

Question 24 HW

(b) (i) Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short-listed friends as a nominee with effect from 1st January, 2024.

X (1) Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.

(2) Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.

Referring to the provisions of the Companies Act, 2013, advise Kamal regarding eligibility of his short-listed friends to be appointed nominee and the procedure to be followed for changing the name of the nominee as per the provisions of The Companies Act, 2013.

2022-2023

2023-2024

NO.

2023-2024

22-23

1st April

By - CA Shantam Gupta

Q24

Law

According to Section 2(62) of the Companies Act 2013, an One Person Company (OPC) can be incorporated by an Indian Citizen, whether or not resident in India, but should stay in India for 120 days in the previous year. Similarly the member shall appoint a nominee who is also an Indian Citizen, whether or not resident, but should be in India for one hundred and twenty days in the previous year.

Conclusion

(1) Robert is ineligible to be appointed as a Nominee since in the previous year 22-23 he has been in India for only 61 days i.e. (1st April to 31st May).

(2) Dinkar is ineligible to be appointed as a nominee since he has not stayed for even single day in India during the previous year 22-23.

Q1. What are the privilege of a section 8 company.

Q2 Aman and Priya entered into a contract wherein Aman agreed to sell his car to Priya for ₹5,00,000. The contract was signed by both parties, and the car was to be delivered to Priya on the 1st of December. Priya paid an advance of ₹50,000 on 1st November. On the 15th of November, Aman informed Priya that he was no longer willing to sell the car because he had found a better offer. Priya immediately sent a notice to Aman, demanding the car or the return of the advance. Aman refused to return the advance and insisted that the contract was not valid anymore because of the changed circumstances.

- Has Aman breached the contract under the Sales of Goods Act, 1930? Explain with reference to the conditions and warranties under the Act.

- What rights does Priya have under the Sales of Goods Act,

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4 hours ago



Extra Question

Law

According to Section 57, 59 subject to section 14(a) of the Sales of Goods Act 1930, where the seller has failed to deliver the goods on the due date, the buyer can sue the seller for damages, the damages are in relation to breach of warranty and Anticipatory breach of contract with respect to the sale contract. The condition as to title prevents a non-owner or a person not having rights to transfer title from transferring valid ownership to another buyer.

Conclusion

- Aman has committed breach of the sale contract, which is prior to date of delivery this is anticipatory breach of contract.

as he has violated condition as to title under the sale of goods act

- Priya has the right to repudiate the contract as it is voidable at her option and can also ask for refund of advance. Priya can however also ask for specific performance but the same will be awarded at discretion of the court.

Question 25

XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of Rs. 1 crore. Referring to the provisions of The Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company?

By - CA Shantam Gupta

Q25

Law

According to section 455 of the Companies Act 2013, a company can claim the status of a dormant company where it is an inactive company doing no significant accounting transaction, in the Companies Act the following are not considered as significant accounting transaction

Maintenance and Office Expenses

Allotment of Securities

Requirements of the Act.

- Fees paid to Registrar

Conclusion

Since, the transaction here is a order for plant and machinery which does not fall in the heading of exempted transactions and hence the company, XYZ Ltd is not an inactive company and therefore cannot claim the status of dormant company.

Question 26

M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller. On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties?

quality X
packing X
Mixed

(3)
(15) (18)

$$\frac{2000}{25} = 80 \text{ bag} \rightarrow \text{pink colour}$$

By - CA Shantam Gupta

Q26

Law

According to section 15 of the Sales of Goods Act 1930, where the goods are sold by description, there is an implied condition that all the goods shall comply description, where description is not complied with, the contract can be repudiated by the buyer.

Section 13 of the Sales of Goods Act 1930 contains provisions that specify cases in which condition maybe treated as warranty, where the buyer elects to accept breach of condition as breach of warranty, and claim damages for the difference.

Conclusion

- The buyer has the right to reject the entire lot of goods as they did not comply with description.
- If the buyer accepts the entire quantity of goods he has the right to claim any damages in form of difference in price or quality from the seller.