

CSR & Social Governance

(Chapter 12)

(Total= 20 marks)

Time - 1 Hr

Answer the following question.

Case Study 1

Companies which are regulated by Companies Act, 2013, the other form of business is partnership which is regulated by Indian Partnership Act, 1932. The partnership is considered as the convenient way to start a business. Suppose one wants to open a bookshop in the locality. There are various things that are required to start and run the business which may not be feasible to arrange all alone. These may include resources from money to place to management. In that case, the idea may be spoken to friends and relatives who may agree to run the bookshop by contributing a certain amount of money and other things required. So all of them join hands together to become the owners and agree to share profits and losses.

The law relating to partnership firm in India is prescribed in the Indian Partnership Act of 1932. The Indian Partnership Act, 1932, came into force w.e.f. 1st October, 1932 except section 69, which came into force on the 1st day of October, 1933. It extends to the whole of India except the state of Jammu and Kashmir.

It lays down the important provisions relating to partnership contracts. However, the general principles of the Indian Contracts Act, 1872 which formally contained the provisions of the law of partnership shall apply so far as they are not inconsistent with this Act.

Questions:

(5 marks each)

1. "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". Explain the essential elements of partnership and true test of partnership.

Answer

(1) Association of two or more persons

There must be a contract between two or more persons. Therefore unless there are at least two persons there cannot be a partnership. Persons must be competent to enter into a contract. They may all be natural or artificial or some natural and other artificial. Thus a corporation or limited partnership may itself be a partner in a general partnership.

(2) Agreement

Existence of an agreement is essential of partnership. Section 5 of the Act states that the relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided Family carrying on a family business as such, or a Burmese Buddhist Husband and wife carrying on business as such are not partners in such business. Such an agreement between the partners may be express or implied. Further, the agreement must be a valid agreement and for a lawful object and purpose and between the persons competent to contract.

(3) Business

Partnership implies business and when there is no association to carry on business there is no partnership. The term "business" is, however, used in the widest sense to cover trade, occupation and profession. As per Section 2(b) of the Act the term "business" includes every trade, occupation and profession. In the definition of partnership the word "business" is used in the sense of "carrying on business" which suggests continuity or repetition of acts. But it does not mean that it should be confined to lengthy operations, it may consist of a single adventure of a single undertaking, if there is continued participation of two or more persons for acquisition of gains.

The term must be understood in a particular sense. It refers to any activity which, if successful, would result in profit.

(4) Sharing of Profits

To constitute a partnership, the parties must have agreed to carry on a business and to share profits in common. "Profits" mean the excess of returns over advances, the excess of what is obtained over the cost of obtaining it. Sharing of profits also involves sharing of losses. But whereas the sharing of profit is an essential element of partnership, the sharing of losses is not. It is open to one or more partners to bear all the losses of the business.

It follows that the sharing of profits is an essential ingredient of partnership and there would be no partnership where only one of the partners is entitled to the whole of the profits of the business. But it is open to the partners to agree to share the profits in any way they like. They may agree to share the profits either in specific proportions or in specific sums.

(5) Mutual Agency The True Test

Mutual agency is the foundation of partner's liability. Each partner is both an agent and principal for himself and others; that is the significance of the phrase "carried on by all or any of them acting for all". Each partner is an agent binding the other partners who are his principal and each partner is again a principal, who in turn is bound by the acts of the other partners. In other words, there must be facts or circumstances from which it can be inferred that each of the persons alleged to be partners was the agent, real or implied of another. What is essential is that the partner who conducts the business of the firm not only acts for himself but for the other partners also.

2. A partnership may either be for a particular adventure or for a fixed period. It may also be a partnership at will. From the duration point of view, a partnership may be classified into the following two categories. Explain both the categories of Partnership.

Answer

(i) Particular Partnership (Section 8)

"A person may become a partner with another person in a particular adventure or undertaking". When two or more persons agree to do business in a particular adventure or undertaking, such a partnership is called "Particular Partnership". Thus, a particular partnership may even be for a single adventure or undertaking.

(ii) Partnership at Will (Section 7)

"Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, the partnership is called Partnership at Will". A partnership is deemed to be a partnership at will when (i) no fixed period has been agreed upon for the duration of partnership, and (ii) there is no provision made as to the determination of partnership in any other way. The partnership at will has no fixed or definite date of termination and, therefore, death or retirement of a partner does not affect the existence of such partnership.

Case Study 2

"Any one who by words, spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit". The rule as to holding out is based on the doctrine of estoppel as contained in Section 115 of the Indian Evidence Act.

Holding Out means "to represent". Strangers, who hold themselves out or represent themselves to be partners in a firm, whereby they induce others to give credit to the partnership are called "Partners by Holding Out".

In case of "Partnership by Estoppel", the representation is made by partners about a stranger within his knowledge and hearing and he does not contradict it. He is then held liable as a partner.

Questions:

(3 marks each)

1. A minor who was admitted to the benefits during his minority within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later), he has to elect whether he wants to become a partner, or sever his connection with the firm. Explain both the liabilities of minor.

Answer

1. His Share in Liability

A minor partner's liability is confined only to the extent of his share in the firm. Section 30(3) provides that a minor's share is liable for the acts of the firm. But a minor is not personally liable in any such act. Thus, he is neither personally liable nor is his private estate liable for the acts of the firm.

2. Personal Liabilities

Where a minor on attaining majority, elects to become a partner, he becomes personally liable as other partners to the third parties for all the acts of the firm done since he was admitted to the benefits of partnership.

2. The authority of a partner means the capacity of a partner to bind the firm by his act. This authority may be express or implied. Comment.

Answer

(i) Express Authority: - Authority is said to be express when it is given by words, spoken or written. The firm is bound by all acts of a partner done within the scope of his express authority even if the acts are not within the scope of the partnership business.

(ii) Implied Authority: - The implied authority of a partner is also known as ostensible or apparent authority, Sections 19 and 22 contain provisions regarding the scope of the implied authority of a partner. The implied authority is subject to the following conditions:

1. the act done must relate to the "normal business" of the firm;
2. the act must be done in the usual way;
3. the act must be done in the name of the firm.

Q3. (4 marks)

The Partnership Act makes a distinction between the "dissolution of partnership" and "dissolution of firm". Where there is dissolution of partnership between all the partners of a firm, it is a dissolution of the firm (Section 39). Where there is an extinction of relationship between some of the partners only, it is a dissolution of partnership. Describe the dissolution of the firm through court.

Answer

As per Section 44, the Court may order dissolution of the firm in the following circumstances:

- When a partner becomes of unsound mind
- Permanent incapacity of a partner
- Misconduct of a partner affecting the business
- Persistent disregard of partnership agreement by a partner
- Transfer of Interest or share by a partner Business working at a loss
- Where just and equitable

(a) When a partner becomes of unsound mind: As the insanity of a partner does not automatically dissolve the firm, either the lunatic through his guardian or other partners may file a suit for the dissolution of the firm, in either case the Court may order dissolution which will take effect from the date of the order.

(b) Permanent incapacity of a partner: Where a partner has become permanently incapable of performing his duties as a partner, e.g., he becomes blind, paralytic, etc., the Court may, at the instance of any of the other partners, order the dissolution of the firm.

(c) Misconduct of a partner affecting the business: Where a partner is guilty of misconduct, which is likely to affect prejudicially the business of the firm, the Court may dissolve the firm at the instance of any of the other partners. Gambling by a partner or conviction of a partner for travelling without ticket would be sufficient ground for dissolution.

(d) Persistent disregard of partnership agreement by a partner: Where a partner frequently commits breaches of the partnership agreement and the other partners find it impossible to carry on the business, the Court may order dissolution at the instance of the other partners.

(e) Transfer of interest or share by a partner: A partner is not entitled to assign away his interest so as to introduce a new partner into the firm. Where a partner has transferred the whole of his interest to a third person or where his interest has been attached under a decree or sold under a process of law, the other partners may sue for dissolution.

(f) Business working at a loss: The Court may dissolve a partnership firm where it is satisfied that the business of the firm cannot be carried on except at a loss.

(g) Where just and equitable: As the grounds mentioned are not exhaustive, the Court may dissolve a firm on any other ground if it is satisfied that it would be just and equitable to dissolve the firm. The Court may order dissolution where the sub-stratum of the partnership firm has gone or where there is a complete deadlock and destruction of confidence between the partners [re. Yenidje Tobacco Co. Ltd. (1916) 2 Ch. 426].

BEST OF LUCK