Corporate Laws PYQ 2021

Q1. What is an illegal association of persons? What are its consequences? Is it correct that a company can be registered with limited liability without the word limited' in its name? If yes, which type of company is allowed to do so under the Companies Act, 2013? X was an officer of ABC Limited. His appointment condition was that he shall not during his service or afterwards entice the customers of this company. He left the company and after sometime formed a company to carry on his own business that enticed the customers of ABC Limited. When ABC Limited came to know about this, it wanted to sue x. You as a legal expert advice ABC Limited

Ans. An **illegal association of persons refers to a group or organization that engages in activities or objectives that are prohibited by law.** These activities could involve criminal acts, fraud, money laundering, or other unlawful practices. The consequences of participating in an illegal association can be severe and vary depending on the jurisdiction and the nature of the illegal activities involved. Some potential consequences include:

Criminal charges: Members of an illegal association may face criminal charges for their involvement in unlawful activities. This can lead to arrest, prosecution, and potential imprisonment if found guilty.

Financial penalties: Individuals associated with illegal organizations may be subject to financial penalties imposed by the authorities. These penalties can include fines, confiscation of assets, or restitution to victims.

Reputation damage: Being associated with an illegal organization can seriously damage an individual's personal and professional reputation. This can lead to difficulties in finding employment, establishing business relationships, or securing financial support in the future.

Legal consequences for the organization: Illegal associations may face legal actions such as being shut down, having their assets seized, or being subject to other sanctions imposed by law enforcement agencies or regulatory bodies.

Regarding the **second question**, **yes**, a company can be registered with limited liability without using the word "limited" in its name under the Companies Act, 2013. This provision allows certain types of companies to be registered with limited liability without using the word "limited" or "private limited" in their name. One such type of company is a One Person Company (OPC). OPCs are intended for single entrepreneurs and have limited liability protection. They can be registered without the word "limited" in their name.

In the case mentioned, where X was an officer of ABC Limited and later formed a company that enticed ABC Limited's customers, it is **advisable for ABC Limited to consult with a legal expert** to assess the situation and explore potential legal actions. Depending on the specific circumstances, ABC Limited may have grounds to sue X for breaching the terms of their employment agreement and potentially for other claims such as breach of fiduciary duty or misappropriation of trade secrets. A legal expert can provide specific advice tailored to the situation and guide ABC Limited through the necessary legal steps to protect their interests.

Q2. Explain the formation and registration of producer company. What is forfeiture of shares? Distinguish between forfeiture and surrender of shares. The promoter of a proposed computer manufacturing company entered into a contract with X for purchase of machinery for the company. After incorporation the company does not want to proceed with the contract. Can the company back out from the contract?

Ans. **Formation and Registration of Producer Company:**

A **producer company is a type of corporate entity formed under the Companies Act, 2013 in India**, specifically for the purpose of carrying out agricultural activities or the production, procurement, and marketing of primary produce from its members. Here's an overview of the formation and registration process for a producer company:

a. Eligibility: To form a producer company, a minimum of ten individuals (or two institutions or a combination of both) engaged in primary agricultural activities or the production of primary produce can come together as shareholders. These individuals or institutions will be the initial promoters of the producer company.

b. Memorandum and Articles of Association: The promoters need to prepare the Memorandum of Association (MOA) and Articles of Association (AOA) for the proposed producer company. These documents outline the company's objectives, activities, rules, and regulations governing its operations.

c. Incorporation: The promoters must then apply for the incorporation of the producer company with the Registrar of Companies (RoC). The application should include the MOA, AOA, and other necessary documents such as identity proof, address proof, and consent of the directors. Once the RoC verifies the documents and is satisfied with the compliance, the producer company is registered.

d. Share Capital: The initial share capital of the producer company should be raised from the shareholders in the proportion determined by the MOA. Each shareholder's liability is limited to the unpaid amount, if any, on the shares held by them.

e. Board of Directors and Management: Once registered, the producer company should appoint directors who will manage the company's affairs. The Board of Directors will be responsible for making key decisions, ensuring compliance, and representing the interests of the shareholders.

Forfeiture of Shares:

Forfeiture of shares refers to the process by which a company cancels or takes away the rights and ownership of shares from a shareholder who fails to fulfill their obligations related to the shares, such as non-payment of the purchase price or non-compliance with the terms of the share agreement. The company has the authority to forfeit the shares and declare them as forfeited shares.

Distinguishing between Forfeiture and Surrender of Shares:

Forfeiture of shares: The forfeiture of shares is an action taken by the company against a shareholder who has failed to meet their obligations. It is initiated by the company, and the forfeited shares become the property of the company, which can be reissued, transferred, or canceled.

Surrender of shares: Surrender of shares, on the other hand, is a voluntary action initiated by the shareholder. When a shareholder surrenders their shares, they willingly give up their ownership and rights to the company. The surrendered shares are canceled, and the company has the discretion to reissue or transfer them.

Backing out from a Contract:

Once a contract is entered into by a company, it becomes **legally binding**, and both parties are obligated to fulfill their respective obligations as per the terms of the contract. If a company decides not to proceed with a contract after incorporation, it may be considered a breach of contract.

Whether a company can back out from a contract depends on various factors, **such as the terms of the contract, applicable laws, and any specific provisions** related to termination or withdrawal mentioned in the contract. It is advisable for the company to seek legal advice to understand the potential consequences and options available before making a decision to back out from the contract. Breaking a contract without proper justification may expose the company to legal claims, including potential liabilities for damages or compensation to the other party.

Q3. What is Memorandum of Association? State the provisions of Companies Act 2013 relating to alteration in object clause of the company. Can a company purchase its own shares? How and under what conditions?

Mr. A purchased 500 shares from Mr. B of XYZ Limited. Later on he came to know that the prospectus of the company contained some wrong statement. What remedies are available to Mr. A against the company? Will the position be different if not Mr. A but Mr. B to whom the shares were allotted by the company files the suit against the company?

Ans. **Memorandum of Association (MOA):**

The Memorandum of Association is a legal document that defines the constitution and fundamental characteristics of a company. It sets out the company's objectives, powers, and scope of activities. The MOA serves as a foundation document and establishes the company's relationship with its shareholders and external parties. It typically includes the following information:

a. Name Clause: Specifies the name of the company, which should end with the words "Limited" for a public company or "Private Limited" for a private company.

b. Registered Office Clause: States the registered office address of the company, which is the official address where the company's records and documents are maintained.

c. Object Clause: Outlines the main objects and activities the company is authorized to undertake. Any activities outside the scope of the objects clause require alteration of the MOA.

d. Liability Clause: States the limited liability of the shareholders, indicating that their liability is limited to the unpaid amount, if any, on their shares.

e. Capital Clause: Specifies the authorized share capital of the company and the division of shares into different classes, if applicable.

Alteration in Object Clause of the Company under the Companies Act 2013:

Under the Companies Act 2013, the provisions relating to alteration in the object clause of a company are as follows:

a. Special Resolution: Any alteration in the object clause requires the approval of the shareholders by way of a special resolution passed in a general meeting of the company.

b. Notice: The company must give notice of the proposed alteration to all shareholders, creditors, and other interested parties, as prescribed by the Act.

c. Tribunal Approval: If the alteration of the object clause affects the rights or interests of any class of shareholders or creditors, it requires approval from the National Company Law Tribunal (NCLT).

d. Compliance with Other Provisions: The company must comply with other applicable provisions of the Companies Act and any other laws or regulations governing the alteration of the object clause.

Purchase of Own Shares by a Company:

Yes, a company can purchase its own shares under certain conditions and in accordance with the provisions of the Companies Act. The key conditions for a company to purchase its own shares are as follows:

a. Authorized by Articles of Association: The company's Articles of Association must specifically authorize the purchase of its own shares. If not authorized, the Articles may need to be amended.

b. Funding: The company must have sufficient funds available to purchase its own shares. The purchase can be made out of free reserves, securities premium account, or proceeds from a fresh issue of shares or other specified sources.

c. Approval by Board of Directors and Shareholders: The purchase of shares must be approved by the board of directors. If the value of the shares to be purchased exceeds prescribed limits, shareholder approval by way of a special resolution may be required.

d. Compliance with Disclosure and Reporting Requirements: The company must comply with the disclosure and reporting requirements specified by the Companies Act and other applicable laws and regulations.

e. Prohibition on Further Issue: Shares purchased by the company are usually canceled or held as treasury shares, and the company cannot reissue them without complying with specific provisions of the Companies Act.

Remedies for Misstatement in Prospectus:

If Mr. A purchased shares from Mr. B and later discovered that the prospectus of XYZ Limited contained wrong statements, the remedies available to Mr. A against the company are as follows:

a. Civil Action for Misrepresentation: Mr. A can file a civil suit against the company for misrepresentation, seeking remedies such as rescission of the contract, damages, or compensation.

b. Action under Securities Laws: Mr. A may have rights and remedies under securities laws if the misstatements in the prospectus relate to material information required to be disclosed to investors. He can approach the regulatory authorities such as the Securities and Exchange Board of India (SEBI) to initiate an investigation and seek appropriate action against the company.

c. Contractual Remedies: Depending on the terms and conditions of the share purchase agreement between Mr. A and Mr. B, Mr. A may have contractual remedies available against Mr. B, such as seeking indemnification or damages if Mr. B provided false or misleading information about the shares.

d. Rescission: Mr. A may have the right to rescind the contract and seek a refund of the purchase price or return of the shares if the misstatements in the prospectus are substantial and have influenced his decision to purchase the shares.

The position would be different if Mr. B, to whom the shares were allotted by the company, files a suit against the company. In this case, Mr. B, as an original allottee of the shares, would have similar remedies available to him as Mr. A. The primary difference would be that Mr. B would be directly dealing with the company as the aggrieved party, rather than relying on claims against another shareholder like Mr. A.

It **is important for both** Mr. A and Mr. B to consult with a legal professional to assess the specific circumstances, review the applicable laws and agreements, and determine the most appropriate course of action to seek remedies against the company or any other involved parties.

Q4. Who is a director? State the circumstances under which director shall vacate his office. "One person cannot form the quorum for a General Meeting of a company". Comment. What are functions of the 'audit committee' of board of directors of a company?

Ans. Director:

A director is an individual appointed or elected to the board of directors of a company. Directors are responsible for the overall management, decision-making, and governance of the company. They act in the best interest of the company and its shareholders, ensuring compliance with legal and regulatory requirements. Directors have fiduciary duties and are expected to exercise their powers and perform their responsibilities with care, skill, and diligence.

Circumstances under which a Director shall vacate office:

A director may vacate his or her office under various circumstances, including:

a. Expiry of Term: If a director's term expires, they will vacate their office. Directors are typically appointed or elected for a specific term as determined by the company's Articles of Association or the relevant laws.

b. Resignation: A director may choose to resign voluntarily by submitting a resignation letter to the company. The resignation takes effect from the date specified in the letter or, if not specified, from the date of receipt by the company.

c. Removal: Shareholders of a company may remove a director by passing an ordinary resolution in a general meeting. This removal may be with or without cause, depending on the specific provisions in the company's Articles of Association or applicable laws.

d. Disqualification: A director may become disqualified from holding office due to reasons such as bankruptcy, conviction of certain offenses, or being declared mentally incapable by a court. Disqualification leads to the automatic vacation of the director's office.

e. Death or incapacitation: In the unfortunate event of a director's death or incapacity, their office will be automatically vacated.

"One person cannot form the quorum for a General Meeting of a company." Comment:

The statement is correct. Quorum refers to the minimum number of members or shareholders required to be present at a meeting to make the proceedings valid and legally binding. In the case of a General Meeting of a company, it is a fundamental principle that one person alone cannot form the quorum.

The **exact quorum requirements for** General Meetings are usually specified in the company's Articles of Association or the applicable laws and regulations. Typically, the quorum is set at a minimum number or percentage of members or shareholders, such as one-third or one-fourth of the total membership or shareholding.

This requirement **ensures that decisions made in a General Meeting represent** the collective will and judgment of a sufficient number of members or shareholders. It promotes transparency, accountability, and fairness in the decision-making process and prevents the concentration of power in the hands of a single individual.

Functions of the Audit Committee:

The audit committee is a subcommittee of the board of directors of a company that focuses on financial reporting, internal controls, and compliance matters. Its main functions include:

a. Financial Reporting and Oversight: The audit committee reviews the company's financial statements, ensuring their accuracy, completeness, and compliance with accounting standards and regulatory requirements. It oversees the financial reporting process, including the work of auditors and internal control systems.

b. Internal Control and Risk Management: The committee assesses the effectiveness of the company's internal control systems, including risk management practices. It monitors the identification and mitigation of risks, internal audit functions, and compliance with legal and regulatory frameworks.

c. External Audit: The audit committee selects and appoints external auditors, oversees their independence, and reviews the scope and findings of external audits. It facilitates communication between the auditors and the board and ensures the implementation of audit recommendations.

d. Legal and Regulatory Compliance: The committee ensures compliance with applicable laws, regulations, and corporate governance guidelines. It reviews the company's compliance programs, monitors legal and regulatory developments, and addresses any significant compliance issues.

e. Whistleblower Mechanism: The audit committee oversees the establishment and functioning of a whistleblower mechanism to enable employees and stakeholders to report any concerns or irregularities related to financial matters, internal controls, or unethical practices. It ensures the protection and confidentiality of whistleblowers.

f. Communication and Reporting: The committee communicates regularly with management, internal auditors, and external auditors to stay informed about financial reporting, internal control issues, and audit findings. It provides regular reports to the board of directors on its activities, significant financial matters, and any identified areas of concern.

g. Continuous Improvement: The audit committee plays a crucial role in promoting continuous improvement in financial reporting, internal controls, and risk management processes. It assesses the adequacy and effectiveness of the company's financial and accounting policies and recommends enhancements or changes when necessary.

The primary objective of the audit committee is to enhance **transparency, integrity, and credibility** in the financial reporting process, safeguard the interests of shareholders, and promote good corporate governance practices. By performing these functions, the audit committee contributes to the overall confidence and trust in the company's financial operations.

Q5. Write a note on 'voting by electronic means'.

Explain the term books of account and discuss the provisions under the Companies Act 2013 regarding the maintenance of books of account. At an Annual General Meeting of XYZ Limited the shareholders of the company unanimously resolved for the payment of dividend @ 10% to the equity shareholders of the company as the board of directors did not recommend any dividend. Is the unanimous resolution passed by the shareholders stands valid? Discuss.

Ans. Note on 'Voting by Electronic Means':

Voting by electronic means refers to the process of **casting votes by shareholders or members** of a company **through electronic devices and** platforms, such as computers, smartphones, or other digital interfaces. It allows shareholders to participate in general meetings and exercise their voting rights remotely, without being physically present at the meeting venue.

The use of electronic voting methods provides several advantages, including **increased convenience, efficiency, and transparency in** the voting process. It allows shareholders to cast their votes from anywhere, at any time, eliminating the need for physical attendance. Electronic voting systems often include security measures to ensure the integrity and confidentiality of votes.

Companies adopting electronic voting methods typically establish protocols and procedures for conducting **electronic voting**, including **authentication of shareholders**, **secure transmission** and **storage of voting data,** and verification mechanisms to prevent duplicate voting or fraudulent activities.

Provisions under the Companies Act 2013 regarding the Maintenance of Books of Account:

Under the Companies Act 2013, every company is required to maintain proper books of account, which accurately and fairly represent the company's financial transactions and state of affairs. The provisions regarding the maintenance of books of account include:

Nature and Form: The books of account must be maintained in a specific manner, capturing all transactions and financial information necessary to prepare the company's financial statements. They should be in written form or in electronic form, complying with the rules prescribed by the Ministry of Corporate Affairs (MCA).

Timeliness: The books of account should be kept up to date, with entries made within a reasonable time after the occurrence of transactions.

Accurate and Complete: The books of account must accurately and completely record all financial transactions of the company, including receipts, payments, purchases, sales, assets, liabilities, and other relevant information.

Compliance with Accounting Standards: The books of account should comply with the applicable accounting standards issued by the Institute of Chartered Accountants of India (ICAI) or specified by the Central Government.

Preservation: The books of account, along with supporting vouchers, invoices, and documents, must be preserved for a specified period. Generally, the books and records must be maintained for a minimum of eight years from the end of the financial year to which they relate.

Accessibility: The books of account should be kept at the registered office of the company or at such other place as the board of directors deems appropriate. They should be open for inspection by the directors, auditors, and other authorized persons during business hours.

Compliance with Auditing Requirements: The books of account should facilitate the conduct of statutory audits, internal audits, and other necessary examinations of the company's financial statements.

It is important for companies to adhere to these provisions to ensure compliance with the Companies Act and to maintain accurate and reliable financial records.

Regarding the **unanimous resolution passed by the shareholders** of XYZ Limited for the payment of dividend, the validity of the resolution would depend on the specific provisions outlined in the Articles of Association and the applicable laws governing dividend distribution.

While the **board of directors may generally recommend the payment of dividends, it is** possible for **shareholders** to pass a unanimous resolution to pay dividends even if the board does not recommend it. However, it is crucial to review the company's Articles of Association and any other relevant provisions to determine the validity and enforceability of such resolutions.

Consulting with legal professionals or corporate governance experts would provide a more accurate assessment of the situation based on the specific details and governing documents of XYZ Limited.

Q6. Explain the salient features of the Depositories Act 1996. What are the consequences of winding up order made by the Tribunal under the Companies Act 2013? Discuss the provisions relating to constitution of National Company Law Tribunal.

Ans. **Salient Features of the Depositories Act 1996:**

The **Depositories Act, 1996 is** a crucial legislation in India that provides for the establishment and regulation of depositories, which are entities responsible for the electronic holding and transfer of securities. The salient features of the Depositories Act include:

a. Establishment of Depositories: The Act provides for the establishment of depositories, such as the National Securities Depository Limited (NSDL) and the Central Depository Services Limited (CDSL), which are responsible for maintaining electronic records of securities.

b. Dematerialization of Securities: The Act facilitates the dematerialization of securities by allowing shareholders or investors to convert their physical securities into electronic form. This eliminates the need for physical certificates and enables seamless electronic transfer and trading of securities.

c. Elimination of Paperwork: The Act aims to reduce paperwork associated with securities transactions by enabling electronic record-keeping, transfer, and settlement. It provides for the electronic transfer of securities through a process known as "book-entry" where ownership changes are reflected in the electronic records of the depository.

d. Transfer and Pledge of Securities: The Act allows for the transfer and pledge of securities held in electronic form. It provides a secure and efficient mechanism for transferring securities between different parties and enables investors to pledge their securities as collateral for loans or other financial transactions.

e. Investor Protection: The Act includes provisions to safeguard the interests of investors. It establishes a robust system for record-keeping, maintenance of investor accounts, and resolution of disputes related to securities held in electronic form.

f. Regulation and Oversight: The Act provides for the regulation and oversight of depositories by the Securities and Exchange Board of India (SEBI). SEBI monitors the operations, functions, and activities of depositories to ensure compliance with the Act and investor protection.

Consequences of Winding up Order under the Companies Act 2013:

When a winding-up order is made by the Tribunal under the Companies Act 2013, it signifies the beginning of the process of winding up or liquidation of the company. The consequences of a winding-up order include:

a. Cessation of Business: Once a winding-up order is made, the company must cease its business activities, except for activities essential for the winding-up process. It cannot undertake any new transactions or enter into contracts without the approval of the liquidator or the Tribunal.

b. Appointment of Liquidator: The Tribunal appoints a liquidator to take charge of the winding-up process. The liquidator is responsible for realizing the company's assets, settling its liabilities, and distributing the remaining funds to the creditors and shareholders in accordance with the priority of claims.

c. Freezing of Assets: Upon the winding-up order, the assets of the company are typically frozen to prevent their dissipation or disposal. The liquidator takes control of the assets and manages their realization for the benefit of the creditors and shareholders.

d. Legal Proceedings: Once the winding-up order is passed, no legal proceedings can be initiated or continued against the company without the permission of the Tribunal. Any pending legal actions are usually stayed or transferred to the Tribunal overseeing the winding-up process.

e. Dissolution of the Company: The ultimate consequence of the winding-up process is the dissolution of the company. After settling all the company's liabilities and distributing the remaining assets, the company is officially dissolved and ceases to exist as a legal entity.

Provisions Relating to Constitution of National Company Law Tribunal:

The National Company Law Tribunal (NCLT) is a specialized forum established under the Companies Act 2013 for resolving corporate disputes and matters related to companies. The provisions relating to the constitution of NCLT include:

a. Establishment: The NCLT was established on June 1, 2016, under the provisions of the Companies Act, 2013. It replaced the Company Law Board (CLB) and assumed the responsibility for adjudicating corporate and company law matters.

b. Composition: The NCLT consists of both judicial and technical members. The judicial members are typically retired judges of the High Court, while the technical members are experts in the fields of law, finance, accounting, or management.

c. Jurisdiction: The NCLT has jurisdiction over a wide range of matters, including company law issues, mergers and amalgamations, compromise and arrangement cases, oppression and mismanagement cases, and winding-up proceedings.

d. Appointments and Terms: The members of the NCLT are appointed by the central government. The President and other members of the NCLT hold office for a specified term and are eligible for reappointment.

e. Benches: The NCLT consists of multiple benches located across different cities in India. These benches are responsible for hearing and disposing of cases assigned to them based on their territorial jurisdiction.

f. Powers and Functions: The NCLT has extensive powers and functions, including the authority to initiate, regulate, and oversee proceedings related to companies. It has the power to pass orders, issue directions, and provide remedies in matters falling within its jurisdiction.

g. Appeals: The decisions of the NCLT can be appealed to the National Company Law Appellate Tribunal (NCLAT), which is the appellate authority for matters arising out of the NCLT. Further appeals can be made to the Supreme Court of India.

The establishment of the NCLT has streamlined and expedited the resolution of corporate disputes, enhanced corporate governance, and provided a specialized forum for addressing company law matters in India. Its constitution and functioning aim to ensure efficient and effective resolution of disputes and promote a conducive business environment.