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PROSPECTUS: WITH REFERENCE TO COMPANY LAW

Introduction-

A prospectus is a disclosure document inviting the public, to subscribe to the securities of the company, to enable the investor to make rational investment decisions and to protect their rights, by giving various material facts and prospectus about the company.
It is a document containing detailed information about the company. It is an invitation to the public to subscribing to the shares or debentures of the company.
Some companies do not directly to the public themselves but allot the entire share capital to an intermediary, which then offers the shares to the public by an advertisement of its own. Any document by which such offer for sale to the public is made is deemed to be a prospectus.
Private Limited Companies are strictly prohibited from issuing a prospectus and they cannot invite the public to subscribe to their shares. Only public limited companies can issue prospectus. Thus, it is an open invitation extended to the public at large.
The prospectus is not an offer in the contractual sense but only an invitation to offer. A document constructed to be a prospectus should be issued to the public. A prospectus should have the following essentials.
-There must be an invitation offering to the public.
-The invitation must be made on behalf of the company or intended company.
-The invitation must be subscribed to or purchase.
-The invitation must relate to shares or debentures.
A prospectus must be filed with the Registrar of companies before it is issued to the public. The issue of the prospectus is essential when the company wishes the public to purchase its shares or debentures. [1]

Objective-

Objectives of Prospectus:
-To know the investment strategies and investment objectives of the company.

[1] Companies Act, 2013

-To know the nature and future plans of the company.
-To know the assets and liability of the company.
-To know the rights of directors, shareholders, denture holders of the company.
-To know where the company is situated and what is the capital structure of the company.
-To know about the minimum subscription amount.
-To know about the procedure to file the application of share or debenture application.
-To know the classes, face value, the amount payable on application, and allotment of shares.
-To know the information about the managing director, directors, promoters, bankers, brokers, solicitors of the company.

Some points regarding the objectives of the prospectus are as follows:

Collection of Capital- As we know, capital is the blood of any organization, though Private Limited Company arranges its fund by itself. On the other hand, the Public Limited Company can't. For this reason, a public limited company can raise its capital by selling shares and debentures at various rates. The prospectus is invited by the people to purchase shares or debentures. To bring to the notice of the public that a new company has been shaped. It informs the company about the structure of a new company. This is the prospectus that holds the rate of return of the shares or debentures of the respective company and it also holds the potentiality of the company by explaining the future plans and policies of the company.

An obligation of Companies Act- According to the Companies Act, every Public Limited Company is being obligated to issue a prospectus and need to submit it to the registrar. To conserve a reliable record of the terms and allocation on which the public have been invited to buy its shares or debentures. That's why it is mandatory for all the public limited company. It serves as written proof about the terms and conditions of the issue of shares or debentures of a company. It induces the investors to invest in the shares and debentures of the company.

Importance to Potential Shareholders- It helps potential investors to take proper decisions to invest their money in the respective company as it describes the policies, financial conditions, and earning rate of the company. To protect that the directors of the company recognize a liability for the statements in the prospectus. It describes the nature, extent, and potential prospectus of the company. It maintains all reliable records on the matter and makes the directors accountable for the misstatement in the prospectus.

Fundamentals of a Prospectus-

A prospectus should include the following details:
-There must be an appeal submission to the unhindered public.
- The appeal must be made on behalf of the company or future company.
- The application must be pledged or purchase.
- The request must transmit to shares or debentures.

Matters to be stated in the prospectus-

As per provisions of Section 26(1)-

- Names and address of the company
- Opening and closing date of issue and declaration about allotment letters and refunds
- Statement of by the separate bank account of Board of Directors
- Details about the underwriting of the issue
- consent of the directors, auditors, bankers to the issue and of such other persons, as may be prescribed
- Authority for the issue and the details of the resolution passed
- Time schedule and procedure for allotment and issue of securities
- The capital structure of the company
- Objects of the public offer, terms of the present issue, and such other particulars
- The present business of the company and its location
- Particulars relating to-
  - Management perception of risk factors specific to the project
  - Gestation period of the project
  - Extent of progress made in the project
  - Deadlines for completion of the project

  Any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company
- Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash
- Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed
- disclosures in such manner as may be prescribed about sources of promoter's contribution

Essentials for a document to be called as a prospectus-

For any document to consider as a prospectus, it should satisfy two conditions.
-The document should invite the subscription to public share or debentures, or it should invite deposits.
-Such an invitation should be made to the public.
-The invitation should be made by the company or on behalf company.
-The invitation should relate to shares, debentures, or such other instruments.

Kinds of the prospectus-

- **Deemed Prospectus-**

A deemed prospectus has been stated under Section 25(1) of the Companies Act, 2013.
It is a document which the company issues in case of an offer for sale of securities to the public. Moreover, this document is an invitation to the public to purchase the shares of the company through an intermediary such as Issuing House.
When any company to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale. The document is deemed to be a prospectus of a company for all purposes and all the provision of content and liabilities of a prospectus will be applied upon it.

In the case of SEBI v. Kunnamkulam Paper Mills Ltd, [[2]] it was held by the court that where a rights issue is made to the existing members with a right to renounce in the favour of others, it becomes a deemed prospectus if the number of such others exceeds fifty.

- **Abridged Prospectus**

It means a memorandum containing salient features of a prospectus. It contains the information in brief which helps the investor to make investment decisions quickly. In this case, the Company needs to attach it along with every application form for the purchase of securities.
The abridged prospectus is a summary of a prospectus filed before the registrar. It contains all the features of a prospectus. An abridged prospectus contains all the information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in short.
Section33 (1) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.
It contains all the useful and materialistic information so that the investor can make a rational decision and it also reduces the cost of public issues of the capital as it is a short form of a prospectus.

- **Red Herring Prospectus**

Red herring prospectus is the prospectus that lacks the complete particulars about the quantum of the price of the securities. A company may issue a red herring prospectus before the issue of prospectus when it is proposing to make an offer of securities.
This type of prospectus needs to be filed with the registrar at least three days before the opening of the subscription list or the offer. The obligations carried by a red herring prospectus are the same as a prospectus. If there is any variation between a red herring prospectus and a prospectus then it should be highlighted in the prospectus as variations.
When the offer of securities closes then the prospectus has to state the total capital raised either raised by the way of debt or share capital. It also has to state the closing price of the

[2] https://indiankanoon.org

securities. Any other details which have not been included in the prospectus need to be registered with the registrar and SEBI.
The applicant or subscriber has the right under Section 60B (7) to withdraw the application on any intimation of variation within 7 days of such intimation and the withdrawal should be communicated in writing.

- **Shelf Prospectus**

Shelf prospectus can be defined as a prospectus that has been issued by any public financial institution, company, or bank for one or more issues of securities or class of securities as mentioned in the prospectus. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus.
The provisions related to shelf prospectus have been discussed under Section 31 of the Companies Act, 2013. The regulations are to be provided by the Securities and Exchange Board of India for any class or classes of companies that may file a shelf prospectus at the stage of the first offer of securities to the registrar.
The prospectus shall prescribe the validity period of the prospectus and it should be not be exceeding one year. This period commences from the opening date of the first offer of the securities. For any second or further offer, no separate prospectus is required. While filing for a shelf prospectus, a company is required to file an information memorandum along with it.

Conclusion-

A prospectus for being a valid one must contain essential requisites and it must be registered. If any prospectus is not registered, it is considered as an invalid one and with contravention to provisions laid down for the valid prospectus. Such contravention is punishable under section 26(9).
Whenever the advertisement if the prospectus is made, it must contain the memorandum of the company. When a company is proposing an offer of securities, then before issuing a prospectus, it may issue a red herring prospectus. A company can also issue a shelf prospectus when it has to make an offer one or more securities or class of securities and then it does not have to issue a prospectus before issuing an offer of each security.