

SUGGESTED ANSWERS FOR TEST -3

1. After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalization of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. Comment.

Ans:

- **As per the provisions of The Companies Act, 2013 & related rules**, the amount stated in the prospectus as the minimum subscription must be subscribed and the sum payable on application must be received by the company within 30 days of issue of prospectus or such other period as specified by SEBI. Otherwise the money received by the company shall be returned within 15 days from the closure of issue.
- Also, the application money received shall be credited into a separate bank account and not be utilized for any purpose until the completion of allotment.
- **In the given case**, company has received 80% of the minimum subscription as stated in the prospectus and allotted 100 equity shares to X. The company deposited the said amount but withdrew 50% of the amount before finalization of allotment. X refuses to accept the allotment.
- **Question involved is** whether X can refuse to accept the allotment of shares?
- **Applying the above provisions in the given the case**, we understand that the allotment is in contravention of section 39 of the Companies Act, 2013 and the allotment is irregular. The consequences of such irregular allotment renders the allotment void.
- **In view of the above, we can conclude** that refusal by 'X' to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act is valid provided he has exercised his option to avoid the allotment within the period mentioned.
- The Company has also violated the provisions of the Companies Act in withdrawing 50% of the amount deposited with the bank before receiving the entire amount payable on application for shares in respect of the minimum subscription.

2. A company issued a Prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.

Ans:

- **As per Golden Rule for framing the prospectus:-**
 - The prospectus must present the whole picture of the company i.e. it must disclose all material facts truly, honestly and accurately. All facts which are likely to influence the decision regarding applying for shares must be disclosed.
 - The prospectus should not contain any untrue or misleading statement. Suppression of a fact, however remote,

will make a prospectus 'misleading prospectus', if inclusion of such fact might have affected investor's decision to subscribe for the shares.

- **In the given case**, company issued a prospectus which contained all the statements which were literally true but also stated that company had paid dividends for a number of years but did not disclose the source. An allottee of shares wants to avoid the contract on the basis of misleading prospectus.
- **Question involved is** whether he can rescind the contract?
- **Applying the above provisions/rule in the given case**, we understand that since non-disclosure of the fact that the company was making losses and that the dividends were paid out of past year profits gave a false impression that the company was making profits and suppression of such fact might have affected investor's decision to subscribe for shares.
- Since the allottee has a right to rescind the contract of allotment of shares if he had relied and acted on the prospectus, i.e., he subscribed for shares after being influenced by a misleading prospectus, **we can conclude that** the allottee of shares is entitled to avoid allotment.

3. Apex Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid up shares. Considering the provisions of the Companies Act, 2013, what advice would you give to the company in this regard?

Ans:

- **As per Section 67 of The Companies Act, 2013**, no public company can give financial aid to any person, either directly or indirectly, whether by way of loan, guarantee or surety or otherwise, for or in connection with purchase or subscription made or to be made of any of its own shares or of its holding company.
- There are, however, certain exceptions to this rule, namely-
 - a banking company may lend money for the purpose in the ordinary course of its business, or
 - The company in pursuance of a scheme (approved by a special resolution) for the purchase of or subscription for fully paid shares of the company (or those of its holding company) to be held by trustees for the benefit of the employees of the company, may advance loan for the purpose.
 - The company may advance a loan to a person bonafide in its employment (other than directors or managers) to enable them to purchase or subscribe for fully paid shares for an amount not exceeding their salary or wages for a period of six months.
- **In the given case**, Apex Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain fully paid up shares of itself.
- **Question involved is** whether the company give such financial assistance.
- **Applying the above provisions in the given case**, we understand that Apex Limited may fall under the above exceptions and **hence conclude** that it can give financial assistance to its employees if falling under the above exceptions.

4. Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered office in Mumbai. He did not receive the shares certificates even after expiry of 4 months from the date of dispatch of transfer deed. He lodged a criminal complaint in the court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the court at New Delhi is competent to take action in the said matter?

Ans:

- **As per the provisions of The Companies Act, 2013**, a person can file a suit against the company with the competent court in India. Competent court is decided on the basis of the jurisdiction where the registered office of the company is situated.
- **In the given case**, Ramesh, a resident of New Delhi did not receive the shares certificate even after expiry of 4 months from the date of dispatch of transfer deed. He lodged a criminal court at New Delhi whereas the registered office of the company is in Mumbai.
- **Question involved is** whether the court at New Delhi is competent to take action in the said matter.
- **Applying the above provisions in the given case**, we understand that if the registered office of the company is in Mumbai then the competent court to accept the case and take action is court at Mumbai and not New Delhi. Hence Ramesh shall lodge a complaint with the court at Mumbai.

5. "A forged transfer of shares is a nullity." Comment.

Ans:

- **As per the general principles of law and provisions of the Companies Act, 2013:**
 - A Forged transfer is a nullity. It does not give the transferee concerned any title to the shares.
 - If the company acts on a forged transfer and removes the name of the real owner from the Register of Members, then it is bound to restore the name of the real owner on the register as the holder of the shares and to pay him dividends which he ought to have received.
 - A buyer of shares on the basis of forged transfer does not get any title to the shares, since forgery is nullity.
 - However, the company shall be liable to compensate the purchaser in so far as the company had issued a certificate to transfer and was therefore estopped from denying the liability accruing from its own acts.
6. RSP Ltd. allotted 500 fully paid-up shares of 100/- each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Registrar of members. Later on, the company came to know of his fact. The company cancelled the allotment and struck-off his name from the Register of members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court under the provisions of the Companies Act, 2013.

Ans:

- **As per the provisions of The Companies Act, 2013**, If the company allots shares to a minor in ignorance of the fact of minority, following consequences shall follow:
 - The minor or the guardian shall not be liable to pay any calls remaining unpaid on the shares held by him.
 - The minor or the company can repudiate the allotment made to him. However, the minor shall be entitled to receive back the money paid by him.

- **In this case**, RSP Ltd. Allotted 500 fully paid up shares to Z, a minor in ignorance of the fact that he's a minor. Later, on knowing the fact the company cancelled the allotment and also forfeited his entire money. Z filed a suit for recovering his money.
- **Question involved is** whether Z can get any relief from the court.
- **Applying the above provisions to the given case**, we understand that company has the right to rescind the contract on becoming aware about the minority of any shareholder but when it repudiates the contract, money paid by the minor has to be refunded.
- So, we can **conclude** that Forfeiture of money paid by the minor is not valid and hence Z can take get relief from the court.

7. What are the provisions of the Co. Act, 1956 w.r.t. appointment of Debenture Trustee by a company?
Whether the following can be appointed as Debenture Trustee:

- A shareholder who has no beneficial interest
- A creditor whom the company owes Rs.499 only.
- A person who has given a guarantee for repayment of amount of debentures issued by the company.

Ans:

- **As per the provision of Sec 71 of The Companies Act, 2013 and related rules**, before issue of prospectus or letter of offer for the debentures, the company should appoint one or more debenture trustees and disclose their names and also state that they have given their consent.
- It is also provided that (i) a shareholder who has beneficial interest in shares (ii) creditor or (iii) a person who has given guarantee for repayment of principal and interest in respect of the debentures (iv) promoter, director, KMP, any officer or employee of company, its holding or subsidiary or associate company (v) relative of director or KMP or promoter (vi) having pecuniary relationship of specified amount etc., cannot be appointed as a debenture trustee
- **Thus based on the above provisions answers to the given questions are:**
 - A shareholder who has no beneficial interest can be appointed as a debenture trustee.
 - A creditor whom company owes Rs. 499 cannot be so appointed. The amount owed is immaterial.
 - A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.