IPCC/PCC

1. MN Limited held its Annual General Meeting on 27th March, 2011. Mr. M, the Chairman of the said meeting died on 1st April, 2011, when minutes of the annual general meeting were not yet recorded and signed. How would you deal with the situation? Would your answer be different in case the meeting held on 27th March, 2011 was a Board meeting?

ANSWER

Minutes of Meetings (Section 193 (1A) of the Companies Act, 1956): The problem is based on the provisions of Section 193 (1A) of the Companies Act, 1956. In the case of General Meetings minutes are to be recorded and signed by the Chairman of the meeting within a period of 30 days from the conclusion of the General Meeting or in the event of death or inability of the Chairman, by the director duly authorized for the purpose. As the Chairman of the meeting (Mr. M.) died on 1st April 2011, a Board Meeting has to be convened immediately and one of the directors present at the meeting must be authorized to sign the minutes of AGM held on 27th March, 2011 within a period of 30 days from the conclusion of the said meeting.

In the case of Board Meetings the minutes are to be recorded within a period of 30 days from the conclusion of the meeting, but it can be signed either by the Chairman of the said meeting or the Chairman of the next succeeding meeting [Section 193 (1) and Section 193 (1A) (a)] . So it is enough if the minutes are recorded within 30 days from 27th March 2011, but it can be signed by the Chairman of the next Board Meeting.

2. State whether the following statements are True or False and give reasons.

(a) A certificate of incorporation issued by the Registrar of Companies is not valid if all the signatures of the subscribers to memorandum of association have been forged.

(b) A Public Company can issue either redeemable or irredeemable preference shares.

ANSWER

(a) False (incorrect): Because according to Section 35 of the Companies Act, 1956 a certificate of incorporation is conclusive evidence that all the requirements of the Companies Act, 1956 in respect of registration have been complied with.

(b) False (Incorrect): Because according to Section 80 (5A) of the Companies Act, 1956 a company cannot issue irredeemable preference shares or redeemable after a period of 20 years.

3. A charge requiring registration with Registrar of Companies was created on 1st February, 2008 by XYZ Limited. The Secretary of the Company realised on 15th March, 2008 that the charge was not filed with the Registrar. State the steps to be taken by the Secretary to get the charge registered with the Registrar.

ANSWER

Registration of Charge : Steps for belated registration (Section 125 of the Companies Act, 1956): A charge should be registered within 30 days after the date of its creation. In this case the charge was created on 1st Feb, 2008. Hence the particulars of charge are required to be filed with the Registrar on or before 2nd March, 2008 [Section 125 (11)]. The Secretary of the company

realised only on 15th March, 2008 that the charge was not filed with the Registrar. It is, however, open to the Registrar to allow the particulars of the charge to be filed within 30 days next following the expiry of the period of 30 days if the company satisfies the Registrar that it had sufficient cause for not filing the particulars within 30 days. [Proviso to Section 125(1)]. The Secretary may take advantage of this provision and immediately file the particulars of charge with the Registrar giving adequate reasons for the delay. If the Registrar is satisfied, he may allow registration on payment of additional fee.

4. Pick-up the correct answer from the following and give reasons:

(a) A Public Company need not offer further shares to existing shareholders, if:

- (i) Ordinary resolution is passed to that effect by the company in General meeting.
- (ii) Special resolution is passed to that effect by the company in General meeting.
- (iii) Resolution is passed by Board of Directors and approved by Company Law Board.
- (iv) Special resolution is passed by the Company in General meeting and approved by

Registrar of Companies.

(b) Resolution requiring special notice is required

(i) For appointment of a person other than the retiring auditor as auditor at the Annual General Meeting

(ii) For removing a Director before the expiry of the period of his office

(iii) For both (1) and (2)

(iv) For None of the above.

(c) Quorum for a General meeting of a Public Company is

(i) 5 members present in person or by proxy

(ii) 3 members personally present as required by the Articles of Association of the Company

(iii) 5 members personally present

(iv) 2 members personally present.

ANSWER

(a) (2) is the correct answer. According to Section 81 (1) of the Companies Act, 1956 further shares can be offered to persons other than existing shareholders if special resolution to that effect is passed by the company in general meeting.

(b) (3) is the correct answer because it has been so provided in Section 190, Section 225 and Section 284 (2) of the Companies Act, 1956.

(c) (3) is the correct answer because according to Section 174, five members personally present will constitute quorum unless the Articles provide for a larger number.

5. VD Company Ltd. is registered in Tamil Nadu within the jurisdiction of the Registrar of Companies, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of Registrar of Companies, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office.

ANSWER

Change of registered office from the jurisdiction of one ROC to another within same State (Section 17-A of the Companies Act, 1956) : In this case the company has to comply with the provisions of Section 17-A of the Companies Act, 1956. The proposed change of registered office from the jurisdiction of ROC, Chennai to ROC, Coimbatore will be effective only after

such change is confirmed by the Regional Director who shall communicate the confirmation within 4 weeks from the date of receipt of application. Certified copy of the confirmation along with the attested copy of the Memorandum of Association must be filed with ROC under whose jurisdiction the Registered Office is being shifted within 2 months from the date of confirmation. The Registrar will issue Registration certificate within one month of filing the documents. The certificate shall be conclusive evidence that all the requirements of the Companies Act, 1956 have been complied with.

6. DJA Company Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 1956 advise whether the above buy back of equity shares by the company is possible. Also state the sources out of which buy-back of shares can be financed.

ANSWER

Buy-back Shares by Company (Section 77A of the Companies Act, 1956): The Company cannot buy back its entire equity shares from the existing shareholders. According to Section 77A of the Companies Act, 1956, buy back is restricted to 10% of its paid-up equity capital and free reserves authorized by the Board by means of a resolution passed at its meeting and upto 25% by way of a special resolution in a financial year. The sources out of which buy-back of shares can be finalised are:

- (a) Free reserves or
- (b) Security Premium account or
- (c) Proceeds of any shares or other specified securities.

7. Noble Meters Limited was incorporated with the equity share capital of Rs. 50 lakh. The company received the certificate of incorporation on 20th May, 2009. The company issued the prospectus inviting the public to subscribe for its equity shares. Meanwhile, the company intended to commence its business. Whether Noble Meters Ltd. is entitled to commence its business without obtaining the certificate to commencement of Business? Advise the company stating the conditions to be fulfilled for obtaining the certificate to commencement of Business from the Registrar of Companies under Companies Act, 1956.

ANSWER

A private company or a company having no share capital may commence business immediately after its incorporation. The public company having share capital must obtain certificate to commence business from the Registrar of Companies before it commences its business or exercises its borrowing powers. Therefore in the given problem Noble Meters Limited is not entitled to commence business without obtaining the certificate to commence the business from the Registrar of Companies.

In order to obtain this certificate the company has to fulfill the following conditions in compliance with the provisions of Section 149 of the Companies Act, 1956:

- a) the minimum number of shares which has to be paid for in cash has been subscribed and allotted;
- b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to

the proportion payable on application and allotment on the shares offered for public subscription;

- c) no money is or may become liable to be paid to applicants of any shares or debentures offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any recognized Stock Exchange; and
- d) A statutory declaration by the secretary or one of the directors that the aforesaid requirements have been complied with, is filed with the Registrar of Companies. If a public company commences business or borrows money without obtaining the certificate, every officer in default shall be punishable with a fine of Rs. 5,000/-.

8. The United Traders Association was constituted by two joint Hindu Families consisting of 21 major and 5 minor members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 1956 or any other law. State whether United Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the United Traders Association subsequently were reduced to 15?

ANSWER

Section 11 of the Companies Act, 1956 provides that no company, association or partnership consisting of more than 10 persons for the purpose of carrying on the business of banking and more than 20 persons for the purpose of carrying on any other business can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law.

Thus if such an association violates the provisions of Section 11 it is an “Illegal Association” although none of the objects for which it may have been formed is illegal. This Section does not apply to a joint Hindu family but where the business is being carried on by two or more joint Hindu families the provisions of Section 11 shall be applicable. For computing the number of members for this purpose, minor members of such families shall be excluded.

Hence, the United Traders Association constituted by two joint Hindu Families is an Illegal Association according to the provisions of Section 11 as stated above. Further such Association of more than 20 persons, if unregistered is invalid at its inception and cannot be validated by subsequent reduction in the number of members to below 20 (*Madan Lal vs. Janki Prasad 4 All 319*).

9. Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

ANSWER

According to Section 84(1) of the Companies Act, 1956, a share certificate once issued amounts to a declaration by the company to all the world that the person in whose name the certificate is made out and to whom it is given is a share holder in the company; in other words the company is estopped from denying his title to the shares. However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. If the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is

bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received (*Barton v. North Staffordshire Railway Co.* 38 Ch D 456).

In the above case, 'Z' being the bona fide purchaser must be compensated by the company. 'Z' shall have therefore a right to claim the market price of those shares at that time. However 'Z' cannot insist on being placed on the register of members to which 'X' alone is eligible as he cannot be said to have consented to the transfer. 'Y' shall of course be liable to the company to indemnify the loss on account of payment to 'Z'. A similar decision was given in *Dixon v. Kennaway*.

10. *M. H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 1956? Explain in detail.*

ANSWER

Section 173 of the Companies Act, 1956 requires a company to annex an explanatory statement to every notice for a meeting of the company at which some special business is to be transacted. This explanatory statement is to bring to the notice of members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than (i) consideration and approval of the annual accounts of the company (ii) declaration of dividend (iii) appointment of directors in place of those retiring and (iv) appointment of auditors including the fixing of their remuneration is regarded as special business. Therefore, the complaint of Mr. A, the shareholder is valid, since the details on the item regarding issue of sweat equity shares to be considered is lacking. The information about the issue of sweat equity shares is a material fact. The notice given by M. H. Ltd. of the General Meeting of the shareholders is not a valid notice under Section 173 of the Companies Act, 1956.

11. (a) *The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X, a member, of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y one month before the date on which the meeting was due. The name of Y could not be entered in the Register of Members as the application for transfer of shares was pending. X attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not held his shares for the specified period as provided in the articles before the date of the meeting.*

State whether X can exercise his voting right in the meeting. State also the grounds upon which X may be excluded from exercising his voting rights in the meeting of the shareholders.

(b) *State whether the following statements are true or false and give reasons:*

- i. *A share warrant is a bearer instrument and the bearer is entitled to the shares specified in the share warrant.*
- ii. *Every Company which is registered under the Companies Act, 1956, need not have their own Articles of Association.*

(c) *Pick out the correct answer from the following and give reasons:*

- (i) *Statutory meeting is to be called by:*

- (1) *Government Company*
- (2) *Private Company having share capital*
- (3) *Public Company having share capital*
- (4) *Foreign Company.*
- (ii) *The Securities Premium Account can not be utilized:*
 - (1) *In writing off the preliminary expenses of the company*
 - (2) *In writing off the expenses of commission paid on issue of share of the company*
 - (3) *For redemption of redeemable preference shares*
 - (4) *In providing for the premium payable on the redemption of redeemable preference shares.*
- (iii) *A "Statement in lieu of Prospectus" must be filed before the allotment of the shares with the Registrar of Companies by:*
 - (1) *A Private Company*
 - (2) *A Guarantee Company*
 - (3) *A Public Company which issues the prospectus to the public*
 - (4) *A Public Company which does not issue the prospectus to the public.*

ANSWER

(a) "Entitlement to voting rights of shares holders"

1. Section 182 of the Companies Act, 1956 states that a public company, or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting right on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken, or any other ground except the grounds stated under Section 181 of the Companies Act, 1956. Examining the provisions of Section 182 it is clear that X can exercise his voting right in the shareholders' meeting of ABC Ltd though the articles of the company prohibits the same on the ground that he has not held his shares for the specified period before the meeting or on any other ground. The decision of *Anathalakshmi vs. H.I & F Trust* AIR 1951 Mad 927, is relevant to this point.
2. According to Section 181 of the Companies Act, 1956, the only grounds on which the right of an equity shareholder to vote may be excluded are (i) non-payment of calls by a member, (ii) non-payment of other sums due against a member, and (iii) where the company has exercised the right of lien on his shares.

(b) (i) Correct : According to Section 114 (1) of the Companies Act, 1956 a public company limited by shares, if so authorized by its articles, may issue, with the prior approval of the Central Government, for fully paid up shares, under its common seal, a warrant stating that the bearer of the warrant is entitled to the shares therein specified. Section 114(3) states that a share warrant shall entitle the bearer thereof of the shares therein specified and the shares so specified may be transferred by delivery of the warrant. Thus it is clear that a share warrant is a bearer document of title to shares specified therein. On conversion of shares into share warrant, the name of the shareholder is struck off from the register of members.

(ii) Incorrect : Every company limited by guarantee or an unlimited or a private limited company is required to register its own articles along with the Memorandum of Association. If a public company limited by shares does not register its articles, the regulations contained in Table A would be applicable as if these were the articles of the company. In the case of a public company limited by shares and registered after the commencement of the Act, Table A shall apply in so far

as it has not been excluded or modified by special articles. A guarantee company, an unlimited and a private company may adopt some of the provisions stated in Tables C,D and E but they must have their own Articles which should not be inconsistent with the provisions of the Companies Act, 1956.

(c) (i) Statutory meeting:

Answer No. (3): Public Company having share capital: In accordance with the provisions of Section 165 every company limited by shares and every company limited by guarantee having share capital may call the statutory meeting. Other companies need not call the statutory meeting.

(ii) Securities Premium Account:

Answer No. (3): For redemption of redeemable preference shares: Securities Premium account can not be utilized for redemption of redeemable preference shares as it has not been covered under Section 78(2). However, if the articles so permit it may also be utilized for other purposes (in Re Hyderabad Industries Ltd, 2004).

(iii) Statement in lieu of Prospectus:

Answer No. (4): A public company which does not issue prospectus to the public: According to the provisions of Section 70 of the Companies Act, 1956, a public company, which does not issue a prospectus to the public, has to file a statement in lieu of prospectus before the allotment of the shares with the Registrar of companies.

12. F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded?

ANSWER

The House of Lords in Salomon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the corporate veil may be lifted by the courts. It means looking behind the corporate façade and disregarding the corporate entity. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, by taking shelter of the corporate nature, the courts have discretion to disregard the corporate entity in the matter of tax evasion.

(1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the assessee himself. Therefore the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax.

(1) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to handover them over to the assessee as pretended loans. The same was upheld in Re Sir Dinshaw Maneckji Petit AIR 1927 Bom.371 and Juggilal vs. Commissioner of Income Tax AIR (1969) SC (932).

13. Annual General Meeting of MGR Limited is convened on 28th December, 2008. Mr. J, who is a member of the company, approaches the company on 28th December, 2008 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 1956 in this regard.

ANSWER

Every member entitled to vote at a meeting of the company or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at anytime during the business hours of the company. Provided not less than 3 days' notice in writing of the intention to inspect is given to the company (Section 176[7] of the Companies Act, 1956).

In the given case, Mr. J who is a member approaches the company on 28th December and demands inspection of proxies lodged with the company. Based on the above provisions since prior notice had not been given by Mr. J to the company for inspecting the proxies, the company may refuse inspection of proxy forms.

14. India Cosmetics Limited was a registered company under Indian Companies Act, 1956. Later on, another company, India Cosmetics and Accessories Limited was formed and registered. There being similarity in the names of both the Companies, India Cosmetics Limited lodged a complaint against India Cosmetics and Accessories Limited, with the Registrar of Companies, stating that there is sufficient similarity between these two names which may mislead or defraud the public. India Cosmetics and Accessories Limited is intending to alter its name. Advise India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 1956.

ANSWER

Similarity in the names of Companies

In accordance with Section 22(1) of the Companies Act, 1956, if through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered or resembles a registered trademark, whether under this Act or any previous company law, the first mentioned company, may by ordinary resolution and with the previous approval of the Central Government, signified in writing, change its name or new name.

The problem asked in the question is based upon the provision of Section 22(1) of the Companies Act, 1956. The new company registered under the name India Cosmetics Accessories Ltd. is identical in name with the existing India Cosmetics Limited. According to the aforesaid provisions of Section 22(1) the newly setup company should change its name. In such a case, the company can, on its own, change the name by obtaining previous approval of Central Government (new power delegated to Regional Director) and then by passing an ordinary resolution [Section 22(1)(a)] within 12 months of the registration. Such a change should be made within 3 months of the date of the direction of the Central Government being received or such longer period as the Central Government may deem fit to allow. The application for changing the name is required to be made to the Registrar of companies in Form 1A with a fee of Rs. 500. Where the name of a company has been changed the Registrar shall issue fresh certificate of

incorporation with the changed name. Such change of name shall not affect any of the company's rights or obligations or affect any legal proceedings by or against it. Any legal proceedings which might have been continued or commenced by or against the company by its former name, may be continued by its name under Section 23 of the Companies Act, 1956.

15. While sanctioning working limit, the rate of interest had been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India. There was a change in the interest rate due to Reserve Bank of India notification issued later. The Bank insisted on filing a return of modification of charges. Is the stand of the bank correct? Discuss in the light of the provisions of the Companies Act, 1956.

ANSWER

Section 135 of the Companies Act, 1956 provides that “whenever the terms or conditions or the extent or operation of any charge registered under this part are or is modified, it shall be the duty of the company to send to the Registrar the particulars of such modifications and the provisions of this part as to registration of a charge shall apply to modification of the charge.” Here the term modification includes variation of any terms of the agreement including variation of rate of interest (other than bank rate), which may be by mutual agreement or by operation of law. In the light of the above, the change

16. Promoters of Ahuja & sons Co. Ltd signed an agreement during incorporation process of the company , for the purchase of certain raw material for the company and the payment to be made to the supplier after the incorporation of the company. The company was incorporated and the material was also consumed. Soon, the company became insolvent and the debt became due. As a result supplier sued the promoters of the company for the recovery of money. Examine the position of the promoters under the following situations:

- 1. When the company has already adopted the contract after incorporation?’*
- 2. When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?*

ANSWER

Problem on the Promoters:

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name (Scot v. Lord Ebury), even though the contract expressly provided that only the company shall be answerable for performance. In Kelner v. Baxter also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre incorporation

contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract. Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

1. the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.
2. in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

17. X purchased 100 equity shares of ABC Ltd. from Y. Though the amount of transaction was paid to the seller, the transferee name is not appearing in the list of members. Subsequently, the company declared dividend. Referring to the provisions of the Companies Act, 1956 state to whom the company will be paying the dividend.

ANSWER

According to Section 206 of the Companies Act, 1956 dividend shall be paid only to the registered holder of shares or to his order or to his bankers or to the bearer of a share warrant. Where shares have been sold but not yet registered, the dividend shall be paid to the transferee only in case the transferor gives a mandate in writing to that effect. Otherwise, the dividend in respect of such shares shall be transferred to the 'unpaid dividend account'.

18. The Articles of Associations of X Ltd. require the personal presence of six members to constitute quorum of General Meeting. The following persons were present at the time of commencement of an Extraordinary General Meeting to consider the appointment of Managing Director:

- (i) Mr. G. the representative of Governor of Gujarat
- (ii) Mr. A and Mr. B, shareholders of Preference Shares.
- (iii) Mr. L. representing M Ltd., N Ltd. and X Ltd.
- (iv) Mr. P, Mr. Q, Mr. R and Mr. S who were proxies of Shareholders.

Can it be said that quorum was present? Discuss.

ANSWERS

Quorum means the minimum number of members that must be personally present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations. According to Section 174, of the Companies Act, 1956, unless the Articles provide for larger number, five members, personally present in the case of a public company and two in the case of any other company form the quorum for a general meeting. In this case, the Articles provide for six. The word 'personally present' excludes proxies. However, the representative of a body

corporate appointed under Section 187 or the representative of the President or a Governor of State under Section 187A is a member 'personally present' for purpose of counting a quorum. In case two or more corporate bodies who are members of a company are represented by a single individual, each of the bodies corporate will be treated as personally present by the individual representing it. If, for instance, he represents three corporate bodies, his presence will be counted as three members being present in person for purposes of quorum.

The quorum of members, personally present means the presence of the members who are called to vote in the meeting. Preference shareholders can vote only in relation to the matters affecting the rights of preference shares. In the extra ordinary general meeting in question, only the appointment of the managing director has to be considered. It is not a matter affecting the right of preference shares and the preference shareholders are not entitled to vote and hence, they cannot be considered as "members personally present" for the purpose of quorum.

Thus, the number of persons being personally present would be as follows:

Present personally Number

Mr. G 1

Mr. A and Mr. B Nil

Mr. L 3

Proxies Nil

Total 4

It can therefore be said that quorum was not present.

19. P transfers his share to Q and applies to a company to register transfer of share by P to Q. The company refuses to register such transfer of shares and even not sends notice of refusal to P or Q within the prescribed period. What are the rights available to the aggrieved party against the company for such refusal?

ANSWER

The problem as asked in the question is based upon Section 111 of the Companies Act dealing with the refusal to register transfer and appeal against refusal. On refusal to register a transfer or transmission by operation of law, of the right to any shares in, or debentures thereof, the company has to send notice of refusal giving reasons to the transferee or the transferor or to the person giving intimation of such transmission, or on delivery of transfer deed to the company, as the case may be within a period of 2 months from the date of the intimation or delivery of the transfer deed to the company. In the given case the company has failed to give such notice of refusal to the aggrieved parties within the stipulated time of 2 months. Failure to give notice of refusal gives a right/remedies to the aggrieved parties.

Rights/remedies to aggrieved parties:

The aggrieved parties may apply to the Company Law Board (Tribunal) under subsection (2) or (4) of Section 111 against refusal or for rectification of the register of members, if his name is entered in the register without sufficient cause, or for omission of his name from the register or default in making an entry of his name in the register. The time of filing such appeal is 4 months from the date of lodgement of transfer application.

There is no limitation period provided for making an application for rectification of register of members, under subsection (4). The company is also punishable under sub-section (12) with a fine upto Rs.500 per day.

20. (a) 'S', a shareholder, after duly appointing P as his proxy for a meeting, himself attended the meeting and voted on a resolution. P thereafter claimed to exercise his vote. Examine his claim.

(b) The Articles of Association of a public company require the instrument appointing a proxy to be received by the company 75 hours before the meeting. Is it a valid requirement? If not, what are its effect?

(c) S, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions?

ANSWER

(a) As per law, a shareholder has a right to revoke the proxy's authority by voting himself before the proxy has voted - but once the proxy has voted he cannot retract his authority. Therefore P's claim in the given case is invalid. This point was reiterated in *Cousins v. International Brick Co. Ltd* also.

(b) According to Section 176 of the Companies Act, 1956, any provision in the Articles of a public company or of a private company which is a subsidiary of a public company which requires a longer period than 48 hours before a meeting of the company for depositing a proxy, shall have effect as if a period of 48 hours had been specified for such deposit. Therefore in the given case, the answer is a 'no'.

(c) S has given proper notice under Section 176(7) of the Companies Act 1956 which stipulates that not less than three days in writing of the intention to inspect has to be given to the company. But, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So S can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

21. (i) An annual general meeting of a company was convened in November, 2006. It was adjourned and the adjourned meeting was held in March, 2007. The next general meeting was held in March, 2008. The company was held liable for an irregularity in holding the AGMs. Decide.

(ii) Reliance Industries Ltd. has its registered office at Mumbai. The company desires to hold an extraordinary general meeting in New Delhi. Examine the validity of the company's desire with reference to the relevant provisions of the Companies Act, 1956

ANSWER

(i) The company is guilty of violation of Section 166. There must be a meeting in each calendar year which did not happen in this case.

(ii) The company may hold the EGM at any place. Sec.166 mentions the place for an AGM but Section 172 (1), dealing with EGMs, contains no reference to any particular place for meeting.

22. State whether the following statements are true or false and give reasons there for:

(a) The approval of the Central Government is required to change the name of a company.

(b) Companies registered under Section 25 are also known as 'licensed companies'.

(c) Television advertisements and visual clips giving all required details can be treated as a prospectus.

- (d) *Deferred shares also called founders' shares.*
(e) *To authorise the issue of shares at a discount, a special resolution is required.*

ANSWER

- (a) True. As per Section 21 of Companies Act, 1956, the Central Government's approval is required for name change.
(b) True. The permission of the Central Government for registering a company under Section 25 is in the form of a license and hence they are also called licensed companies.
(c) False. A prospectus must be in writing.
(d) True. Since deferred shares are often held by the promoters of the company, they are called so.
(e) False. Under Section 79, subject to the articles, an ordinary resolution is sufficient to authorize an issue of shares at discount.

23. A Managing Director of a Company borrowed a sum of money by executing a document in which he forged the signature of two other directors who are required to sign as per requirements of the articles. Can the Company deny liability to creditors?

ANSWER

In *Ruben v. Great Fingall Consolidated*, it was held that Doctrine of Indoor Management could not be extended to case of forgery. Transaction effected by forgery is void ab initio. However, in *Sri Kishan v. Mondal Bros. & Co.* it was held that a Company may be held liable for any fraudulent acts of its officers acting under ostensible authority. Therefore, in the instant case, Company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

24. M/s Arya Engineering Ltd. was incorporated on 1.4.2010. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first annual general meeting of the Company and the power of the registrar to grant extension of time for the first annual general meeting.

ANSWER

A company shall hold its first Annual General Meeting (AGM) within 18 months from the date of its incorporation. It shall not be necessary for a company to hold any AGM in the year of its incorporation or in the following year if it holds AGM within 18 months from the date of its incorporation. In the given case the company M/s Arya Engineering Ltd. was incorporated on 1.4.2010. It should have conducted its first AGM within a period of 18 months i.e. 30th September 2011. However the company has not held the meeting till date, thus violating the provisions of Section 166 of the Companies Act. It is to be further noted that the Registrar does not have power to grant extension of time to hold the first AGM.

25. The management of Kamna Real Estate Ltd. has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clauses of the memorandum of association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in object clause.

ANSWER

Since the present objects clause of the company does not contain any enabling provision to carry on the proposed business, the objects clause will have to be altered. According to Section 17, objects clause can be amended only for 7 special reasons. Loss cannot be considered as one of the reason to enable the company to amend the object clause.

26. T, a share broker at Bombay Stock Exchange, is also the Secretary of XYZ Ltd. He applied for the allotment of 1000 equity shares being issued by the Company and paid the full amount. M, one of the clerks of T, owning no shares executed a transfer deed in favour of T without enclosing the share certificate. The Company without asking for the share certificate from M (the clerk) registered the transfer and issued a new share certificate. On declaration of dividend by the Company T was denied the right to get dividend on the grounds that the share certificate issued to T had no validity. T moves the Court praying the Court to declare the share certificate as valid and also claims for damages.

Examine the case and decide whether T's claim is valid. What would be your answer in case M is an officer of the Company, having no authority to issue share certificate, issues a forged certificate?

ANSWER

If a Company authorises the issue of a share certificate stating that the person named therein is the registered holder of certain shares, it cannot afterwards allege that that person is not entitled to those shares (Praga Tools Corporation v. MRT Patny). Thus a share certificate is a declaration by the Company to the whole world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the Company.

Further in the case Dixon v. Kennaway & Co., the Company was estopped from denying the validity of the certificate and was held liable to damages. The facts of the case were similar to that of what has been asked in the question. Furthermore, if an officer of the Company, who has no authority to issue certificates, issues a forged certificate, there is no estoppel. Thus based on the above explanation and the case ruling, T's claim is valid and the Company would be estopped from denying the validity of the share certificate. The answer would be different in the second case since the officer concerned has no authority to issue the certificate and issues a forged certificate.

27. Mars Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for payment under the following situations:

(i) When the company has already adopted the contract after incorporation?'

(ii) When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?

ANSWER

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name (*Scot v. Lord Ebury*), even though the contract expressly provided that only the company shall be answerable for performance. In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

- (i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.
- (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

28. Under the Articles, the Directors of a Company had power to borrow upto Rs.1,00,000 without the consent of the General Meeting. The Directors themselves lent Rs.2,00,000 to the Company without such consent and took Debentures. Is the Company liable for Rs.2,00,000? If not, for what amount, if any, is the Company liable?

ANSWER

The company is not to be held wholly liable but it is liable only to the extent of Rs.1,00,000 which is permitted under the Articles of the company. (*Howard Vs. Patent Ivory Co.*)

29. Six of the seven signatures on the Memorandum of Association of a Company were forged. The Memorandum was duly presented, registered and a certificate of incorporation was issued. The existence of the Company was subsequently questioned on the ground that the registration was void. Decide.

ANSWER

Section 35 of the Companies Act 1956 declares that certificate of incorporation given by the Registrar in respect of any company shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto. Therefore the Registration cannot be challenged in the given case, even though six of the seven signatures of the Memorandum of Association of a company were forged as the Memorandum was duly presented, registered and a certificate of incorporation was issued.

30. A company wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the Company. Does it amount to purchase of its own shares. If in the instant case, the Company is itself purchasing to redeem its preference shares, does it amount to again acquisition of its own shares?

ANSWER

As per Section 77 of the Companies Act, a company can not purchase directly its own shares and also financing any person directly or indirectly whether by way of loan / guarantee or surety or otherwise for or in connection with purchase or subscription made or to be made of any shares of its own or of its holding Company is prohibited. But this rule has two exceptions under Section 80 of the Act. The first of those exceptions extends to a case where a company makes a purchase to redeem its preference shares and the second exception comes into operation where a company may legitimately provide financial assistance in the form of a loan to bona fide employees of the company, other than its Directors or manager, to enable them to purchase fully paid-up shares to be "held by themselves by way of beneficial ownership, where such loans shall not exceed in amount six months' salary or wages of such employees.

31. ABC Ltd. issued a notice for holding of its AGM on 7th November, 2010. The notice was posted to the members on 16th October, 2010. Some of the members alleged that the company had not complied with the provisions of the Act with regard to the period of notice and as such the meeting was not validly called. Decide.

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall in the number of days by which the notice falls short of the statutory requirement. State and explain by how many days the notice fall short of the statutory requirement?

(iii) Can the shortfall, if any, be condoned?

ANSWER

(i) 21 days' clear notice of an AGM must be given [Section 171]. In case notice is sent by post, then section 53(2) provides that the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting. For working out clear 21 days, the day of the notice and the day of the meeting shall be excluded. Accordingly, 21 clear days' notice has not been served and the meeting is, therefore, not validly convened.

(ii) Worked as per (I) above, notice falls short by 2 days (i.e. Notice should have been posted on 14.10.10). In other words, notice of the general meeting must have been sent at least 25 days before the date of the meeting i.e. 7th November, 2010 (where the notice is sent by post)

(iii) According to section 171(2), an AGM called at a notice shorter than 21 clear days shall be valid if consent is accorded thereto by all the members entitled to vote thereat. Thus, if all the members of the company approve to the shorter notice, shortfall may be condoned.

32. STD Ltd. convened its Board of Directors meeting on 1st August, 2010. During the course of the meeting the date for calling annual general meeting was discussed but no decision could be taken on it in the meeting. However, the Secretary of the company issued the notice for calling the annual general meeting of the shareholders without taking any authorization from the Board of Directors. State who is the proper authority to issue the notice for calling the annual general meeting and to whom such notice is to be given.

ANSWER

The Annual General Meeting of a company can be called by a proper authority. Obviously the only proper authority is the Board of Directors. It may be called by passing necessary resolution in the Board meeting or by circular resolution. The notice for it must be given by the proper authority i.e. Board of Directors.

It cannot be called by any individual director or some of the directors or by Secretary. Therefore, in this case the secretary of the STD Ltd. is not authorised to call Annual General Meeting of the company. The proper authority to call and to issue the notice of such meeting is the Board of Directors. If however a notice has been issued without authority such a notice may be ratified by the Board of Directors before the meeting.

Whom to send notice of AGM?: Notice of AGM must be in writing and should be given to:

- (a) every member of the company
- (b) In case of insolvent member, to his assignee
- (c) In case of deceased member to his representative.
- (d) Auditors {Section 172 (2)}.
- (e) A legally entitled representative
- (f) In case of joint holders, that joint holder whose name is first in the register of members or in record of depository {Section 53 (4)}.
- (g) Stock exchange, in case the company is a listed company.

In addition to the above the copy of notice is to be sent to Financial Institutions, foreign collaborators, trustees for holders of debentures, if company has entered into any agreement with them, which may provide for sending of notices of general meeting to them.

33. Developers Ltd. hold a General Meeting of shareholders for passing a special resolution regarding alteration of Articles of Association. Out of the members present in the meeting 20 voted in favour, 4 against and 8 members did not vote and remained absent from voting. The Chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Indian Companies Act, 1956 ?

ANSWER

In accordance with Section 189 (2) of the Companies Act, 1956 the votes cast in favour of a resolution (whether by show of hands or in a poll as the case may be) by members who, being entitled so to do, vote in person or where proxies are allowed, by proxy, are not less than three times the number of votes if any, cast against the resolution by members so entitled and voting is called special resolution.

Hence in accordance with the above mentioned provisions, the resolution passed in the general meeting of the Developers Ltd is a valid resolution since the vote cast in favour of the resolution are more than 3 times the number of votes cast against the resolution.

34. The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The Company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so ? State the reasons clearly.

ANSWER

According to Section 36(1) of the Indian Companies Act, 1956, 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 combined covenants on its and his part to observe all the provisions of the memorandum and articles. Section 36 creates an obligation binding on the company in its dealings with the members but the word “members” in this Section means members in their capacity as members, that is, excluding any relationship which does not flow from the membership itself. Therefore even a member cannot enforce the provisions of articles for his benefit in some other capacity than that of a member.

Section 31 also provides that the company may by special resolution alter its articles. In the given problem the company has changed its articles by passing resolution unanimously and therefore the company can change its articles. The provision of memorandum and articles will bind the members but in the capacity of a member only and even a member may be treated as an outsider. Therefore a member cannot enforce the provisions of articles for his benefit in some other capacity than that of a member. In the given case A will not succeed and the company is empowered to appoint B as a solicitor of the company and may change the articles accordingly. The problem is based upon the decision held in *Eley vs. Positive Govt. Security Life Assurance Co.* (1876).

35. The Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of directors decided to pay 5% underwriting commission. Can the Board of directors do so ? State the provisions of law in this regard as stated under the Indian Companies Act, 1956.

ANSWER

According to the provisions of Section 76 (1) of the Companies Act, 1956 a company may pay a commission to any person who agrees to subscribe or procure subscription for an agreed number of shares or debentures of the company. Such commission may be paid to the underwriters who offer guarantee to procure applications for certain number of shares and guarantee to purchase the balance quantity of shares. For this, the underwriter gets underwriting commission. Maximum total commission payable cannot exceed 5% of the price of shares or the underwriter may be paid a lower rate if so prescribed by articles. In case of debentures it is 2½% or a lower rate if so prescribed in the articles.

In the given problem the articles of MSW Ltd has prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. The directors cannot do so because under Section 76 (1) as aforesaid, such commission cannot be more than that prescribed in the articles. Therefore the directors are not empowered to do so. Further, such amount of

commission payable must be authorized by articles. The agreed commission should be disclosed in the prospectus or the statement in lieu of prospectus. Copy of the contract for payment of commission must be filed with Registrar of companies at the time of the delivery of the prospectus or letter of offer. [Section 76 (1)]. An underwriter must be also registered with SEBI.