

TopYug Educations

CA INTER – CORPORATE & OTHER LAWS

SUGGESTED ANSWERS FOR TEST - 4 (Ch V, VI & VII of Co.s Act, 2013)**Answer All the questions. Each question carries 5 marks each. Duration – 50 Mins**

1. ABC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not filed with the Register of Companies for Registration, What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2019 instead of 12th March, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer:

As per provisions of Sec. 77 of The Companies Act, 2013 & related rules, prescribed particulars of the charge together with the instrument, if any by which the charge is created, or a copy thereof shall be filed with the Registrar within 30 days after the date of creation of charge.

The Registrar may allow the registration of the charge after 30 days of its creation, within 60 days of creation in case of charges created after the commencement of the Companies Amendment Act, 2019 (Nov 2, 2018).

If the company has not filed within 60 days of its creation, then further 60 days is allowed for the purpose of registration.

The company shall file prescribed form (CHG -1) AND shall pay fee plus such additional fee as may be prescribed for the purpose of registration of charge.

In the given case, ABC Limited created a charge on March 12, 2019 and realized on May 2, 2019 that it did not file the charge for registration with Registrar.

Question involved is about the procedure for registration of charge.

Applying the above provisions in the given case, we notice that charge has been created after commencement of the Amendment Act and particulars of charge have not been filed within the prescribed period of 30 days. However, the Registrar is empowered to extend the period of 30 days by another 30 days on payment of such additional fee as prescribed.

Hence Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

Alternatively, if the charge was created on Feb 12, 2019, then the company has further 60 days after the first 60 days of creation of charge for filing the particulars for registration.

The company must file the prescribed form and pay such additional fee as prescribed to get the charge registered.

2. Prism Limited has accepted Rs.10 Lakhs as advance towards the supply of goods to certain parties. As per the agreement, the company will supply the goods after two years from the date of deposit. Later on, internal auditors qualified their report on the ground that the company has violated the provisions of the Companies Act, 2013. Directors explained that this is required to complete the order. Examining the relevant provisions of the Companies Act, 2013 state whether the explanation given by the directors is justified.

Answer:

As per Sec. 2(31) of the Companies Act, 2013 read with related rules, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with RBI.

One of the amounts prescribed is any amount received in the course of or for the purpose of business of the company as an advance for the supply of goods or provision of services provided that such advance is appropriated against the supply of goods or provision of services within a period of 365 days from acceptance of such deposit. However, the said limit of 365 days is not

applicable if the matter is under legal proceeding.

In the given case, Prism Limited has accepted Rs.10 Lakhs as advance towards the supply of goods to certain parties and the company will supply the goods after two years from the date of deposit to which internal auditors qualified their report. Director explained that this is required to complete the order.

Question involved is whether the explanation given by the directors is justified or not.

Applying the above provision in the given case, we understand that the said advance would not have been treated as deposit if the same would have been appropriated against the supply of goods within a period of 365 days from acceptance of such deposit.

But since company will supply the goods after 2 years from the date of deposit, it shall be treated as deposit for Prism Limited for which they have to comply with the provisions of Chapter V of The Companies Act, 2013.

Hence the explanation of directors is not justified.

3. The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the Chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a Director of the company. The Chairman declines to do so. State how the matter can be resolved.

Answer:

As per the provisions of Sec. 118 of the Companies Act, 2013, any matter which in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceedings, or
- (iii) is detrimental to the interests of the company,

the Chairman shall exercise an absolute discretion with regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above.

In the given case, Chairman of the meeting has directed exclusion of some matter which is regarded as defamatory of a Director from the minutes to which some of the shareholders insisted on exclusion.

Question involved is can the chairman decline to do so.

Applying the above provision in the given case, Since the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes, the insistence of the shareholders will be of no avail as the matter is defamatory to the director of the company.

4. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956:
- a. The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolution proposed to be passed at the meeting.
 - b. The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
 - c. Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present at the meeting.

Answer:

As per Section 100 of the Companies Act 2013, the Board of directors must convene a general meeting upon request or requisition if certain conditions are satisfied.

- a. The requisitions must state the objects of the meeting, i.e., it must set out the matters for the consideration of which the meeting is to be called. He is not bound to disclose the reasons for the resolution to be proposed at the meeting.

In given question (i) the Board of Directors cannot refuse to convene the meeting because reasons for the resolution is not compulsorily required to be given. Only object for the meeting is sufficient.

- b. Where two or more persons hold any shares or interest in a company jointly, a requisition, or notice calling a meeting, signed by one or some of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

On the basis of above section the Board of Directors has no right to refuse to convene the meeting in the given question (ii).

- c. As per provisions of Sec 103 of the Companies Act, 2013 if in a requisitioned meeting, there is no quorum present within half an hour, the meeting stands dissolved.

Therefore, the stand taken by the Board of Directors is not proper in the given problem (iii).

5. The Articles of Association of X Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

- a. A, the representative of Governor of Madhya Pradesh.
- b. B and C, shareholders of preference shares,
- c. D, representing Y Ltd. and Z Ltd.
- d. E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Answer:

As per the provisions of Sec.103 of the companies Act, 2013, Articles may provide for a larger number as quorum for the General meeting. Again, only members present in person and not by proxy are to be counted.

As per sec. 113, If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of a latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum.

Also Sec 112 provides that the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as its representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

Further, a preference shareholder shall be excluded for the purpose of quorum if the matter transacted at the meeting is not affecting his rights directly.

Also, For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

In this case, the quorum for a general meeting is 7 members to be personally present as per the Articles of Association of X Ltd.

Question involved is whether the quorum was present in the meeting. .

Applying the above provision in the given case we conclude that:

- a. 'A' will be included for the purpose of quorum as he is the representative of Governor of MP.

- b. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.
- c. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.'
- d. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. E, F, G and H are not to be included as they are not members but representing as proxies for the members.

In view of the above there are only three members personally present.

Thus it can be said that the requirements of quorum being 7, 3 members personally present shall not constitute a valid quorum for the meeting.