**CLASS NOTE**

**B.COM: SEM--4**

**Subject: ENTREPRENEURSHIP DEVELOPMENT**

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**LECTURE NO. 03**

**Preliminary Contracts with the Vendors, Suppliers, Bank¬ers, Principal Customers; Contract Management:**

Preliminary or Pre-Incorporation Contracts:

When the contract is agreed, on behalf of the company before its incorporation they are called the preliminary Contract or pre-incorporation Contract. These contracts may relate either to the property, which the promoter wants to purchase for the Company or the technical knowledge which is essential for the success of the company. These types of contracts cannot bind the company until it is incorporated.

The legal position in case of preliminary contracts can be studied under two heads:

(i) Position before passing of Specific Relief Act, 1963

(ii) Position after passing of Specific Relief Act, 1963

(i) Position before Passing of Specific Relief Act, 1963:

a. The preliminary Contract made before passing of Specific Relief Act, 1963 cannot bind the company because it has not legal existence before incorporation.

b. The companies are not in a position to sue on pre-incorporated contracts.

c. Ratification is not possible in the case of the preliminary contract, as the ostensible principal not exist at the time of the contract.

(ii) Position after Passing of Specific Relief Act, 1963:

a. The promoters found difficulties in carrying out the work before the Specific Relief Act, 1963, because the contracts prior to incorporation were void.

b. The Specific Relief Act, 1963 came as a relief to the promoters.

c. The Act provides that where the promoters of a public company have made a contract before its incorporation, for the purpose of the company and if the contract is warranted by the terms of its incorporation, the company may enforce it.

Basic Requirements for a Contract:

Entering into a legal contract with another individual or party helps provide legal protection, as well as a specific outline of the deal. When you enter into a contract with another party, it should meet a few requirements before it can be considered a valid legal contract.

(i) Specific Details:

In order for a contract to be valid it has to feature the specific contract details. In the contract, outline exactly what is being dealt with. If you are buying material from a dealer, it has to have the legal description of the material, so that there is no question about which material is being conveyed. The contract should also be specific about the names of the parties involved and their role in the transaction. It should also outline the nature of the agreement.

(ii) Consideration:

A valid legal contract also must have consideration. Consideration is giving something of value in return for something else. In this section, the factors associated with consideration should also be included. For example, you should include information about payment terms, time considerations and other expectations.

(iii) Capacity to Contract:

Before a valid legal contract is created, both parties must be able to prove that they have the capacity required. This means that the individuals have to be of legal age, depending on state law and they must be of sound mind. This means that if they are mentally handicapped or are under the influence of drugs or alcohol, they cannot enter into a binding contract. The parties must also enter into the agreement under their own free will and cannot be coerced into signing.

(iv) Legal:

The agreement also has to have legal terms. If you enter into an agreement to perform an illegal act, this would not constitute a legal contract. For example, if you enter into an agreement to launder money for an illegal operation, that contract would not be enforceable by the law because you are involved in an illegal activity.

(v) Proper Form:

A legal contract also must be in the proper form. Typically, this means that the contract must be in writing. The prop¬er form is determined by the type of contract that you are engaged in and the laws of your state. In some cases, verbal contracts are binding and are perfectly acceptable. In most cases, you should do the contract in writing so that no confusion exists if any legal matters come up later.

General Principles for Entering into Contracts:

A contract is created the moment two people agree to do something for each other. These people, who are called “contracting parties”, can be individuals, bankers, customers, dealers, financial institutions, a group of people or representatives of a business.

In general, it is not necessary to sign a document for a contract to be created. A simple verbal agreement can be enough. However, some kinds of contracts must be in writing, and some must even meet other requirements to be valid.

For Example:

1. Many contracts between merchants and consumers must be in writing.

2. A mortgage contract for property must be in writing and made by a notary.

Of course, even when the law does not require a written document, it is often a good idea to put a contract in writing. When there is a written document and a problem arises, the disagreement does not become a case of “his/her word against mine”.

There are some areas that deserve careful attention during entering into a contract includes:

(i) The terms of a contract must be precise and definite and there must be no room for ambiguity or misconstruction thereon should exist.

(ii) No contract involving an uncertain or, indefinite liability or any conditions of an unusual character should be entered into without the previous consent of both parties.

(iii) Subject to adequate prior scrutiny of terms, general or special, if any, standard forms of contracts should be adopted, wherever possible.

(iv) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the contracts and before they are finally entered into.

(v) Before entering into a contract or an agreement, all pros and cons should be considered and validity of contractual documents should be ensured.

(vi) If you are sued because you did not respect your contract, you can avoid responsibility if you can prove there was an “Act of God” (event beyond human control), unless the contract states that you are responsible even if an act of God occurs.

(vii) To be considered an Act of God, the event must be outside your control. It must have been absolutely impossible for you to predict the event and prevent its negative impact. Finally, you must have been completely prevented from respecting the contract and from having someone else carry out your duties under the contract for you.

(viii) Generally a contract cannot be cancelled. However, it is possible to cancel a contract in some situations such as when the people involved did not have the right to enter into a contract.

(ix) If your contract is cancelled, it is as though it never existed. The people involved must therefore return to the situation they were in before the contract was entered into. To do this, they must give back to the other person everything they received because of the contract.

(x) While you may have the opportunity to negotiate before you agree, it is common for you to be offered the same or a similar contract as everyone else. This is known as a standard form contract. There are laws to protect you from unfair contract terms in standard form consumer contracts where you have little or no opportunity to negotiate with the trader.

Ending a Contract by Consumer:

There are limited circumstances when consumers may end a contract without penalty and these can include:

(i) If the business has misrepresented the goods, services, terms or conditions

(ii) If a cooling-off period applies.

A cooling-off period is a safeguard designed to give consumers the opportunity to change their minds about a purchase or agreement they have made. You have a right to a cooling-off period when you purchase goods or services through telemarketing or door-to-door sales.

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