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LIQUIDATOR:-

INTRODUCTION:-

Liquidation is a process by which the existence or life of a company is put to an end. To execute liquidation proceedings, a person is appointed to administer the assets and liabilities of the company. Such person or administrator is called 'Liquidator'. He is known as "Official Liquidator" in case of compulsory winding up; and 'Liquidator' in case of voluntary winding up.

APPOINTMENT OF LIQUIDATOR:-

Section 275 of the Companies Act, 2013 is concerned with the appointment of liquidators to manage the affairs of the company on winding up or to manage its affairs in the course of hearing the petition for winding up.

The 2013 Act adopts in substance the amended section 448 of the 1956 Act. The office of the official Liquidator is retained under section 359 of the 2013 Act. Under section 275, the Tribunal will appoint the official Liquidator or Liquidator from a panel maintained by the Central Government for this purpose. The designation accorded to the Liquidator appointed is "company Liquidator".

A Liquidator appointed pending winding up creditors passed is a 'provisional Liquidator'. A provisional Liquidator will be appointed only from the panel of Liquidators which contains names of professionals chartered accountants, lawyers, cost accountants, company secretaries and other professionals which is constituted by the Central Government.

POWERS AND DUTIES OF LIQUIDATOR:-

Section 290 of the 2013 Act provides for the powers and duties of company liquidators in winding up by the tribunal.

Following are some of the powers of a liquidator -

1. "to carry on the business of the company so far as may be necessary for the beneficial winding up of the company.
2. "to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels.
3. "to invoke and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act.
4. "to inspect the records and returns of the company on the tables of the Registrar or any other authority.
5. "to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, bundle etc promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
6. "to take out, in his official name, letters of administration to any deceased contributor, and to do in his official name any other act necessary for obtaining payment of any money due from a contributor or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the company. Liquidator himself.

7. To take all such actions, steps, or to sign, execute or verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary - for winding up of the company.

When an individual is appointed as the liquidator of a company, he is expected to perform certain duties which are laid down in various provisions of law. Following are the duties of a liquidator:

1. The first duty which a liquidator has to fulfil is that of providing notice of his appointment. It is clearly stated under section 178(b) of the Income Tax Act that an individual who is appointed as a liquidator must within thirty days of him becoming such liquidator, give notice to the Assessing Officer sanctioned to evaluate the revenue of the company of his appointment.
2. It is the duty of the liquidator to act equitably and impartially the whole winding up.

Procedure in accordance with the provisions of law and the directions of the tribunal. It is also his duty to make himself thoroughly acquainted with the state of affairs of the company, and also about the technical hurdles that the company is facing. The liquidator has to act fairly and honourably in considering the claims of persons against the company.

3. The liquidator must bring into his custody and control the property of the company. The supreme court in Indian Official Liquidator, U.P & Uttarakhand v. Allahabad

Bank held that company judge under Companies Act has no jurisdiction at instance of official liquidator to set aside auction sale held by recovery officer under RDB Act.

4. He must submit a preliminary report to the tribunal within sixty days from the winding up order.
5. He must within 30 days from date of direction from the tribunal shall call a meeting of the creditors and other contributories in order to determine the persons who are to be made the members of the advisory committee, if such committee is to be appointed. And, he must chair the committee.
6. He must keep all sums received by him on behalf of the company into some scheduled bank, or in accordance to the directions of the tribunal.
7. He must maintain proper books in the prescribed manner in which he must make entries or minutes to be made of the proceedings of meetings and of other such matters as may be inspected by any creditor or contributory or their agents subject to control of the tribunal.
8. A liquidator owes a duty to act with care and efficiency. He has a duty to exercise his particular professional skills to complete the winding up process and he shall incur liability if he fails to show the required degree of care and skill which, by accepting the office, he holds himself out as possessing. Therefore, a high standard of care and diligence is required of a liquidator.
9. As the liquidator is acquainted with all the state of affairs of the company and has all the records and accounts of the company, it is his duty to maintain all these records and accounts safely and not disclose these information to any person not authorized to access them or has legitimate reason to gain access to them.

CONCLUSION:-

Winding up of a company means the end of the life of the company and for this purpose a liquidator is appointed who takes over the entire winding up procedure. Currently, under Companies Act, 2013 a company can be wound up only by way of tribunal. This means, an application is to the tribunal by the company or creditors or other individuals mentioned under section 272 of the 2013 Act. The tribunal then appoints a liquidator who is made in charge of the liquidation proceedings. This liquidator performs various duties and has a number of powers which are laid down under section 290 of the 2013 Act. However, the actions of the liquidator must be in accordance with the law failing which the tribunal may remove the liquidator. He may also be removed when "any creditor or contributory may apply to court requesting the liquidator's removal". And if the court sees sufficient grounds for the removal of the liquidator, it may issue an order for his removal. The liquidator also has an option of resigning from his duties but for this he is bound to give notice.

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PROSPECTUS:-

Introduction:-

Prospectus is an important document to be submitted to the Registrar of companies after incorporation of public limited company. 'Prospectus' is an "Invitation to the public to offer to subscribe shares". After incorporation (registration) a public limited company has to secure minimum subscription (capital). According to section 25 of the Companies Act 2013, "no application for shares or debentures of a company can be invited/entertained unless the appeal / requisition is accompanied with a prospectus.

Types:-

Deemed Prospectus (sec. 25) —

Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which their fair sale to the public is made, shall for all purposes be deemed to be a prospectus issued by the company.

It is to be noted that 'deemed prospectus' would carry the same effect as to prospectus in respect of liability, in respect of mis-statement. A "deemed prospectus" has an evidentiary value according to section 24(2) of the Act, 2013.

Shelf Prospectus (sec - 31) —

In this context expression 'shelf prospectus' means a prospectus in respect of which securities or classes of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

At the stage of first offer of securities shelf prospectus has to be filed with the Registrar of companies which shall indicate the period not exceeding one year.

as the period of validity of such prospectus, which shall commence from the date of opening of the first offer of securities without prospectus.

Thus, no further prospectus is required in case of second or subsequent offer of securities during the validity period of such prospectus, that is to say 'shelf prospectus'.

Red Herring Prospectus - Prior to issue of prospectus (sec. 32)

In this context expression 'Red Herring prospectus' means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

In terms of section 32(1) a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of prospectus. Thus, a red herring prospectus has to be filed with the Registrar of companies at least three days prior to the opening of the subscription list and the public offer as provided under section 32(1) of the Companies Act, 2013.

Registration of Prospectus (sec 27(7))

A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated. That date shall be taken as the date of publication of the prospectus, unless the contrary is proved.

A prospectus can be issued by or on behalf of a company, only when a copy thereof has been delivered to the Registrar for registration. The registration must be made, on or before the date of publication thereof. The copy must be signed by every person who is named therein as director or proposed director of the company, or by his agent authorised in writing. Further such a

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Prospectus must state on the back of it that a copy of it has been delivered to the Registrar for registration on or before the date of its publication. It must accompany the following documents —

- (a) The consent of the expert, if his report is to be published in the prospectus.
- (b) A copy of every contract relating to the appointment or remuneration of managerial personnel.
- (c) A copy of every material contract not being a contract entered into in the ordinary course of business of the company into within two years of the date of issue of prospectus.
- (d) A written statement.
- (e) The consent in writing of the person, if any, named in the prospectus as auditor, Legal Advisor, Attorney, solicitor, Issue House bankers or brokers of the company to act in that capacity.
- (f) The consent of directors in respect of new directors, if any, named therein.
- (g) A copy of the underwriting agreement, if any, should also be filed along with the prospectus.

Objects of Prospectus: —

The objects of prospectus are as follows —

- (i) To bring to the notice of the public that a new company has been formed.
- (ii) To arouse interest of the public to make investment in the company.
- (iii) To create confidence in the public about the company, its directors and its profitability, and
- (iv) To secure that the officers of the company accept responsibility of the statements in prospectus.

Characteristics of Prospectus:

(i) Prospectus to be in writing:-

A prospectus must be in writing.

An oral invitation or advertisement, in T.V. and film is not treated to be a prospectus.

(ii) Invitation for the subscription:-

The word 'subscription' means 'taking' or 'agreeing to take' shares for cash. Prospectus invites the public to subscribe for shares in, or debentures of, a company.

(iii) Public Issue:-

'Public' means 'the people'; the general body of mankind; or belonging to the people; 'the body of the people at large'. 'Public' includes any class of the public or any community'.

Contents of Prospectus (section 26)

Section 26 of the Companies Act, 2013 provides for the matters/contents to be furnished in the prospectus. It runs as follows -

Matters to be stated in prospectus (sec 26) - (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall:

State such information and set out such reports on financial information as may be specified by the securities and Exchange Board in consultation with the central Government:

Provided that until the securities and Exchange Board specifies the information and reports on financial

information under this sub-section, the regulation is made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information all respects on financial information shall apply.

(a) - (d)

(2) Nothing in sub-section(1) shall apply:

- (a) to the issue to existing members or debenture-holders of a company, or a prospectus or form of application relating to shares or debentures of the company, whether an applicant has a right to renounce the shares or not under sub clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or
- (b) to the issue of a prospectus or form of application relating to shares or debenture which are, or are to be, in all respects conform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.
- (3) Subject to sub-section(2), the provisions of sub-section(1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.
- (4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless or before the date of its publication, there has been delivered to the Registrar for filing, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.
- (5) A prospectus issued under sub-section(1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the business.

Information on management, of the company and his opinion on his written consent to the issue of the pre-prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing and a statement to that effect shall be included in the prospectus.

(G) Every prospectus issued under sub-sec (1) shall, on the back of it:

(a) State that a copy has been delivered for filing to the Registrar as required under sub-section (4); and

(b) Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(F) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(8) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

CONCLUSION:-

A prospectus is a legal document that must be submitted to the concerned authority that contains information for the public regarding an investment offering. It is very useful for investors as they can learn about the risks associated with buying securities or bonds. Normally, risks are briefly

mentioned early in the prospectus and described in more detail later. When the company is acquiring bonds through the issuance of stocks or bonds, it is the duty of investors to review the company's financials to make sure it is financially stable enough to uphold its obligations.

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INTRODUCTION :—

Section 2(34) of the Act prescribed that "director" means a director appointed to the Board of a company. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013. Company are termed as directors.

According to section 149 of the Companies Act, 2013, only individuals can be appointed as Directors. Section 149 says, "No body corporate, association or firm shall be appointed director of a company, and only an individual shall be appointed". Section 149 reads as follows—

Company to have Board of Directors:—

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have:
 - (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a one person company; and
 - (b) a maximum of fifteen directors: Provided that a company may appoint more than fifteen directors after passing a special resolution: Provided further that such class or classes of companies as may be prescribed, shall have at least one women director.
- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
- (3) Every company shall have at least one director who stays in India for a total period of not less than

One hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).
- (6) Every independent director shall at the first meeting of the Board in which he participates as a director and there after at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).
- (7) The company and independent directors shall abide by the provisions specified in schedule IV.
- (8) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197,

reimbursement of expenses for participation in the Board and other meetings and probit related commission as may be approved by the members.

(9) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(10) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent directors shall be eligible for appointment after the expiration of three years of ceasing to become an independent director;

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

(11) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoters or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(12) The provisions of sub-section (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Qualification :-

The Companies Act, 2013 does not prescribe any qualification to become a director of a company. To become a director, one need not be a shareholder. The Articles of Association of a company prescribes qualifications for a person to be appointed as a director.

To become a director -

- i. He / she must be a natural person.
- ii. Need not have academic qualification.
- iii. Must be competent to contract (within the meaning of section 11 of the Indian Contract Act, 1872).
- iv. He must not have been disqualified on the ground of insolvency or conviction by court.

Types of Directors :-

Directors of a company may be classified under the following heads -

1. First Directors.
2. Directors.
3. Additional Directors.
4. Alternative Directors.
5. Nominee Director.
6. Director appointed by Casual Vacancy.
7. Independent Director, and
8. Woman Director.

1. First Directors:- As per section 152(1) of the Companies Act, 2013, the first directors of a company are to be appointed by the subscribers of the memorandum. They are generally listed in the articles of the company. If they do not appoint any, all the subscribers who are individuals become directors. The very fact of incorporation makes them the first directors.

of the company. The first directors however hold office only up to the date of the first annual general meeting of the company.

3. Directors (Elected Directors) :- According to section 151(1) of the companies Act , 2013 , every director shall be appointed by the company in general meeting .

3. Additional Directors :- As per section 151 (1) of the companies Act , 2013 the articles of a company may confer on the Board of Directors the power to appoint any person , other than a person who fails to get appointment as a director in a general meeting as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held , whichever is earlier .

4. Alternative Directors :- According to section 151(2) of the Companies Act , 2013 , the Board of Directors of a company may , if so authorized by its articles or by a resolution passed by the company in general meeting , appoint a person , not being a person holding any alternate directorship for any other director in the company ; to act as an alternate director for a director during his absence for a period of not less than three months from India .

5. Nominee Directors :- According to section 151(3) of the Companies Act , 2013 , subject to the articles of a company , the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central government or the state Government by virtue of its share holding in a Government company .

6. Director appointed in casual Vacancy : - As per section 151(4) of the companies Act , 2013 , if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course , the resulting

Casual Vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

7. Independent Director :- As per sub-section 6 of section 147 of the Act, ID means a director other than a managing director or whole-time director or a nominee director.

- a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.
- b. i. who is not related to promoters or directors in the company.
- ii. who is not related to promoters or directors in the company.
- c. who has or had no pecuniary relationship with the company.
- d. None of whose relative has or had pecuniary relationship or transaction with the company.
- e. Who, neither himself nor any of his relative —
 - i. Holds or has held the position of a key managerial personnel.
 - ii. Is or has been an employee or proprietor or a partner, in any of the three financial years preceding.
 - iii. Holds together with his relative two percent or more of the total voting power of the company; or
 - iv. Is a Chief Executive or director, of any nonprofit organization, or who possesses such other qualifications as may be prescribed.

8. Woman Director :- According to Rule 3 of the Companies Rules, 2014, the following class/classes of companies shall have at least one women director.

- 1. Every listed company.
- 2. Every other public company having
 - (a) paid up share capital of the hundred crore rupees or more, or

(ii) Turnover of three hundred crore rupees or more as on the last date of the latest audited financial statement.

Appointment of Directors :-

By and large, the public company or a private company subsidiary of a public company, two-thirds of the whole numbers of Directors are appointed by the shareholders and therefore, the remaining one-third's appointment is termed as per Articles and accordingly, shareholders shall appoint the remaining one-third.

In case of a private company, which isn't subsidiary of a public company, the Article can prescribe the manner of appointment of Directors. In case the Articles are silent, the Directors must be appointed by the shareholders.

First directors of the company shall be named in the MoA and AOA. The first directors are

deemed to have been appointed on the incorporation of the company. The first directors will hold office until the first annual General Meeting where they will retire.

The appointment of directors in company law likewise allows the Articles to accommodate for the appointment of two-thirds of the Directors according to the principle of proportional representation if so adopted by the company in question.

Position of Directors :-

The position of Directors may be well explained with reference to the following heads.

1. Directors as Agents
2. Directors as Employees
3. Directors as Officers

Removal :-

The procedure to remove a director is as follows -
- Prepare notice of board meeting along with draft resolution to be passed in the board meeting.

- Company should give intimation to the concerned director about his removal.
- Sending of Notice along with Agenda of Board meeting to all the Directors of company.
- Convene board meeting and pass the Board Resolution to consider the removal of concerned Director and notice of general meeting to members of company.
- Sending of general meeting notice to all the members atleast 14 days before date of general meeting along with special notice with the intention of removing a director by the specified no. of members of the company has to be passed at least before 14 days before the concerned meeting of which it has to be moved excluding the day on which the notice is served and the day of the meeting.

A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not more than five lakh rupees has been paid up on the date of the notice.

- Holding of General meeting, allowing the removing director to be heard and speak, passing of ordinary resolution if it seems just and equitable.
- Preparation of Document for removal of Director and intimation to concerned departments.

Conclusion :-

They are agents in respect of the transactions which they enter into on behalf of the company and they are trustees of the company's money and property and also of the powers which they are authorised to exercise on behalf of the company. It would be better to say that the directors stand in fiduciary relationship with the company.

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INTRODUCTION :—

As provided in section 2(69) of the Companies Act 2013, the term 'Promoter' means a person -

- (a) Who has been named as such in the prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as share-holders, directors or otherwise, or
- (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

Position of Promoter :—

Promoter occupies significant position in formation of a company. However, it is very difficult to determine his accurate legal position, because the company is not in existence. He is neither trustee nor agent of the company. His position may be describe with reference to Rights, the following heads namely -

- (i) Legal status
- (ii) Rights
- (iii) Duties
- (iv) Liabilities

(i) Legal status :— The legal position of promoters in relation to the company has been explained by Lord Cairns in Erlangens v. New Sombrero phosphate co. (1878)

LR & APP. CAS 1918 (1236) - "They (i.e. promoters) stand in my opinion, undoubtedly in a fiduciary position. They have in their hands the creation and moulding of the company. They have the power of defining how and when in what shape and under what supervision the prospectus is to be issued by one of the promoters, he is entitled to recover proportionately from the co-promoters.

Quasi-trustee: — A promoter is neither an agent nor a trustee of the company under incorporation but certain fiduciary duties have been imposed on him under the Companies Act, 1996. He is not an agent because there is no principal born by that time and he is not an agent trustee because there is no cestui que trust in existence. Hence, he occupies the peculiar position of a quasi-trustee.

(ii) **Rights:** — The Promoter of a company is entitled to the following rights —

(a) **Right to receive / reimburse the preliminary expenses:**
Preliminary expenses means all the expenses, which are incurred in connection with the registration / incorporation of a company. If the promoter spends from his personal funds during the period of incorporation, he is entitled to recover / reimburse the same. However, the payments made by him should not be ultra vires the articles of association.

(b) **Right to recover proportionate share from the co-promoters:** —

The liability of promoters is joint and several. In the event of two or more promoters have to meet the liability jointly, and only one promoter meets / clears the liability, he is entitled to recover the proportionate share from the co-promoter / promoters.

(iii) Duties:-

(a) Duty to make no secret profit: A promoter cannot make either directly or indirectly any profits at the expense of the company.

(b) Duty to make no profit by sale of his property to the company: He is not allowed to make any profit by sale of his own property to the company, unless all material facts are disclosed.

Case law:-

In Erlanger v. N.S phosphate company - a person purchased an island, contained mines for £55000 and sold the same to the company for £110000 to which he was a promoter. It was held that the company could rescind the contract.

(c) Duty to make all sincere efforts and prepare required documents for Registration of the company: He has to take necessary steps for formation of the company viz, preparation of Memorandum, Articles of Association, prospectus etc.

(d) To make a full disclosure of interest or profit; section 26(1)(a)(xiv) of the Companies Act, 2013 now requires the promoters' earnings to be disclosed in the prospectus itself. It is not the profit by the promoter, which the law forbids, but the non-disclosure of it or the non-disclosure of interest in the transaction. If full disclosure is made, the profit is permissible.

The disclosure must be made to an independent Board of directors. Hence, there is no independent Board, disclosure must be made to the intended share holders as a whole.

The measure of damages is the actual loss suffered by the company as a result of the transaction in question.

(e) The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

(iv) Liabilities :-

Promoter is subject to the following liabilities, preliminary contracts in particular

- 1- He is liable for non-compliance of companies Act (Section 40)
- 2- He is liable for mis-statements in prospectus (Section 42)
- 3- He is personally liable for breach of preliminary contracts as enumerated below in detail.

Remuneration of Promoters :-

A promoter has no right to get compensation from the company for his services in promoting the company unless there is a contract to that effect. If there is no such contract, he is not entitled to get any compensation in respect of any payment made by him in connection with the formation of the company.

Promoters Liable :-

The preliminary contracts are deemed to have been entered into personally by the promoters. Hence, the promoters are personally liable in respect of preliminary contracts. The promoters were held personally liable in the case of *Kelner v. Baxter*.

Section 15(h) of the Specific Relief Act, 1908 contains an exception to the above mentioned rule regarding ratification, and permits action by or against the company for specific performance of the contract, if the company accepts the contract, when

- (i) the promoters of a company have , before its incorporation entered into a contract for the purpose of the company .
- (ii) Such contract is warranted by the terms of the incorporation ; and
- (iii) the company has accepted the contract and has communicated such acceptance to the other party to the contract , specific performance of such a contract may be obtained by the other party to the contract , against the company .

It may be noted that the company's liability under the Specific Relief Act , 1963 arises when the company has taken the benefit under the contract , but refuses to fulfil its obligation . It does not apply to contract regarding allotment of shares .

CONCLUSION : —

To sum up , in India under the Companies Act of 2013 , a promoter is anyone who takes up the responsibility of a business from the pre incorporation stage up to getting it registered . They have certain rights , duties and strict liabilities as well as legal positions which they have to maintain accordingly .

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