

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination November – 2023

Semester – UG V Semester

Subject: Company Law - I

Time: 3 hours

Marks: 100 marks

Instructions:

- i. All the questions carry equal marks.
- ii. The students are required to attempt five questions only.
- iii. Question Nos. 1, 4, 6 are mandatory to attempt.
- iv. The students may choose to attempt any two questions from the remaining three questions.
- v. Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.
- vi. Considering the Factual based Questions, the Students may kindly be permitted to either 'Strikeout'/'Underline' on the question paper only for Question Nos. 1, 4, 6.

Q.1. Oceania is a country in Asia, with a robust economic structure and accordingly has enacted the revamped Companies Act, 2013 for modernising its legal framework. The present facts of the matter arise out of the Appeal against the Order of the National Company Law Tribunal's (*hereinafter* NCLT) order dated 19.05.2023 passed in the matter of Daniel Nesta (*hereinafter* Applicant No. 1) and Viktor Grey (*hereinafter* Applicant No. 2) (Minority Shareholder of Minosha) v. Minosha India Ltd.

Background Facts:

Minosha Oceania Ltd (*hereinafter* the Company) is a public limited company incorporated on 22/10/1993 with Registrar of Companies, Mumbai. Article 57 of its Articles of Association of the Company allows for reduction of the share capital in any manner for the time being authorized by law.

Company passed a special resolution at the Annual General Meeting of its shareholders held on 29th September, 2022 for reduction of its issued, subscribed and paid-up share capital of the Company from Rs. 47,90,67,840/- comprising of 4,79,06,784 Equity Shares of Rs. 10/- to Rs. 45,32,98,040/- comprising of 4,53,29,804 Equity Shares of Rs. 10/- by cancelling and extinguishing in aggregate, 5.38% of the total issued, subscribed and paid up equity share capital of the Company comprising of 25,76,980 Equity Shares of Rs. 10/- held by the public shareholders of the Company (i.e., the holders of the equity shares of the Company other than the promoter group shareholders of the Company) by paying a sum aggregating to Rs. 79,37,09,840/- (the compensation amount was inclusive of the Nominal Value of Rs. 10/- and a premium of Rs. 298/- per equity share). Consequently, it filed an application for affirmation of the said resolution on 03rd October, 2022.

Rationale provided by the Company for the Reduction

The Company went into Corporate Insolvency Resolution Process (CIRP) pursuant to admission of Insolvency Petition by the Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT) vide its Order dated May 14, 2018. The approved resolution plan had a mandatory condition concerning the delisting of the equity shares.



Accordingly, equity shares of the Company were delisted from OSE Limited. As a result, the equity shares of the Company have lost their marketability. In view of this, many public shareholders have expressed their desire to tender/transfer their equity shares they hold in the Company as they are unable to dispose of the same. In view of this, the Company is desirous of providing the Public Shareholders an exit opportunity so as to provide liquidity to such shareholders with a fair and just valuation of the Company.

As on September 22, 2022, out of 12911 Public Shareholders (holding, in aggregate, 5.38% of the total paid-up equity share capital of the Company), nearly 9693 Public Shareholders currently hold less than or equal to 100 equity shares and 2638 Public Shareholders currently hold more than 100 but less than or equal to 500 equity shares as enumerated in the table below (cumulatively representative of the total 5.38% of public shareholding in the Company):

The aforesaid Capital Reduction will give an opportunity to the Public Shareholders of the Company to exit from the Company at a fair valuation as the equity shares held by them in the Company are otherwise not marketable or tradeable since the delisting of the shares. Furthermore, the said reduction will also enable the Company to control costs which are presently being incurred to service the large number of shareholders and manage its operations efficiently.

Factum of Dispute

During the pendency of the application, Mr. Daniel Nesta, a public shareholder of the company filed an Intervention Petition, raising objections with respect to the said reduction in interest of the right of the minority. Applicant No. 1 had acquired 10,000 (Ten Thousand) equity shares of the Company in 23rd October, 2016 through stock exchange. Pursuant to the implementation of the resolution plan, the share capital of the Company was reorganized, and the shareholding of the Applicant No. 1 was reduced from 10,000 equity shares to 4,000 equity shares.

Also, the Applicant No. 2 had acquired 10,000 equity shares of the Company on 21st April, 2016 through stock exchange. He further acquired an additional 10,000 equity shares on 23rd April, 2016. Pursuant to the implementation of the resolution plan, the share capital of the Company was reorganized, and the shareholding of the Applicant No. 2 was reduced from 20,000 equity shares to 8,000 equity shares.

It is submitted that the Company vide Agenda No. 4 of the Notice of the meeting dated 29th September, 2022 proposed a resolution for the reduction of equity shares of the Company. The explanatory statement to the said Notice provided that

‘There is no trading platform available to the shareholders and the equity shares of the Company have lost its marketability. In view of this, many public shareholders have expressed their desire to tender/transfer their equity shares they hold in the Company as they are unable to dispose of the same. In view of this, the Company is desirous of providing the Public Shareholders an exit opportunity so as to provide liquidity to such shareholders with a fair and just valuation of the Company’.

Applicant No. 1 and Applicant No. 2 raised an objection on said Agenda Item No. 4, through an e-mail dated 27th September, 2022, and 28th September, 2022, respectively, addressed to the Company and its Board of Directors. The Applicants stated to the Management of the Company that they are being compelled to sell shares in the company by way of reduction of share capital and requested that they wish to continue being a Shareholder and see the growth of the Company in the coming years along with their investment.

However, the Company failed to provide an adequate response to the aforementioned communication. That Applicants, after holding an AGM, again approached to the management of the Company via emails dated 30th September, 2022, and requested to provide an option to those shareholders who would want to remain invested in the company. However, the Company failed to provide an adequate resolution for the concern raised by the Applicants, and the issue remains unresolved.

The Applicants further argued that,

“The proposed reduction is discriminatory, unfair and mal fide and is aimed at extinguishing the class of public shareholders. They have alleged that the consequential value of the investments made by Applicant No. 1 was reduced from Rs. 27 Lakhs to that Rs. 12.32 lakh; the same for Applicant No. 2 witnessed a reduction from the original investment of Rs. 74.33 lakhs to Rs. 24.64 lakhs, pursuant to resolution for reduction. Furthermore, it was imperative to hold a separate meeting of non-promoters and public shareholders where minority shareholders would have got an opportunity to assent or dissent on the capital reduction scheme. The majority shareholders cannot squeeze out minority shareholders compulsorily and without having a say in the matter, and the company ought to have given an option to the unwilling dissenting shareholders of the company who chose to retain their shareholding in the company.”

Upon perusal of the matter, the NCLT, Mumbai Bench affirmed the reduction of the Share capital and observed that,

“...it can be said that it is just an equitable that the Petitioner Company be allowed to reduce its capital and transfer part of the property as envisaged in the proposed Reduction. Furthermore, in numerous decisions by the coordinate bench of this Tribunal and by the Delhi High Court in the case of Reckitt Benckiser (India Ltd) reported in 2005 122 DLT 612 passed by Justice A.K. Sikri has categorically held that it is settled law that question of reduction of share capital is treated as a matter of domestic concern and the decision of majority will prevail. In view of this, the contention of the objecting shareholders in the Intervention Petition does not survive.”

Aggrieved by the NCLT's order, the Applicants have filed an appeal to the NCLAT (i.e., the Appellate Authority) seeking the reversal of the Reduction scheme passed by the Company. Being the Chairperson of the NCLAT decide the appeal with the use of cases and reasoned arguments. (Marks 20)

Q.2. Tweety Bird Co. Ltd. has been incorporated under the Companies Act, 2013. According to the share capital clause of its MoA, it had a share capital of INR 10,00,000, with each share having a face value of INR 100.

The share capital of the Company was divided among the seven shareholders and was allotted in the following proportion:

- a. Amy – 20%
- b. Shaunak – 15%
- c. Ishrat – 20%
- d. Siddharth – 10%
- e. Samiksha – 10%
- f. Aashna – 10%
- g. Avishk – 15%

During the time of allotment of shares, Ishrat was called upon by the Company to pay the requisite amount in lieu of the shares, however, Ishrat suggested that she could not pay the amount at present and that she would make the payment at a subsequent time. After the passing of one year the payment was still to be made, hence the Company called up Ishrat for the second time for making the requisite payment, which was refused by the Ishrat. She further denied to take the shares refused to partake any role in the Company.

Offended by the curt response Mr. Vinay Oberoi, the Managing Director proposed a resolution for cancelling the shares the initially allotted to Ishrat. The resolution was passed by the BOD first and thereafter was tabled before the Shareholders in the AGM. The resolution was passed with a 70% majority. Post the resolution was passed, the shares that were issued to Ishrat were cancelled and share capital of the Company was reduced to INR 8,00,000. Subsequently, the share capital clause of MoA was amended by passing an ordinary resolution. A notice was sent to the Registrar in compliance of the same, however, the Tribunal was involved in this entire process. Based on the above factual matrix, discuss the legality of the two resolutions passed by the Company. Provide adequate and appropriate justifications with relevant provisions of Law applicable. (Marks 20)

Q.3. "Company is an association of person having no physical existence of its own. However, the gamut of law is never concerned with one's physical existence, rather, it considers one's legal existence to be sacrosanct." – Justice Holmes

Justify the above statement of Justice Holmes based on your understanding of Corporate Personality. In furtherance of the same, discuss the principle of 'Corporate Veil' and enumerate the situations of its inapplicability. (Maximum Word Limit 1000 words) (Marks 20)

Q.4. Dragonstone is a country situated in the tropical continent of Westeros. It is an erstwhile colony of the Targaryen Empire, however, it achieved its independence in the year 2007. Upon achieving independence and pursuant to the General Elections of 2009, elected Mr. Robert Baratheon as its Prime Minister. Mr. Baratheon, upon his election initiated a slew of economic reforms. One such reforms resulted in the enactment of the Dragonstone Corporations (Regulatory Framework) Act, 2010 [hereinafter 'Corporations Act, 2010'], which acted as the principal legislation for regulating all the Corporations within the territory of Dragonstone.

Dragonstone is well endowed with natural resources, however, it is most famous for the natural resource 'Obsidian' (colloquially known as 'Dragon Glass') a key ingredient in the refractor shields developed for satellites and space probes. Hence, mining of the said resource is highly regulated. Recently, a significant deposit (an estimated 2.5 million MT) of Dragon Glass has been discovered in Storm Islands province of Dragonstone. The Baratheon Govt. with an intent of maximising the economic value had made a public announcement seeking bids for issuing mining license for the same on 27th November 2018.

Bowman Mercantile Group of Industries Ltd. (hereinafter 'BM Group') is a conglomerate company incorporated under the colonial legislation of Companies Act, 1913 and has a wide range of businesses through its various subsidiaries. In 2010, BM Group entered into a Multi-Party Joint Venture Agreement (hereinafter the 'Agreement') with Hot Gates Heavy Engineering Enterprises (Dragonstone) LLC.

(hereinafter 'Hot Gates'), Bowman Heavy Engineering & Technology Inc. Ltd. (hereinafter 'BTIL'), Avantal Deep Earth Explorations Pvt. Ltd. (hereinafter 'Avantal') and Birla Heavy Earth Minerals Ltd. (hereinafter 'Birla'). The agreement led to the incorporation of Casterly Rock Mines and Minerals Pvt. Ltd. (hereinafter 'Casterly Rock/JV') in accordance with the laws of Dragonstone.

The Shareholding Pattern of the JV is as following:

- a. BM Group - 45.23%
- b. Hot Gates Heavy Engineering Enterprises (Dragonstone) LLC - 15.27%
- c. Bowman Heavy Engineering & Technology Inc. Ltd. (hereinafter BTIL) - 12.77%
- d. Avantal Deep Earth Explorations Pvt. Ltd. (Avantal) - 11%
- e. Birla Heavy Earth Minerals Ltd. (hereinafter BAEL) - 15.73%

In 2013 BM Group floated the Bowman Precious Stones and Minerals Pvt. Ltd. (hereinafter 'Bowman Pvt. Ltd.') where it owns 99% shares, with the remaining 1% shares being divided equally between Bowman Sons Ltd. (hereinafter 'BSL') and Bowman Heavy Electrical Industries Ltd. (hereinafter 'BHEL').

BM Group holds 15% shares in BSL with the right to a negative veto and right to appoint 1 Wholtime Director and the Chairman of the Board at the Board Meetings. BSL holds majority shareholding in BTIL (50.01%), which in turns holds 20% shares in Avantal and 10% shares in BHEL along with appointment of 4 out of 9 directors on the board, including the Managing Director. In 2017, Mr. Viserys Martell, Managing Director of BSL was appointed to the Board of BM Group in the capacity of Managing Director.

Pursuant to the public announcement made by Government of Dragonstone on 27th November, 2018, Avantal had placed the winning bid and had won the mining rights to the Obsidian mines in the Storm Islands province. On 29th May, 2020, the CEOs of Avantal and Bowman Pvt. Ltd. held a meeting, to discuss the viability of a proposed contract to be signed between the two Companies, regarding the sale of 'Dragon Glass' by Avantal to Bowman Pvt. Ltd. After three months of negotiations, the sale price was fixed at DSS 7000/t, the same was marginally lower as compared to the market price of DSS 7500/t.

However, the contract became a matter of great debate in the Annual General Meeting of Avantal, conducted on 30th April, 2021, with the Ms. Rhaenyra Targaryen raising doubts regarding the intent of the Board while deciding the price. The MD and CFO of Avantal, justified the sale price, stating that the same was decided keeping in mind the weakened position of the Company due to the ongoing Covid pandemic. However, the justification was not accepted by Ms. Targaryen, and consequentially she initiated a suit against the Company. The Dragonstone Company Law Tribunal (hereinafter 'DCLT'), after deciding on the jurisdictional matters of the case, accepted the case and the final order is to be passed in November, 2023.

As the Chairperson of the DCLT, decide on the basis of the above factual matrix by applying relevant principles and provisions of the Corporations Act, 2010. (Marks 20)

N.B.: The laws of Dragonstone are *Pari Materia* to the laws of Republic of India

- Q.5. Answer the following: (Marks 15+5)
- (a) What do you understand by Corporate Veil? How has the notion of Corporate Veil been incorporated within the Companies Act, 2013. Elucidate the same, with the help of relevant legal provisions and case laws. (Word Limit: 1000 words)