

PAPER – 3 : BUSINESS AND CORPORATE LAWS

QUESTION

The Indian Contract Act, 1872

1. (a) A entered into an agreement with S to deliver five dozen bottles of a particular brand of champagne to be manufactured in his factory. The champagne could not be manufactured because of strike by the workers and A failed to supply the said dozen of champagne to S. Decide whether A can be exempted from liability under the provisions of the Indian Contract Act, 1872.
- (b) X buys from Y a painting which both believe to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy .Discuss the validity of the contract?
2. (a) R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella ,M accidentally slips and the umbrella is badly damaged. Who bear the loss and why?
- (b) Mr. Aman of Kolkata engaged Mr. Singh as his agent to buy a house in East Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Aman for Rs.26 lakhs. Mr. Aman later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.
3. (a) What do you mean by Pledge? What is Pawnor's right to redeem ?
- (b) What are the rights of the indemnity-holder when sued?

The Sale of Goods Act,1930

4. (a) A stock of wheat was sold at an agreed price per ton. The wheat was to be weighed by the agents of the seller as also of the buyer for ascertainment of the price. A part of the wheat was weighed and carried away by the buyer's agent but the remainder was swept away by the flood. Who will bear the loss of the remainder?
- (b) A purchased a car for Rs.70,000 from B who had no title for it. A used the car for eight months when the true owner of the car spotted it and demanded it from A. Can the true owner get back his car and can A recover the money from B or not ?
5. What is a contract of sale? State the formalities of contract of sale?

The Indian Partnership Act,1932

6. (a) A, B, and C are partners in a trading firm. A ,without the knowledge or consent of B and C, borrows Rs. 10,000 from D, a customer of the firm, in the name of the firm. A then buys some goods for his personal household use with that borrowed money. Can D hold B and C liable for the loan?

- (b) A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and B. Considering the provisions of Indian Partnership Act, 1932 state whether they can expel a partner from the firm?
7. (a) State the modes by which a partner may transfer his interest in the firm in favour of another person, under the Indian Partnership Act, 1932. What are the rights of such a transferee?
- (b) M, a partner made an advance in excess of the amount of capital to be contributed to a partnership firm. Further, he also made an advance to the firm for expansion of its operations. However, firm is not doing well in its business and all partners are intending to dissolve the firm. Considering the provisions of the Indian Partnership Act, 1932 state whether they can do so?

The Negotiable Instruments Act, 1881

8. Give the answer of the following:
- (a) A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Discuss the rights of X.
- (b) A promissory was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. Does this amount to material alteration?
- (c) A draws a cheque for Rs. 100 and hands it over to B by way of gift. Is B a holder in due course?? Explain the nature of his title, interest and right to receive the proceeds of the cheque.
- (d) A cheque is drawn payable to "B or order". It is stolen and the thief forges B's endorsement and endorses it to C. The banker pays the cheque in due course. Can B recover the money from the banker.
9. Distinguish between 'Bearer instrument' and 'Other instrument' under the Negotiable Instruments Act, 1881.

The Payment of Bonus Act, 1965

10. The employer is a banking company. Point out as to what items are required to be added to the "Net Profit" by the employer for calculating the "Gross Profit" in accordance with the first Schedule of the Payment of Bonus Act, 1965.
11. Explain the provisions of the Payment of Bonus Act, 1965 relating to the procedure to recover the bonus due from an employer.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

12. (a) Who are authorized to maintain a P.F.Account?
(b) Is provident fund attachable?
13. Describe the provisions relating to contribution by the employees and the employer under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
14. Explain the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 with regard to determination of 'Escaped Amount' after an officer has passed an order concerning 'Determination of Amount' due from an Employer under the Act.

The Co-operative Societies Act,1912

15. S is a member of a co-operative society registered with the unlimited liability under the Cooperative Societies Act, 1912. Holding shares of the society for ten months, S transfers his shares to M. Decide whether transfer of shares in favour of M is valid?
16. State the ways in which a society may invest its own funds under the Cooperative Societies Act, 1912. Whether such funds may be divided among the members of the society?

The Multi-state Co-operative Societies Act,2002

17. How are the disputes in a Multi-state Co-operative Society settle and by whom?
18. Who may become the member of Multi-state Co-operative Society?

The Companies Act,1956

19. What are the authorities whose approval must be sought for issue of prospectus?
20. When is a director not liable for a misstatement in a prospectus?
21. What is the effect of irregular allotment?
22. Examine the different aspects of the voting rights of a member.
23. Discuss the reduction and the diminution of share capital and distinguish the two
24. Enumerate the particulars to be included in the Statutory Report.
25. Outline some eight matters for which an ordinary resolution would suffice.

SUGGESTED ANSWERS/HINTS

1. (a) According to Section 56 (Para 2) of Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his

promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (*Budget V Bennington*; *Jacobs V Credit Lyonnais*).

In this case Mr. A could not deliver the 5 dozen bottles of champagne as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. A is liable to Mr. S for non-performance of contract.

- (b) The contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab initio, as per section 20.
2. (a) M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.
- (b) The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide, that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:
- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
 - (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Aman is entitled to recover Rs.6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

3. (a) Pledge : Section 172 of the Indian Contract Act,1872 defines a pledge as the bailment of goods as security for payment of debt or performance of a promise. When goods have been pledged, the bailor is called in this case the pawner and the bailee the pawnee. In the case of pledge no transfer of any interest in property takes place; but a special right to property is carved out in favour of the pledgee, i.e. he has right to dispose of the property in certain circumstances.

Pawnor's right to redeem: As per the provision laid down under Section 177 of the Indian Contract Act,1872 if a time is stipulated for the payment of the debt or performance of the promise; for which the pledge is made, and the pawnor makes

default, he may redeem the goods pledged at any subsequent time before the goods are sold, but in that case, he must pay, in addition, any expenses occasioned by the default.

The period for a suit against a pawnee to recover the things pledged is 3 years from the date of pawnee's refusal to do so after demand (The Limitation Act 1963 - Schedule, 70).

(b) According to the Section 125 of the Indian Contract Act, 1872 the indemnity holder i.e., promisee in a contract of indemnity, acting within the scope of his authority, is entitled to cover from the promisor :

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit.
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Section 125 is by no means exhaustive, which deals only with his rights in the event of his being sued. The indemnity holder has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute he is entitled to call upon his indemnifier to save him from that liability and to pay it off.

4. (a) The seller under Section 22 of the Sale of Goods Act, 1930, "where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or to do some other thing with reference to them for ascertaining the price, the property does not pass till such act or thing is done and the buyer has notice of it."

The facts of the given problem are based on *Zagury v. Furnell*, in which also it was held that the loss of the remainder shall be borne by the seller, since the property therein had not passed because the required weighing was not done.

(b) As per the provision given under the Section 14(a) in the given problem the true owner can get back his car. A person other than the owner cannot confer a good title on the buyer of the goods. Also, A shall be entitled to recover money from B because of breach of condition as to title.

5. Contract of Sale of Goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price [Section 4 (1)].

Essential elements of sale : The following elements must co-exist so to constitute a sale of goods:

1. There must be at least two parties.
2. The subject matter of the contract must necessarily be goods.
3. A price in money (not in kind) should be paid or promised.
4. A transfer of property in goods from seller to buyer must take place.
5. A contract of sale may be absolute or conditional (Section 4 (2)).
6. All other essential elements of a valid contract must be present in the contract of sale.

The Supreme court has held in the case of *State of Madras V. Gannon Dunkerley and Co.* AIR (1858) S (560) that according to the law, in order to constitute a sale, it is necessary that there should be an agreement between the parties for the purpose of transferring title of goods, which of course presupposes capacity to contract, that it must be supported by money consideration, that as a result of transaction, the property in the goods must actually pass. Unless all these elements were present there would be no sale.

It follows that a man cannot buy his own goods. For example, a transaction between two partnerships having identical partners would not constitute a sale. (*Bell vs. Lever Bros. Ltd.* (1932) AC. 161) However, a part owner may sell to another part owner. (Sec. 4)

Transfer of property in goods for price is the linchpin of a contract of sale. Exchange of goods of something other than money is not a sale. But if the exchange is made partly for goods and partly for a price, it is one of sale. (*Aldridge vs. Johnson* (1857) 7E&P 885).

Formalities of contract of sale

Except where specially required by any law, no particular form is necessary for entering into such a contract. The agreement may be express or may be implied from the conduct of parties. As stipulated by Section 5 of the Act, a contract of sale is made simply by an offer to buy or sell goods for a price and acceptance of such an offer. The delivery of the goods may be immediate or at a future date.

Again, a contract of sale may be made orally or in writing or partly in writing and partly orally. It may be effected in any of the following way, namely :

- (i) there may be immediate delivery of the goods; or
- (ii) there may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or
- (iii) there may be immediate delivery of the goods and an immediate payment of price; or
- (iv) it may be agreed that the delivery or payment or both are to be made in instalments; or
- (v) It may be agreed that the delivery or payment or both are to be made at some future date (Section 5).

6. (a) Yes. As per Sections 19 and 22 of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm provided the same falls within the ordinary course of the business and is done in a usual manner. The said conditions being satisfied, B and C shall be held liable.
- (b) A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that: (i) the power of expulsion must have existed in a contract between the partners; (ii) the power has been exercised by a majority of the partners; and (iii) it has been exercised in good faith. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33(1), Indian Partnership Act, 1932 includes three things:

- (a) that the expulsion must be in the interest of the partnership.
- (b) that the partner to be expelled is served with a notice.
- (c) that he is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void. The only remedy, when a partner misconducts in the business of the firm, is to seek judicial dissolution. Therefore, expulsion of Partner B is not valid.

7. (a) Modes by which a partner may transfer his interest entitlements & non entitlements:

According to Section 29 of the Indian Partnership Act, 1932 a partner may transfer his interest in the firm by sale, mortgage or charge. The transfer may be absolute or partial. The transfer does not entitle the transferee, during the continuance of the firm:

- (a) to interfere in the conduct of the business of the firm, or
 - (ii) to require accounts of the firm, or
 - (iii) to inspect the books of the firm

On transfer of interest by a partner, the transferee only becomes entitled to receive share of profit of the transferring partner. But in this case also the transferee has to accept the account of profits agreed to by the partners [Section 29(i)].

If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled to receive the transferring partner's share in the assets of the firm. For the purpose of ascertaining that share, he is entitled to an account as from the date of the dissolution (Section 29(2)).

- (b) As per the provision given under The Indian Partnership Act, 1932, When a partner makes an advance to the firm in addition to the amount of capital to be contributed

by him. In such a case, the partner is entitled to claim interest thereon @6% per annum [Section 13 (d)]. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

8. (a) As per Section 26, a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.
- (b) As per the provision of the Negotiable Instrument Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument.
- (c) B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive Rs. 100 from the bank on whom the cheque is drawn.
- (d) According to Section 85, the drawee banker is discharged when he pays a cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the endorsement of Mr. B is forged, the banker is protected and he is discharged. The true owner, B, cannot recover the money from the drawee bank.
9. Bearer and Order instruments: An instrument may be made payable: (1) to bearer; (2) to a specified person or to his order.

An instrument is payable to bearer which is expressed to be so payable on which is expressed thus "Pay to R or bearer". It is also payable to bearer when the only or last endorsement on it is an endorsement in blank.

An instrument is payable to order, (1) when it is payable to the order of a specified person or (2) when it is payable to a specified person or his order or, (3) when it is payable to a specified person without the addition of the words "or his order" and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. When an instrument, either originally or by endorsement, is made payable to the order of a specified person and not to him or his order, it is payable to him or his order, at his option.

When an instrument is not payable to bearer, the payee must be indicated with reasonable certainty.

Significance of bearer instruments: The expression "bearer instrument" signifies an instrument, be it a promissory note, bill of exchange or a cheque, which is expressed to be so payable or on which the last endorsement is in blank (Explanation 2 to Section 13 of the Negotiable Instrument Act).

Under Section 46, where an instrument is made payable to bearer it is transferable merely by delivery, i.e., without any further endorsement thereon. This character of the instrument, however, can be altered subsequently. For Section 49 provides that a holder of negotiable instrument endorsed in blank (i.e., bearer) may, without signing his own

name, by writing above the endorser's signatures, direct that the payment of the instrument be made to another person. An endorsee thus, can convert an endorsement in blank into an endorsement in full. In such a case, the holder of the instrument would not be able to negotiate the instrument by mere delivery. He will be required to endorse the instrument before delivering it.

In the case of a cheque, however the law is a little different from the one stated above. According to the provisions of Section 85(2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, despite any endorsement whether in blank or full appearing thereon notwithstanding that any such instrument purported to restrict or exclude further negotiation. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course. Hence the proposition that "once a bearer instrument always a bearer instrument".

10. As per first Schedule to the payment of Bonus Act, 1965, items to be added back to the net profit for calculating the gross profit of a banking company are:
 - (1) Provision for Bonus to employees
 - (2) Depreciation.
 - (3) Development Rebate Reserve.
 - (4) Any other reserves
 - (5) Bonus paid to employees in respect of previous accounting year.
 - (6) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of :
 - (i) the amount, if any, paid or provided for payment, to an approved gratuity fund; and (ii) the amount actually paid to employees on their retirement or on termination of their employment.
 - (7) Donation in excess of the amount admissible for income tax.
 - (8) Capital expenditure (other than capital expenditure on scientific research) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax).
 - (9) Any amount certified by the Reserve bank in terms of Section 34A(2) of the Banking Regulation Act, 1949.
 - (10) Losses of, or expenditure relating to, any business situated outside India.
 - (11) Income, profits or gains (if any) credited directly to published or disclosed reserves other than:
 - (i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax).

- (ii) Profits of, and receipts relating to any business situated outside India;
- (iii) income of foreign banking companies from investments outside India.

11. Recovery of the bonus due from an employer (Section 21) :

It may so happen that an amount of bonus is due to an employee from his employer under a settlement or an award or agreement and it is not paid. In such a case, the employee is to make an application for the recovery of the amount to the appropriate Government. This application can be made even by his assignee or heirs when the employee is dead. The application is to be made within one year from the date on which the money(bonus) becomes due but it may be entertained even after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

On the receipt of the aforesaid application for the recovery of the bonus amount, the appropriate Government or such authority as it may specify in this connection is to be satisfied that the money is so due. On being thus satisfied, it must issue a certificate for that amount to the Collector. Thereupon, Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

According to the Explanation to Section 21, "employee" (mentioned in Sections 21, 22, 23, 24 and 25) includes a person who is entitled to the payment of bonus under this Act but, who is no longer in employment.

12. (a) Authorising certain employers to maintain a P.F. Account (Section 16-A) : The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions as may be specified in the Scheme.

No authorisation shall, however, be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

Where an establishment is authorised to maintain a provident fund account as aforesaid, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act.

Before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

- (b) Protection against attachment (Section 10) : The amount standing to the credit of any member in the Fund or credit of any exempted employee in provident fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee. Neither the Official Assignee appointed under the Presidency-Town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such amount.

The amount standing to the credit of the aforesaid categories of persons at the time of their death and payable to their nominees under the Scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

13. According to section 6 of the EPF & MP Act, 1952, the employees' contribution to the fund shall be 10% of the basic wage, dearness allowance and retaining allowance (if any). An employee can at his will contribute beyond 10 if the scheme makes provision therefore subject to the conditions that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section (i.e. 10%). This rule will prevail irrespective of whether the employer employes the person directly or through contractor.

According to the first proviso to the Section 6, the Central Government may, however, raise the aforesaid percentage of contribution from 10% to 12% in respect of any establishments. It may do so after making such enquiries as it deems fit.

The following points are relevant in this regard:

- (i) Where the amount of any contribution involves a fraction of rupee, the scheme may provide for the rounding off of such fraction to the nearest rupee, half rupee or a quarter rupee.
 - (ii) Dearness allowance includes cash value of any food concession allowed to the employee.
 - (iii) Retaining allowance means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working for retaining his services.
14. Determination of escaped amount under section 7C of the Employees Provident Funds and Miscellaneous Provisions Act, 1952: Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who passed the order:
- (a) has reasons to believe that by reason of omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the

employer, any amount so due from such employer for any period has escaped his notice.

- (b) has in consequence of information in his possession, reason to believe that any amount to be determined under Section 7A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer.

He may, within a period of five years from the date of communication of the order passed under Section 7A or Section 7B, re-open the case and pass appropriate order re-determining the amount due from the employer in accordance with provisions of this Act. However, no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

15. Transfer of Share of a Member In a Co-operative Society

According to Section 14(2) of the Co-operative Societies Act, 1912, in case of a society registered with unlimited liability, a member cannot transfer any share held by him or his interest in the capital of the society or any part thereof unless:

- (i) he has held such shares or interest for not less than one year; and
- (ii) the transfer or charge is to the society or to a member of the society.

A member can transfer his shares only when both the conditions are fulfilled.

Hence, the transfer of shares by S is not valid since he had held these shares only for 10 months.

16. Investment of funds by a society :

According to Section 32, a registered society under the Co-operative Societies Act, 1912 may invest or deposit its funds :

- (i) in the Government Savings Bank; or
- (ii) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882; or
- (iii) in the shares or on the security of any other registered society; or
- (iv) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or
- (v) in any other mode permitted by the rules.

Whether funds or profits may be divided to the members of the society (Section 33)

According to Section 33 of the Act, 1912 generally, no part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members. However, where the liquidity is limited, at least one fourth of the net profits in any year must be carried to a reserve fund, and payments from the remainder of such profits and from any divisible profits of past years may be made among the members to such extent and under such conditions as may be prescribed by the rules or bye-laws. In the case of

societies with unlimited liquidity, no distribution of profits shall be made, without the permission of the State Government.

17. Settlement of Disputes

The Central Registrar is empowered to act as an arbitrator to settle the disputes touching the constitution, management or business of a Multi-State Co-operative Society.

The disputes will arise

- (a) among members, past members and persons claiming through members, past members and deceased members, or
- (b) between a member, past member or a person claiming through a member, past member or deceased member and the Multi-State Co-operative Society, its board or any officer, agent or employee of the Multi-State Co-operative Society or liquidator past or present, or
- (c) between the Multi-State Co-operative Society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the Multi-State Co-operative Society, or
- (d) between the Multi-State Co-operative Society and any other Multi-State Co-operative Society, between a Multi-State Co-operative Society and liquidator of another Multi-State Co-operative Society or between the liquidator of one Multi-State Co-operative Society and the liquidator of another Multi-State Co-operative Society. [Section 84 (1)].

All such disputes are to be referred to the Central Registrar for decision. No court shall have jurisdiction to entertain any suit or other proceedings in respect of such above stated disputes.

Where a National Co-operative Society is a party, all such disputes shall be referred to the Central Registrar or any officer empowered to exercise the powers of the Central Registrar.

The following shall be deemed to be disputes touching the constitution management or business of a Multi-State Co-operative Society [Section 84(2)]:

- (a) A claim by the Multi-State Co-operative Society for any debt or demand due to it from a member or the nominee, heirs or legal representative of a deceased member, whether such debt or demand be admitted or not;
- (b) A claim by a surety against the principal debtor where the Multi-State Co-operative Society has recovered from the surety any amount in respect of any debtor demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;
- (c) Any dispute arising in connection with the election of any officer of a Multi-State Co-operative Society.

Whether a dispute touching the constitution, management or business of a Multi-State Co-operative Society is a dispute or not shall be decided by the Central Registrar and his decision shall be final and shall not be a question of the court. (Sub Section 3).

18. Eligibility to become member:

Under this Act, the following persons are eligible to become members of Multi-State Co-operative Society (Section 25), namely -

- (a) an individual competent to contract u/s 11 of the Indian Contract Act;
- (b) any Multi-State Co-operative Society or any Co-operative Society;
- (c) the Central Government.
- (d) a State Government;
- (e) the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962;
- (f) any other corporation owned or controlled by Government;
- (g) any Government company as defined in Section 617 of the Companies Act, 1956;
- (h) such class or classes of persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of Multi-State Co-operative Society.

However, no individual person shall be eligible for admission as a member of a national Co-operative Society or a Federal Co-operative [section 25(2)].

19. Approval of prospectus by various agencies : The draft prospectus has to be approved by various agencies before it is filed with the ROC of the concerned State. The various authorities who approve the prospectus are the following:

- (i) All the lead managers to the issue.
- (ii) Each of the stock exchanges where the shares of the company are listed and where the shares/debentures are proposed to be listed.
- (iii) The lead financial institution underwriting the issue, if applicable.

The draft prospectus is vetted by SEBI to ensure adequacy of disclosures. However, vetting by SEBI does not amount to approval of prospectus. SEBI does not take any responsibility for the correctness of the statements made or opinions expressed in the prospectus.

The Department of Company Affairs, vide its circular 10/8/87-CL V No. 7/91, dated 28-2-1991 advised the ROCs to ensure that in respect of every prospectus of public issues which comes up for filing with them the merchant bankers to the issue, whether as lead managers, co-managers, advisers or consultants are only those authorised by SEBI. Each merchant bankers has been given a code number.

It was also decided that ROC shall not register a prospectus where prior to registration of the prospectus, the ROC before whom the prospectus is filed for registration is informed

by SEBI that the contents of prospectus filed are in contravention of any law or statutory rules and regulations.

In connection with the above, the SEBI has recently issued in its Circular No. 3(95-96) dated 29-9-1995, Clarification No. XII, under Guidelines for disclosure and investor protection, that the draft prospectus filed with SEBI is not a public document. The final prospectus becomes available to the public only 2-3 weeks prior to the opening of the issue. To introduce greater transparency, the draft prospectus filed with SEBI would be made as a public document. The Lead managers shall simultaneously file copies of the draft document with the stock exchanges where issue is proposed to be listed, and can charge an appropriate sum to the person requesting such copy(ies).

20. When a director is not liable [Section 62(2)] : A person who is held liable for the issue of a prospectus containing an untrue statement as a director will be exonerated from such a liability if he can show:

(a) In a suit under Section 62 :

- (i) that he (having consented to become a director) had withdrawn his consent to become a director before the issue of the prospectus and that it was issued without his authority or consent;
- (ii) that the prospectus was issued without his authority or consent; and that on becoming aware of its issue, he forthwith gave reasonable public notice of the issue having been made without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before allotment thereunder he, on becoming aware of any untrue statement therein, had withdrawn his consent and given a reasonable public notice of the withdrawal and of the reasons therefore; or
- (iv) that he had reasonable ground to believe and, until allotment, did believe that the statement was true. This provision pertains to the untrue statement not purporting to have been made on the authority of an expert or of a public official document or statement.
- (v) that the untrue statement, purporting to be a statement by an expert or contained in a report or valuation of an expert was a correct and fair representation of the expert's statement and he had reasonable ground to believe and, until issue of prospectus, did believe that the expert was competent to make it and the expert had given and had not withdrawn his consent to the issue of the prospectus and had not withdrawn it before delivery of a copy of the prospectus for registration; and
- (vi) that the untrue statement, arising from the statement made by an official person or from the public official documents was a correct and fair representation or correct copy or correct and fair extract of the document.

(b) In a suit under Section 56 :

A director or other person sued for non-compliance of Section 56 may defend himself by proving :

- (i) that he had no knowledge of the matter not disclosed;
- (ii) that the contravention was an honest mistake of fact;
- (iii) that in the opinion of the Court, the matter not disclosed was immaterial or was otherwise such as ought to be excused.

21. Effect of Irregular Allotment: When the shares are not allotted in pursuance of Sections 69 and 70 such an allotment is known as irregular allotment. In spite of the stringent provisions of Sections 69 and 70, one may find that allotment has been made in utter contravention thereof. The directors may choose to take a chance and proceed to allot shares although minimum subscription has not reached or a prospectus or statement in lieu of prospectus has not been filed. Such an allotment is treated by the Act not as void ab initio but as irregular.

The applicant for the shares may avoid the allotment. If he does so within the time specified by Section 71, namely,

- (a) where the allotment was made before the statutory meeting, within 2 months after the holding of statutory meeting of the company and not later; or
- (b) where no statutory meeting is required to be held by the company, within 2 months after the date of allotment and not later; or
- (c) where the allotment was made after the statutory meeting within 2 months of allotment [and not later] the allotment shall be voidable despite the fact that the company is in the course of being wound up.

Within the above-mentioned period, the allottee must intimate to the company that he wants to avoid the allotment. If legal proceedings are required to be taken, these need not be within the period of two months provided the notice of avoidance was served on the company within the aforesaid time, but they should be reasonably prompt thereafter if they are required to be brought [Re. National Motor Mail Coach Co. (1908) 2 Ch. 228].

Furthermore, Sub-section (3) of Section 71 makes every director of a company, who knowingly contravenes or authorises the contravention of any of the provisions of Section 69 or Section 70 with respect to allotment, liable to compensate the company and the allottee for any loss, damages or costs which they may have sustained or incurred thereby. But the proceedings for such compensation can only be taken within two years from the date of allotment. As the allotment is only voidable at the option of the shareholder, the shareholder may keep the shares and yet sue the directors who have knowingly contravened either of the two Sections (69 and 70) to compel them to make good the loss to him as a result of the irregular allotment.

22. Voting rights of a member: Section 87 governs the voting rights of members. Every holder of an equity share has the right to vote, by virtue of his share in the capital, on

every resolution placed before the company. And his voting right on a poll shall be in proportion to the amount paid upon his share. A member's right to vote may be exercised by him personally or through a proxy.

Every holder of preference shares has a right to vote only on a resolution which directly affects the rights attached to the preference share capital. A resolution for the winding up of the company or repayment or reduction of its share capital is deemed to directly affect the rights of holders of preference shares. Where preference shares are cumulative as to dividend and the dividend thereon has remained unpaid for an aggregate period of not less than 2 years preceding the date of any meeting of the company, the preference shareholders shall have the right to vote on every resolution placed before the meeting. On the other hand, if the preference shares are not cumulative as regards dividend, then the holders thereof will be able to exercise the above-mentioned extended right of voting only if dividend due on shares has remained unpaid for not less than 2 years ending with the expiry of the financial year immediately preceding the commencement of the meeting or for an aggregate period of not less than 3 years out of 6 years ending with the expiry of the financial year aforesaid. In all the above cases, the right of preference shareholders to vote on a poll shall be in the same proportion as the capital paid up on such shares bears to the total paid-up equity capital of the company. Dividend on preference shares, whether declared or not, shall be deemed to be due on the last date of the period specified for payment in the articles or other instrument executed by the company in that behalf. Alternatively, if no such date is specified, the dividend shall be deemed to be due on the day immediately following such period. The provisions stated above are, however, subject to the provisions of Sections 89 and Section 92(2) which we shall discuss hereunder :

A company may, by making a provision in the articles, restrain a shareholder from exercising his voting rights in respect of any shares registered in his name on which any call or other amount due has not been paid or on which the company has a lien or exercised a lien. But a public company or a private company which is a subsidiary of the public company cannot prohibit a member from voting on the ground that he has not held his share or other interest for a specified period before the time of voting or on any other ground except as mentioned above.

A company may, if so authorised by its articles, accept from any member the whole or any part of the uncalled amount on shares, but the member will not be entitled to voting rights in respect of the sum paid by him until it becomes payable [Section 92]. It is an exception to the rule that the voting rights of equity and preference shareholders on a poll will be in the same proportion as the capital paid up on those shares bears to the total paid-up equity capital.

23. Section 100 of the Companies Act provides for the reduction of capital. For this, the articles must give the authority ; it is not enough to provide for it in the memorandum. If the articles do not so authorise, then these must be altered by a special resolution first and thereafter a second special resolution will have to be passed to reduce the capital in the manner proposed. Reduction of capital may be a reduction in the nominal capital,

reduction at the same time in issued capital, a reduction in the paid-up capital or in the capital that has been issued but not paid up (e.g. where an uncalled liability is cancelled).

The term "diminution" denotes a cancellation of that portion of the issued capital which has not been subscribed for. Section 94(1)(e) of the Act states it, the cancellation of "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".

Section 94(3) specifically states that diminution does not constitute a reduction within the meaning of the Companies Act. The expression "diminution of share capital" and "reduction of share capital" differ from each other in the following respects.

- (1) Reduction may involve reduction inter alia of issued capital, whereas diminution may be in respect of authorised capital but not of issued capital.
 - (2) If the articles authorise the procedure, diminution can be effected by an ordinary resolution, while reduction (which also need authorisation by articles), can be effected only by a special resolution.
 - (3) Diminution needs no confirmation by the Court [Section 94(2)], but reduction needs such confirmation [Section 101].
 - (4) Where a company is ordered to add to its name the words "and reduced" these words shall until the expiry of the period specified in the order, be deemed to be part of the company's name [Section 102(3)], but such a provision does not exist in the case of diminution of the share capital as envisaged in Section 94(1)(e).
 - (5) In the case of diminution, notice is to be given to the Registrar within 30 days from the date of cancellation whereupon the Registrar shall record the notice and make the necessary alteration in the memorandum or articles or both [Section 95(1)(f) & (2)] ; whereas in the case of reduction more detailed procedure regarding notice to the Registrar has been prescribed by Section 103, though there is no such time limit as aforesaid (i.e. 30 days).
24. Statutory Report: The eight particulars to be set out in the statutory report are contained in sub-section (3) of Section 165. These are:
- (a) the number of shares allotted, distinguishing fully or partly paid up, otherwise than for cash and stating the extent to which the partly paid up shares have been paid and the consideration for which they have been allotted;
 - (b) the total amount of cash received on account of shares allotted;
 - (c) an abstract of receipts and payments up to the date within 7 days of the date of report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payment made thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;

- (d) the names addresses and occupations of the directors and auditors, manager and secretary, if any, and any changes therein, if occurred, since the date of the company's incorporation;
- (e) the particulars of any contract or modifications thereof to be submitted to the meeting for its approval;
- (f) the extent of non-carrying of each underwriting contract together with the reason therefore;
- (g) the arrears due on calls from every director and manager; and
- (h) particulars of commission or brokerage paid or to be paid to any director for manager in connection with the issue or sale of shares or debentures.

The report aforesaid must be certified as correct by at least two directors, one of whom should be the managing director, if there be any. The auditors should also certify it to be correct insofar as the report relates to shares allotted by the company, cash received in respect thereof and receipts and payments on revenue as well as on capital account of the company.

25. Subject to the articles, an ordinary resolution is sufficient, for inter alia any of the following matters:
- (a) To authorise an issue of shares at a discount (Section 79);
 - (b) To increase the share capital if authorised by the articles, or otherwise alter the share capital apart from its reduction (Section 94,100);
 - (c) To appoint auditors [Section 224(1)]; but in the case of a company in which not less than 25 percent of the subscribed share capital is held, whether singly or in any combination, by a public financial institution or a Government company or Central or any State Government, or a nationalised bank or an insurance company carrying a general insurance business, the appointment of auditors requires a special resolution (Section 224A);
 - (d) To appoint directors;
 - (e) To adopt annual accounts;
 - (f) To declare dividends;
 - (g) To wind up voluntarily when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provided that the company is to be dissolved [Section 484(1)];
 - (h) To appoint liquidators in a members 'voluntary winding-up and to fix their remuneration (Section 490);
 - (i) To register an unlimited company as a limited company (Section 32); and generally to do all things for which a special resolution is not specifically required either by the Act or the company's articles.