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Case Analysis on Evolution of Company Act With Reference to Registrar of Companies- India

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ABSTRACT:
The new Indian Company Act, 2013 is an inviting and positive advance towards modernizing India's organization law and spots India comparable to corporate enactment elsewhere in the globe. The Act is a reformist and forward looking which guarantees further developed corporate administration standards, improved exposures and straightforwardness, facilitation of responsible business venture, expanded responsibility of organization administrations and evaluators and severe authorization measures. It goes far in ensuring the interests of investors and eliminates regulatory weight in a few regions. The article provides important insights of The Company's Act 2013.
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I. INTRODUCTION

Company law is that part of law which manages all perspectives identifying with organizations, like fuses of organizations distribution of offers and offer capital enrollment in organizations the executives and organization of organizations, ending up of organizations and so on. Company law in India is that part of Indian law which manages organizations in India.

The new Companies Act is supplanting old Companies Act, 1956. The Company Act 2013 makes far reaching arrangements to oversee all recorded and unlisted organizations in the country. This act was made effective to some extent in 12 September, 2013. Notwithstanding, the new law additionally makes broad reference to sub-ordinate enactment as rules, which structure a vital piece of the new law overseeing organizations in India.

Benchmark Case Studies

I. Company as artificial legal person

❖ State Trading Corporation of India v. Commercial Tax Officer, 1963 SCJ 705

In the State Trading Corporation of India v. Commercial Tax Officer, 1963 SCJ 705 case, the organization contended that as every one of the investors of the organization are citizens of India and it ought to get all the advantages presented upon the citizens of India. The Court dismissed the contention and it held that neither the arrangements of the Constitution nor the Citizenship Act applies to the Company. It ought to be noticed that however an organization doesn't have fundamental rights, yet it is an individual in the eye of law. It can go into contracts with its Directors, its individuals, and outcasts.

II. Company as Separate Legal Entity

❖ Salomon v Salomon & Co. Ltd (1897)

Mr. Saloman, the owner of an incredibly prosperous shoe business, sold his business for the measure of $ 39,000 to Saloman and Co. Ltd.which comprised of Saloman himself, his significant other, his girl and his four children. Saloman and his two children turned into the Directors of this organization. Saloman was the Managing Director. After a brief span, the organization went into liquidation.

The unsound creditors expressed a need over the debenture holder on the ground that affiliation and Saloman were in all actuality the very same individual. In any case, theHouse of Lords held that in law an enrolled organization is an entity distinct from its individuals, regardless of whether the individual hold all the shares in the organization. There is no distinction on a fundamental level between an organization comprising of just two investors and an organization comprising of 200 individuals. For each situation the organization is a different legitimate entity.

III. Promoter's Contracts

❖ Kelnerv Bexter (1886) L.R. 2 C.P.174.

An inn organization was going to be framed and advertisers consented to an arrangement for the acquisition of stock in the interest of the proposed organization. The organization appeared be that as it may, prior to addressing the cost, went into liquidation. The advertisers were held by and by at risk to the offended party. Further, a specialist himself will be unable to uphold the agreement against the other party. Court held that a stranger cannot, by subsequent ratification, relieve the promoters from that responsibility of liability.A promoter can avoid liability if a substitute agreement novices the original pre-incorporation contract.

IV. Memorandum of Association: Name Clause

❖ Atkins & Co vs. Wardle, (1889) 61 LT 23

In the case it was seen that exclusion of the word 'Limited' makes the name inaccurate. Where "Limited" shapes part of an organization's name, exclusion of this word will make the name erroneous. On the off chance that the organization makes an agreement without the utilization of "Limited", the officials of the organization who make the agreement would be considered to be actually obligated.

V. Memorandum of Association: Object Clause

❖ Crown Bank. Re (1890)

An organization's object clause empowered it to go about as a bank and further to put resources into securities land to guarantee issue of securities. The organization deserted its bank business and restricted itself to venture and monetary speculation. Held, the organization was not qualified for do as such.

VI. Doctrine of Ultra Vires

❖ Ashbury Railway Carriage and Iron Company Limited vs. Riche (1875)

The directors went into an agreement not mentioned in the objective clause in the memorandum of association with the respondent, Riche for financing the development of a rail line in an outside country and the organization accordingly suspected to approve the demonstration of the directors by passing a special resolution at a comprehensive gathering. The organization, notwithstanding, renounced the agreement. Riche immediately sued the organization for break of agreement.

The principle of law enunciated in this case remained that after a company is incorporated, the memorandum becomes the charter of its activities and the same time defines its field of operation. Apart from statutory powers, anything done outside the stated objects is ultra-vires the company; it is invalid and cannot be ratified by the member. Lord Cairns further stated that the rule served the dual purpose of protecting both investors and creditors. But the rule is applied liberally so that whatever is fairly incidental to the objects stated in the memorandum unless expressly prohibited is regarded, as intra vires.

VII. Contract Clause

❖ Trustees of Dartmouth College vs. Woodward (1819)

This case was a milestone choice in United States corporate law from the United States Supreme Court managing the utilization of the Contracts Clause of the United States Constitution to private enterprises. The case emerged when the president of Dartmouth College was expelled by its trustees. It incitied the New Hampshire lawmaking body endeavoring to compel the school to transform into a public foundation and consequently place the capacity to name trustees in the possession of the legislative head of New Hampshire.

The judgment stated that any act of a legislature which takes away any powers or franchises vested by its charter in a private corporation or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligations of that charter. If the legislature mean to claim such an authority, it must be reserved in the grant.

VIII. Articles of Association: Alteration of Articles

❖ Andrews vs. Gas Meter Company (1884)

This is a UK organization law case concerning the right of an organization to revise its constitution to empower the giving of preferential shares. It was held in this case, that the articles may be altered to explain ambiguous portions or to supplement the memorandum with regard to those things upon which it is silent.

IX. Prospectus

❖ Nash vs. Lynde (1929)

Nash applied for specific offers in an organization based on an archive shipped off him by Lynde, the overseeing overseer of the organization. The record was checked "stringently private and classified." The record didn't contain every one of the material realities needed by the Act to be unveiled. Nash documented a suit for remuneration for misfortune endured by him by reason of the oversights.

The court observed, "The public is of course a general word. No particular numbers are prescribed. Anything from two to infinity may serve. The point is that the offer as such is to be open to anyone who brings his money and applies in due form, whether the prospectus was addressed to him on behalf of the

company or not. A private communications is not thus open and does not construe to be a prospectus."

Misstatements in the Prospectus

❖ New Brunswick etc. Co. V. Muggeridge (1860)

The 'Golden Rule' for outlining prospectus as set down in this case. The real essence of organization's venture ought to be revealed. The explanations which don't fit the bill to the specifics referenced in the prospectus or any data is deliberately and will completely disguised by the heads of the organization, would be considered as mis-proclamation.

X. Compensation

❖ McConnel V. Wright (1903)

In McConnel V. Wright, it has been held that the proportion of the harms is the misfortune endured by reason of the false assertion, exclusions, and so forth the contrast between the worth which the shares would have had and the genuine worth of the shares at the hour of the distribution.

XI. Damages for Deceit as Fraud

❖ Derry V. Peek (1889)

In this case, it has been held that if the individual offering the expression trustworthiness trusts it to be valid, he isn't liable of misrepresentation regardless of whether the assertion isn't correct.

XII. Allotment of Shares

❖ Sri GopalJalan& Co. vs. Calcutta Stock Exchange Association Ltd. (1963)

For this case, allotment of shares was clarified by the Supreme Court as "the appointment, out of the beforehand unappropriated capital of the organization, of a specific number of offers to an individual. It is solely after allotment that shares appear. Reissue of relinquished shares isn't an allotment'.

Capacity of a member: Minor

❖ PalaniappaMudaliar vs. Official Liquidator,Pasupathi Bank Limited (1942)

In this case, it was held that if an application for shares is made by a father as guardian of his minor child and the company registers the shares in the name of the child describing him as a minor, neither the minor nor the guardian can be placed on the list of contributories at the time of winding-up.

XIII. Membership by Subscribing to Memorandum

❖ Metal Constituents Company (1902)

In this case, a supporter consented to take 350 subscriber. Then, at that point, he needed to repeal the agreement on the ground of deception with respect to the advertisers. Held that a subscriber to memorandum cannot, after issue of certificate of registration, repudiate his subscription on ground that he was induced to sign by misrepresentation of an agent of company.

XIV. Membership by Application and Allotment

❖ Roger's case (1868)

When the shares applied for are subjected to condition, the applicant is not a member till the condition is satisfied even though his name might be on the register of members.

XV. Membership by Transmission

❖ Indian Chemical Products vs. Province of Orissa, AIR (1967)

On account of the case, by devolution, the province of Orissa had gotten qualified for the portions of the Maharajas. Yet, the organization wouldn't enlist the offers for the sake of state's delegate. It was held that the organization will undoubtedly enroll the offers for the state's delegate since it was an instance of transmission. What's more, the state became qualified for the offers because of the activity of law.

XVI. Borrowing Powers

❖ General Auction Estate and Monetary Co. vs. Smith (1891)

432 case the organization had among its items, the deal and acquisition of bequests and property, credits on stores of protections and limiting of bills. The Memorandum of the organization didn't explicitly give it any influence to get cash. The organization was ended up inside a half year.

Held, being an exchanging organization, it had a suggested influence to get cash for its business and to offer security to the individual making the development (credit). Where an organization has express or suggested influence to acquire it can raise, get or secure the installment of any amount of cash for the motivations behind business subject as far as possible set by its Memorandum or Articles.

XIX. Ultra Vires Borrowings

❖ Introduction Ltd. vs. Public Provincial Bank Ltd. (1970)

An organization was framed with the primary object of giving data and offices to the abroad guests to the Festival of Britain in 1950. The organization later occupied with pig reproducing as its sole action. For this reason, it acquired cash from a bank which accepting debentures as a security. The bank was given a duplicate of the Memorandum and it realized that the solitary business being carried on by the organization was pig rearing.

It was held that the loan was ultra vires as the power to borrow money must be subordinate to the main objects of the business. As a result the loan was irrecoverable

XX. Borrowing intra vires of company; ultra vires of directors

❖ Equity Insurance Co. Ltd vs. Dinshaw and Company, AIR (1940)

For the situation, it was held "Where the managing agent of a company who is not authorised to borrow has borrowed money which is not necessary, neither bonafide, nor for the benefit of the company, the company is not liable for the amount borrowed." But if a loan has not been obtained in the name of the company, it will not be liable even though such amount has been used for the benefit of the company.

XXI. Floating Charges securing debentures

❖ Government Stock Investment Co. Ltd. vs. Manila Rly Company Ltd.(1897)

Lord Macnaghtenremarks, "A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying Condition in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the parson in whose favour the charge is created intervenes. His right to intervene may of coarse be suspended by agreement. But if there is no agreement for suspension, he may exercise his right whenever he pleases after default."

II. FINDINGS

i. Company incorporation with respect to the new Company Act eliminates the punishment, detainment for specific offenses, and diminishes the measure of fine payable in specific cases. Notwithstanding, under the Act, one-individual organizations or small organizations are simply at risk to settle up to half of the punishment for specific offenses.

ii. The Bill enables the Center in counsel with the SEBI, to reject organizations giving indicated classes of protections from the meaning of a "listed organization".

iii. The Act expects organizations to record certain goals with the Registrar of Companies, which incorporate resolutions of the Board of Directors of the organization to get cash, or award credits. In any case, banking organizations are excluded from documenting resolutions passed to allow advances or to give assurances or security to a credit. This exclusion has been stretched out to enrolled nonbanking monetary organizations and housing finance organizations.

iv. Company incorporation under the new Company Act recommends the usage of share premium while there was no such arrangement in the old Company Act. Accordingly now the security premium is bound to restricted uses. Thus organization appreciate less adaptability of usage of safety premium.

v. Prior an organization can give shares at discount subject to certain condition however according to new Company Act an organization can't give shares at rebate with the exception of sweat value shares. In this way according to new Company Act an organization can't get advantage of giving shares at discount, all the while it is truly challenging for organization to draw in the financial backer during melancholy period.

vi. New Companies Act 2013 augmenting the extent of private arrangement than prior which will assist an organization with getting simple and fast accessibility of money.

vii. According to Company Act 2013 no dividend will be announced or paid by a Company from its stores other than free holds yet in Company Act 1956 there is no such arrangement. So that will effect on the accessibility of money for business. As dividend is just paid out of free hold so presently the organization can channelize such save for other reason prior which were utilized in profit installment purposes.

III. CONCLUSION

The new Indian Company Act, 2013 is an progressive towards modernizing India's organization law and place India comparable to corporate enactment elsewhere in the globe. Further the advantages of amendments with regard to abroad listing, extent of listed organizations, beneficial possession and different angles will be tried once the Central Government informs and recommends comparing rules in such manner. Unnecessary to state, de-criminalization of lowly offenses spinning around procedural prerequisites and adversely affecting the public premium will go far on facilitating the weight on corporates from being condemned for offenses that are a result of accidental failures and minor non-compliances with no plan to dupe the specialists or general society on the loose.

All things considered, this is a welcome move towards India's objective to work on the ease of doing business in the country.

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