



R.K.

GROUP OF COLLEGE

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ASSIGNMENT

Question:-1 :-

What do you understand by prospectus?
Describe the special contents of the prospectus of a limited company by Anshu.

Answer :- Definition and meaning of Prospectus

A prospectus means such document which is issued by a company for inviting offers from public for subscription or purchase of its securities.

As per companies Act, 2013 section 2(70). "prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate."

Conclusion :-

Any document which is described or issued as prospectus, which invites public to subscribe or purchase the securities of a company or body corporate

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is called Prospectus. Prospectus includes and having prospectus, shelf prospectus or any type of notice, circular, advertisement or other document if it is described as prospectus.

Contents of the Prospectus

As per the companies Act, 2013 and the Rules made there under, a prospectus to be issued shall contain the following particulars -

- (1). Date :- Every prospectus shall be dated. This date shall be deemed to be the date of its publication.
- (2) Signature :- Prospectus shall be signed by all persons whose name is prescribed therein.
- (3) Particulars regarding company and other names :- Name of the company, address of the registered office of the company, name of company secretary, chief financial Advisor, auditors, legal

advisers, bankers, trustees, underwriters and such other persons as may be prescribed.

(4) Date of opening and closing of the issue:-
mention of date of opening and closing of the issue.

(5) Declaration about the issue of allotment letters and refunds:- Declaration made by the Board or the committee authorised by the board of the company that the allotment letter shall be issued on application money shall be refunded within 15 days from the closure of the issue or such lesser time as may be specified by SEBI.

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Question :- 2

What is meant by a 'Company Promoter'? Describe fully his rights, duties and liabilities.

Answer Meaning and Definition of Promoter

Promoter means such persons who do research related to business and form a company according to specific plan, assemble all the necessary material and manage the company.

As per section 2(69) of Companies Act, 2013:
"Promoter means a person who fulfills any of the following conditions:

- (i) who has been named as promoter in a prospectus.
- (ii) who is identified as promoter by the company in its annual return.
- (iii) who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise.

(iv) In accordance with whose advice, directions or instructions the Board of directors of the company is accustomed to act. But a person who advises and gives directions or instructions acting merely in a professional capacity shall not be a promoter of the company.

Functions of Promoter.

Whether a com starts a fresh or purchases a running company or clubs the current companies. In all these conditions promoter has to perform lot of functions. The promoter's work depends on the nature, legal constraints and prevailing conditions of the company to be established at the time of promotion. In brief following are the functions of promoter —

1. Conceiving the idea of the company and investigating the business opportunities.
2. Thorough research on the business plan, collecting facts and figures and analyzing them.

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3. Assembling the requirements to translate the idea into a reality.
4. making preliminary contracts.
5. Financial planning of the proposed company.
6. compliance of necessary legal formalities related to formation of company, like decide the place for the registered office of the company, ensure the availability of name of the company; decide the objectives and capital of the company.
7. To perform the necessary proceedings for the incorporation of company and obtained the certified of incorporation.
8. Ensuring subscription to the initial capital.
9. To furnish the verification of registered office to the company registrar within 30 days of its incorporation.
10. Controlling the affairs of the company directly or indirectly rights of promoters.

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Rights of Promoter

Following are the main rights of promoter-

1) To defray preliminary expenses:-

Once company comes into existence it repays or get into existence it repays or get into agreement for repayment of the initial expenses done by the promoter at the time of incorporation of the company.

2) To obtain proportionate amount from co-promoter
If any one promoter among the co-promoters has to compensate due to false description in the prospectus; then the promoter has right to get proportionate amount from other promoters.

3) Right to get remuneration:-

Due to promoter's put lot of efforts to form and run a company; therefore company pay the remuneration as the award. Though a promoter is not legally entitled to get any remuneration for his services.

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- (a) Profit :- The company may purchase the property of the promoter on high value so as the promoter is benefited and reimbursed.
- (b) Commission :- Company can pay some commission to the promoter on the total sale of its shares.
- (c) Purchasing property in consideration of shares and debentures :- Company may purchase the property in lieu of its shares for the benefit of promoters.
- (d) Shares at par :- The company can reimburse promoter by selling them shares at par.
- (e) Lump sum payment :- Company can pay a lump sum cash amount to the promoter as remuneration. It can be paid as part cash and part shares or debentures.
- (f) Allotment of shares :- Sometimes company allot its shares for free to promoters to reimburse.

Duties of Promoter

Following are the main duties of promoter:-

1. To disclose all material fact :- It is the duty of promoter to disclose all material facts related to promotion of company.
2. Not to make secret profit :- Promoter should not make any secret profit from the company.
3. To disclose the interest in the transaction :- Promoter should disclose his interest in an transaction entered into by the company.
4. Not to sell property without informing :- The promoter should disclose all the facts about his property to be sold to company. He should not sell his property to the company without informing.
5. Not to make unfair use of his position :- It is the duty of promoter not to make unfair his position in the company.

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Liabilities of Promoter.

1. Liability for furnishing false information :- If a company is incorporated by furnishing false or incorrect information in any of the or representation, by suppressing any material fact or information in any of the documents filed; by suppressing any material fact or information in any of the declarations made; by any fraudulent action then the promoter of the company shall be liable and can be punished and fined. [Section 7(6)]
2. Liability for Compensation :- Sometimes, a person subscribes for securities of a company acting on the faith of any misleading prospectus and sustains any loss or damage as a consequence. In such case, the promoter of the company shall be liable to pay compensation to every person who has sustained such loss or damage [Section 35(1)]

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3) Liability for contravention of provisions as to issue of securities in private placement mode :- Sometimes, a company makes an offer or accepts money in contravention of the provisions relating to private placement of securities. In such case, the company and its promoters etc. shall be liable for a penalty which may extend to the amount involved in the offer or invitation or Rs. 2 crore, whichever is higher. [Section 42 (10)]

4) Liability for failure to make disclosure items of special business :- Sometimes, a special business is to be transacted at a general meeting. In such case, a statement setting out the certain specified material facts concerning each item of special business to be transacted at the general meeting shall be annexed to the notice calling such meeting.

Question :- 3

Discuss the powers, duties and liabilities of a director.

Answer :- Powers of Directors

I. Powers exercisable at the Board meeting:-

1. Powers exercisable by general majority :- The Board of Directors can exercise following powers by general majority -

(1) To make calls on shareholders in respect of money unpaid on their shares.

(2) To authorize buy-back of securities.

(3) To issue or allotment of securities.

(4) To borrow money for the company.

(5) To grant loans or give guarantee or provide security in respect of loans.

(6) To invest the funds of the company.

(7) To approve financial statements and Board

of Directors report.

(8) To diversify the business of the company.

(9) To approve amalgamation, merger or reconstruction of the company.

(10) To make political contribution.

2. Powers exercisable by unanimous vote of Board of Directors:-

(1) To make inter-corporate loans or investments.

(2) To appoint a person as managing director or manager who is already holding office of managing director or manager in any other company.

II. Powers exercisable with the consent of the general meeting:-

(1) To sell, lease or dispose of the whole or substantially the whole of the undertaking of the company.

- (2) To invest the amount of compensation received as result of any mergers or amalgamation in trust securities.
- (3) To remit or give time for the repayment of any debt due from a director.
- (4) To contribute to bona fide charitable and other funds where the amount of aggregate contribution in any financial year exceeds 5 percent of its average net profits for 3 immediately preceding financial years.
- (5) To borrow money equal to prepaid share capital and free funds.

III. Powers exercisable with the consent of the central Government:-

As per section 197 of Companies Act, 2013, when a company has inadequate profits or no profits to pay remuneration to its directors managing directors,

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full-time directors or manager, in such case, it may pay any remuneration with the prior approval of the central government.

Duties of Directors

I General Duties :-

1. To act in accordance with the articles :-
The directors of every company shall act in accordance with the articles of the company.

2. To act in good ~~health~~ :- faith :-
The directors of a company shall act in good faith for the profit of members and to promote the objects of the company.

3. To work with care and diligence :-
The directors shall perform their duties with reasonable care, diligence, proficiency

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and impartiality

4. Not to act in conflict of interest :-

The directors of the company shall not act such that they may directly or indirectly conflict, or may possibly conflict with the interest of the company.

II. Special duties

(1) Declaration regarding payment of value of shares and paid up capital of the company :-

To get the power to raise start-up capital for the company, the directors shall make declarations that, every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and that the paid up share capital of the company is not less than Rs. 5 lacs or more as prescribed or not less than 1 lac or more as prescribed.

(2) To make full and correct disclosure in prospectus :- The directors shall ensure full and correct disclosure of all matters in the prospectus as required by Act.

(3) To sign the prospectus :- The directors authorizing the issue of prospectus shall sign the prospectus.

Liabilities of Directors

I. Liability towards outsiders / third party :-

1. Breach of implied assurance :-

If the director breach the implied assurance, take loan beyond the limit as prescribed in articles, then they are personally liable for the repayment of such excess amount.

2. mis-statement or mistake in prospectus :-

If there is mistake in the prospectus or untrue statement or details in the prospectus are liable to pay compensation to every such person who subscribes for

shares on the faith of such prospectus.

II Liability towards company :-

1. Act beyond limits or ultra vires act :- If a director act beyond his power then they are personally liable for these acts towards the company.
2. On negligence :- If the director act negligently they will be personally liable for such act towards the company.
3. Breach of duties :- If the director knowingly breach the duties towards the company, like taking bribe or other mala fide acts, then they are personally liable towards the company.