Corporate Laws PYQ 2020

Q1. A transport company Lucky Golden wanted to obtain permit to operate in Haryana but due to its past issues and track record, Govt of Haryana denied to grant it permission. So later on this company formed a subsidiary Evergreen transport and this time got permit to operate in Haryana state. But on complaint by one competing company, court cancelled the permit of Evergreen company. Later on, holding company lucky golden invested Rs.5 lakh in Evergreen company by buying its shares. Dividend out of these shares were shown in P&L account of lucky golden company as basis of calculating bonus payable to its workers. But after some time lucky golden transferred all 5 lakh shares of evergreen company to new subsidiary company Mayur transport. So P&L of lucky golden showed no dividend income and lucky golden did not pay bonus this time to its worker by giving excuse of no dividend income. Workers filed case in court and court directed lucky golden to pay bonus to its workers as paid in last year. Explain by citing case laws under relevant judicial interpretations, How court denied all 3 companies mentioned in above case to be accepted as seperate legal entities?

Ans. In the case mentioned, where Lucky Golden formed a subsidiary called Evergreen Transport to obtain a permit in Haryana, and later transferred the shares of Evergreen to another subsidiary called **Mayur Transport**, it appears that the court denied the separate legal entity status of these companies. This may have led to the court's decision to hold Lucky Golden responsible for the obligations of Evergreen Transport.

Under the concept of separate legal entity, a company is considered a distinct legal entity separate from its shareholders or parent company. However, there are circumstances where the courts may disregard the separate legal entity principle and "pierce the corporate veil" to hold the parent company liable for the actions or obligations of its subsidiary. The court does this when it finds that the subsidiary is being used as a mere instrument or facade to evade legal responsibilities or perpetrate fraud.

The court may **disregard the separate legal entity** status of a company and hold the parent company liable if:

Alter Ego Doctrine: The court finds that there is such unity between the parent and subsidiary that they operate as a single economic entity, and treating them as separate entities would lead to injustice or defeat the purpose of the law.

Fraudulent or Improper Purpose: The court determines that the subsidiary was formed or used for fraudulent or improper purposes, such as to evade legal obligations or to deceive creditors or regulatory authorities.

Lack of Independent Decision-Making: The court finds that the subsidiary does not exercise genuine independent decision-making and is controlled entirely by the parent company, making it a mere puppet or alter ego of the parent.

It is important to note that the application of these principles **may vary depending** on the **jurisdiction and the specific facts** and circumstances of each case. The court's decision would depend on the evidence presented and the interpretation of the law in that particular jurisdiction.

To get specific case laws or judicial interpretations relevant to the situation described, it is advisable to consult with a legal professional or refer to legal databases and resources that provide up-to-date information on relevant case law.

Q2. A promoter Mr. Ram appointed a solicitor for preparing MOA and AOA for a proposed company XYZ Ltd in 1962 which was not in existence at that time. That solicitor incurred all expenses related to company registration fees : and other related expenses but later on after incorporation of company directors of XYZ. Ltd denied him payment. Before XYZ Ltd came into existence. Mr. Ram had done a deal with Mr. Shyam & sons to take leasing rights of a gold mine for 5 years on behalf of proposed XYZ Ltd but later on after Gold struck in the mine, Shyam & sons denied to fulfill transferring of leasing rights to Mr. Ram. When Mr. Ram approached court then court rejected Mr. Ram's claim on leasing rights. Meanwhile, Mr. Ram had done a contract with Mr. Sudhir for supplying cranes to be used by proposed company XYZ Ltd and had done payment also from his account. But later on after incorporation of XYZ Ltd in 1964, when Mr Ram demanded his payment from company XYZ directors they denied payment. When Ram approached court then court asked company to honor payment to Mr. Ram. With reference to given case, mention reasons of non payment of expenses to solicitor by Company XYZ. Ltd. and denial of leasing rights by court to Mr. Ram and acceptance of payment claimed by Ram for cranes by court explaining all provisions related with contracts done by promoters before incorporation of the company.

Ans. In the given case, the reasons for the non-payment of expenses to the solicitor by Company XYZ Ltd and the denial of leasing rights to Mr. Ram by the court, as well as the acceptance of the payment claimed by Ram for cranes by the court, can be explained based on the provisions related to contracts done by promoters before the incorporation of the company. Here's a breakdown of the relevant provisions:

Expenses incurred by the solicitor:

Typically, promoters are personally responsible for the expenses incurred in promoting a company until it is incorporated. In this case, since the company XYZ Ltd was not in existence at the time the solicitor incurred the expenses, the directors of the company may argue that they are not liable for those expenses as they were not authorized by the company or its directors. As a result, they may deny payment to the solicitor.

Denial of leasing rights by the court:

The **court rejected** Mr. Ram's claim on the leasing rights of the gold mine because, as a promoter, Mr. Ram acted on behalf of the proposed company XYZ Ltd before it came into existence. Until a company is incorporated and registered, it does not have a legal existence or capacity to enter into contracts or acquire rights. Therefore, Mr. Ram could not enforce the leasing rights on behalf of a non-existent company, and the court denied his claim.

Acceptance of payment claimed for cranes by the court:

In the case of the contract between Mr. Ram and Mr. Sudhir for supplying cranes, the court directed the company XYZ Ltd to honor the payment to Mr. Ram. This is because a promoter can be personally liable for contracts entered into on behalf of the proposed company before its incorporation. Promoters are responsible for fulfilling their contractual obligations until the company is incorporated and assumes those obligations. Therefore, the court recognized Mr. Ram's claim for payment and directed the company to honor it.

It's important to note that the specific provisions and legal principles regarding contracts by promoters may vary depending on the jurisdiction and the applicable company law. The above explanation provides a general understanding of the situation based on common principles, but the outcome and legal implications can be influenced by the specific provisions of the relevant company law and the interpretation of the court.

Q3. Mr. Vikram who was chartered accountant in company Globe finance It borrowed a sum of 5 lakh from this company. He got loan agreement signed by chief accountant and managing director but signatures of MD had been forged. For any loan above rs. 4.5 lakh MD needed approval of shareholders in AGM before sanctioning such loan as per AOA but loan given to Mr. Vikram was sanctioned without calling AGM by MD. Moreover, as per AOA, all loans agreement needed signatures of MD as well as director finance. Later on when Mr Vikram demanded loan money from Globe finance Ltd. then MD of Globe finance denied to give loan money to Mr. Vikram. Mr. Vikram approached court against company Globe finance but court rejected claim of Mr. Vikram. Specify reasons behind court rejection of Mr Vikram's claim explaining two important doctrines under AOA.

Ans. The court rejected Mr. Vikram's claim against Globe finance Ltd. based on two important doctrines under the Articles of Association (AOA) of the company. These doctrines are:

Ultra Vires Doctrine: The court may apply the Ultra Vires doctrine when a company exceeds the scope of its legal powers as defined in its AOA or the Companies Act. In this case, the AOA of Globe finance Ltd. required the approval of shareholders in the Annual General Meeting (AGM) for loans above Rs. 4.5 lakh. However, the loan given to Mr. Vikram was sanctioned without calling an AGM or obtaining the necessary shareholder approval. This action by the managing director (MD) of Globe finance Ltd. exceeded the powers granted to them under the AOA, rendering the loan ultra vires or beyond the company's legal capacity. As a result, the court may have rejected Mr. Vikram's claim based on the principle that the company's actions were invalid and unenforceable.

Indoor Management Rule: The Indoor Management Rule, also known as the Turquand Rule or the Doctrine of Constructive Notice, protects the rights of a bona fide third party dealing with a company. According to this rule, an outsider dealing with a company is entitled to assume that the internal requirements and procedures of the company have been properly followed. In this case, Mr. Vikram, as an employee of Globe finance Ltd., relied on the loan agreement signed by the chief accountant and the alleged forged signature of the MD. However, the court may have held that Mr. Vikram, being an insider of the company, should have been aware of the requirement for shareholder approval for loans above a certain threshold and the need for the signatures of both the MD and the director of finance. Therefore, the court may have rejected Mr. Vikram's claim based on the principle that he should have known about the internal procedures and requirements of the company.

It is important to note that the court's decision can vary based on the specific facts and circumstances of the case and the interpretation of the applicable company law. The **rejection of Mr.**

Vikram's claim could be a result of the court's application of these doctrines, considering the actions of the company and the knowledge and responsibilities of the parties involved.

Q4. ABC It issued prospectus for IPO and it mentioned few statements in it. It showed dividend payment for last 5 years but did not disclose that company was in losses since last 3 years and paying dividend out of its free reserves. It mentioned further that company acquired S godowns but in reality ABC It had not acquired any such property. It mentioned that present value of its gross sale is 10 crore per annum without mentioning actual produce or capable of production. It also stated that due to intelligence of management our company is expected to reach a certain level. It also talked about issuing shares at discount. Explain which statements in prospects of ABC Itd are half truth, misleading, false, ambiguous, lawfully wrong and mere opinion? what are the conditions to be satisfied for cancellation of such contract and under what circumstances right to rescission is lost? Under what circumstances a shareholder can claim for damages also besides the cancellation of shares?

Ans. In the prospectus of ABC It, several statements can be categorized as follows:

Half truth: The statement regarding dividend payment for the last 5 years is a half truth because it fails to disclose that the company has been in losses for the past 3 years and is paying dividends out of its free reserves. By omitting this crucial information, the prospectus presents an incomplete picture of the company's financial situation.

Misleading: The statement about the acquisition of S godowns is misleading because, in reality, ABC It had not acquired any such property. By providing false information, the prospectus creates a misleading impression that the company has expanded its infrastructure.

False: The statement about the present value of gross sales being 10 crore per annum without mentioning the actual produce or capability of production is false. It provides an inflated figure without substantiating it with factual details.

Ambiguous: The statement regarding the expected level of growth due to the intelligence of management is ambiguous. It does not provide clear and measurable criteria for assessing the intelligence or capabilities of the management.

Lawfully wrong: The statement about issuing shares at a discount is lawfully wrong. According to the Companies Act, 2013, shares cannot be issued at a discount unless specific conditions and procedures, as prescribed by law, are met. Issuing shares at a discount without complying with these requirements would be a violation of the law.

In the context of contract cancellation and the loss of right to rescission, the conditions to be satisfied may vary depending on the jurisdiction and applicable laws. Generally, the following conditions may apply:

Misrepresentation: If the prospectus contains false, misleading, or ambiguous statements, and the person entering into the contract can prove that they relied on those statements, they may have grounds for cancellation of the contract.

Materiality: The misrepresentation must be material, meaning that it is significant enough to influence the decision of the person entering into the contract. If the misrepresentation is minor or immaterial, it may not be sufficient to justify cancellation.

Innocent party: The person seeking cancellation must be an innocent party, meaning they did not contribute to the misrepresentation or participate in any fraudulent activity.

Timeliness: The innocent party must exercise their right to rescission within a reasonable time after discovering the misrepresentation.

Regarding the **circumstances under which a shareholder can claim damages in addition to the cancellation of shares**, it typically **depends on the specific legal** provisions and remedies available in the jurisdiction. Generally, a shareholder may be able to claim damages if they can prove that they suffered a loss as a result of the company's false or misleading statements in the prospectus. However, it is important to consult with a legal professional or refer to the specific laws and regulations in your jurisdiction for accurate and detailed information on these matters.

Q5. The ministry of corporate affairs (MCA) on 5th May, 2020 allowed companies to hold their annual general meetings (AGMs) by video conferencing (VC) or other audio-visual means during 2020. This has been done as the social distancing norms continue and there is restriction on the movement of people looking at COVID 19 pandemic situation in India. Earlier only specific companies were allowed to conduct E Voting in India. What procedure need to be followed for E voting in india and how passing resolutions through E voting in AGM is different from passing resolutions through postal ballot in AGM in India?

Ans. The procedure for e-voting in India is governed by the **Companies Act, 2013** and the rules prescribed by the Ministry of Corporate Affairs (MCA). The steps involved in e-voting are as follows:

Appointment of a Recognized E-voting Service Provider (ESP): The company must appoint an ESP who is registered with the Securities and Exchange Board of India (SEBI) to conduct the e-voting process.

Sending Notice: The company sends a notice to all shareholders informing them about the e-voting process, along with the details of the resolutions to be passed.

Registering Shareholders: The company provides the ESP with a list of eligible shareholders who are entitled to participate in the e-voting process.

Creating a Platform: The ESP creates an electronic platform where shareholders can cast their votes securely. The platform is user-friendly and accessible through a website or mobile application.

Unique Login Credentials: The ESP provides each eligible shareholder with unique login credentials to access the e-voting platform.

Casting Votes: Shareholders can log in to the platform using their credentials and cast their votes electronically by selecting the appropriate options for each resolution.

Confirmation and Recordkeeping: Once the shareholder submits their vote, the system generates a confirmation message and records the vote electronically.

Declaration of Results: The ESP consolidates the votes received from shareholders and prepares a report of the voting results. The company then declares the results of the e-voting process.

Passing resolutions through e-voting in an Annual General Meeting (AGM) in India differs from passing resolutions through postal ballot in the following ways:

Mode of Voting: In e-voting, shareholders cast their votes electronically through a designated platform, whereas in postal ballot, shareholders vote by sending physical ballot papers through post.

Real-time Participation: In e-voting, shareholders can participate and cast their votes in real-time during the AGM, whereas in postal ballot, shareholders vote before the AGM takes place.

Secure and Efficient Process: E-voting provides a secure and efficient method of voting, with instant recording and consolidation of votes. Postal ballot, on the other hand, may involve longer processing times and potential delays due to physical mail handling.

Cost and Time Savings: E-voting eliminates the need for printing and distributing physical ballot papers, resulting in cost and time savings for the company and shareholders. Postal ballot requires the printing and mailing of ballot papers, which can be more time-consuming and expensive.

It's **important to note that specific** rules and regulations may apply to different types of companies, and it's advisable to consult the Companies Act, 2013 and relevant guidelines issued by the Ministry of Corporate Affairs for detailed and up-to-date information on e-voting and postal ballot procedures in India.

Q6. Board of PQR Id was divided in two dissenting groups and there was complete deadlock in the board for taking any decisions for the company. Besides deadlock independent directors of POR Ltd. had pointed in their annual report reservations about the way company was being managed by promoters for their personal benefits by cooking up accounting books creating false image in minds of shareholders. As a shareholder of PQR Ltd. how would you proceed with compulsory winding up by NCLT.? What are other grounds for approaching NCLT for compulsory winding up of such company? What will be consequences of such winding up order by NCLT in case of POR Ltd.

Ans. As a shareholder of **PQR Ltd.,** if there is a complete deadlock in the board and the independent directors have raised concerns about the mismanagement of the company by the promoters, you may consider initiating the process of compulsory winding up by approaching the National Company Law Tribunal (NCLT). Here's how **you can proceed**:

Petition for Compulsory Winding Up: Engage legal counsel to file a petition for compulsory winding up of PQR Ltd. with the NCLT. The petition should highlight the deadlock in the board, mismanagement by the promoters, and any other relevant grounds for winding up.

Grounds for Compulsory Winding Up: Besides deadlock, there are various grounds for approaching the NCLT for compulsory winding up of a company, including:

a. The company has conducted its affairs in a fraudulent or unlawful manner.

b. The company is unable to pay its debts.

c. The company has acted against the interests of the sovereignty and integrity of India.

d. The company has ceased its operations for a substantial period.

e. The company has not filed financial statements or annual returns for a consecutive period.

NCLT Proceedings: The NCLT will examine the petition and conduct hearings to evaluate the grounds for winding up. They may also give an opportunity to the company and other stakeholders to present their arguments.

Consequences of Winding Up Order: If the NCLT grants the winding up order, it can have several consequences for PQR Ltd., including:

a. Appointment of Official Liquidator: An official liquidator will be appointed to take charge of winding up the company's affairs and liquidating its assets.

b. Disposal of Assets: The company's assets will be sold off to settle its debts and liabilities.

c. Distribution of Proceeds: The proceeds from the liquidation will be distributed among the creditors and shareholders as per the priority set out in the Companies Act, 2013.

d. Dissolution of the Company: Once the winding up process is complete, the company will be dissolved and cease to exist.

It's important to note that specific legal advice should be sought from a qualified professional regarding your specific case. The process of compulsory winding up can be complex, and the specific circumstances of the company will determine the course of action and the potential outcomes.