

- **Prospectus- Remedies for Misrepresentation**

Rescission for misrepresentation-

The shareholder can also sue the company for rescission of the contract. Under this remedy the contract is cancelled and the money given by the shareholder refunded. Under Section 75 of the Contract Act, a person who lawfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfillment of the contract.

Loss of right of rescission

(a) By affirmation-

If the allottee with full knowledge of the misrepresentation upholds the contract, he cannot afterwards rescind.

(b) By unreasonable delay-

Any man who claims to retire from a company on the ground that he was induced to become a member by misrepresentation, is bound to come at the earliest possible moment after he becomes aware of the misrepresentation.”

(c) By commencement of winding up-

The right of rescission is lost on the commencement of the winding up of the company. “But where a shareholder has started active proceedings to be relieved of his shares, the passing of the winding up order during their pendency would not prevent his getting the relief.”

Damages for deceit-

Any person induced by a fraudulent statement in a prospectus to take shares, is entitled to sue the company for damages. He must prove the same matters in claiming damages for deceit as in claiming rescission of the contract. He cannot both retain the shares and get damages against the company. He must show that he has repudiated the shares and has not acted as a shareholder after discovering the fraud or misrepresentation.

Compensation

Now section 35 of companies act 2013-

Every director, promoter and every person authorizes the issue of the prospectus is liable to pay compensation to the aggrieved party for loss or damage he may have incurred by reason of any untrue statement in the prospectus.

The persons who are liable to pay compensation are :

- (a) Directors at the time of issue of prospectus,**
- (b) Persons who have authorized themselves to be named as directors in the prospectus,**
- (c) Promoters,**
- (d) Persons who have authorized the issue of prospectus.**

Section 35 of companies act 2013—

Civil liability for misstatements in prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus

which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who-

(a) Is a director of the company at the time of the issue of the prospectus;

(b) Has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) Is a promoter of the company;

(d) Has authorised the issue of the prospectus; and

(e) Is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

