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SHARE CAPITAL AND DEBENTURE
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(TIME ALLOTED – 90 MINUTES) (MARKS ALLOTED – 50 MARKS)
EACH QUESTION CARRIES 5 MARKS

Question 1.

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs.30,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer:

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

a) The employee must not be a Key Managerial Personnel;

b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.

c) The shares to be subscribed must be fully paid shares

In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of Rs. 30,000 per month and loan taken to buy 500 partly paid up equity shares of Rs. 1000 each in OLAF Ltd. Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons: The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs. 1.8 Lakhs. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Question 2.

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

Answer –

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary. specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.).

In the above case, therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

Question 3.

Dhyan Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyan Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

Answer –

Issue of Further Shares: According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to –

(i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

(ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

(iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Since, in the given case Dhyan Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company nor an employee, Dhyan Dairy Ltd., if it is authorised by a special resolution, may issues shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Question 4.

M/s. NRS Biochemicals Limited is planning to buy-back of its shares during the financial year 202324 but the company has defaulted in the payment of term loan and interest thereon to its bankers and not filed the annual return for the financial year 2022-23. The company seeks your advice as to how and when the company can buy- back its shares under these circumstances as per the provisions of the Companies Act, 2013.

Answer –

Circumstances prohibiting buy-back [Section 70(1) of the Companies Act, 2013] No company shall directly or indirectly purchase its own shares or other specified securities

a. through any subsidiary company including its own subsidiary companies;

b. through any investment company of group of investment companies; or

c. if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

According to section 70(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (Annual Return), section 123 (Declaration of Dividend), section 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement). Therefore, NRS Bio Chemicals Limited cannot buy back its share until the expiry of cooling period (3 years) after the default is remedied

since it has defaulted in repayment of loan and not filed the annual return for the financial year 2022-23.

Question 5.

ABC Ltd. is engaged in the manufacture of ayurvedic medicines, sales are good. Over the years, it has built a good reputation in the market made the huge profits and its Balance Sheet as at 31st March, 2023 shows the following position:

Authorized Share Capital	(50,00,000 equity shares of face value or Rs. 10/- each) Rs. 500,00,000/-)
Issued, subscribed and paid-up share capital	(10,00,000 equity shares of face value or Rs. 10/- each, fully paid-up) Rs. 100,00,000/-)
Free Reserves	Rs. 30,00,000
Securities Premium	Rs. 10,00,000
Debentures Redemption Reserve	Rs.10.00.000

The Board of Directors proposes to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the sources, conditions of bonus issue and the maximum number of bonus shares that can be issued under the provisions of the Companies Act, 2013.

Answer –

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members. in any manner whatsoever, out of- (Sources)

- Its free reserves
- Securities premium account
- The capital redemption reserve account

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets Conditions for issue of Bonus Shares In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

(a) Authorisation in AOA: It is authorised by its articles.

(b) Passing of Ordinary Resolution: It has, on the recommendation of the Board, been authorised in the general meeting of the company.

(c) No defaults: It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

(d) Fully paid-up shares: The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

(e) The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

(f) No issue in lieu of dividend: The bonus shares shall not be issued in lieu of dividend.

Maximum number of shares to be issued:

The company proposes to issue 1 bonus share for every 2 equity shares. The issued and fully paidup shares are 10,00, 000. Hence, the company wants to issue 5,00,000 shares, the face value of which will be Rs. 50,00,000 and reserve of equal amount is required.

As per Section 71 of the Companies Act, 2013, where the company has created a debenture redemption reserve account, the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The aggregate of eligible reserves come to Rs. 40,00,000 (Rs. 30,00,000+10,00,000). Hence, sufficient reserves are not available and the company cannot implement its proposal to issue 1 bonus share for every 2 shares.

Question 6.

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provided that new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders, except VRS Company Ltd.

Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

Answer-

The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.

As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.

Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of section 62 (1) (a) as well as Articles of the issuing company.

Question 7.

The Directors of Irah Motors India Ltd. desire to alter Capital Clause of the Memorandum of Association of their Company. Advise them about the ways in which the said clause may be altered under the provisions of the Companies Act, 2013.

Answer –

Alteration of Capital: Under section 61 (1) a limited company having a share capital may, if authorised by its Articles, alter its Memorandum in its general meeting to:

(1) increase its authorized share capital by such amount as it thinks expedient;

(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

(iii) convert all or any of its paid up shares into stock and reconvert that stock into fully paid shares of any denomination.

(iv) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum;

(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above-mentioned ways, the company shall file a notice in the Form No. SH-7 as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014 with the Registrar, along with an altered memorandum within thirty days of alteration. The capital clause of memorandum, if authorised by the Articles, shall be altered by passing an ordinary resolution as per section 61 (1) of the Companies Act, 2013.

Question 8.

State the legal provisions in respect of "Declaration of Solvency" which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

Answer –

According to section 68 (6), where an unlisted public company has passed a special resolution under section 68 (2) (b) or the Board has passed a resolution under item (ii) of the proviso to section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any

Question 9.

Unnati Limited has an authorised share capital of 2,00,000 equity shares of ₹100 per share and an amount of ₹2 crores in its Securities Premium Account as on 31-3-2024. The Board of Directors seeks your advice about the application of securities premium account for its business purposes. Please advise.

Answer –

Amount lying to the credit of Securities Premium Account is required to be utilised for certain prescribed purposes

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this Section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company-

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares,

(b) in writing off the preliminary expenses of the company,

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; ar

(e) for the purchase of its own shares or other securities under section 68

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,-

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company, or

(c) for the purchase of its own shares or other securities under section 68.

Keeping the above points in view Unnati Limited should proceed to utilise the amount of Securities Premium Account.

Question 10.

Debadrita Developers Limited owed to Cindrella ₹10,000. On becoming this debt payable, the company offered Cindrella 100 shares of ₹100 each in full settlement of the debt. The said shares were allotted to Cindrella as fully paid up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013.

Answer –

Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a empowered to allot the shares to Sunil in settlement of its debt to him. This valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Debadrita Developers India Limited's allotment, to be classified as shares issued for consideration other than cash, must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.