Company Law PYQ 2021

Q1. The fundamental attribute of corporate personality is that company is a legal entity different from its members but still the court may disregard it under a few circumstances. Elucidate the statement citing relevant case laws.

Ans 1. The concept of corporate personality is a fundamental principle of company law, which states that a company is a separate legal entity from its members. This means that the company can enter into contracts, sue and be sued, and own property in its own name. However, there are some circumstances where the court may disregard the corporate personality of a company, and instead, look at the individuals behind the company. This is known as the doctrine of piercing the corporate veil.

There are several circumstances where the court may disregard the corporate personality of a company. One such circumstance is when the company is being used for fraudulent or illegal purposes. In this situation, the court may hold the individual members of the company responsible for the actions of the company.

In the case of Gilford Motor Co Ltd v Horne [1933] Ch 935, the court disregarded the corporate personality of the company as the company was formed to avoid the enforceability of a restraint of trade covenant by the former employee. The court held that the company was a mere sham, and the individual behind the company was personally liable for the actions of the company.

Another circumstance where the court may disregard the corporate personality of a company is when the company is undercapitalized or the company is a façade for the dominant shareholders. In such a situation, the court may look beyond the corporate entity and hold the shareholders personally liable for the company's debts and obligations.

In the case of DHN Food Distributors Ltd v Tower Hamlets London Borough Council [1976] 1 WLR 852, the court disregarded the corporate personality of the company and held the dominant shareholders personally liable as the company was undercapitalized and was used as a façade to conceal the dominant shareholders' control over the company.

In conclusion, the doctrine of piercing the corporate veil is an exception to the principle of corporate personality. The court may disregard the corporate personality of a company under certain circumstances, such as fraud, undercapitalization, or façade. The above-mentioned case laws highlight the circumstances in which the court may pierce the corporate veil and hold the individuals behind the company personally liable.

Q2. “An outsider is presumed to know the constitution and the statutory public documents of a company, but not what may or may not have taken place within the doors that are closed to him”. Explain with reference to the relevant doctrine with exceptions, if any.

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Ans2. The statement "an outsider is presumed to know the constitution and the statutory public documents of a company, but not what may or may not have taken place within the doors that are closed to him" refers to the doctrine of constructive notice. The doctrine of constructive notice is a principle of company law that presumes that any person who deals with a company is deemed to have knowledge of its constitutional documents and statutory public documents.

Under this doctrine, any person who deals with a company is deemed to have constructive notice of the company's memorandum and articles of association, which set out the company's constitution, objectives, and rules of governance. The doctrine also extends to the company's statutory public documents, such as its annual return, financial statements, and filings with the registrar of companies.

The principle of constructive notice is based on the presumption that all the relevant information about the company is publicly available and that any person who deals with the company should have familiarized themselves with this information before entering into any transaction with the company. This principle is particularly relevant in the context of the liability of third parties for the acts of the company.

However, the doctrine of constructive notice is subject to certain exceptions. For example, the doctrine may not apply where a third party has dealt with the company in good faith and without knowledge of any irregularity or fraud on the part of the company. In such a case, the third party may be entitled to rely on the apparent authority of the company's agents or officers, even if such authority is not actually granted in the company's constitution or other documents.

Another exception to the doctrine of constructive notice is in cases where the company's constitutional documents have been altered without complying with the statutory requirements for such alterations. In such a case, a third party who has relied on the altered documents may not be deemed to have constructive notice of the alteration and may be able to challenge the validity of the transaction.

In conclusion, the doctrine of constructive notice presumes that any person who deals with a company is deemed to have knowledge of the company's constitution and statutory public documents. This doctrine is subject to exceptions, such as where the third party has dealt with the company in good faith or where the company's constitutional documents have been altered without complying with the statutory requirements.

Q3. XYZ Ltd. is a public company. The company wants to appoint Ms. Namrata as the director in the company. Discuss the methods by which she may be appointed director in the company as laid down by the Companies Act 2013. Can the directors of a company be removed during their term of office?

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Ans3. According to the Companies Act, 2013, there are two methods by which Ms. Namrata can be appointed as a director in XYZ Ltd, a public company. These are as follows:

Appointment by Shareholders: Ms. Namrata can be appointed as a director by the shareholders of the company through an ordinary resolution passed at a general meeting. The company must first issue a notice to all shareholders informing them of the proposed appointment, and the resolution must be passed by a simple majority of the votes cast.

Appointment by Board of Directors: Ms. Namrata can also be appointed as a director by the Board of Directors, subject to the provisions of the company's articles of association. However, such appointment must be confirmed by the shareholders at the next general meeting.

In addition, Ms. Namrata must meet the eligibility requirements as specified under the Companies Act, 2013, such as not being disqualified from being a director under any law, being above 18 years of age, and having a Director Identification Number (DIN) issued by the Ministry of Corporate Affairs.

Regarding the second part of the question, yes, the directors of a company can be removed during their term of office under certain circumstances as provided for by the Companies Act, 2013. A director can be removed by an ordinary resolution passed by the shareholders at a general meeting before the expiry of their term, subject to the provisions of the articles of association of the company.

However, in the case of a public company, the removal of a director may be challenged by the director concerned if it is done without following the prescribed procedure or if it is in violation of any contractual obligations. Therefore, the removal of a director must be done with due care and in accordance with the provisions of the Companies Act, 2013, and the company's articles of association.

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Q4. What do you mean by “buy back of securities” Explain the legal provisions related to buy -back of shares by the company as per the Companies Act in this regard.

Ans 4 Buyback of securities refers to the process by which a company repurchases its own shares or other securities from its shareholders. This is done by offering a price to the shareholders who are willing to sell their shares to the company. The buyback of securities is a common corporate finance strategy used by companies to return surplus cash to shareholders, increase earnings per share, and improve the company's financial ratios.

Under the Companies Act, 2013, a company can buy back its own securities subject to the following conditions and legal provisions:

Authorization: A company can buy back its own shares only if it is authorized by its articles of association and a special resolution passed by the shareholders at a general meeting.

Sources of Funds: The buyback of shares can only be done through free reserves or securities premium account or proceeds of any shares or other specified securities.

Maximum limit: The buyback of shares cannot exceed 25% of the aggregate of the paid-up share capital and free reserves of the company.

Method of buyback: The buyback of shares can be done through the stock exchange or by a tender offer to the shareholders or any other method as may be prescribed by the Securities and Exchange Board of India (SEBI).

Time period: The company cannot make another offer of buyback within a period of 1 year from the date of the closure of the previous offer.

Disclosure and filings: The company must file the details of the buyback with the Registrar of Companies within 30 days of the completion of the buyback.

Consequences of non-compliance: Any violation of the provisions related to buyback of shares can result in penalties and fines for the company and its officers.

It is important to note that the buyback of securities can only be done in accordance with the legal provisions and regulations prescribed by the Companies Act, 2013, and other applicable laws and regulations. Any non-compliance with the legal requirements can result in legal and financial consequences for the company and its officers.

Q.5 What is Annual General Meeting? The Annual General Meeting of the Z Ltd. was scheduled to be held on 30th December 2019. Due to insufficient quorum, it had to be adjourned. What rules should be followed while adjourning the meeting? What is the quorum required for Z Ltd. (The company had 10,090 members on the date)? What if the quorum is not present in a general meeting? Can a single member constitute quorum of a general meeting?

Ans5 An Annual General Meeting (AGM) is a mandatory meeting held by every company once in a year, where the shareholders of the company gather to discuss and approve important matters related to the company's performance, financial statements, appointment of directors, and other important business matters.

In the case of Z Ltd, the rules that should be followed while adjourning the meeting are as follows:

The Chairman of the meeting must announce the adjournment and the date, time, and place of the adjourned meeting.

Notice of the adjourned meeting must be given to all members of the company at least seven days before the scheduled date of the adjourned meeting.

The business that was scheduled for the original meeting will be transacted at the adjourned meeting, regardless of whether or not a quorum is present.

The quorum required for Z Ltd. would depend on the provisions of the company's articles of association. However, as per the Companies Act, 2013, the quorum required for an AGM of a public

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company is either 5 members personally present, or 1/3rd of the total number of members, whichever is higher. In the case of Z Ltd, with 10,090 members, the quorum required would be either 5 members personally present, or 3,364 members, whichever is higher.

If the quorum is not present in a general meeting, then the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other date, time and place as the Board may determine. The Board must give notice of the adjourned meeting to all members at least seven days before the scheduled date of the adjourned meeting.

No, a single member cannot constitute the quorum of a general meeting, as the Companies Act, 2013 requires that a minimum number of members be personally present to constitute the quorum. This is to ensure that the decisions taken at the meeting have the approval of a sufficient number of members of the company.

Q6. There are only two members of a company. They are also the directors of the company. But both are not on speaking terms. Can the company be wound- up on this ground? Give reasons. Discuss in detail the circumstances under which a company may be compulsory wound up by the Tribunal under the Companies Act.

Ans6 The fact that the two members and directors of a company are not on speaking terms does not in itself constitute grounds for winding up the company. Winding up a company is a serious matter, and it can only be done under certain prescribed circumstances. The Companies Act, 2013, sets out specific grounds on which a company can be wound up, both voluntarily and compulsorily.

Compulsory winding up of a company by the Tribunal can be initiated under the following circumstances:

If the company is unable to pay its debts: If a company has outstanding debts and is unable to pay them off, the Tribunal may order the company to be wound up.

If the company has acted against the interests of sovereignty and integrity of India, security of the state, public order, decency or morality: If a company engages in activities that are against the interests of the country or society, the Tribunal may order the company to be wound up.

If the company has not filed its financial statements or annual returns for a continuous period of three years: If a company does not file its financial statements or annual returns for three consecutive years, the Tribunal may order the company to be wound up.

If the company has conducted its affairs in a fraudulent manner: If a company is found to have engaged in fraudulent activities, the Tribunal may order the company to be wound up.

If the number of members of the company has fallen below the minimum required: If the number of members of a company falls below the minimum required, the Tribunal may order the company to be wound up.

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If the company is unable to carry out its business for a year: If a company is unable to carry out its business for a continuous period of one year, the Tribunal may order the company to be wound up.

It is important to note that in order for a company to be compulsorily wound up by the Tribunal, there must be a valid reason that falls under one of the above circumstances. The fact that the two members and directors of a company are not on speaking terms, in itself, does not constitute a valid reason for compulsory winding up.

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