BLOGS

Passage-Based Questions on Company Law for CLAT PG

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The NCLAT failed to see that Tata sons did not become a public company by choice, but became one by operation of law. Therefore, we do not know how such a company should also be asked to follow the rigors of Section 14(1)(b) of the 2013 Act. As a matter of fact, Section 14(1) does not ipso facto deal with the issue of conversion of private company into a public company or vice versa. Primarily, Section 14(1) deals with the issue of alteration of Articles of Association of the company. Incidentally, Section 14(1) also deals with the alteration of Articles “having the effect of such conversion”.

By virtue of the proviso to subsection(1A) of Section 43A of the 1956 Act, Tata Sons continued to have articles that covered the matters specified in subclauses (a), (b) and (c) of Clause(iii) of Sub-section(1) of Section 3 of the 1956 Act. Though it did not have the additional stipulation introduced by Act 53 of 2000, namely the stipulation relating to acceptance of deposits from public, this additional requirement disappeared in the 2013 Act.

Therefore, Tata Sons wanted a mere amendment of the Certificate of Incorporation, which is not something that is covered by Section 14 of the 2013 Act. NCLAT mixed up the attempt of Tata Sons to have the Certificate of Incorporation amended, with an attempt to have the Articles of Association amended. Since Tata Sons satisfied the criteria prescribed in Section 2(68) of the 2013 Act, they applied to the Registrar of companies for amendment of the certificate. The certificate is a mere recognition of the status of the company and it does not by itself create one.

As pointed out by this court in Ram Parshotam Mittal Vs. Hillcrest Realty, “it is not the records of the Registrar of Companies which determines the status of the company”. The status of the company is determined by the Articles of association and the statutory provisions.

NCLAT was wrong in thinking that Tata Sons ought to have taken action during the period 2000-2013 and obtained approval of the Central Government to become a private company under Sub-section (4) of Section 43A of the 1956 Act.

Subsection (11) of section 43A, inserted under Act 53 of 2000 made all sub sections of Section 43A except subsection (2A), inapplicable on and after the commencement of the Act. Therefore, it is clear that Sub section (4) ceased to exist on and from 13.12.2000 and hence the question of Tata Sons seeking the approval of the Central Government under Subsection (4) during the period 20002013 did not arise.

Excerpt from Tata Consultancy Services Limited vs Cyrus Investments Pvt. Ltd. AIRONLINE [2021 SC 179]

1. Under the Companies Act, 2013, the right to apply for relief in cases of oppression and mismanagement is primarily governed by:

a) Section 210

b) Section 241

c) Section 245

d) Section 244

2. Which of the following correctly states the eligibility criteria under Section 244?

a) 1/10th of members or 1/10th of issued share capital

b) 1/5th of members only

c) Any shareholder, regardless of shareholding

d) Only the majority shareholders

3. Which of the following statements are correct with respect to the oppression and mismanagement under Companies Act, 2013?

I) Under Section 244 of the Companies Act, 2013, certain class of members of a company with the right to file an application to the NCLT as provided under Section 241 of the Act.
II) This is applicable only when the members of a company are of the view that the business operations of the company are being carried out in a way that is oppressive and prejudicial to the interests of its members, the company itself and the general public at large.
III) One of the most important prerequisites for a member of a company to file an application to the NCLT depends on whether the company, against which such an application is filed has a share capital or not.

a) I and II only

b) II an III only

c) I and III only

d) All of the above

4. Which of the following statements are correct with respect to the oppression and mismanagement under Companies Act, 2013?

I) For companies having a share capital, the right to file such an application is granted to either at least one hundred members of the company or not less than one tenth of the total number of its members, whichever is less.
II) an application can be filed by any member or member holding not less than one-tenth of the issued share capital of the company, provided that they have paid all calls and other sums due on their shares.
III) For companies not having a share capital, the right to file an application is granted to not less than one-fifth of the total number of its members.

a) I and II only

b) II an III only

c) I and III only

d) All of the above

5. Which of the following statements are incorrect with respect to the oppression and mismanagement under Companies Act, 2013?

a) NCLT has the power to waive off any requirements upon application.

b) The requirement of having a share capital cannot be waived

c) The members can file an application even if all the criteria under Section 244 are not met

d) Minority shareholders can also seek redressal for oppressive and prejudicial acts committed by the management.

6. In which of the following cases was it held that the winding up of a company shall only be permitted when it is strongly backed and supported by valid reasons based on grounds of growing trust deficit in the company's operations and management?

a) Loch v. John Blackwood, (1924)

b) Needle Industries (India) Ltd. and Ors. v. Needle Industries Newey (India) Ltd. and Ors., (1981)

c) Shanti Prasad Jain vs Kalinga Tubes Limited

d) Eder vs Elder & Watson Limited

7. The Tribunal may waive the requirements under Section 244. This power was emphasized in:

a) Needle Industries v. Needle Industries Newey

b) Cyrus Investments v. Tata Sons

c) Shanti Prasad Jain v. Kalinga Tubes

d) Rajahmundry Electric Supply Corp. v. Nageshwara Rao

8. The rule in Foss v. Harbottle is relevant to oppression cases because:

a) It allows minority shareholders unlimited rights

b) It restricts minority actions except in certain exceptions

c) It abolishes majority rule

d) It applies only to winding up

9. Which of the following is a recognized exception to the rule in Foss v. Harbottle?

a) Ultra vires acts

b) Internal management

c) Majority decision rule

d) Dividend declaration

10. Assertion (A): Relief under Section 241 can be granted even if there is no illegality. Reason (R): Oppression focuses on the lack of probity and fairness rather than strict legality.

a) Both A and R are true, and R is the correct explanation

b) Both A and R are true, but R is not the correct explanation

c) A is true, R is false

d) A is false, R is true

11. The concept of “just and equitable winding up” is closely associated with:

a) Section 210

b) Section 271

c) Section 244

d) Section 186

12. An application under Section 241 of the Companies Act can be lodged by _______

a) Only shareholders

b) Members and Central Government

c) Only directors

d) Creditors only

13. Which of the following statements are correct with respect to the decision of the Supreme Court in Tata Consultancy Services Limited vs Cyrus Investment Private Limited?

I) Winding up a company due to findings of oppression and mismanagement is opted only when there is a justifiable lack of confidence in the management of affairs of the company.
II) A mere lack of confidence between the majority and minority members is not sufficient to trigger an action of winding up.
III) the standard of just and equitable clause should be met for winding up of the company.

a) I and II only

b) II an III only

c) I and III only

d) All of the above

14. Assertion (A): Central Government can apply under Section 241.
Reason (R): It can act in cases involving public interest.

a) Both true, R explains A

b) Both true, R not explanation

c) A true, R false

d) A false, R true

15. Which of the following statements are correct regarding the power of the NCLT to waive requirements in an application under Section 241 of the Companies Act?

a) Power to waive the requirements is discretionary

b) It should be considered whether a case is made out relating to oppression and mismanagement of the affairs of the company

c) The interest of the applicant in the company need not be considered.

d) Both A and B

Answers

1. (B)
2. (A)
3. (D)
4. (D)
5. (B) On application, the NCLT may waive any or all of these requirements under the proviso of Section 244. This specific waiver gives the members the ability to apply to the NCLT under Section 241 even if they don’t fit any of the requirements listed in Section 244 of the Companies Act, 2013 for issues pertaining to the mistreatment and persecution of minority shareholders in a firm. This clause attempts to guarantee that minority owners, even if they are unable to satisfy the stringent quantitative requirements specified in the clause, can pursue compensation for oppressive and discriminatory actions carried out by the company’s management.
6. (A)
7. (B)
8. (B)
9. (A)
10. (A)
11. (B)
12. (B)
13. (D)
14. (A)
15. (D) It was decided in Brookefield Technologies Private Limited v. Shylaja Iyer & others that the Tribunal’s ability to waive the need to file a petition under Section 241 of CA, 2013 is discretionary. When projecting an application for waiver, the following pertinent factors should be taken into account: whether the applicant’s interest in the company is substantial or significant; whether the issues raised in the company petition under Section 241 fall under the appropriate/competent jurisdiction to be handled by the Tribunal; and whether the case projected in the petition is of paramount importance to the applicant, the company, or any

class of members.