

Welcome students.

Today we will be discussing Module 8 of the company Law .Module 8 deals with remedies for misrepresentation of prospectus.

In this module we will be discussing what is the meaning of misrepresentation or misstatement in the prospectus. We will be discussing remedies.What are the civil liabilities? Defences to the civil liabilities available to the director and expert and also we will be discussing criminal liability.

From this module students will be able to understand the concept of misrepresentation or misstatement in the prospectus. Also students will be able to learn civil and criminal liability for misstatement in prospectus under Companies Act of 2013.

Meaning of misrepresentation or misstatement

Misrepresentation or Misstatement means an untrue Statement or misleading material facts affecting the privileges and advantages or an omission calculated to mislead.

Prospectus is a key to open the financial position of a company through which an investor can look into the soundness of a company's venture.

Therefore the prospectus must disclose the truth. There must be honest disclosure of all material facts. An untrue statement or misrepresentation is a serious mistake as it misleads the investors.

The aggrieved investor can approach court for appropriate remedy and the company and concerned officials will be responsible for misrepresentation in prospectus and will have to face Civil and Criminal Liability.

There are two kinds of Untrue statement namely:-

- 1)Omission to state a material fact, which is calculated to mislead the investors,
- 2) The Inclusion of the statement, which is misleading in the form and context in which it is included.

Next we will discuss the remedies.

An aggrieved Investor as a consequence of misstatement in prospectus is entitled to the following remedies:

- 1)Recession of Contract
- 2)Damages for deceit
- 3)Statutory Compensation

Rescission of the Contract

- 1.The statement must be a material misrepresentation of fact.
- 2.The statement must have induced the shareholder to take the shares.
- 3.The statement must be untrue.
- 4.The deceived shareholder is an allottee and he must have relied on the statement in the Prospectus.

An aggrieved investor can rescind/ cancel/ repudiate the contract and claim return/ refund of his money investment

Damages for Deceit

The term deceit is the tortious Act(Civil Wrong) Which connotes fraud. The aggrieved is subjected to deceit as a consequence of misstatement of prospectus and is entitled to claim damages/Compensation.

Statutory Compensation Sec 35

According to Sec 35 if the Prospectus which invites a person to subscribe for shares or debentures contains an untrue statement ,every director, promoter and person authorising the issue of prospectus is liable to pay compensation.

Liability for untrue statement in prospectus (Sec34 and Sec 35)

Any misstatement lead to the following liability :

- Civil Liability
- Criminal liability

Civil liability Sec 35

Sec 35 imposes civil liability.

The person responsible for misstatement/untrue statements of prospectus are liable to pay compensation to the persons, who subscribed shares and debentures relying on such false information in the prospectus.Such person include directors, promoters, experts

Defence is available under Section 35 Clause 2.

Persons (Directors /expert) subject to the civil Liability may plead/ invoke immunity/ exemption from the liability

1. **Withdrawal of consent-director** or expert may plead that he had withdrew his consent before the prospectus was issued and prospectus was issued without his authority or consent

2. **Without knowledge-** director or expert may plead that the prospectus was issued without his knowledge or consent

3. **Ignorant of Untrue statement-** director or expert may plead that he was ignorant about the untrue statement

4. **Reasonable ground for Belief** –He had reasonable ground to believe that the statement was true.

Next we will discuss **Criminal liability**.

Liability for non disclosures

According to **Sec 26** every prospectus shall state matters specified in part-I of schedule –ii of the companies act, like information regarding the object of the company, shares, managerial personnel, minimum subscription, preliminary expenses, working capital.

•If the above mentioned disclosures are not made the person responsible for the same shall be punishable with fine which may extend to Rs. 5000/-

A person may avoid his liability for non disclosures by proving

1. He had no knowledge of the matter disclosed

2. Contravention of the above requirement arose on account of honest mistake of fact from his part

3. If in the opinion of the court, the non-disclosures were immaterial.

Liability for misstatement

Sec 34 says that where prospectus includes any untrue statement, every person who has authorised the issue of the prospectus shall be punishable under sec 447 of the Act, which provides punishment for fraud.

Sec 447

Any person who is guilty of fraud shall be punishable with imprisonment for the term which should not be less than six months and which may extend to ten years and

Fine which shall not be less than the amount involved in the fraud but which may extend to three times the amount involved in fraud or Both Punishment and fine.

Person shall not be criminally liable if he proves that statement was immaterial or that he had reasonable ground to believe that it was true.

For the present module,you can make the following references.

Thank you.