

Subject – Secretarial Practices
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Lecture 20

Lien of shares :

A lien is the right to retain possession of a thing until a claim is satisfied. In the case of a company lien on a share means that the member would not be permitted to transfer his shares unless he pays his debt to the company. The articles generally provide that the company shall have a first lien on the shares of each member for his debts and liabilities to the company. The right of lien is not inherent but must be clearly provided for in the articles. The articles may give the right of lien over share either for unpaid calls or for any other debt due by the member of the company. The company may have lien on fully paid-up shares. The lien also extends to the dividends payable on the shares.

The death of a shareholder does not destroy the lien. The right of lien can be exercised even though the claim has become barred by law of limitation.

Where the liability of the shareholder towards the company is disputed by him, it does not deprive the company of its right of lien on the shares. But a company will not be able to exercise its right of lien where the shareholder has mortgaged his shares before he has incurred any liability to the company and the company has notice of it. Similarly, a company will lose its lien if registers a transfer of shares subject to the lien.

Surrender of shares :

The companies act does not provide for surrender of shares. Shares are said to be surrendered when they are voluntarily given up. The articles of a company may authorize the directors to accept surrender of shares. Surrender of shares is

valid where it is done to relieve the company from going through the formality of forfeiture of shares and the shareholder is willing to surrender the shares. A surrender and a forfeiture have practically the same effect, the only difference being that the former is done with the assent of the shareholder while the latter is done at the instance of the company.

A surrender of shares will be void if it amounts to a purchase of shares by the company or if it is accepted for the purpose of relieving a member of his liabilities. Every surrender of shares whether fully paid-up or not, involves a reduction of capital which is unlawful except when sanctioned by the court. But, fully paid shares can be surrendered without leave of the court provided the surrender does not involve the reduction of capital i.e., in exchange for other shares of the same nominal value.

A person ceases to be a member of the company on a valid surrender of shares. But he shall be liable as a contributory as a past member of the company if it is wound up within twelve months of his surrendering his shares. Shares which have been validly surrendered can be reissued in the same way as forfeited shares.