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What Our Students have to Say....

Aman Mahajan (CA AIR 19)

I really liked your classes, especially the practical linkages explained with amazing graphics. The full subject test serieshelped a lot in improving my writing speed and presentation skills.

Sundar Sri Renganathan B (AIR 33)

I took Accounting from IndigoLearn and the classes were really good. They emphasized on conceptual clarity over getting things done quickly, which is really vital to score good marks in practical papers. Other resources like Notes, Quizzes and Forum was beneficial too.

Dwarakesh

Thank you IndigoLearn team for the guidance and support throughout the past few months. I had great conceptual clarity in all the subjects and the revision classes by Suraj Sir were very helpful. Study planner and Free resources were very useful. Thank you Team IndigoLearn.

Yug Manoj Kumar Bhattad

I have cleared my CA Foundation examination with the total of 286. And this was not possible without the efforts and support of IndigoLearn. The way of teaching with utmost conceptual clarity is the best thing at Indigolearn.

Prakash Bhatt

Superb, one stop solution for All CA and Accountancy students they serve real Education at very very reasonable price

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Good experience, unlimited views helped a lot in last one month preparation. Looking forward for

Bhagyasree Chougule

It was only because of Indigolearn that my concepts became very clear, and I was able to crack the exam. I wasn't 100% prepared I needed more practice but luckily I got through. I'm definitely choosing IndigoLearn for group 2 preparation. A big thanks!

Mohd Thayyab

Theoretical subjects made easier through story based examples and charts. Concept clarity 100%. Fully exam+practical oriented classes will help not only to retain the concepts during exams but for the longer duration.

Lalit Chetan Sanpal

Indigolearn has been fantastic and brilliant. Helped me alot in my preparations. I cleared both the groups in first attempt with your brilliant classes and notes. Thanks to all the faculties, coordinators, forum admins and everyone at Indigolearn. Really grateful. Will go for CA Finals at Indigolearn For sure. Thank you so much Indigolearn.

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Abishek M

I'd like to thank IndigoLearn for all the support they've provided me with. Modules were great. They were time saving and straight to the point. I extensively used the materials provided before exams, they were so helpful. Also I'd appreciate them for providing unlimited views as I kept looking into the maths modules till the end.

Munnur Nandini Sree

Accounting classes I have taken from IndigoLearn. Now I feel that it's a great choice that I have made (after seeing my result) because only in Accounting I got exemption. Thank you IndigoLearn.

Harshita G

Thank u so much IndigoLearn for your guidance. This is only possible because of u people.... For my finals also my journey will continue with IndigoLearn.

Bharathsha PS

I purchased Economics, IT, FM, EIS and Audit from Indigolearn. All your classes are superb and anyone can easily crack the CA exams. What makes u special is your classes help us to understand the concepts very well.Special thanks to the FM faculty, I studied only 2 chapters in economics,and still managed to score excemption in the 8th paper.

Nayi Mihir kumar

This platform is very helpful in all activity like mcq practise, notes, teaching activities, revisions and the forum interaction with all students which I like the most. If anybody want to clear their exams in first attempt then IndigoLearn is the best platform for them. My all regards to IndigoLearn. Thank you so much.

Rajalaxmi
CA Inter

Can't believe I cleared.Sathya Sir, Suraj Sir, Yogita Mam ... thanks to all my faculties. Basically an Eng student with zero accounts knowledge. Thanks IndigoLearn for making me clear in first attempt.

Priyanka Udeshi

All the faculties have excellent knowledge of the subject and deliver it in very crisp & effective manner. Also, quick response at Forums never let any of my doubts go unresolved no matter how small they were. Thank you once again to all the teachers & staff at IndigoLearn!

Naveen Kumar T

It been a great journey with indigo learn team. Thanks to all the facilities and forum friends who support me a lot.

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Chapter 1 - Preliminary
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 RTP

Ram Pvt. Ltd. is the holding company of Laxman Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of Laxman Pvt. Ltd., its turnover was Rs. 1.80 crore; and paid up share capital was Rs. 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

Answer:

As per section 2(85) of the Companies Act, 2013, small company means a company, other than a public company:

(i) paid-up share capital of which does not exceed four crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Laxman Pvt. Ltd., its turnover was to the extent of Rs. 1.80 crore, and paid-up share capital was Rs. 80 lakh. Though Laxman Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Ram Pvt. Ltd.).

Hence, the contention of the Company Secretary is correct.

Q2. Nov 23 Exam (5 Marks)

ABC Limited issued equity shares worth Rs. 1,00,000 (10,000 shares of Rs. 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013-

(i) Whether ABC Limited is a subsidiary of MNP Limited?

(ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023?

Answer:

This given question is based on section 2(87) read with section 19 of the Companies Act, 2013.

As per section 2(87) of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where:

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee

(c) the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

Here, in the instant case, ABC Limited issued 10,000 equity shares on 1st April, 2023 whereby XYZ Limited & PQR Limited holds 3,500 & 2,500 shares respectively in ABC Limited. Considering 1 share = 1 vote, XYZ Limited and PQR Limited together holds 60% of the total voting power [i.e. more than one-half (50%)].

Further, MNP Limited controls the composition of Board of Directors of XYZ Limited and PQR Limited from 01.07.2023. In the light of section 2(87), MNP Limited is a holding company of XYZ Limited and PQR Limited (Subsidiary companies).

Following are the answers to the questions:

(i) ABC Limited shall be deemed to be a subsidiary company of the holding company (MNP Limited) as MNP Limited controls the composition of subsidiary companies XYZ Limited & PQR Limited as per explanation to section 2(87).

(ii) The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore:

1. ABC Limited cannot vote at AGM of MNP Limited held on 30th September, 2023.
2. XYZ Limited can vote at AGM of MNP Limited held on 30th September, 2023.

Q3. May 23 Exam (5 Marks)

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was Rs. 1.80 crore; and paid up share capital

was Rs. 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

Answer:

(a) As per section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company, —

(i) paid-up share capital of which does not exceed four crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of Rs. 1.80 crore, and paid-up share capital was Rs. 80 lakh. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.).

Hence, the contention of the Company Secretary is correct.

Q4. May 23 RTP

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of Rs. 1.5 crore with 40 members and turnover of Rs. 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):-

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:-

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.

Answer:

According to section 2(10) of the Companies Act, 2013,

Financial statement in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

(i) One person company – It is given that the company is having 40 members and also
(i) its name does not contain the words 'OPC', so it is not a one person company.

(ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.

(iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.

(iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a start- up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013.

Q5. Nov 22 Exam (5 Marks)

Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

(i) ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

(ii) CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

(iii) PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013.

Answer:

(a) According to Section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange.

RULE 2A: According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
   (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
   (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
   (iii) both categories of (i) and (ii) above.

(b) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.
(ii) CHG Limited is an unlisted company.
(iii) PRS Limited is an unlisted company.

Q6. Nov 22 RTP

Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.

Answer:

As per section 2(40) of the Companies Act, 2013, Financial Statement in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

Q7. May 22 Exam (3+3 =6 Marks)

MNP Limited is a registered public company having the following:

i	Directors and their Relatives	18
ii	Employees	26
iii	Ex-Employees (Shares were allotted during employment)	15

iv	Members holding shares jointly (7 x 2)	14
v	Other Members	137

The Board of Directors of MNP Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise:

i. Whether the company can be converted into a private company?
ii. Whether existing number of members need to be reduced for the proposed private company?

Answer

According to **Section 2(68)** of the Companies Act, 2013, **"Private company"** means a company having prescribed minimum paid-up share capital, and which by its articles, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that following shall not be included in the number of members -

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Accordingly, total Number of members in MNP Limited are:

(i)	Directors and their relatives	18
(ii)	Joint shareholders (7x2)	7
(iii)	Other Members	137
	Total	**162**

(i) MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.

(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

Q8. May 22 Exam (3 Marks)

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

Answer

According to **section 2(76)(viii)** of the Companies Act, 2013, **Related party**, with reference to a company, means any body corporate which is -

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

Q9. May 22 RTP

Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in the capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.
In the context of aforesaid facts, answer the following question(s):-
(a) Whether the aforesaid companies can be considered as listed company(ies)?
(b) Explain the relationship between the aforesaid companies?

Answer

(a) According to **section 2(52)** of the Companies Act, 2013, **listed company** means a company which has any of its securities listed on any recognised stock exchange;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
iii. both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Company Name	**Analysis and Conclusion**
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. **shall not be considered as a listed company.**
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed nonconvertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. **shall not be considered as a listed company.**
Sajagta (P) Ltd	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. **shall not be considered as a listed company.**

(b) According to **section 2(46)** of the Companies Act, 2013, **holding company** in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to **section 2(87)** of the Companies Act, 2013, **subsidiary company** or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.

It is given that Kleshrahit Ltd. has the power to appoint 2/3rd directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd. Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that Indriyadaman

Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd.

(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. Accordingly, as per sub-clause (ii) to section 2(87), it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively. Accordingly, as per sub-clause (ii) to section 2(87) read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.

(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity. Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding– subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

Q10. May 22 MTP (6 Marks)

AJD Pvt. Ltd. is having paid up share capital of ₹45 Lakhs and annual turnover of ₹185 Lacs. It is a wholly owned subsidiary of K Ltd.- a listed company. Can AJD Pvt. Ltd. be called a small company as per the provisions of the Companies Act, 2013.

Answer

As per **Section 2(85)** of the Companies Act 2013 read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014, **"Small Company"** means a company, other than a public company, having—

(i) paid-up share capital of which does not exceed four crores rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act;

In the given case, AJD Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of K Ltd (a listed), it falls under the exclusions to the definition and hence is not a small Company.

Q11. Dec 21 Exam (2 Marks)

Define "Small Company".

Answer

Refer Question 4, May 22 MTP as given above for the provision

Q12. Dec 21 MTP (5 Marks)

New Private Ltd. is a company registered under the Companies Act, 2013 with a paid -up share capital of ₹ 70 lakh and turnover of ₹30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the New Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹ 15 crore and the capital is same as ₹70 lakh?

Answer

Refer Question 4, May 22 MTP as given above for the provision

(1) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 70 lakh and having turnover of ₹ 30 crore. Since, it's paid up share capital does not exceed ₹ 4 crores and turnover does not exceed ₹ 40 crores, both the criteria of being a small company are met. Thus, New Private Ltd. can avail the status of small company.

(2) Answer will remain same.

Q13. July 21 Exam (6 Marks)

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

(1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹ 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash

flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?

Answer

(i) Refer Question 4 May 22 MTP for the provision.

Also, according to **section 2(87)**, **subsidiary company**, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ₹ 10 totalling ₹ 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company.

Further, the paid up share capital (₹ 50 lakhs) and turnover (₹ 2 crores) is within the limit as prescribed under section 2(85), hence, **Smart Solutions Private Limited can be categorised as a small company.**

(ii) According to section 2 (40), Financial statement in relation to a company, includes—
(a) a balance sheet as at the end of the financial year;
(b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(c) cash flow statement for the financial year;
(d) a statement of changes in equity, if applicable; and
(e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d)

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Smart Solutions Private Limited being a small company is exempted from filing acash flow statement as a part of its financial statements. Thus, Smart Solutions Private Limited has not defaulted in filing its financial statements with ROC.

Q14. July 21 Exam (5 Marks)

Kavya Ltd. has a paid up share-capital of Rs. 80 crores. Amjali Ltd. holds a total of Rs. 50 crores of Kavya Ltd. Now, Kavya ltd. is making huge profits and wants to expand its business and is aiming at investing in Amjali Ltd. Kavya Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of Amjali Ltd.

Answer

In terms of **section 2 (87)** of the Companies Act 2013 **"subsidiary company"** or **"subsidiary"**, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, Kavya ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of Kavya Ltd., it (Amjali Ltd.) is holding company of Kavya Ltd.

Further, as per the provisions of **section 19** of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

a. where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
b. where the subsidiary company holds such shares as a trustee; or
c. where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, Kavya ltd. cannot acquire the shares of Amjali Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

Q15. Nov 20 MTP (6 Marks); May 18 Exam (6 Marks)

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of ₹ 45 lakh and turnover of ₹ 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹1.50 crore?

Answer

Refer Question 4 May 22 MTP for the provision

Q16. Nov 19 Exam (4 Marks)

(i) Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.

(ii) SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Answer

(i) According to **section 2(42)** of the Companies Act, 2013, **"foreign company"** means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Looking to the above description, it can be said that being involved in telemarketing in India having its main server for online business outside India, **Herry Limited will be treated as foreign company.**

(ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

SKP Limited is advised to follow the above procedure accordingly.

[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part (i) of the question]

Q17. May 19 RTP

The paid-up share capital of Altar Private Limited is ₹1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?

Answer

In terms of **section 2 (87)** of the Companies Act 2013 **"subsidiary company"** or **"subsidiary"**, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Explanation.—For the purposes of this clause,—
(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd.

However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.

Q18. Nov 18 Exam (4 Marks)

What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement?

Answer

According to **section 2(40)** of the Companies Act, 2013, **Financial statement** in relation to a company, includes—
(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement.

Q19. Nov 18 Exam (6 Marks)

Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company.

Answer

According to **section 2(42)** of the Companies Act, 2013, **foreign company** means any company or body corporate incorporated outside India which,-
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term **"electronic mode"**, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(i) Business to business and business to consumer transactions, data interchange and
(ii) other digital supply transactions;
(iii) Offering to accept deposits or inviting deposits or accepting deposits or
(iv) subscriptions in securities, in India or from citizens of India;
(v) Financial settlements, web based marketing, advisory and transactional services,
(vi) database services and products, supply chain management;
(vii) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
(viii) All related data communication services, whether conducted by email, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

Q20. May 18 RTP

The paid-up share capital of Saras Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited.
With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

Answer

Refer Question 11 May 19 RTP

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Chapter 2 - INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO
Past Exams, RTP & MTP Questions Compiler

Q1. Nov 23 Exam (5 Marks)

A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act.

Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013

Answer:

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company:

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

According section 8(9), if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of women to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the association and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is a restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of section 8 of the Companies Act, 2013. Therefore, the proposal in its entirety is not feasible. The promoters will be accordingly advised that the proposal should be in conformity with the provisions of the Act.

Q2. May 23 RTP

Aman an engineer has started a new company with the name of Nuts and Bolts Private Limited. He got registered a company with the same name. However, Nuts and Bolts is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company change its name at its discretion?

Answer:

According to section 16 of the Companies Act, 2013 if a company is registered by a name which,—

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Q3. Nov 22 Exam (5 Marks)

The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(i) Whether refusal of document by the company is valid?

(ii) Whether Suresh can claim damages for it?

Answer:

(i) Serving of document to Company

In terms of Section 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

- registered post, or
- speed post, or
- courier service, or
- leaving it at its registered office, or

- means of such electronic or other mode as may be prescribed.

In the instant case, Suresh dispatches some document to AB Ltd. by courier whereas the AOA of said company provides that documents may be served upon the company only through Speed Post. AB Ltd. did not accept the documents on the ground that it is in violation of the AOA. Taking into account the above provision,

(i) Refusal of documents by AB Ltd. is not valid as sending of documents by courier to AB Ltd. is complying with the provisions given under section 20(1) of the Act.

(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, YES, he can claim the damages for any loss occurred to him.

Q4. Nov 22 RTP

Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid?

Answer:

As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-

(a) shall be eligible to incorporate a One Person Company (OPC);

(b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

Q5. May 22 Exam (3 Marks)

Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

Answer

As per **Section 9 and 10** of the Companies Act, 2013 following shall be the effect of registration of a company:

1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.
2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.
3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Q6. May 22 RTP

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.
However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid.
Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company?

Answer
According to **section 8** of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).
Also, a firm may be a member of the company registered under this section.

Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid.
Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Q7. May 22 RTP

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013.

Answer
According to **section 2(69)** of the Companies Act, 2013, Promoter means a person:-
(a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
(c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

Q8. March 22 MTP (6 Marks)

Kapila Limited issued equity shares of ₹ 1,00,000 (10,000 shares of ₹ 10 each) on 01.04.2021 which have been fully subscribed, whereby Kusha Limited holds 4000 shares and Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holding 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. Examine with relevant provisions of the Companies Act, 2013:

(i) Whether Kapila Limited is a subsidiary of Red Limited?

(ii) Whether Kapila Limited can hold shares of Red Limited?

Answer

This given problem is based on **Section 2 (87)** read with **section 19** of the Companies Act, 2013. As per **Sec 2(87)** of the Companies Act, 2013 **"subsidiary company"** or **"subsidiary"**, in relation to any other company (i.e., the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, Kapila Limited issued 10,000 equity shares on 1.4.2021 whereby Kusha Limited & Prem Limited holds 4000 & 2000 shares respectively in Kapila Ltd., Considering 1 share = 1 vote, Kusha Limited and Prem Limited together holds more than one-half (50%) of the total voting power. Therefore, Kapila Limited will be a subsidiary to Kusha Limited & Prem Limited from 1.4.2021.

Whereas Kapila Limited is already holding 20% equity shares of Red Limited before the date of issue of equity shares i.e. 1.4.2021.

Further, Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. In the light of Sec 2 (87), Red Limited is a holding company of Kusha Limited and Prem Limited (Subsidiary companies).

Following are the answers to the questions:

(i) Yes, Kapila Limited is a subsidiary of Red Limited. In this case Kapila Limited shall be deemed to be subsidiary company of holding company (Red Limited) as Red Limited controls composition of subsidiary companies Kusha Limited & Prem Limited as per explanation to Sec 2(87).

(ii) Yes, Kapila Limited can hold shares of Red Limited. In this case Kapila Limited is subsidiary of Red Limited as Kapila Limited was holding 20% of equity shares of Red Limited even before it became subsidiary company of Red Limited (i.e. on 1.8.2021), as per exception to section 19.

Q9. March 22 MTP (5 Marks)

Gully Gilli Danda Club was formed as a Limited Liability Company under section 8 of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. A, a member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

(i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.

(ii) Whether the company may be wound up?

(iii) Whether the Gully Gilli Danda Club can be merged with Stick Private Limited, a company engaged in the business of networking?

Answer

(i) According to **section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Hence, in the instant case, the Central Government can revoke the license given to Gully Gilli Danda Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard. **[Section 8(7)].**
Hence, the stated company may be wound up.

(iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. **[Section 8(10)]**

In the instant case, Gully Gilli Danda Club cannot be merged with Stick Private Limited as the objects of both the companies are different and not similar.

Q10. April 22 MTP (5 Marks)

Sai along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters :
(i) What is the minimum paid-up capital requirement in case of a Section 8 Company ?
(ii) Whether a firm can be member of the Section 8 Company ?
(iii) Whether the Section 8 Company can pay dividend to its members ?
Advise, Sai with reference to the provisions of Companies Act, 2013.

Answer

(i) The requirement of having a minimum paid up share capital shall not apply to a section 8 company vide notification dated 5th June 2015.
(ii) Yes, under **section 8(3)** of the Companies Act, 2013, a firm may be a member of the company registered under section 8.
(iii) According to **Section 8(1)(c)** of the Companies Act, 2013, section 8 company cannot pay dividend to its members as it prohibits the payment of dividends to its members.

Q11. April 22 MTP (6 Marks)

Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

Answer
According to **section 16** of the Companies Act, 2013 if a company is registered by a name which,—

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default, company and defaulting officer are punishable.

In the given case, owner of registered trade- mark is filing objection after 5 years of registration of company with identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per **section 13**, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Q12. April 22 MTP (5 Marks)

Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.
Decide, as per the provisions of the Companies Act, 2013:
(i) Whether the contention of Amar is valid.
(ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held?

Answer

According to **section 20(2)** of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:
(i) Contention of Amar shall be tenable, for the reason that the notice was not properly served.
(ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

Q13. Dec 21 Exam (3 Marks)

Chhavish, an Indian citizen and resident of India formed "Ekta Readymade Garments (OPC) Private Ltd." as One Person Company on 1st April 2018 with his wife Mrs. Jyoti as nominee. The authorized and paid-up share capital of the company is ₹ 35 lakhs. He got in touch with a readymade garments buyer and was expecting to receive a substantial order by August 2020 where final delivery will be completed by December 2020. To expand the production capacity, the decided to invest an additional capital of ₹ 10 lakhs in plant and machinery. As a result, the company's authorized and paid-up share capital is now ₹ 45 Lakhs. Promoter of the company seeks your advice. Considering the case and referring the provisions of the Companies Act, 2013, advice:
(A) Who is eligible to act as a member of OPC?
(B) Whether "Ekta Readymade Garments (OPC) Private Ltd." can convert into any other kind of company as on 1st December 2020?
(C) If the company increases its paid up share capital by ₹ 30 lakhs in August, 2019, can it be converted in any other kind of company immediately?

Answer
(A) The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
Only a natural person who is an Indian citizen whether resident in India or otherwise-
(a) shall be eligible to incorporate One Person Company (OPC);
(b) shall be a nominee for the sole member of One Person Company (OPC).

(B) & (C) As per the latest amendments to the Companies Act in 2021, OPC can now convert into private / public company any time after its incorporation. Also, there is no compulsory conversion on exceeding the turnover or paid up capital as well.

In this question, since the years mentioned are before the change, old provision may still apply, but these questions must be answered as per the latest provision in exam.

Q14. Dec 21 RTP

AB Limited issued equity shares of ₹ 1,00,000 (10000 shares of ₹10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:
(i) Whether AB Limited is a subsidiary of RS Limited?
(ii) Whether AB Limited can hold shares of RS Limited?
(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?

Answer
Refer Q4. Mar 22, MTP as given above for the provision

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

(i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01.08.2020), according to the exception to section 19.

(iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

Q15. Nov 21 MTP (6 Marks)

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain.

Answer
Doctrine of Indoor Management
According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Q16. Oct 21 MTP (5 Marks) & March 21 MTP (3 Marks)

Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

Answer

Under **section 20** of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Q17. Oct 21 MTP, (6 Marks)

What is the minimum number of persons required to form a Private company and a Public company. Explain the consequences when the number of members falls below the minimum prescribed limit.

Answer

(1) According to **section 3** of the Companies Act, 2013, a company may be formed for any lawful purpose by—

(a) 7 or more persons, where the company to be formed is to be a public company;

(b) 2 or more persons, where the company to be formed is to be a private company; or

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

According to **section 3A**,

• If at any time the number of members of a company is reduced,

- ➢ in the case of a public company, below 7,
- ➢ in the case of a private company, below 2,

and the company carries on business for more than six months while the number of members is so reduced, then

- every person who is a member of the company during the time that it so carries on business after those six months and is cognizant (aware) of the fact that it is carrying on business with less than seven members or two members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after six months) and may be severally sued therefore.

Q18. July 21 Exam, (5 Marks)

State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.
(i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
(ii) Whether the Company may be wound up?
(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?

Answer
Refer Q5. May 22 MTP for the provision.

Q19. July 21 Exam, (5 Marks)

Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:

i. The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.
ii. The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from· Pune to Mumbai under the authority of a Board· resolution.
iii. The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Answer
Regarding the validity of Proposals w.r.t change of registered office by A Ltd. in the light of the **section 12** of the Companies Act, 2013:

(i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.
As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

(ii) Section 12 talks about shifting of Registered office only, In the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.
[Note: It may be assumed that corporate office and registered office are same. Then in this case, registered office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State.
In line section 12 (5) of the Act, where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.]

(iii) In the third case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.

Q20. July 21, RTP

Mr. Bindra is holding 950 equity shares of Bio safe Herbals, a section 8 company. Bio safe Herbals is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Examine whether the act of the company is in accordance with the provisions of the Companies Act, 2013.

Answer
According to **Section 8(1)** of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Bio safe Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not in accordance to the provisions of the Companies Act, 2013.

Q21. July 21 RTP

Nadeem incorporated a "One Person Company" making his sister Nisha as the nominee. Nisha is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
(A) If Nisha is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
(B) If Nisha maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Answer
As per **Rule 3 & 4** of the Companies (Incorporation) Rules, 2014 following are the answers:

(A) It is not mandatory for Nisha to withdraw her nomination in the said OPC as long as she can maintain her status as Indian citizen as only a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee in OPC.

(B) Yes, Nisha can continue her nomination in the said OPC, as per the amended provisions it is not necessary to be a resident of India.

As per the latest amendments to Companies Act:

Only a natural person who is an Indian citizen whether resident in India or otherwise-
(a) shall be eligible to incorporate One Person Company (OPC);
(b) shall be a nominee for the sole member of One Person Company (OPC).

For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year.

Q22. April 21, MTP (6 Marks)

Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime.
Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director.
Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime.
Give your answer as per the provisions of the Companies Act, 2013.

Answer
As per the provisions of **section 5(3)** of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution are met or complied with.

Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.

Manner of inclusion of the entrenchment provision:
As per the provisions of section 5(4) of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Notice to the Registrar of the entrenchment provision:
As per the provisions of section 5(4) of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Q23. March 21, MTP (5 Marks)

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about

the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013.

Answer

As per **Section 10A** of the Companies Act, 2013, a company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(i) A declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(ii) The company has filed with the Registrar a verification of it registered office as provided in section 12(2).

Mr. Dinesh has to comply with the above requirements and procedure for commencing the business of the company.

Q24. Jan 21 Exam, (5 Marks)

The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.

Answer

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. They can simply assume that all the required things were done properly in the company.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.
The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management was evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available in the circumstances where company does not make proper inquiry.

Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
The above doctrines have been well considered while framing the provisions of various Acts pertaining to the companies worldwide. The Companies Act, 2013 and the earlier Acts relevant for the Companies in India are no exception to the same.

Q25. Jan 21 RTP

Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.
Decide:
(i) Whether the contention of Vijay is valid.
(ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

Answer
Refer Q8 May 22, MTP for the provision

Q26. Oct 20, MTP (3 Marks)

Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

Answer
Refer Q16 July 21, RTP as given above for the provision

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Q27. Oct 20, MTP (5 Marks)

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Answer

According to **section 8(1)** of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

a. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
b. intends to apply its profits, if any, or other income in promoting its objects; and
c. intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in Section 8(9) of the Companies Act, 2013. **Therefore, the proposal is not feasible.**

Q28. Oct 20, MTP (5 Marks)

XYZ a One-Person Company (OPC) was incorporated during the year 2017-18 with an authorized capital of ₹45.00 lakhs (4.5 lakh shares of ₹10 each), The capital was fully subscribed and paid up. Turnover of the company during 2017-18 and 2018-19 was ₹2.00 crores and ₹2.5 crores respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2019-20. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

(i) If promoter increases the paid up capital of the company by ₹ 10.00 lakhs during 2019-20.
(ii) If turnover of the company during 2019-20 was ₹ 3.00 crores.

Answer

Refer Q9. Dec 21 Exam, Part (B) & (C)

Besides, **Section 18** of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Q29. Nov 20 Exam (6 Marks)

Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the marketplace. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013?

Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

i. Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.
ii. Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.
iii. Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

Answer

As per **section 3** of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent in such manner as may be prescribed.

Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

(B) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.

(ii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise, shall be a nominee or the sole member of a One Person Company. As per the latest provisions, the term "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year. Here Ms. Devaki is an Indian Citizen (as well as resident in India during the immediately preceding financial year in India). So, she is eligible for being nominated as nominee of the OPC.

(B) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

Q30. Nov 20 Exam (4 Marks)

S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. On 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide
(i) the validity of holding of shares by S Ltd. In H Ltd.
(ii) allotment of Bonus shares by H Ltd. To S Ltd.

Answer

As per **Section 19** of the Companies Act, 2013, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
In the given case, H Ltd. Has acquired 55% paid up share capital of S Ltd. On 10th March 2018. Whereas, S Ltd. Has been holding 10% paid up share capital of H Ltd. Since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore –

(i) Holding of shares by S Ltd. In H Ltd. Is valid in view of the proviso © to sub-section (1) of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

(ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

Q31. Nov 20 Exam (4 Marks)

Sun Light Limited was incorporated on 2nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 2nd January 2019 to 1st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:
(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?

Answer
According to **section 8 (1)** of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

Q32. Nov 20 Exam (3 Marks)

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

Answer
Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So, entrenchment means making something more protective.
Section 5 of the Companies Act, 2013 describes the provisions relating to entrenchment.

Articles may contain provisions for entrenchment [Section 5(3)]: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered

only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision [Section 5(5)]: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Q33. Nov 20 RTP

Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013.
You are required to advise the company on this matter.

Answer
As per **section 5** of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

Q34. Mar 20, MTP, (6 Marks)

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

Answer

Refer Q11 Dec 21 MTP as given above for the provision

Thus,
1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorising the loan was passed, the company is bound to pay the loan to Mr. Tridev.

Q35. Nov 19 Exam (2 Marks)

Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
(A) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
(B) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Answer
Refer Q9. Dec 21 Exam for the provision

Q36. Nov 19 Exam (5 Marks)

Mahima Ltd. was incorporated by furnishing false information. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard.

Answer
Order of the Tribunal: According to **section 7(7)** of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
(b) direct that liability of the members shall be unlimited; or
(c) direct removal of the name of the company from the register of companies; or
(d) pass an order for the winding up of the company; or
(e) pass such other orders as it may deem fit.

However before making any order-
(i) the company shall be given a reasonable opportunity of being heard in the matter; and
(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Q37. Nov 19, RTP

S Ltd. is a company in which H Ltd. is holding 60% of its paid-up share capital. One of the shareholder of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. and ₹ 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way?

Answer

According to **section 19** of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—
(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
(b) where the subsidiary company holds such shares as a trustee; or
(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

Q38. Nov 19, RTP

Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised ₹ 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilised 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

Answer

According to **section 13** of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Q39. Nov 19, RTP

Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

Answer

Refer Q 13 Dec 21, MTP as given above for the provision

Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

Q40. Oct 19, MTP (5 Marks)

XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

Answer

The Companies Act, 2013 under **section 13** provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director.

Q41. May 19 Exam, (4 Marks)

As at 31st March, 2018, the paid up share capital of S Ltd. is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis

of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 :
(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

Answer
The paid up share capital of S Ltd. is ₹1,00,00,000 divided into 10,00,000 equity shares of ₹10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of **section 2(87)** of the Companies Act, 2013.

In the instant case,

(i) As per the provisions of Section 19(1) of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per 2 proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) **Section 19** also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Q42. May 19 Exam (5 Marks)

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Answer
According to **section 8(1)** of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members; the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in Section 8(9) of the Companies Act, 2013. Therefore, the proposal is not feasible.

Q43. May 19, RTP

MNO a One Person company (OPC) was incorporated during the year 2015-16 with an authorised capital of ₹ 45 lakhs (4.5 lakhs shares of ₹ 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was ₹ 2 crores and ₹ 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether MNO (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:
(i) If promoter increases the paid up capital of the company by ₹ 10 lakhs during 2017-18
(ii) If turnover of the company during 2017-18 was ₹ 3 crores.

Answer
Refer Q9. Dec 21 Exam as given above for the provision

Q44. Nov 18 Exam (6 Marks)

The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.

Answer
Refer Q20. Jan 21 for the provision

Q45. Nov 18 RTP

The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.
Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

Answer
Alteration in Articles of Association: Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

(1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

(2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

(4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

Q46. May 18 Exam (2 Marks)

Alpha Ltd., A Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

Answer
Refer Q25 Jan 21, MTP as given above for the provision

Hence, in the instant case, the proposed act of Alpha Ltd., a company registered under the provisions of **Section 8** of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Chapter 3 - Prospectus And Allotment Of Securities
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (5 Marks)

Referring to the provisions of the Companies Act, 2013, answer the following queries:

(i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?

(ii) Explain the consequences of non-allotment of shares within the stipulated timeline.

(iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement?

Answer:

(i) Rule 14 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub- section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year.

Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

Q2. Nov 23 Exam (4 Marks)

A clause that begins with the words 'notwithstanding anything contained' is a clause, that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.

Answer:

A clause that begins with the words 'notwithstanding anything contained' is called a non-obstante clause. Unlike the 'subject to' clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah Vs. Pakari Lakshman AIR 1965 AP 220)

A notwithstanding clause can operate at four levels.

S. No.	Clause	Effect
1.	Notwithstanding any thing contained in another section or sub- section of that statute.	The clause will override such other section(s) / sub-section(s)
2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.
3.	Notwithstanding anything contained in specific section(s) or sub-section(s) orall the provisions contained in another statute.	The clause will prevail over the other enactment.
4.	Notwithstanding anything contained in any other law for the time being inforce.	The clause will override all otherlaws.

Q3. Nov 23 RTP

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance.

However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance.
Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void?

Answer:

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.
According to section 6 of the Companies Act, 2013,
'Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.'

In simple words, the provisions of this Act shall have overriding effect. It is also to be noted that section 6, starts with "Save as otherwise ....". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the articles of association will prevail and cannot be considered as void.

Q4. May 23 Exam (5 Marks)

MBL Pharmaceutical Limited is committed to provide quality medicines at an affordable cost through relentless pursuit of excellence in its operations, product quality, documentation and services. The company is now focusing on oncology therapeutics & other generies with a vision to be a Global Leader in Oncology. The prospectus issued by the company contained some important extracts of the expert's report on research by oncology department. The report was found untrue. Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Will Mr. Diwakar have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Answer:

Remedy against the company: Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Diwakar purchased the shares of MBL Pharmaceutical Limited on the basis of the expert's report published in the prospectus. Mr. Diwakar can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Further, section 35 also mentions punishment prescribed by section 36 i.e., punishment for fraud under section 447.

Circumstances when an expert is not liable: An expert will not be liable for any misstatement in a prospectus under the following situations:

(i) Under section 26 (5): It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or

(ii) Under section 35 (2) (b): It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under section 35 (2) (c): As regards every misleading statement purported to be made by an expert /contained in a copy of / an extract from a report / valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Q5. Nov 22 Exam (5 Marks)

Aarna Ltd. was dealing in export of cotton fabric to specified foreign countries. The company was willing to purchase cotton fields in Punjab State. The prospectus issued by the company contained some important extracts of the expert report. The report was found untrue. Mr. Nick purchased the shares of Aarna Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Would Mr. Nick have any remedy against the company? State the circumstances where an expert is not liable under the Companies Act, 2013.

Answer:

(i) Whether Mr. Nick has any Remedy?

Under Section 35 (1) of the Companies Act 2013 (the Act), where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Nick purchased the shares of Aarna Limited on the basis of the expert's report published in the prospectus. Mr. Nick can claim compensation for any loss or damage that he might have sustained from the purchase of shares. Since, Mr. Nick did not suffer any loss due to purchase of such shares, he cannot claim any compensation for any loss or damage.

Further, Section 35 of the Act also mentions punishment prescribed by Section 36 of the Act i.e. punishment for fraud under Section 447.

(ii) Circumstances when an expert is not liable: An expert will not be liable for any mis statement in a prospectus under the following situations:

(i) Under Section 26 (5) of the Act: It states that having given his consent, the expert withdrew it in writing before delivery of the copy of prospectus for filing, or

(ii) Under Section 35 (2) (b) of the Act: It states that the prospectus was issued without his knowledge/consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) Under Section 35 (2) (c) of the Act: It states that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by Section 26(5) of the Act to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder..

Q6. May 22 Exam (5 Marks)

The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Answer

As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression **"red herring prospectus"** means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. [Explanation to **Section 32**]

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.

The company may follow the provisions of section 32 in issuing a red herring prospectus:

(1) Red Herring Prospectus is issued prior to issue of Prospectus: A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) Filing with the registrar: A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) Obligations under Red Herring Prospectus vis-à-vis Prospectus: A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Q7. May 22 RTP

Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.
In the context of aforesaid facts, answer the following question(s) :-
(a) Whether the aforesaid companies can be considered as listed company(ies)?

Answer
(a) According to **section 2(52)** of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange;
Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to **rule 2A** of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
(iii) both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in **section 23(3)** of the Act.

Company Name	**Analysis and Conclusion**
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. **shall not be considered as a listed company.**
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. **shall not be considered as a listed company.**
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. **shall not be considered as a listed company.**

Q8. May 22 RTP

The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer

As per **section 26(1)** of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial

information as may be specified by the Securities and Exchange Board in consultation with the Central Government.

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

According to clause (c) of section 26 (1), the prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Plum Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

Q9. March 22 MTP (5 Marks)

Swati Limited is intending to issue its securities on private placement basis. Explain to the directors of the company, the provisions of the Companies Act, 2013, on the following matters:
(i) Meaning of Private Placement
(ii) 'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment.'

Answer
(i) **Meaning of 'Private Placement':** As per **section 42(3)**, the term "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer- cum-application, which satisfies the conditions specified in section 42.

(ii) **'Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment':** A company making an offer or invitation under **section 42** shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

Q10. Dec 21 Exam (3 Marks)

RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allottee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

Answer

According to **section 34** of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.

Further, **Section 35(3)** provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) of section 35, shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

In the given question, the non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.

Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Q11. Dec 21 Exam (5 Marks)

Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:
(i) ABC limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers.
(ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.
(iii) Being a public company can it issue securities in a private placement offers?

Answer

According to **section 42** of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

(i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

(ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42 . Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

(iii) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.

Q12. Oct 21 MTP (5 Marks)

What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form?

Answer

(1) **Meaning of Abridged Prospectus: -** According to **Section 2(1)** of the Companies Act, 2018, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(2) **Circumstances under which the abridged prospectus need not accompany the application forms: Section 33 (1)** of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus.

In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

(i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
(ii) Where the securities are not offered to the public.

Q13. Jul 21 Exams (3 Marks)

ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

Answer

Information Memorandum together with Shelf Prospectus is deemed Prospectus. The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to **Section 31**]

Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,

No further prospectus is required for issue of securities. [Sub-section (1)]

Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is correct.

Q14. Jul 21 RTP

Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

Answer

According to **Section 30**, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:
(i) the objects,
(ii) the liability of members and the amount of share capital of the company,
(iii) the names of the signatories to the memorandum,
(iv) the number of shares subscribed for by the signatories, and
(v) the capital structure of the company.

Q15. March 21 MTP (6 Marks)

Prakash Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.
Being a public company is it possible for Prakash Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Answer

Refer Q6 Dec 22 Exam as given above for the provision

In the given case Prakash Limited, though a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second of fer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

Q16. March 21 MTP (6 Marks)

An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under these circumstances? Decide referring to the provisions of the Companies Act, 2013.

Answer

Yes, the Director shall be held liable for the false statements made in the prospectus under **sections 34 and 35** of the Companies Act, 2013. Whereas **section 34** imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements.

The only situations when a director will not incur any liability for mis -statements in a prospectus are as under:

(1) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

(2) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:

(i) 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

(ii) 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.

(iii) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the

consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Therefore, in the present case the director cannot escape the liability by stating that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

Q17. April 21 MTP (6 Marks)

How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:
(i) Minimum Amount stated in the Prospectus; and
(ii) Application Money payable on shares.

Answer
The Companies Act, 2013 by virtue of the provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum amount stated in the prospectus and the application money payable in a public issue of shares as under:

Minimum amount stated in a prospectus [Section 39 (1)]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

(i) the amount stated in the prospectus as the minimum amount has been subscribed; and

(ii) the sums payable on application for such amount has been paid to and received by the company.
Application money: Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as Securities and Exchange Board of India (SEBI) may prescribe by making any regulations in this behalf.

Further section 39 (3) provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.

Rule 11 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 mentions that if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

Q18. April 21 Exam (4 Marks)

CDS Ltd. is planning to make a private placement of securities. The Managing Director arranged to obtain a brief note from some source explaining the salient features of the issue of private placement that the Board of Directors shall keep in mind while approving the proposal on this subject. The brief note includes, inter alia, the information / suggestions on the following points:
(i) A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year.
The aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme.
(ii) The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.
The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013.

Answer
As per the provisions of **section 42(2)** of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed.

It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

Referring to the above mentioned provisions of sub-section (2) of section 42 of the Companies Act, 2013 and Rule 14 the Companies (Prospectus and Allotment of Securities) Rules, 2014, we can conclude as follows:

(i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.

The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct.

(ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year.

Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

Q19. Jan 21 Exam (6 Marks)

A Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further reveals that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and A Ltd. received an amount of ₹ 20,00,000 on share application. A Ltd., then proceeded for allotment of shares.
Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013.

Answer
As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in **section 39** of the Companies Act, 2013.

According to **Section 39(1)**, no allotment of any securities of a company offered to the public for subscription shall be made unless-
• the amount stated in the prospectus as the minimum amount has been subscribed, and
• the sums payable on application for the amount so stated have been paid to, and received by the company by cheque or other instrument.
• The amount payable on application on every security shall not be less than five percent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

In the question, A Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.

Further, it revealed that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.

In the given instance, there is compliance to section 23, as nothing is talked about matters required to be included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

The provisions of section 40 of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and

the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.

Consequently, A Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

Q20. Jan 21 RTP

The Board of Directors of Ramesh Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer
Refer Q3 May 22 RTP as given above for the provision.

Q21. May 20 RTP

Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Answer
Under **section 35 (1)** of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Andrew will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any mis- statements in the prospectus under the following situations:

(i) Under **section 26(5)**, that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or

(ii) Under section 35(2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Q22. May 20 MTP (5 Marks)

Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in Andhra Pradesh. The prospectus issued by the company contained some important extracts of the expert report and number of trees in Andhra Pradesh. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Answer
Refer Q16 May 20 RTP as given above for the provision

Q23. Nov 19 Exam (4 Marks)

The Board of Directors of Chandra Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

Answer
Refer Q3 May22 RTP as given above for the provision.

Q24. Oct 19 MTP (5 Marks)

An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

Answer
Refer Q11 March 21MTP as given above for the provision

Q25. May 19 Exam (2 Marks)

Modem Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares. Examine the validity of the above decision under the provision of the Companies Act, 2013.

Answer

Section 40(6) of the Companies Act, 2013 provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed. Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides the conditions. As per Rule 13(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five per cent of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

In the instant case, Modern Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares.

Hence, the company can only pay a maximum of 4% underwriting commission on shares.

Q26. May 19 Exam (4 Marks)

Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.

Answer

Irregular allotment: The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfillment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Q27. Nov 18 Exam (2+4=6 Marks)

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act,2013.

Answer

Shelf prospectus – As per the Explanation given in **Section 31** of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Provisions relating to issue of Shelf-prospectus:

(1) **Filing of shelf prospectus with the registrar**: According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

(3) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(4) **Memorandum together with the shelf prospectus shall be deemed to be a prospectus:** Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Q28. Nov 18 Exam (5 Marks)

Discuss the provisions relating to private placement of shares under the Companies Act, 2013.

Answer

"Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Requirements of offer or invitation for subscription of securities on private placement: [Section 42]

(1) Issue of private placement offer letter: According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.

(2) Offer/invitation to number of persons: The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Offer/ invitation made to more than the prescribed number of persons : If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots,or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

(3) No issue of fresh offer/ invitation: No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
(i) have been completed, or
(ii) that offer or invitation has been withdrawn, or
(iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)

(4) Offer / invitation treated as public offer: Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

(5) Payment of amount: All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) Time for allotment of securities: A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)

Default in allotment of securities: Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:

Separate Bank Account: Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) Offers made to the persons whose name is recorded : All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

(8) No publication required: No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) Filing with the registrar: Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) In contravention of the section: If a company makes an offer or accepts monies in contravention of this section-

Persons liable	**Penalty**
Company, Promoters and Directors	• May extend to the amount involved in the offer or invitation, or
	• Two crore rupees-whichever is higher
Company	• Shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Q29. Nov 18 RTP

Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?

Answer

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

(1) According to **Section 31** of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—

(A) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

(B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus .

Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

Q30. May 18 Exam (6 Marks)

TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

Answer

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission:

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;
3. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars -

a. the name of the underwriters;
b. the rate and amount of the commission payable to the underwriter; and
c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

5. No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Q31. May 18 RTP

Kapoor Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act,2013.

Answer

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. In relation to the case given, the conditions applicable under the above Rules are as under:

(a) The payment of such commission shall be authorized in the company's articles of association;

(b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
(c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

Chapter 4 -Share Capital & Debentures
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (5 Marks)

"A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." in reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013.

Answer:

Pre-requisites for issue of bonus shares

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

a. it is authorised by its Articles,
b. it has on the recommendation of the Board, been authorised in the general meeting of the company.
c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.
d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
f. it complies with such conditions as prescribed by Rule 14 of the Companies (Share capital and debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Q2. May 24 Exam (5 Marks)

MNO limited has the following equity share capital –

Class-1: Equity Share Capital – 3,00,000 equity shares of Rs. 10 each. (1 voting right for every 1 share)	Rs. 30,00,000
Class-2: Equity share Capital – 50,000 equity shares of Rs. 10 each. (1 voting right for every 5 shares)	Rs. 5,00,000

At the time of issue, the company had fulfilled all the conditions related to the issue of equity share capital.

The company wants to vary the voting rights of class 2 equity share capital–

1 voting right for every 5 shares to 1 voting right for every 10 shares.

The Company's Memorandum and Articles of Association have given the company the power to make the variation. The holders of 40,000 equity shares have their consent in writing for this variation.

Out of dissenting shareholders, the holders of 4,500 equity shares want to apply to the Tribunal against the company's action.

Examine, with reference to the relevant provisions of the Companies Act, 2013-

(i) Whether a company can change the rights of its shareholders?

(ii) Whether the dissenting shareholders can apply to the Tribunal?

Answer:

Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.

First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.

Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.

Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three- fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Third – Where the holders of not less than10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

(i) In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.
Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.

(ii) Total number of dissenting shareholders= 50,000- 40,000= 10,000.
Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal= 10% of 50,000=5,000.
In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

Q3. Nov 23 Exam (5 Marks)

What are the requirements outlined in the Companies Act, 2013 regarding the appointment of a 'Debenture Trustee' by a company? Can the following entiti es be designated as a 'Debenture Trustee':

(i) An investor who holds advantageous stake.
(ii) A lender to whom the company has a debt of only Rs. 1,000.
(iii) An individual who has provided a guarantee for the repayment of the debenture amount issued by the company.

Answer:

(a) Appointment of Debenture Trustee: As per section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, provides that no person shall be appointed as a debenture trustee, if he:

(i) beneficially holds shares in the company;
(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
(vi) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Thus, based on the above provisions answers to the given questions are as follows:

(i) An investor who holds advantageous stake cannot be appointed as a debenture trustee.
(ii) A lender to whom company has a debt of only Rs. 1000 cannot be appointed as a debenture trustee. The amount here is immaterial.
(iii) An individual who has provided a guarantee for repayment of debenture amount issued by the company also cannot be appointed as a debenture trustee.

Q4. May 23 Exam (6 Marks)

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders.

The balance sheet of Frontline Limited showed the following positions as at 31st March 2022:

(i) Authorized Share Capital (50,00,000 equity shares of Rs. 10 each) Rs. 5,00,000
(ii) Issued, subscribed and paid-up Share Capital (20,00,000 equity shares of Rs. 10 each, fully paid-up) Rs. 2,00,00,000
(iii) Free Reserves Rs. 50,00,000
(iv) Securities premium account Rs. 25,00,000
(v) Capital Redemption Reserve Rs. 25,00,000

The Board wants to know the conditions of issuing bonus shares under the provisions of the Companies Act, 2013. Also explain, whether the company may proceed for a bonus issue.

Answer:

Conditions for bonus shares

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid- up bonus shares to its members, in any manner whatsoever, out of -

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares [Section 63(2)]: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

Issue of bonus shares: For the issue of bonus shares, Frontline Limited will require reserves of Rs. 1,00,00,000 (i.e. half of Rs. 2,00,00,000 being the paid-up share capital) and the available reserves with the company are of same amount i.e. Rs. 1,00,00,000 (Rs. 50,00,000+ Rs. 25,00,000 + Rs. 25,00,000). Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Q5. May 23 Exam (6 Marks)

Innovative Ltd., a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	*INR (Crore)*
Authorised Share Capital	
100,00,000 Equity Shares of Rs. 10 each	*10.00*
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of Rs. 10 each	*5.00*
Share Premium	*1.00*
General Reserve	*3.52*
Profit & Loss Account	*1.58*

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price Rs. 25 per share with a consideration of Rs. 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

Answer:

Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company. Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Q6. Nov 22 Exam (6 Marks)

Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of Rs.100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to Rs.10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

Answer:

According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid

and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in Section 61 (1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Anika Limited, in the AGM requested the Company to reduce the face value of each share (from INR 100 to INR 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value Rs. 100 each) can reduce the face value of each share to Rs. 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to Rs. 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

How the company can alter its Share Capital

The company has to alter its memorandum in its general meeting as per the procedure contained in Section 13 of the Companies Act, 2013 and give notice to the Registrar along with an altered memorandum.

Q7. Nov 22 Exam (5 Marks)

The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

Authorised Share Capital:

1,00,000 Nos. of Equity Shares of Rs.100 each	*1,00,00,000*
Subscribed and Paid-up Share Capital:	
40,000 Nos. of Equity Shares of Rs. 100 each, fully paid-up.	*40,00,000*
Share Premium Reserve	*50,00,000*
General Reserve	*30,00,000*
Balance in Profit and Loss Account	*20,00,000*
Capital Reserve (profit on sale of Fixed Assets)	*30,00,000*
8% Non-Convertible Debentures	*30,00,000*
9.5% Term Loan from XYZ Bank Limited for purchase of	
Plant and Machinery (Repayment starts after 1 year moratorium period)	20,00,000
Short-term Cash Credit Loan from XYZ Bank Limited	50,00,000
(On hypothecation of stock and receivables of the Company, repayable on demand)	

Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise the company presenting the necessary calculations:

(i) The amount that can be raised by the company by issuing debentures and the resolution, if any, is required to be passed in the General Meeting of the Company in respect of the same?

(ii) What will be your answer in case the above company desired to issue debentures with an option to convert such debentures into shares?

Answer:

The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be in cluded in the borrowings.

The Amount that can be raised by the Company by issuing Debentures: In view of the above provisions, SRD Limited can raise money to the extent of the following amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	**1,40,00,000**

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	**50,00,000**

Here, Short– term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting

= (A) - (B) = Rs. 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed Rs. 90,00,000.

(ii) Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

Q8. Nov 22 RTP

What are provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

(i) A shareholder of the company who has shares of Rs. 10,000.

(ii) A creditor whom the company owes Rs. 999 only.

(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.

Answer:

Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-

(1) beneficially holds shares in the company;

(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

Thus, based on the above provisions answers to the given questions are as follows:

(i) A shareholder who has holds shares of Rs.10,000, cannot be appointed as a debenture trustee.

(ii) A creditor whom company owes Rs.999 cannot be appointed as a debenture trustee. The amount owed is immaterial.

(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures, cannot be appointed as a debenture trustee.

Q9. May 22 Exam (3 Marks)

SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition

be approved by the Tribunal in the light of the provisions of the Companies Act, 2013? Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Answer
According to **section 55(3)** of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

➢ with the consent of the holders of three-fourths in value of such preference shares, and

➢ with the approval of the Tribunal on a petition made by it in this behalf issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.

If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

Q10. May 22 Exam (5 Marks)

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹ 10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.

Answer
According to **section 61** of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

(1) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the

passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.

According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting.

However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.

Accordingly, in the light of the stated facts, following shall be the answers:

(i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.

(ii) According to section13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

Q11. March 22 MTP (3 Marks)

"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

Answer

According to proviso to **section 68(2)** of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

Section 68 (8) casts an obligation that where a company completes a buy -back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Keeping in view of the above provisions, the statement “the offer of buy -back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions” is not valid.

Q12. Dec 21 Exam (3 Marks)

Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Particulars		Amount(₹)
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹ 10 each	1,00,000	
1,00,000 equity shares of ₹ 10 each	10,00,000	11,00,000
Issued & Subscribed Capital:		
8000,12% Preference Shares of ₹ 10 each fully paid up		80,000
90,000 equity shares of ₹ 10 each, ₹ 8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		
(a) Long-term borrowings:		
Secured Loan: 12% partly convertible Debenture @ ₹ 100 each		5,00,000

On 1st April, 2020 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.
Answer the following questions according to the Companies Act, 2013, in above case:
(A) Which of the above-mentioned sources can be used by company to issue bonus shares?
(B) Calculate the amount to be capitalized from free reserves to issue bonus shares?
(C) If the company did not ask for the final call on April 1st, 2020. Can it still issue bonus shares to its members?

Answer
Issue of Bonus Shares
(1) According to **section 63 (1)** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.
However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) Section 63 (2) provides that the company can issue bonus shares only when the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

(A) The following sources can be used by the company to issue bonus shares:
1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

(B) Amount of bonus shares to be issued = 90,000 shares x ¼
= 22,500 shares

Amount that ought to be capitalized for issue of bonus shares
= 22,500 x ₹ 10 per share
= ₹ 2,25,000

Total amount available to be capitalized from free reserves to issue bonus shares
= 1,20,000+25,000+2,00,000
= ₹ 3,45,000

Hence, the amount to be capitalized from free reserves to issue bonus shares will be ₹ 2,25,000.

(C) A company can issue bonus shares on only fully paid shares. Hence, if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.

Q13. Dec 21 Exam (4 Marks)

What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?
(i) A shareholder of the company who has shares of ₹ 10,000.
(ii) A creditor whom the company owes ₹ 999 only.
(iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.

Answer
Appointment of Debenture Trustee: Under **section 71 (5)** of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-
(1) beneficially holds shares in the company;
(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
Thus, based on the above provisions answers to the given questions are as follows:
(i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee.
(ii) A creditor whom company owes ₹ 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Q14. Dec 21 RTP

500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?

Answer

According to **Section 46(1)** of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of then person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.
However, a forged transfer is a nullity. It does not give the transferee (Mr. Amit) any title to the shares. Similarly, any transfer made by Mr. Amit (to Mr. Abhi) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if company acts on a forged transfer and removes name of the real owner (Mr. Manoj) from the Register of Members, then the company is bound to restore the name of Mr. Manoj as the holder of the shares and to pay him any dividends which he ought to have received.
In the above case, therefore, Mr. Manoj has right against the company to get the shares recorded in his name. However, neither Mr. Amit nor Mr. Abhi have any rights against the company.

Q15. Dec 21 RTP

Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain?

Answer

Sweat Equity Shares is governed by **Section 54** of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.

According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.
Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity

share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

Q16. Oct 21 MTP (6 Marks)

(a) Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2021:

		₹
(1)	Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:
(i) Whether company can give bonus shares in the ratio of 1:3?
(ii) What if company decide to give bonus shares in the ratio of 1:2? ?

Answer
Issue of bonus shares: As per **Section 63** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of ₹12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.

Accordingly:
(i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, Silver Oak Limited can go ahead with the bonus issue in the ratio of 1:3.
(ii) In case Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., 1/2 x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.

Q17. Nov 21 MTP (6 Marks)

Kat Pvt. Ltd., is an unlisted company incorporated on 2.6.2012. The company have a share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees on 5.7.2021. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up

company. How would you justify these facts in relation to the provisions for issue of sweat equity shares by a start-up company, with reference to the provisions of the Companies Act, 2013? Explain.

Answer
Refer Q7 Dec 21 RTP as given above for the provision.

Q18. Nov 21 MTP (5 Marks)

Mr. Nirmal has transferred 1000 equity shares of Perfect Private Limited to his sister Ms. Mana. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nirmal or Ms. Mana within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

Answer
The problem given in the question is governed by **Section 58** of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against such refusal.

In the present case, the company has committed the wrongful act of not sending the notice of refusal to register the transfer of shares.

Under section 58 (1), if a private company limited by shares refuses to register the transfer of, or the transmission by operation of law of the right to any securities or interest of a member in the company, then the company shall send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

In this case, as the company has not sent even a notice of refusal, Ms. Mana being transferee can file an appeal before the Tribunal within a period of sixty days from the date on which the instrument of transfer was delivered to the company.

Q19. Jul 21 Exam (3 Marks)

"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy -back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

Answer
Refer Q3 March 22 MTP as given above for the provision.

Q20. Jul 21 RTP

Shiva Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2020 showed the following position:
1. Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹ 2,50,00,000
2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid-up) ₹ 1,00,00,000
3. Free Reserves ₹ 3,00,00,000
The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Answer
According to **Section 63** of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.
Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
(i) it is authorised by its Articles;
(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;
(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies
(Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.
Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

For the issue of bonus shares Shiva Cement Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Q21. April 21 MTP (5 Marks)

Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

Answer

Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, **section 67 (3)** of the Companies Act, 2013, permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid -up shares in the company or its holding company to be held by them by way of beneficial ownership.

Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.

Purchasing in order to redemption its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of section 68 of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and upto specified limits and only after following the prescribed procedure.

Q22. Jan 21 Exam (3 Marks)

London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy-back 30 percent of its equity share capital. The articles of the company empower the company for buy-back of shares. Explaining the provisions of the Companies Act, 2013, examine:
(A) Whether company's proposal is in order?
(B) Would your answer be still the same in case the company instead of 30 percent, decides to buy-back only 20 per cent of its equity share capital?

Answer
According to the provisions of **section 68(2)** of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub-section (1), unless—

(a) the buy-back is authorised by its articles;
(b) a special resolution has been passed at a general meeting of the company authorising the buy-back;
Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

In the instant case, London Limited, at a general meeting of members of the company, passed an ordinary resolution to buy back 30% of its equity share capital. The articles of the company empower the company for buy back of shares.

(A) The Company's proposal is not in order, since a special resolution as required by the above provision has not been passed, rather an ordinary resolution has only been passed.
(B) if the company instead of 30%, decides to buy back only 20% (even if it is within the specified limit of 25%) of its equity share capital, then also special resolution is required. Hence, our answer will not change. This proposal of the company will also be not in order.

Q23. Jan 21 RTP

Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:
Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each) ₹ 2,50,00,000
Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹ 1,00,00,000
Free Reserves ₹ 3,00,00,000
The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

Answer
Refer Q12 Jul 21 RTP as given above for the provision

Q24. Oct 20 MTP (6 Marks)

OEMR Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to its Human Resource Manager Mr. Shyam Kumar, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹ 40,000 per month, to buy 500 partly paid-up equity shares of ₹ 1,000 each in OEMR Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer
Restrictions on purchase by company or giving of loans by it for purchase of its share: As per **section 67 (3)** of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:
(a) The employee must not be a director or Key Managerial Personnel;
(b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
(c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Shyam Kumar is not a Key Managerial Personnel of the OEMR Limited. Further, he is drawing a salary of ₹ 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of ₹ 1000 each of OEMR Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OEMR Limited in granting a loan of ₹ 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:
i. The amount of loan is more than 6 months' salary of Mr. Shyam Kumar, the HR Manager. It should have been restricted to ₹ 2,40,000 only.
ii. The loan to be given by OEMR Limited to its HR Manager Mr. Shyam Kumar is meant for purchase of partly paid shares.

Q25. Nov 20 Exam (5 Marks)

The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The

Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:
(i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.
(ii) Conversion of 30 Lakhs partly paid up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹ 2 per share.
State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013.

Answer

(i) Procedure for reduction of share capital-

In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital.

Procedure

(1) Reduction of share capital by special resolution: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
(b) either with or without extinguishing or reducing liability on any of its shares,—
(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Issue of Notice from the Tribunal: The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.

(3) Order of tribunal: The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

(4) Publishing of order of confirmation of tribunal: The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

(5) Delivery of certified copy of order to the registrar: The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(ii) Alteration of Share Capital:

SSP Limited proposes to alter its share capital. The Present authorized share capital ₹ 5 Crore will be altered to ₹ 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum.

A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to -

1. Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.

2. A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of Companies Act, 2013]. The Company has to follow the above procedures to alter its authorized share capital.

Q26. Nov 20 Exam (3 Marks)

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.
Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Answer
As per the provisions of **section 53(1)** read with **section 54** of the Companies Act, 2013, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares. As per the provisions of section 53(2) of the Companies Act, 2013, any share issued by a company at a discount shall be void.

In terms of the above provisions, issue of shares by ABC Limited at a discount of ₹ 1 per share is not valid.

In case the above shares have been issued to employees as Sweat equity shares , then the issue of shares at discount is valid. [Section 54(1) of the Companies Act, 2013.

Q27. Nov 20 RTP

K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer
Refer Q16 Oct 20 MTP, as given above for the provision.

Q28. May 20 MTP (6 Marks)

Aptech Technology Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid- up share capital of Rs. 200 crores. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

Answer

Sweat equity shares of a class of shares already issued.

According to **section 54** of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

(i) the issue is authorised by a special resolution passed by the company;

(ii) theresolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Aptech Technology Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Q29. May 20 MTP (5 Marks)

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.

Answer

Refer Q6 Dec 21 RTP, as given above for the provision.

Q30. Nov 19 Exam (5 Marks)

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them.

The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.?

Answer

According to **section 62** of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days or such period as prescribed (7 days as per rules) and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Q31. Nov 19 Exam (5 Marks)

XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,
(i) Decide, whether the company's proposal is in order.
(ii) What will be your answer if buy back offer date is revised from Jan 5th, 2019 to Jan 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

Answer
(i) In the instant case, the company's proposal is not in order due to the following reasons:
(A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per **section 68(2)(c)** of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
(B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

(C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to section 68(2)]
(D) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Q32. Oct 19 MTP (4 Marks)

The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered.

Answer
Alteration of Capital: Under **section 61(1)** of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:
(i) increase its authorized share capital by such amount as it thinks expedient;
(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares
However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination
(iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
(v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of section 13 of the Companies Act, 2013.

Q33. Oct 19 MTP (6 Marks)

Mr. Transferor has transferred 1000 shares of Perfect Ltd. to Ms. Receiver. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Transferor or Ms. Receiver respectively within the prescribed period. Examine the given situation and discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer
The problem as asked in the question is governed by **Section 58** of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58(4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub - section (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

In the present case Ms. Receiver can make an appeal before the tribunal and claim damages.

Q34. May 19 RTP

Walnut Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹ 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

Answer
According to **section 52** of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.
The securities premium account may be applied by the company—
(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
(e) for the purchase of its own shares or other securities under section 68

Q35. May 19 RTP

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of ₹ 200 crores. Within this small time of 4 months it has earned huge profits and

has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.

Answer
Refer Q20 May 20 MTP, as given above for the provision.

Q36. Nov 18 Exam (2 Marks)

ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

		₹
(1)	Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2)	Free reserves	5.00 lacs
(3)	Securities Premium Account	3.00 lacs
(4)	Capital redemption reserve account	4.00 lacs
(5)	Revaluation Reserve	3.00 lacs

Directors of the company seeks your advice in following cases:
(i) Whether company can give bonus shares in the ratio of 1:3?
(ii) What if company decide to give bonus shares in the ratio of 1:2?

Answer
Refer Q8 Oct 21 MTP as given above for the provision.

Q37. Nov 18 RTP

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

Answer
Under **section 67 (2)** of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

Q38. Nov 18 RTP

Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

Answer

According to section 48 of the Companies Act, 2013-

(1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(2) No consent for variation: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Q39. Nov 18 RTP

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

Answer

Issue of Further Shares: Section 62(1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue

of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-
(a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
(b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer,

Q40. May 18 Exam (4 Marks)

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

Answer
Refusal for Registration of transferred/transmitted securities: According to **Section 58 (4)** of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Remedies available to the Transferee against the company: Section 58(5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—
(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Q41. May 18 Exam (3 Marks)

Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following
(i) Is special resolution required to be passed?
(ii) What is the time limit for completion of buy-back?
(iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

Answer

Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless-

(a) The buy-back is authorized by its articles;

(b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—

(1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per **section 68(4)**, every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

The above buy-back is possible when backed by the authorization by the articles of the company.

Q42. May 18 Exam (6 Marks)

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

Answer

Conditions for the issue of equity shares with differential rights [Rule 4 of the Companies (Share capital and Debenture) Rules, 2014]: No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(1) the articles of association of the company authorizes the issue of shares with differential rights;

(2) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.

However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(3) the voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
(4) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
(5) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
(6) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
(7) However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
(8) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Q43. May 18 RTP

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed?

Answer
In terms of **section 68(2) (c)** of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:
(a) Free reserves or
(b) Security Premium account or
(c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

Q44. May 18 RTP

Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer
Refer Q25 Oct 19 MTP, as given above for the provision.

Chapter 5 - Acceptance Of Deposits By Companies Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (2 Marks)

Okara Limited, a company. having a net worth of Rs.110 crore and a turnover of Rs.450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public.

Answer:

According to section 76 (1) of the Companies Act, 2013, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits. Okara Limited is having net worth of Rs. 110 crore. Hence, it falls in the category of 'eligible company' and thus can accept the deposits from public.

Q2. May 24 RTP

NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was

Rs. 90 crore and turnover for the year 2022-23 was Rs. 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company. Furthermore, the company has accepted a loan of Rs. 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

(i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not?

Answer:

(i) As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly:

- It should be a public company.
- It should have net worth of minimum Rs. 100 crore or a turnover of minimum Rs. 500 crore.

- It has obtained the prior consent by means of a special resolution passed in general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the turnover of NOP Limited is Rs. 510 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.

Q3. Nov 23 Exam (4 Marks)

WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of Rs. 25 crore. According to financial results of the company as on 31.3.2022 net worth of the company was Rs. 120 crore and turnover for the year 2021-22 was Rs. 350 crore. The company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of Rs. 1.5 crore from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty four months. Company in its books of account, records the receipt as a loan under non- current liabilities. At the time of advancing loan, Mr. Seth affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

(i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of the Companies Act, 2013?

(ii) With reference to the loan advanced by Mr. Seth to company, state whether the same is to be classified as a deposit or not?

Answer:

(i) As per Rule 2(1)(e) Companies (Acceptance of Deposits) Rules, 2014, the term 'eligible company' means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly,

- It should be a public company.
- It should have net worth of minimum Rs. 100 crore or a turnover of minimum Rs. 500 crore.
- It has obtained the prior consent by means of a special resolution passed in general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

In the instant case, the net worth of WEE Remedies Limited is Rs. 120 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

The tenure for the proposed deposits dated 1st November 2022 which would be due for repayment on 30th September, 2027, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In terms of Rule 2(1)(c)(viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, the said deposits by Mr. Seth shall not be treated as deposit.

Q4. May 23 Exam (5 Marks)

Mr. Raj is an employee of DSP Trading Pvt Ltd. As per his contract of employment, his annual salary is Rs. 5,00,000. Mr. Raj paid to the company Rs. 5,30,000 in the nature of non- interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, define deposit and decide whether this amount received from Mr. Raj will be considered as deposit as per rule 2(1)(c)?

Answer:

Deposit: According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a

contract of employment with the company in the nature of non- interest-bearing security deposit is not considered as deposit.

In the instant case, Rs. 5,30,000 was received by DSP Trading Private Limited as a non- interest-bearing security deposit, from its employee, Mr. Raj, who draws an annual salary of Rs. 5,00,000 under a contract of employment.

Accordingly, amount of Rs. 5,30,000 received from Mr. Raj, will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c) of the Act, as the amount received from Mr. Raj is more than his annual salary of Rs. 5,00,000.

Q5. May 23 RTP

Answer the following citing relevant provisions of the Companies Act, 2013:

(a) Wire Electricals Limited having paid-up capital of Rs. 1.00 crore availed a term loan of Rs. 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

(b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?

Answer:

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Taar that the term loan of Rs. 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

(b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.

Q6. May 22 RTP

Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹ 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit?

Answer

As per **sub-clause (ixa) of Rule 2(1)(c)** of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of

the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

Hence, ₹ 1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

Q7. March 22 MTP (4 Marks)

The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not?

Answer

According to **Rule 2(1)(c)** of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:
(a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
(b) the loan is provided by the promoters themselves or by their relatives or by both; and
(c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

Q8. April 22 MTP (4 Marks)

Comment quoting relevant provisions of the Companies Act, 2013, whether the following amounts received by a company will be considered as deposits or not:
(i) ₹ 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.

(ii) Textile Traders Limited received a loan of ₹ 30,00,000 from R who is one of its directors.

Answer

Rule 2(1)(c) of the CAD Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) In terms of **Rule 2 (1)(c)(x)**, any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit, shall not be treated as deposit.

₹ 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ₹1,50,000, as a non-interest bearing security deposit under a contract of employment will be

considered as deposit in terms of sub-clause (x) of Rule 2(1)(c), for the amount received is more than his annual salary of ₹ 1,50,000.

(ii) In terms of **Rule 2(1)(c)(viii)**, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, ₹ 30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

Q9. Dec 21 Exam (5 Marks)

Discuss the following situations in the light of 'Deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ₹ 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Shriram Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?

(iii) The turnover of Y Ltd. is ₹ 400 crore as per last audited financial statement and net worth is ₹50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013?

Answer

(i) In terms of **Rule 2 (1)(c)(xvii)** of the CAD Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received ₹ 20.00 lacs from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ₹ 25.00 lacs. Hence, the amount of ₹ 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

(ii) According to **Rule 3 (1)** of the CAD Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an **exception** to this rule, for the purpose of meeting any of its short- term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(1) such deposits shall not exceed 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(2) such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(iii) As per **Rule 2(1)(e)** of the CAD Rules, 2014, the term **"eligible company"** means a public company as referred to in **section 76 (1)** having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution. Thus, a public company can accept deposit from public if it is an eligible company.

In the given question, Y Ltd. has a turnover of ₹ 400 crore and net worth of ₹ 50 crore. Hence, it cannot be termed as an eligible company and thus can not accept deposits from the public.

Q10. Oct 21 MTP (4 Marks)

Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.

Answer

Rule 2(1)(c) of the CAD Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) Refer Q1 May 22 RTP as given above for the provision.

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c), for the amount received is more than his annual salary of ₹ 1,50,000.

Q11. Oct 21 MTP (5 Marks)

Who all cannot be appointed as a trustee for the depositors. Enumerate with reference provisions to the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

Answer

In this respect following provisions are required to be observed as mentioned in **Rule 7** of the CAD Rules, 2014:

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:
(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
(e) is related to any person specified in clause (a) above.

Q12. Jul 21 Exam (4 Marks)

The Promoters of Jayshree Spinning Mills Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?

Answer

Refer Q2 March 22 MTP as given above for the provision.

In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of Jayshree Spinning Mills Limited will be regarded as deposit.

Q13. March 21 MTP (4 Marks)

NIM Private Limited is engaged in the business of manufacturing household plastic goods. The books of accounts of the company provides that aggregate of its paid-up capital, free reserves and security premium account is Rs. 35.00 lacs. The company intends to accept deposits from its members to the extent of Rs. 35.00 lacs. Advise the company whether it can do so. Support your answer as per the provisions of the Companies Act, 2013.

Answer

As per the provisions of **Section 73 (2)** of the Companies Act, 2013 read with **Rule 3 (3)** of the CAD Rules, 2014, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves

and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

In the given question, since NIM Private Limited is a private company hence it may accept monies to the extent of Rs. 35.00 lacs as deposits from its members.

Q14. April 21 MTP (2 Marks)

A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. State, with reasons, whether the following statement is 'True or False'?

Answer

As per **Rule 3 (5)** of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is **'false'**.

Q15. Jan 21 Exam (4 Marks)

RS Ltd. received share application money of ₹ 50.00 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit.

The share application money of ₹ 5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of ₹ 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

Answer

According to **Rule 2(1)(c)** of the CAD Rules, 2014, the following category of receipt is not considered as deposit:

Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, RS Limited has received ₹50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30.07.2019 the company adjusted the amount of ₹5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:
(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of ₹50 Lac as 'Deposits' on 31.07.2019.

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ₹5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

Q16. Jan 21 Exam (3 Marks)

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
Safar Limited having a net worth of ₹130 crore wants to accept deposits from its members. It has approached you to advise whether it falls within the category of an eligible company? What special care has to be taken while accepting such deposits from members?

Answer

Refer Q4 Dec 21 Exam as given above for the provision.

According to Rule 4 (a) of the CAD Rules, 2014, an **'eligible company'** shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Safar Limited is having a net worth of ₹130 crores. Hence, it falls in the category of 'eligible company'.

The fact that turnover has not been stated in the question will not affect this answer, since fulfilling any one criteria will be sufficient.

Thus, Safar Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Q17. Nov 20 RTP

State, with reasons, whether the following statements are true or false?

(i) XYZ Private Limited may accept the deposits from its members to the extent of ₹ 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹60.00 Lakh.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

Answer
(i) Refer Q8 March MTP as given above for the provision.

Therefore, the given statement of eligibility of XYZ Private Ltd. to accept deposits from its members to the extent of ₹ 60.00 lakh is **True**.

(ii) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is **False**.

Q18. Nov 20 Exam (6 Marks)

Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:
Paid up share capital ₹ 70 Crores
Securities Premium ₹ 20 Crores
Free Reserves ₹ 20 Crores
Long-term borrowings ₹ 50 Crores
The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.
(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.
(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act.

Answer
(i) According to **Rule 2(1)(e)** of the Companies (Acceptance of Deposits) Rules, 2014 **"eligible company"** means a public company as referred to in **section 76(1)** of the Companies Act, 2013, having a net worth of not less than ₹ 100 cr. or a turnover of not less than₹ 500 cr. and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Provided that an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c) , may accept deposits by means of an ordinary resolution.

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:
Paid up share capital: ₹ 70 crores
Free Reserves: ₹20 crores
Securities premium: ₹ 20 crores
Total: ₹ 110 crores
Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹ 100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.
Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (outstanding deposit under plan A) = 16.5 crores.

(ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan B: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Q19. May 20 MTP (4 Marks)

Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.

(ii) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

Answer
(i) Refer Q3 April 22 MTP as given above for the provision

If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

(ii) According to **section 73 (1)** of the Companies Act, 2013, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance or renewal of deposit from public shall not apply to it. In other words,it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Q20. Nov 19 Exam (6 Marks)

Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;

(i) ₹ 5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.

(ii) ₹ 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.

(iii) Amount of ₹ 3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.

Answer
Deposit: According to **section 2 (31)** of the Companies Act, 2013, the term **'deposit'** includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) (c) of the CAD Rules, 2014, in consultation with the Reserve bank of India.

In terms of Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

(i) In the first case, where ₹ 5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.

(ii) In the second case, ₹ 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.

(iii) In the third case, amount of ₹ 3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Q21. May 19 Exam (2 Marks)

State, with reasons, whether the following statements are True or False?

(i) ABC Private Limited may accept the deposits from its members to the extent of ₹ 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ₹ 50.00 Lakh.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

Answer
(i) ReferQ8 March 21 MTP as given above for the provision.

Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of ₹50.00 lakh is **True**.

(ii) Refer Q9 April 21 MTP as given above for the provision

Therefore, the given statement prescribing the limit of 25% to accept deposits is **False**.

Q22. May 19 RTP

Ashish Ltd. having a net-worth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members.

Answer
Acceptance of deposit from public: According to **section 76** of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in section 73 (2) and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for

informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Q23. Nov 18 Exam (6 Marks)

State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies?

Answer

Acceptance of deposit by company from its members: As per **section 73(2)** of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—

(a) By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
(b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
(c) Depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";
(d) Providing such deposit insurance in such manner and to such extent as may be prescribed;
(e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
(f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Exemptions to Private Limited Companies

In case of private company - Points (a) to (e) above shall not apply to private Companies-

(A) which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:-
(a) It is not an associate or a subsidiary company of any other company;
(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
(c) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Q24. May 18 Exam (6 Marks)

Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

Answer
Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

(1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

(2) The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

(3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -
(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
(c) has any material pecuniary relationship with the company;
(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
(e) is related to any person specified in clause (a) above.

(4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

However, in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Chapter 6 - Registration Of Charges
Past Exams, RTP & MTP Questions Compiler

Q1. Nov 23 RTP

A Limited Company raised the secured deposit of Rs. 80 crore an 30th June, 2023 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	Rs. 55 crore
Plant & machinery	Rs. 15 crore
Factory Shed	Rs. 10 crore
Trade Mark	Rs. 10 crore
Goodwill	Rs. 15 crore

Decide on the validity of the charges created with reference to the provisions of the Companies Act, 2013.

Answer:

As per second proviso to section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.

In the given question,

Particulars	**Amount (in Rs.)**
Total value of security (value of assets on which charge can be created)	55+15+10 [Land and Building, Plant & machinery and Factory Shed] = 80 crore
Total deposits accepted and interest payable thereon	80+ [(80*12%)*3 years] = 108.8 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

Q2. May 23 Exam (5 Marks)

City Bakers Limited obtained a term loan of Rs. 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company

against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013.

Answer:

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013):

Section 80 provides that where any charge is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Alternate Answer to this part of question (Extension of Time Limit)

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. Provisions relating to extension of time limit as under:

(i) Charges created before 02-11-2018: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

Further, if the charge is not registered within the extended period of 300 days, it shall be done within six months from 02-11-2018 on payment of prescribed additional fees.

(ii) Charges created on or after 02-11-2018: In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration

to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Q3. Nov 22 Exam (5 Marks)

Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Answer:

In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances:

According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

Q4. Nov 22 Exam (4 Marks)

Perfect Limited Company raised the secured deposit ofRs.100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	Rs. 60 crores
Plant & machinery	Rs. 20 crores
Factory Shed	Rs. 20 crores
Trade Mark	Rs. 20 crores
Goodwill	Rs. 25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Answer:

As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	**Amount (Rs.)**
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

Q5. May 22 Exam (4 Marks)

Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, of the Companies Act, 2013, discuss:

(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?

(2) When can the Registrar refuse to register the charges in the present scenario?

Answer

(1) **Registration by charge holder: Section 78** of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

Accordingly, if a charge is created, the company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner. In light of above provisions, the Nationalized Bank can get the charges registered.

(2) **Registrar refuse to register the charges:** However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Q6. May 22 RTP

Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013.

Answer

According to **section 77(1)** of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

(a) Krish Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).
Taking advantage of clause (b) of first proviso to section 77 (1), Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but company is required to pay ad valorem fees. If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.
Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3 rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non - registration of charge.

Q7. April 22 MTP (4 Marks)

Mr. Parth purchased a commercial property in Delhi belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Parth comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on

the property of the company. Explain, whether the contention of PQR Limited is correct? Give your answer as per the provisions of the Companies Act, 2013.

Answer

According to **section 80** of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Parth, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property.

In view of above, the contention of PQR Limited is correct.

Q8. Nov 21 MTP (4 Marks)

Mr. Pam purchased a commercial property in Delhi belonging to ABC Limited after entering into an agreement with the company. At the time of registration, Mr. Pam comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of ABC Limited is correct?

Answer

Refer Q3 April 22 MTP as given above for the provision.
In view of above, the contention of ABC Limited is correct.

Q9. March 21 MTP (3 Marks)

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

Answer

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

(i) **in case property is situated outside India:** where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

(ii) **in case property is situated in India (whether wholly or partly):** where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Q10. March 21 MTP (4 Marks)

Mr. A is working with a reputed Chartered Accountant firm in Delhi. After gaining an experience of 5 years, now Mr. A is planning to open his own firm A and Associates. He has now purchased a commercial property in Delhi belonging to Kesha Limited after entering into an agreement with the company. At the time of registration, Mr. A comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of Kesha Limited is correct? Give your answer with respect to the provisions of the Companies Act, 2013.

Answer
Refer Q3 April 22 MTP as given above for the provision.

In view of above, the contention of Kesha Limited is correct.

Q11. Jan 21 Exam (3 Marks)

Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013.

Answer
According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

Q12. Nov 20 RTP

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Q13. Oct 20 MTP (4 Marks)

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer

Refer Q8 Nov 20 RTP as given above for the provision.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

Q14. Oct 20 MTP (5 Marks)

ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ₹ 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

Answer

The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013

Section 87 of the Act of 2013 and **Rule 12** empowers the Central Government to order rectification of Register of Charges in the following cases of default:

(i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

(ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore Z Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Q15. Nov 20 Exam (4 Marks)

Rose (Private) Limited on 3rd April 2019 obtained ₹ 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

(i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

(ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

Answer

As per the provisions of **Section 2(16)** of the Companies Act, 2013, **"charge"** means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

(i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for ₹ 30 Lakhs working capital loan, it is required to create a charge on it.

Rose (Private) Limited is not required to create a charge for ₹ 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

(ii) As per the provisions of **Section 77** of the Companies Act, 2013, in case the above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of 30 days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or advalorem fee, as applicable, must also be paid.

Q16. May 20 MTP (5 Marks)

Briefly explain the provisions enforced by the Companies (Amendment) Act, 2019 when a charge created before 02-11-2018 [before the commencement of Companies (Amendment) Act, 2019] is not registered within the prescribed period of thirty days as provided in Section 77 (1) of the Companies Act, 2013.

Answer

As per **Section 77 (1)** of the Companies Act, 2013 every company creating a charge:
a. within or outside India,
b. on its property or assets or any of its undertakings,
c. whether tangible or otherwise, and
d. situated in or outside India,
is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018[before the commencement of Companies (Amendment) Act, 2019] and it was not registered within the prescribed period of thirty days of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

According to clause (a) of the Second Proviso to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

Q17. Nov 19 Exam (5 Marks)

DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Answer

Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The

intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

Q18. Nov 19 RTP

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer
Refer Q8 Nov 20 RTP as given above for the provision.

Q19. Oct 19 MTP (6 Marks)

Answer the following in the light of the companies Act, 2013-

(i) MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

(ii) Mr. Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr. Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

Answer
(i) The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision MNC Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of 60 days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees. Since first sixty days from creation of charge
were expired on 11th May, 2019, MNC Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

(ii) **Notice of Charge :** According to **section 80** of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct.

Q20. May 19 Exam (2 Marks)

State, with reasons, whether the following statements are True or False?
(iii) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.
(iv) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

Answer
(iii) According to the proviso to **section 82(2)** of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.
Hence, the given statement is **True**.

(iv) As per **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.
Hence, the given statement is **True.**

Q21. Nov 18 Exam (6 Marks)

What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.

Answer

Time limit for registration of charge with the registrar: According to **section 77** of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (ROC) Rules, 2014].

Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.

Place of keeping company's register of charges: According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

Inspection of the register of charges and instrument of charges: The register of charges and instrument of charges, shall be open for inspection during business hours—
(a) by any member or creditor without any payment of fees; or
(b) by any other person on payment of such fees as may be prescribed,

-subject to such reasonable restrictions as the company may, by its articles, impose.

Q22. May 18 RTP

Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

Answer

Refer Q3 April 22 MTP as given above for the provision.

Thus, the contention of NRT Ltd. is correct.

Chapter 7 - Management And Administration
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (5 Marks)

LKJ Ltd. is a company having paid up share capital of Rs. 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

Answer:

(i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum. In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.

Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

Q2. May 24 Exam (5 Marks)

Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which
14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:

(i) Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?

(ii) Whether Mr. Rahi could adjourn the meeting in the current scenario?

Answer:

According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.
As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.
Here, the term 'members personally present' refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

(i) Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present.
Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates.
Hence, total 15 members were present at the meeting held on 10.12.2023.
Thus, the requisite quorum was present.
Assumption: It is assumed that these 14 persons are inclusive of Mr. Mohan.

(ii) In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

Q3. May 24 Exam (3 Marks)

In the circumstance where Mr. M and Mr. P, joint shareholders of Primal Private Limited holding 500 equity shares, have conflicting views on one special business (related to proposed changes in the Articles of Association) at the extra-ordinary general meeting, Mr. M is endorsing the resolution, and Mr. P is dissenting. Determine the procedure for casting the vote in the event of such a situation, as per the guidelines outlined in the Companies Act, 2013.

Answer:

As per the Companies Act, 2013, in case of joint shareholders, they must concur in voting unless the articles provide to the contrary.

As per Regulation 52 of Table F, the voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members.
Accordingly, in case of Mr. M and Mr. P, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is cast in favour of resolution or against it.

Q4. May 24 RTP

Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of Rs. one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

Answer:

(i) In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under:
"In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting."
Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. Rs. 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.

(ii) The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:

(a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.

(b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.

(c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.

(d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.

(e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

Q5. Nov 23 Exam (5 Marks)

Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of Rs. 1,000 crore. According to financial statements as on 31st March, 2023, paid-up capital of company was Rs. 600 crore and free reserves were Rs. 650 crore. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.

MCL is planning to expand its existence throughout the country. For this purpose, company has taken Rs. 200 crore term loan and Rs. 125 crore of working capital loan from Banks on 18thJune, 2023. Charge was created on all the assets of company on that day for above loan of Rs. 325 crore, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.

MCL wants to convene its 23rd AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22ndAugust, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plan.

With reference to provisions of the Companies Act, 2013, answer the following questions:

(i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid?

(ii) Which type of Charge was created by company on 18th June, 2023? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of the Companies Act, 2013?

(iii) Whether the notice given to convene AGM at shorter notice was in compliance of the Companies Act, 2013?

Answer:

(i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 shall be kept at the registered office of the company. Section 88(1) provides that every company shall keep and maintain the register of members.

However, such registers may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company. So, Majboot Cement Limited (MCL) can keep the Registers of Members at Faridabad (as around 15% of total members are resident of Faridabad) by passing a Special Resolution at a general meeting.

(ii) A 'Floating Charge' is created on assets or a class of assets which are of fluctuating nature or changing in nature like raw material, stock-in-trade, debtors, and the like. The assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale.

In the instant case, since charge was created on all the assets of company on that date (i.e. on 18th June, 2023) for loan of Rs. 325 crore, it is type of Floating Charge.
As per section 77 of the Companies Act, 2013, if the registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.
If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.
In the instant case, MCL created a charge on 18th June, 2023 but failed to register it. On 18th August, it filed the application for registration of charge. Since the charge has to be filed by 17th August, 2023 (within 60 days from 18th June, 2023) with additional fees, the application can be filed within a further period of sixty days i.e. by 17th October, 2023 after payment of prescribed ad valorem fees.

(iii) According to section 101(1) of the Companies Act, 2013, general meetings need to be called by giving at least a notice of 21 clear days.
However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than 95% of the members entitled to vote thereat.
In the instant case, MCL wants to convene its AGM on 10th September, 2023 by giving shorter notice which is consented by only 78% of the members. Hence, shorter notice is not in compliance with the provisions of the Act.

Q6. Nov 23 Exam (4 Marks)

Sunshine Limited, an unlisted company, registered in the State of U.P. with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022- 23 as under:

(i) The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.

(ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.

Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.

Answer:

Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the ci ty, town or village in which the registered office of the company is situated.
However, AGM of an unlisted company may be held at any place in India if consent i s given in writing or by electronic mode by all the members in advance.

Explanation—For the purposes of this sub-section, 'National Holiday' means and includes a day declared as National Holiday by the Central Government.

In the instant case,

(i) Sunshine Limited, an unlisted company, can hold its AGM on 28th September, 2023 which happens to be a holiday declared by U.P. Government because this is not a national holiday.

(ii) Sunshine Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 38 members out of 40 has given their consent for conducting the meeting in Lonavala.

Q7. Nov 23 Exam (4 Marks)

Wills Private Limited convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face

Answer:

1. According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.
   In the instant case, the idea of the directors that since the Annual General Meeting (AGM) was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.
2. Section 92(5) states that if any company fails to file its annual return under sub- section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.
   In the given situation, Wills Private Limited has contravened the provisions of section 92(4). Thus, the company and its every officer in default may face the penalties as specified in section 92(5) of the Act.

Q8. Nov 23 RTP

Shree Limited has an Authorized Capital of 10,00,000 equity shares of the face value of Rs. 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the stock market and requested the company to reduce the face value of each share to

Rs. 10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable, as per the provisions of the Companies Act, 2013.

Answer:

According to section 61(1)(d) of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in i ts general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in section 61(1), give notice to the Registrar in the prescribed form along with an altered memorandum.

In the given situation, shareholders of Shree Limited, in the Annual General Meeting requested the company to reduce the face value of each share (from Rs. 100 to Rs. 10) and increase the number of shares than fixed by the memorandum (i.e. from 10 Lakh to 1 crore).

According to the above provision, Shree Limited, having authorized capital of 10,00,000 equity shares (face value Rs. 100 each) can reduce the face value of each share to Rs. 10 each and increase the shares to 1,00,00,000 [thereby keeping the total amount of authorized share capital to Rs. 10,00,00,000], if authorised by the articles of association. Hence, the request of the shareholders is considerable.

Q9. Nov 23 RTP

The paid-up share capital of Golden Shoes Limited is Rs. 25,00,000 divided into 2,50,000 equity shares of Rs. 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

Answer:

Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register' , containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

Q10. May 23 Exam (4 Marks)

L Ltd. having 2,000 members with paid-up capital of Rs. 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of Rs. 6 lakh in aggregate, has given notice of their intention for a resolution to be

passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.
When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of t he company.
In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co?

Answer:

(i) Special Notice: As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of Rs.1 crore, and it received a notice from its 50 members holding paid-up capital of Rs. 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than Rs. 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[Note: In the given question 50 members are holding paid-up share capital of Rs. 6 lakh. In fact they are holding more than 1% of total voting power as the paid-up share capital of the company is Rs. 1 crore.

This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

(ii) Representation to members: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.

However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

Q11. May 23 Exam (4 Marks)

A General Meeting of ABC Private Ltd was scheduled to be held on 15thApril, 2022 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2022 was deposited by Mr. Y with the company at its registered office on 11-04-2022. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2022 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2022. All the proxies viz., Y, M and N were present before the meeting. According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

Answer:

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. Section 105(4) provides that a proxy received 48 hours before the meeting will be valid. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein.

Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

Q12. May 23 RTP

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:-

Sr.No.	Particulars
1	A member individually holding shares with face value of Rs. 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of Rs. 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of Rs. 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

Answer:

14. In case of Nidhi company –

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than Rs. 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

(i) Two members jointly holding shares with face value of Rs. 1,600 which amounted to 0.32% of the total paid-up share capital

(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Q13. Nov 22 Exam (4 Marks)

TST Limited has Equity Share Capital of 10000 shares @ Rs.10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.

Answer:

Validity of Resolution passed in the EGM called by the Requisitionists

As per Section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.

The requisition made under sub- section 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

If the Board does not, within twenty one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].

Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.

Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be re-imbursed to the requisitionists by the company.

In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding Rs. 30,000 (each holding Rs. 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

Q14. Nov 22 RTP

Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e-voting period and the time of closing of remote e-voting.

Answer:

Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

Q15. Nov 22 RTP

'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

Answer:

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

Q16. May 22 Exam (2+2=4 Marks)

ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

Answer

(i) **Section 96(2)** of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In the given question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

(ii) **Section 102** of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.
Effect of non-disclosure: As per section 102(4), if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.

If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [Section 102(5)].

Q17. May 22 Exam (3 Marks)

Mr. Ram, a shareholder of PQR Ltd., has made a request to the company for providing a copy of minutes book of general meeting. Whether the shareholder of a company is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013.

Answer
In line with **section 119** read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company.

As Mr. Ram, in the given case, is the shareholder of PQR Ltd., so shall be entitled to receive a copy of any minutes book of general meeting.

Q18. March 22 MTP (4 Marks)

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

Answer
(i) According to **section 96** of the Companies Act, 2013, first annual general meeting of the company should be held within nine months from the closing of the first financial year. Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is incorrect.

(ii) According to proviso to **section 96(1)**, the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

Q19. March 22 MTP (5 Marks)

A Ltd. held its Annual General Meeting on September 15, 2021. The meeting was presided over by Mr. B, the Chairman of the Company's Board of Directors. On September 17, 2021, Mr. B, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. B and by whom?

Answer

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of **Rule 25** of the Companies (Management and Administration) Rules, 2014 read with section 118 of the Companies Act, 2013, each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of A Ltd. can be signed in the absence of Mr. B, by any director, authorized by the Board in this respect.

Q20. April 22 MTP (5 Marks)

Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:
(a) Quorum for the general meeting if the company has 800 members.
(b) Quorum for the general meeting if the company has 6500 members.
(c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

Answer

According to **section 103(1)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:
(1) 5 members personally present if the number of members as on the date of meeting is not more than 1000,
(2) 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000,
(3) 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Thus,

(a) If the company has 800 members, quorum shall be 5 members personally present.
(b) If the company has 6500 members, quorum shall be 30 members personally present.
(c) If the company has 5500 members, quorum shall be 30 members personally present.
However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

Q21. Dec 21 Exam (4 Marks)

Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:
(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?
(ii) AGM is going to be held on 07-09-2020. Then what will be the e- voting period and the time of closing?

Answer
(i) **Joint shareholders** must concur in voting unless the articles provide to the contrary.
The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per **Rule 21** of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) **Time period for e-voting:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the Annual General Meeting is going to be held on 7.9.2020, the facility for remote e-voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

Q22. Dec 21 Exam (6 Marks)

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.
(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
(iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.

Answer
(i) **Rule 17** of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be

annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

Hence, it is imperative for joint holders (or by requisitionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

(iii) According to section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

Q23. Dec 21 Exam (5 Marks)

New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2020. The notice was posted to the members on 16th August 2020. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid.
Referring to the provision of the Companies Act, 2013, decide:
(i) Whether meeting has been validly called?
(ii) If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?
(iii) Whether the length of serving of notices be curtailed by Article of Association?

Answer
According to **section 101(1)** of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting, are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected-in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.
Hence, in the given question:
(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Q24. Nov 21 RTP

Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavours- first chocolate and second butterscotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalised?

Answer

According to **section 92(4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

In the above case, the annual general meeting of Nutty Buddy Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Q25. Oct 21 MTP (4 Marks)

Best Limited has decided to conduct its Annual General Meeting on 28th September 2021. They have sent the notice of the meeting on 9th September 2021 (for which they have taken consent from 90% of the members entitled to vote thereat). Comment on the validity of notice of the Annual General Meeting, as per the provisions of the Companies Act, 2013.

Answer

Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of at least 21 clear days', before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.
Generally, general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat

In the given question, the Annual General Meeting (AGM) was called by giving less than 21 days clear days notice. Also, consent for calling the meeting at a shorter notice period was given by only 90% members (i.e. less than 95% members). Hence, such meeting can not be said to be validity called.

Q26. Nov 21 MTP (4 Marks)

Kavita Ltd. scheduled its Annual General Meeting to be held on 11th March, 2020 at 11:00 A.M. The company has 900 members. On 11th March, 2020 following persons were present by 11:30 A.M.

1. P1, P2 & P3 shareholders
2. P4 representing ABC Ltd.
3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders

(i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.

(ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?

Answer

According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

(i) (1) P1, P2 and P3 will be counted as three members.

(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum.Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.

(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of Kavita Ltd. is 5 members personally present.

Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

(ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

Q27. Jul 21 Exam (4 Marks)

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:
(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.
(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.
(iv) There shall be a maximum interval of 15 months between two AGMs.

Answer
(i) Refer Q3 March 22 MTP as given above for the provision.

(ii) Refer Q3 March 22 MTP as given above for the provision.

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.
Hence, the given statement is correct.

(iv) According to section 96, the gap between two annual general meetings should not exceed 15 months. Hence, the given statement is correct, that there shall be a maximum interval of 15 months between two AGMs.

Q28. Jul 21 Exam (5 Marks)

Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:
(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?
(ii) Whether he can authorise his friend to inspect the minutes book on behalf of him by signing a power of authority?

Answer
As per **section 119** of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes .

Accordingly, following are the answers:
(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.
(ii) As provision does not specify anything on authorizing any one else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him

Q29. May 21 RTP

Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

Answer

According to **Section 121**, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee. If the company does not file such report on Annual General Meeting within 30 days of the conclusion of the Annual General Meeting then the company and defaulting officers are liable for prescribed penalties.

Since, Pristine Ltd. is a listed company, hence it has to file a copy of 1 annual Report with the Registrar within 30 days from 31st August, 2020.

Q30. May 21 RTP

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

Answer

A Proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of **Section 105** of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorising N to vote was deposited in less than 48 hours before the meeting.

Q31. Mar 21 MTP (5 Marks)

Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer

According to **Section 96** of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Shambhu Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company.

Q32. April 21 MTP (4 Marks)

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email.
In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

Answer

As per **Rule 18** of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized.

A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email ids are already registered.

In the light of the above provisions of the Act, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

Q33. April 21MTP (5 Marks)

State with reason whether the following statement is correct or incorrect:
(i) An annual general meeting can be held on a national holiday.
(ii) A company should file its annual return within six months of the closing of the financial year.

Answer
(i) An annual general meeting cannot be held on a national holiday. Under **section 96 (2)** of the Companies Act, 2013 every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.
Thus, the statement 'An annual general meeting can be held on a national holiday' is incorrect.

(ii) The statement is incorrect in terms of **section 92 (4)** of the Companies Act, 2013. Section 92 (4) states that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Q34. Jan 21 Exam (3 Marks)

A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

Answer
Section 105 of the Companies Act, 2013 deals with the provisions of proxy for meetings.
Section 105(1) of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Further, Section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Q35. Jan 21 Exam (5 Marks)

Veena Ltd. held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Mohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Mohan Rao, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Mohan Rao and by whom?

Answer

Refer Q4 March 22 MTP as given above for the provision.

Q36. Nov 20 RTP

Chetan Ltd. issued a notice for holding its Annual general meeting on 7th November 2019.The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned?

Answer

Refer Q8 Dec 21 Exam as given above for the provision.

Q37. Oct 20 MTP (4 Marks)

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

Answer

According to **section 92(4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

In the instant case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. The

idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Q38. Nov 20 Exam (2+2=4 Marks)

PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.

On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a Private company?

Answer

According to **section 103** of the Companies Act, 2013, unless the articles of the company for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of section 103(1)(b), in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case,

Q39. May 20 RTP

The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Uttar Pradesh.
(ii) B and C, shareholders of preference shares,
(iii) D, representing Y Ltd. and Z Ltd.
(iv) E, F, G and H as proxies of shareholders.
Can it be said that the quorum was present in the meeting?

Answer
According to **section 103** of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Q40. May 20 RTP

EFG Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held till 30.4.2019. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer
Refer Q16 March 21 MTP as given above for the provision.

Thus, the first AGM of EFG Ltd. should have been held on or before 31st December, 2018. Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

Q41. May 20 MTP (4 Marks)

Examine the validity of the following decision of the Board of Directors with reference of the provisions of the Companies Act, 2013:

In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

Answer

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

(i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(ii) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.
Hence, the contention of the Chairman is not valid.

Q42. Nov 19 Exam (4 Marks)

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:
(i) Resolution to increase the Authorised share capital of the company.
(ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

Answer

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-
(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
(i) every director and the manager, if any;
(ii) every other key managerial personnel; and
(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorised share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q43. Nov 19 RTP

Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ.

Answer

According to **section 96(2)** of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

Q44. Nov 19 RTP

Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to

vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

Answer

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

Q45. Nov 19 RTP

Neemrana Infotech Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer

According to **Section 96** of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the closing of its first financial year.

Also, if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

It also provide that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

In the given case, taking the first financial year of Neemrana Infotech Ltd is for the period 1st April 2017 to 31st March 2018, the first annual general meeting of the company should be held on or before 31st December, 2018.

According to section 99, if any default is made in holding a meeting of the company in accordance with section 96, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meetings, such power does not apply in the case of the first annual general meeting. Thus, the company and its directors will be liable under section 99 of the Companies Act, 2013 for the default if the annual general meeting was held after 31st December, 2018.

Q46. Oct 19 MTP (4 Marks)

At a General meeting of a XYZ Limted, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were

found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

Answer

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

(1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
(2) The notice required under the Companies Act must have been duly given of the general meeting;
(3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

Q47. Oct 19 MTP (5 Marks)

In a General meeting of Alpha Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

Answer

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
(i) is or could reasonably be regarded as defamatory of any person;
(ii) is irrelevant or immaterial to the proceeding; or
(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Q48. May 19 Exam (6 Marks)

Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2018. The notice was posted to the members on 16th October 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with

regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:
(i) Whether the meeting has been validly called?
(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
(iii) Can the delay in giving notice be condoned?

Answer
Refer Q8 Dec 21 Exam as given above for the provision.

Q49. May 19 Exam (5 Marks)

(i) Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India.
Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?
(ii) If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

Answer
(i) According to **section 103(1)(a)(i)** of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company.In the instant case, the quorum for the public company will be 5 members personally present.

In the said company, two members are bodies corporate and one member is the President of India.

Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

As per section 113 of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

(ii) According to **Rule – 20(4)(iii)(C)** of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Q50. May 19 RTP

Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis.
Advise the Board of Directors on the following:
(i) EGM be held in India
(ii) EGM be held in Netherlands

Answer
According to **section 100** of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.
In the light of the above provisions:
(i) The Board of Directors can call the EGM in India.
(ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Q51. Nov 18 Exam (3 Marks)

Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.
Answer
Resolutions requiring special notice [Section 115]
Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding Rs. 5,00,000/- has been paid-up. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Q52. Nov 18 Exam (4 Marks)

KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.
(1) P1, P2 & P3 shareholders

(2) P4 representing ABC Ltd.
(3) P5 representing DEF Ltd.
(4) P6 & P7 as proxies of the shareholders
(i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
(ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
(iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
(iv) What happens if there is no Quorum in the Adjourned meeting?

Answer
Refer Q11 Nov 21 MTP as given above for the provision.

Q53. Nov 18 Exam (4 Marks)

'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.

Answer
Restriction on voting rights [Section 106 of the Companies Act, 2013]
According to the said Section:
(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.
In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

Q54. Nov 18 Exam (3 Marks)

Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct.

Answer

As per the provisions of **Section 92(4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed within the time as specified, under section 403.

In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct.

Q55. Nov 18 RTP

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.
(i) In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer
Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Order of demand for poll by the chairman of meeting: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-
(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power. Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:
(i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.
(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Q56. Nov 18 RTP

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
(i) The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

Answer
(i) According to **section 100 (2)** of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Q57. May 18 Exam (6 Marks)

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it.

Answer
Every company is required to file with the Registrar of Companies, the annual return as prescribed in **section 92**, in Form MGT – 7 except One Person Company and Small Company as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

The particulars contained in an annual return, to be filed by every company are as follows–
1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
4. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
5. Meetings of members or a class thereof, Board and its various committees along with attendance details;
6. Remuneration of directors and key managerial personnel;
7. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
8. Matters relating to certification of compliances, disclosures;
9. Details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors;
10. Such other matters as may be prescribed.

Q58. May 18 Exam (4 Marks)

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea hat the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

Answer

According to **section 92(4)** of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, within the time specified under section 403.

Sub-section (5) of Section 92 also states that if a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.

In the above case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Q59. May 18 Exam (4 Marks)

Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

Answer

For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the annual general meeting. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

Q60. May 18 Exam (5 Marks)

M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.
(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

Answer
(i) **Maintenance of the Register of Members etc.**: As per **section 94(1)** of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

Q61. May 18 RTP

In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?

Answer
Under **Section 118 (5)** of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
(i) is or could reasonably be regarded as defamatory of any person;
(ii) is irrelevant or immaterial to the proceeding; or
(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Chapter 8 - Declaration & Payment Of Dividend
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (5 Marks)

Long Boots Ltd. a listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new Production Manager, Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of Rs. 50 lakh after a gap of eight years during which profits were inadequate to distribute the same.

The dividend thus proposed is to be met partially out of the current year profit of Rs. 16 lakh. Accumulated profits during the past eight years were

Rs. 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

Answer:

According to second proviso to section 123, where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Under Rule 3 such declaration shall be subject to the following conditions:

CONDITION I

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid- up share capital as appearing in the latest audited financial statement.

In the given question, since Long Boots Ltd. current year profits of

Rs. 16 lakh are insufficient to meet the dividend requirement of Rs. 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

Particulars	Amount (in Rs.)
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh
Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Fulfilment of Conditions mentioned in Rule 3

Conditions	Calculation		Met/ Not Met
I	This condition is not applicable the company hasnot declared any dividend in each of the three preceding financial year.		-
II	Paid-up share capital and free reserves	680+ 170	Met
		= 850 lakh (C)	
	10% of (C)	85 lakh	
	Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C)		
III	The company has since made profit in the financial year in which dividend is declared.		Met
IV	Free Reserves (D)	170 lakh	Met
	Amount drawn for payment of dividend (E)	34 lakh	
	Balance of reserves after such withdrawal (F) =(D)- (E)	136 lakh	
	15% of its paid up share capital (G)	102 lakh	
	(F) more than (G)		

In the given question, since all the conditions are met, hence Long Boots Ltd. has validly declared dividend.

Q2. Nov 23 Exam (5 Marks)

The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ Rs. 100 each on 1stApril, 2022 after passing a special resolution in this regard. The company received application money from the members on 15thApril, 2022 but did not make an allotment of shares till 31stJuly, 2022. Instead, during this interim period, the company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and

also decide whether application money can be used for the payment of dividends by the company.

Answer:

As per section 42(6) of the Companies Act, 2013, a company making an offer or invitation under private placement shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

It is provided that the monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:

(1) for adjustment against allotment of securities; or

(2) for the repayment of monies where the company is unable to allot securities.

In the instant case, application money from the members was received on 15th April, 2022 and company did not make an allotment of shares till 31 st July, 2022 i.e. after expiry of the period of 60 days. Hence, the company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

Therefore, the objection raised by the members for non- allotment of shares/ non-refund of share application money within the statutory time limit is valid. However, their claim to pay interest @ 15% is not valid.

Also, the application money cannot be used for the payment of dividends by the company.

Q3. Nov 23 RTP

The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	Dividend Declaration Date	Dividend Amount (Rs.)	Remarks
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value Rs. 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):-

(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?

(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

Answer:

(a) According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:
In case the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.
The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.
Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount (Rs.)	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (Rs.)
800	25.08.2022	800×18%×29/365	**11**

(ii) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was Rs. 100.
So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).
Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.
Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.
Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

Q4. May 23 Exam (6 Marks)

ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.
Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.
The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting.
The general meeting of the shareholders was convened on 31 st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013.

Answer:

Interim dividend: As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]
Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years.

Q5. Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Q6. Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Q7. Nov 22 Exam (6 Marks)

A company has accumulated Free Reserves of Rs.75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of Rs. 12 lakhs. The Board proposes a payment of dividend of Rs.30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?

Answer:

In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions of Rule 3:

Condition 1: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Calculations For Each Condition

Condition 1: This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.

Condition 2: As per the facts, the Board proposes a payment of dividend of Rs. 30 lakhs i.e., 30% on the paid up capital.

So, the Paid up Share Capital of the company = Rs. 100 Lakh Paid-up Capital + Free Reserves = 100+ 75 = Rs. 175 Lakh 10% thereof = Rs. 17.5 Lakh

Hence the dividend to be declared is to be restricted to Rs. 17.5 Lakh.

Condition 3:

Here, Free Reserves = Rs. 75 Lakh

Proposed withdrawal for declaration of dividend Rs. 17.5 Lakh Balance of Reserves = Rs.75 Lakh- 17.5 Lakh = Rs. 57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of Rs. 100 Lakh) i.e. Rs. 15 Lakh.

Thus, the company can declare a dividend of Rs. 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of Rs. 100 lakh.

Hence, the proposal of company for payment of dividend of Rs. 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of Rs. 12 lakh, is invalid.

Q8. May 22 Exam (2 Marks)

ABC Ltd. declared dividend of ₹ 2/- per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ₹ 10 face value each, on which ₹ 10,000 towards call money is due. Whether the dividend amount payable to him be adjusted against such dues as per the provisions of the Companies Act, 2013? Give reasons for your answer.

Answer

As per **section 127(d)** of the Companies Act, 2013, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, ABC Ltd. can adjust the call money dues from Mr. Suresh of ₹ 10,000 against the dividend amount payable to him of ₹ 10,000 (5000 shares x ₹ 2 /- per share).

Q9. May 22 RTP

Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

Answer

As per second proviso to **Section 123(1)** of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year.

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

(b) The total amount to be drawn from such accumulated profits shall not exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(c) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

(d) The balance of reserves after such withdrawal shall not fall below 15% of its paid -up share capital as appearing in the latest audited financial statement.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

Q10. April 22 MTP (5 Marks)

Guru limited is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediate preceding year. Is the act of the Board of Directors valid?

Answer

As per **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Guru Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the financial year 2018-2019 is not valid.

Q11. Dec 21 Exam (2 Marks), Nov 21 RTP, Nov 21 MTP

The Board of Directors of ABC Limited at its board meeting declared dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors.

Answer

According to **section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

The Board of Directors of ABC Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors diverted the total dividend to be paid to the shareholders for purchase of investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to the Unpaid Dividend Account.

2. The Board of Directors of ABC Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Q12. Oct 21 MTP (3 Marks)

The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

Answer

The given problem is based on the proviso provided in the **section 127 (d)** of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

Q13. Jul 21 Exam (3 Marks)

ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A

received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

Answer

Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021). It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

Q14. March 21 MTP (6 Marks)

(i) Vishal Limited declared and paid 10% dividend to all its shareholders except Mr. Ricky, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Ricky doesn't tally with the records of the bank. The company, however, did not inform Mr. Ricky about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

(ii) Kumar, holder of 5000 equity shares of Rs. 100 each of Vicky Limited did not pay final call of Rs. 10 per share. Vicky Limited declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

Answer

(i) **Section 127** of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, Vishal Ltd. has failed to communicate to the shareholder Mr. Ricky about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

(ii) As per the proviso to **section 127** of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member against the dividend declared by the company.

Thus, as per the given facts, Vicky Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, call money of Rs. 50,000 not paid by Kumar can be adjusted fully from the entitled dividend amount of Rs. 50,000 payable to him.

Q15. April 21 MTP (5 Marks)

Alpha Limited is facing loss in business during the financial year 2019-2020. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid ? Give your answer as per the provisions of the Companies Act, 2013.

Answer
Refer Q3 April 22 MTP as given above for the provision.

Q16. Jan 21 Exam (5 Marks)

Mr. R, holder of 1000 equity shares of ₹ 10 each of AB Ltd. approached the Company in the last week of September, 2019 with a claim for the payment of dividend of ₹ 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education And Protection Fund.

Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

Answer
According to **section 124** of the Companies Act, 2013:

(1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account** - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)** - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

(3) **Transfer of Shares to IEPF**- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

(4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2011 to last week of September 2019). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2011).

In terms of the above stated provisions, Mr. R should be advised as under:
(i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
(ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

Q17. Oct 20 MTP (3 Marks)

Dev Pharma Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2019-20 out of the profits of current year. The company has earned a profit of ₹ 910 crores during 2019-20. The company does not intend to transfer any amount to the general reserves out of the profits. Is Dev Pharma Limited allowed to do so? Comment.

Answer
According to **section 123** of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, Dev Pharma Limited has earned a profit of ₹ 910 crores for the financial year 2019-20. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if Dev Pharma Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Q18. Nov 20 Exam (4 Marks)

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:
(i) Whether the Company has complied due diligence in declaring interim dividend?
(ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?
(iii) What are the penal consequences in case of failure to pay the interim dividend?

Answer

(i) According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to section 8 (1) of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) **Penal consequences:** According to **section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18 % per annum during the period for which such default continues.

Q19. Nov 20 Exam (4 Marks)

AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of ₹ 20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:
1. Equity Share Capital (₹ 10 each) - 100 lakhs
2. General Reserve - 150 lakhs
3. Debenture redemption Reserve - 50 lakhs
The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard. If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

Answer
In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

According to the said rule, the required conditions are:
Condition I: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

Condition II: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Paid-up capital+Free reserves = ₹ (100+150) Lakhs (General reserves are free reserves)

= ₹ 250 Lakhs

10% thereof = ₹ 25 Lakhs

Condition III: The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

The amount drawn as stated above = ₹ 25 Lakhs
Less: loss for the financial year 2019-2020 = ₹ 20 Lakhs
Amount available = ₹ 5 Lakhs
Hence, the quantum of dividend is further restricted to ₹ 5 lakhs.

Condition IV: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Accumulated Reserves ₹ 150 Lakhs
Proposed withdrawal declaration of dividend ₹ 5 Lakhs
Balance of Reserves ₹ 145 Lakhs
This is more than 15% of paid-up capital (i.e. 15% of ₹ 100 Lakhs) i.e. ₹ 15 lakhs.
Thus, the company can declare a dividend of ₹ 5 lakhs.
Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is ₹ 5 Lakhs.

Q20. May 20 RTP

MNP Ltd. has a paid up share capital of ₹ 10 crore and free reserves of ₹ 50 crore, as on 31st March, 2019. The company made a loss of ₹ 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

Answer
As per Second Proviso to **Section 123 (1)**, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

(i) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.
(ii) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement. Amount of

dividend proposed: ₹ 2 Crores (20% of ₹ 10 Crore i.e on paid up capital) 10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ₹ 6 Crore.
This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.
(iii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: ₹ 48 crore (50 crore – 2 crore) 15% of paid up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

Q21. May 20 MTP (6 Marks)

Cadila Ltd. incurred loss in business up to current quarter of financial year 2018-19. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediately preceding three years. In Spite of the loss, the Board ofDirectors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of Cadila Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

Answer
Interim Dividend: According to **section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by Cadila Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Q22. Nov 19 Exam (5 Marks)

Referring to the provisions of the Companies Act, 2013, examine the validity of the following :
(i) The Board of Directors of Anand Ltd. proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.
(ii) Whether a Company can declare dividend for the financial year in which it incurred loss.

Answer

(i) **Section 123(6)** of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of Anand Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

(ii) As per Second Proviso to **Section 123 (1)** of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Q23. Oct 19 MTP (6 Marks)

Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016-17, except in the following two cases:
(i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.
(ii) Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Answer
(i) **Section 127** of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) **Section 127**, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law. In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

Q24. Oct 19 MTP (5 Marks)

The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2019. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity

shareholder of the Company, up to 30th June, 2019. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.

Answer

Section 127 of the Companies Act, 2013 lays down the penalty for non - payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30days from the date of declaration to any shareholder entitled to the payment of the dividend:

(i) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and

(ii) the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Therefore, in the given case Mr Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

Q25. May 19 Exam (2 Marks)

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Q26. May 19 Exam (3+2=5 Marks)

(i) Alex limited is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid ?

(ii) The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends. Mr. Binoy was the holder of 2000

equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend ?

Answer

(i) As per **Section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

(ii) **Payment of dividend:** According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members. Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

Q27. May 19 RTP

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?

Answer

As per **section 124** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-

site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

Q28. Nov 18 Exam (3+3= Marks)

(i) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of ₹ 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment.

(ii) Karan was holding 5000 equity shares of ₹ 100 each of M/s. Future Ltd. A final call of ₹ 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

Answer

(i) **Transfer to reserves (Section 123 of the Companies Act, 2013):** A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of ₹ 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

(ii) As per the proviso to **section 127** of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of ₹ 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (₹ 50,000) can be adjusted fully from the entitled dividend amount of ₹ 50,000/-.

Q29. May 18 Exam (4 Marks)

PET Ltd., incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare

interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

Answer
Refer Q 14 May 20 MTP as given above for the provision.

Q30. May 18 RTP

The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

Answer
(i) The given problem is based on the proviso provided in the **section 127 (d)** of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

(ii) According to **section 123(5)**, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Chapter 9 – Accounts of Companies
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (5 Marks)

The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. In light of the Companies Act, 2013 elucidate.

(i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.

(ii) the voluntary revision of financial statements or board's report by the directors.

(iii) For how many preceding financial years the board of directors may revise the financial statements?

Answer:

(i) According to section 130 of the Companies Act, 2013, a company shall not:

a. re-open its books of account and

b. recast its financial statements,

unless an application in this regard is made by:

a. the Central Government,

b. the Income-tax authorities,

c. the Securities and Exchange Board of India (SEBI),

d. any other statutory regulatory body or authority or

e. any person concerned.

& an order is made by a court of competent jurisdiction or tribunal to the effect

a. That the relevant earlier accounts were prepared in a fraudulent manner; or

b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(ii) According to section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or

b. the report of the Board does not comply with the provisions of section 134.

They may prepare revised financial statement or board's report in respect of any of the three preceding financial years.

Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

(iii) The board of directors may revise financial statements in respect of any of the three preceding financial years.

Q2. May 24 Exam (5 Marks)

BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis. You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the Companies Act, 2013.

Answer:

Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and
b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

Q3. May 24 RTP

The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.

Answer:

According to first provision to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Orange Limited were adopted at the adjourned AGM held on 20th September, 2023 and filing of financial statements with Registrar was done on 29th September, 2023 i.e. within 30 days of the date of adjourned AGM. However, Orange Limited has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 17th August, 2023.

Hence, Orange Limited has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Q4. Nov 23 Exam (6 Marks)

The company Herbal Wellness Products Ltd. was registered in April 2018 with an authorised share capital of Rs. 300 crore divided into 30 crore equity shares of Rs. 10 each having its registered office at Trivandrum and listed in Bombay Stock Exchange. The company was in compliance of all legal requirements on time. The company was producing health related products such as ayurvedic medicines, medical instruments, sanitizers, masks, medical soaps etc. The aggregate value of the paid-up share capital of the company was Rs. 200 crore divided into 20 crore equity shares of Rs. 10 each at the end of the financial year 2022-23. The extract of Balance Sheet of the company as on 31st March, 2023 showed the following figures–

Particulars	Amount (Rs.) crore
Free reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Reserves created out of revaluation of assets	25
Miscellaneous expenditure not written off	20

Turnover of the company during the financial year 2022-23 was Rs. 700 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013, with other adjustments as per CSR Rules was Rs. 4 crore.

The Board of Directors of the company consists of the following directors:

'CA. R.C Goel' as the Managing Director

'Rudra Mittal' and 'Pragya' as independent directors

'Varun', 'Prabodh', 'Disha' and 'Reshma' as executive directors

Vineet, Chief Compliance Officer of the company informed the Board on 20th April, 2023 that the company attracts the provisions of section 135 of the Companies Act, 2013 , and all the formalities have to be complied with accordingly. Thereafter, on 30th April, 2023 a CSR Committee was formed consisting of the following members:

'CA. R.C Goel', 'Varun', 'Prabodh' and 'Vineet' to act and comply to the provisions of Corporate Social Responsibility.

The company proposed a list of activities to spend 4% of the average net profits of the company made during the immediately preceding three financial years in pursuance of its CSR Policy, as under:

(I) The CSR projects for the benefit of employees of the company and their families only.

(II) A contribution of Rs. 50,000 to a political party under the provisions of section 182 of the Companies Act, 2013.

(III) A contribution to the PM CARES Fund during Covid pandemic.

(IV) Local activities like promotion of child and women education.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein answer the following questions:

(i) On what basis Vineet, Chief Compliance Officer arrived at this conclusion that the company attracts the provisions of section 135 of the Companies Act, 2013, as turnover of the company was only Rs. 700 crore?

(ii) Advise the company, how many members are eligible to be part of Committee and what is the criterion? Whether CSR committee formed was in compliance with the provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules,2014?

Whether activities proposed by company were in accordance with provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

Answer:

According to section 135 of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a

Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director:

"Net worth" [As per section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Particulars	**Amount** (Rs. **in crore)**
Paid up share capital	200
Free Reserves created out of profits	200
Securities Premium Account	70
Credit balance of Profit & Loss account	60
Miscellaneous expenditure not written off	(20)
Net Worth	510

As the Net worth of the company is more than Rs. 510 crore (i.e more than Rs. 500 crore), hence the company has attracted the provisions of section 135 of the Companies Act, 2013.

(ii) The CSR Committee is constituted of CA. R. C. Goel (Managing Director), Varun (director), Prabodh (director) and Vineet (Chief Compliance Officer). The composition of the committee is not in compliance with section 135 of the Companies Act, 2013, as no independent director is the part of the committee. Further, Chief Compliance Officer has also been included which is not the requirement of the Act.

(iii)

List of activities	**Whether the activities arein accordance with the provisions of the Act**
(I) The CSR projects for the benefit of employeesof the company and their family only	No
(II) A contribution of Rs. 50,000 to a political party	No
(III) Contribution to PM CARES Fund during Covid pandemic	Yes
(IV) Local activities like promotion of child andwomen education	Yes

Q5. May 23 Exam (3 Marks)

The aggregate value of the paid-up share capital of ABC Security Services, was Rs. 200 crore divided into 20 crore equity shares of Rs. 10/- each at the end of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of Rs. 300 crore divided into 30 crore equity shares of Rs. 10/- each. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures:

Particulars	*Amount (Rs. in crore)*

Authorized share capital	*300*
Paid -up share capital	*200*
Free reserves created out of profits	*200*
Securities Premium account	*80*
Credit balance of Profit & Loss account	*50*
Reserves created out of revaluation of assets	*25*
Miscellaneous expenditure not written off	*10*

Turnover of the company during the Financial Year 2021-22 was Rs. 800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was Rs. 4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly.

Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provisions of Corporate Social Responsibility.

The Board of Directors of the company constituted of the following persons as its directors:

Mohan Singh	*Managing Director*
Rohit and Bhavana	*Independent Directors*
Venkatesh, Isha, Mohit and Muskaan	*Directors*

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following:

(i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to form a CSR committee is correct? Support your answer with the applicable provision and the required calculation.

(ii) It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

Answer:

(i) Correctness of the contention and required calculations: According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee (CSR) of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, "Net worth" in the light of the provided particulars calculated as Rs. 520 crore [aggregate value of the paid-up share capital (Rs. 200 crore), all reserves created out of the profits (Rs. 200 crore), securities premium account (Rs. 80 crore) and debit or credit balance of the profit and loss account (Rs. 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not

written off (Rs. 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation], Turn over given as Rs. 800 crore and Net profits Rs. 4 crore. Since the net worth is not less than Rs. 500 crore section 135(1) is attracted.

Yes, the contention of Praveen, the Company Secretary is correct w.r.t the constitution of CSR Committee as per the compliance of requirement of section 135 of the Companies Act, 2013.

(ii) Correctness of constitution of CSR Committee: As per requirement, Corporate Social Responsibility Committee of the Board shall be consisting of three or more directors, out of which at least one director shall be an independent director. Decision that Mohan Singh, Venkatesh, Isha and Bhavna (Independent Director) will be the members of CSR Committee, is correct.

Q6. May 23 Exam (3 Marks)

A fraud was reported to SFIO by Statutory Auditors of PQ Ltd. in the current financial year 2021-22. A Competent Authority during the investigation observed that there is a need to re-open the accounts of PQ Ltd. for the financial year 2015-
16 and therefore, they filed an application before the National Company Law Tribunal (NCLT) to issue the order against PQ Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2015-16. Examine the validity of the application filed by the Competent Authority to NCLT.

Answer:

Section 130(1) of the Companies Act, 2013 apply to Court/ Tribunal for re- opening of accounts—A company shall re-open its books of account and recast its financial statements, on an application made by the Central Government, or other competent authorities as prescribed under section130 (1) of the Companies Act, 2013 to the NCLT to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Time Limit: No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, application filed by Competent authority, with its recommendation for reopening and recasting of financial statements for the period 2015-2016 is within the prescribed period of eight financial years immediately preceding the current financial year i.e. 2021-2022, is validly filed to NCLT.

Q7. May 23 RTP

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	5.00 Crore	3.75 crore
2021-22	7.00 crore	5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Answer:

According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is Rs. 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds Rs. 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (Rs. 5 crore + Rs. 7 crore)/ 2 = Rs. 6 crore

Minimum contribution towards CSR will be: 2% of Rs. 6 crore = Rs. 0.12 crore or Rs. 12 Lacs.

Q8. May 23 RTP

Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

Answer:

Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited rev iew of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Q9. Nov 22 Exam (5 Marks)

The Government of Rajasthan and Haryana are jointly holding 58% of the paid-up Equity Share Capital of Moon Ltd. The Audited financial statements of Moon Ltd. for the financial year 2021-22 were placed at its Annual General Meeting held on 31st August, 2022. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not filed its financial statements to the Registrar, Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 5th October, 2022 whereat the accounts were adopted. Thereafter, Moon Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 25th October, 2022.
Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Moon Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar.

Answer:

According to first provision to Section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.
According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.
In the instant case, the accounts of Moon Ltd. were adopted at the adjourned AGM held on 5th October, 2022 and filing of financial statements with Registrar was done on 25th October, 2022 i.e. within 30 days of the date of adjourned AGM. However, Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August 2022.
Hence, Moon Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Q10. Nov 22 RTP

State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013.

Answer:

Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,
(b) Whole-Time Director, in charge of finance
(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Q11. Nov 22 RTP

Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.

Advise, how would Dhiman Limited deal with the consolidation of such financial statements.

Answer:

According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Q12. May 22 Exam (3 Marks)

SKIP Limited (the Company) was incorporated on 01.04.2019. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	**Net Profit before tax**	**Net Profit after tax** (Ignore Income Tax computation)
2019-20	₹ 5.00 crore	₹ 3.75 crore
2020-21	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Answer

According to **section 135(1)** of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,
1. Net Profit before tax of SKIP Limited for the FY 2020-21 is ₹ 7 crore, hence, SKIP Limited is required to constitute a CSR committee during FY 2021-22 as the Net profit before tax for the FY exceeds ₹ 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (SKIP Limited was incorporated on 1.04.2019.)
Average Net Profit since incorporation: (₹ 5 crore + ₹ 7 crore)/ 2 = ₹ 6 crore Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs

Q13. May 22 Exam (4 Marks)

XYZ Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

Answer
Periodical Financial Results [**Section 129A** of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—
(a) to prepare the financial results of the company on periodical basis and in prescribed form
(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as XYZ Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Q14. May 22 MTP (6 Marks)

Aura Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2021 and turnover of ₹ 100 crore during the financial year 2020-21. The Company Secretary has advised the Board of Directors that Aura Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

Answer
According to the provisions of **section 138** of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:
(1) every listed company;
(2) every unlisted public company having-
(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
(B) turnover of 200 crore rupees or more during the preceding financial year;
(C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
(D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, Aura limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company).
Hence, the advice of the Company Secretary is not correct.

Q15. April 22 MTP (6 Marks)

Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:
(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of accounts

Answer

(i) Inspection by Directors

As per **Section 128(3)** of the Companies Act, 2013, any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

Assistance by officers and Employees

As per **Section 128(4)**, where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(ii) Period for preservation of books

According to **section 128(5)** of the Companies Act, 2013, the books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Q16. Dec 21 Exam (3 Marks)

Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss?

Answer

According to **section 129(3)** of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

Q17. Dec 21 Exam (3 Marks)

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly explain any three matters to be furnished in the said statement.

Answer

Directors' Responsibility Statement: According to **section 134(5)** of the Companies Act, 2013, the Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Q18. Nov 21 RTP

Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of ₹ 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020-21. The management of the company have approached you to advise them about the appointment of internal auditor.

Advise them as per the provisions of the Companies Act, 2013.

Answer

According to **section 138** read along with Rules of the Companies Act, 2013, every private company having—

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year. shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ₹ 45 crore and turnover of ₹ 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than ₹ 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020-21.

Q19. Oct 21 MTP (3 Marks)

State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013.

Answer

Persons responsible to maintain books: As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

(a) Managing Director,

(b) Whole-Time Director, in charge of finance

(c) Chief Financial Officer

(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Q20. Nov 21 MTP (6 Marks)

The Income Tax Authorities in the current financial year 2020-21 observed, during the assessment proceedings, a need to re-open the accounts of Shrey Ltd. for the financial year 2009-10 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Shrey Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2009-10. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer

As per **section 130** of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Shrey Ltd. for the financial year 2009-2010 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2020-2019, is invalid.

Q21. Jul 21 Exams (3 Marks)

The balances extracted from the financial statement of ABC Limited are as below:

Sr. No.	Particulars	Balances as on 31-03-2020as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2020 (Provisional ₹ in crore)
1.	Net Worth	100.00	100.00
2.	Turnover	500.00	1000.00
3.	Net Profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21.

Answer

According to **section 135(1)** of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

In the given question, the company does not fulfil any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

Q22. Jul 21 Exam (3 Marks)

KSR Limited, an unlisted company furnishes the following data :
(a) Paid-up share capital as on 31-3-2021 ₹ 45 Crore.
(b) Turnover for the year ended 31-3-2021 ₹ 175 Crore
(c) Outstanding loan from bank as on 3-3-2021 ₹ 105 crore (₹ 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 ₹ 90 crore after repayment.
Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022?

Answer
According to the Companies (Accounts) Rules, 2014, every unlisted public company having-
(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
(B) turnover of 200 crore rupees or more during the preceding financial year; or
(C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;
shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., ₹ 105 crore on 3.3.2021 during the preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

Q23. May 21 RTP

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Qurie Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Qurie Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer
Refer Q9 Nov 21 MTP as given above for the provision.

Q24. March 21 MTP (3 Marks)

State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013.

Answer
Refer Q8 Oct 21 MTP as given above for the provision.

Q25. March 21 MTP (4 Marks)

Green Limited is a company dealing in trading of spices. It has maintained its books of accounts under Single Entry System of Accounting. The company has recently hired a new account. The new accountant, Mr. Dubey, is doubtful that the accounts can be maintained under Single Entry System. Advise the company whether it is allowed to do so?

Answer
According to **Section 128(1)** of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Green Limited is not permitted.

Q26. Jan 21 Exam (4 Marks)

X Ltd. is a listed company having a paid-up share capital of ₹ 25 crore as at 31st March, 2019 and turnover of ₹ 100 crore during the financial year 2018-19. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid up share capital and turnover are less than the threshold limit prescribed under the Companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

Answer

According to the provisions of **Section 138** of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) every listed company;

(2) every unlisted public company having-

(A) paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) turnover of 200 crore rupees or more during the preceding financial year;

(C) outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

Besides, some private companies are also required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Thus, X limited (which is a listed company) is required to appoint an internal auditor, irrespective of its paid-up share capital or turnover (as the limit of paid- up share capital or turnover is applicable for unlisted public company).

Hence, the advice of the Company Secretary is not correct.

Q27. Jan 21 Exam (3 Marks)

The Board of Directors of Dilip Telelinks Ltd. consists of Mr. Choksey, Mr. Patel (Directors) and Mr. Shukla (Managing Director). The company has also employed a full time Secretary. The Profit and Loss Account and Balance Sheet were signed by Mr. Choksey and Mr. Patel. Examine whether the authentication of financial statements of the company is in accordance with the provisions of the Companies Act, 2013 ?

Answer

According to **Section 134(1)** of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Choksey and Mr. Patel, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Shukla, the Managing Director should have been one of the two signing directors.

Further, since the company has also employed a full- time Secretary, he should also sign the Balance Sheet and the Statement of Profit and Loss.

Q28. Oct 20 MTP (3 Marks)

Whether a Company can keep books of Accounts in electronic mode accessible only outside India?

Answer

A Company has the option of keeping its books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,
(a) such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India **at all times** so as to be usable for subsequent reference.
(b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
(c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a **daily basis.**

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Q29. Oct 20 MTP (5 Marks)

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer

Refer Q9 Nov 21 MTP as given above for the provision.

Q30. Nov 20 Exam (3+3=6 Marks)

Explain the following in brief with reference to Companies Act 2013:
(i) National Financial Reporting Authority (NFRA)
(ii) Corporate Social Responsibility (CSR) Committee

Answer

(i) National Financial Reporting Authority (NFRA)

According to **section 132** of the Companies Act, 2013, the Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—
(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(ii) Corporate Social Responsibility (CSR)Committee:

According to **section 135(1)** of the Companies Act, 2013, every company having
(1) net worth of rupees 500 crore or more, or
(2) turnover of rupees 1000 crore or more or
(3) a net profit of rupees 5 crore or more
during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

Duties of CSR Committee [Section 135(3)]:
The CSR Committee shall-
(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
(c) monitor the CSR Policy of the company from time to time.

Q31. May 20 RTP

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.

The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

Answer
Refer Q16 Jan 21 Exam as given above for the provision.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Q32. May 20 MTP (4 Marks)

Explaining the provisions of the Indian Contract Act, 1872, answer the following:
(i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?
(ii) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer
(i) According to **Section 134** of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

(ii) According to **Section 136** of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

Q33. May 20 MTP (6 Marks)

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March, 2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures.
Referring to the provisions of the Companies Act, 2013:
(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.
(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

Answer
Refer Q16 Jan 21 Exam as given above for the provision.

The Board's report and annexures thereto under **section 134(3),** shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full-time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Q34. Nov 19 Exam (6 Marks)

(i) Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

(ii) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.

(iii) Whether a Company can keep books of Accounts in electronic mode accessible only outside India.

Answer
(i) According to **Section 128(1)** of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

(ii) Persons responsible to maintain books
As per **Section 128 (6)** of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:
(a) Managing Director,
(b) Whole-Time Director, in charge of finance
(c) Chief Financial Officer
(d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

(iii) Refer Q17 Oct 20 MTP as given above for the provision

Q35. Nov 19 RTP

Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Prateek has approached you advise him regarding his responsbilty for signing the financial statement. Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more informations:
1. The Board as a policy does not authorise the chairperson of the company to sign the financial statements
2. The company has appointed Ms. Sunanina as its Company Secretary

Answer
Refer Q16 Jan 21 Exam as given above for the provision.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

Q36. May 19 Exams (4 Marks)

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

Answer
According to first proviso to **section 137(1)** of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Q37. May 19 Exam (3 Marks)

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer
Refer Q10 Nov 21 MTP as given above for the provision.

Q38. Nov 18 Exam (3 Marks)

A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of ₹ 11 crores and a turnover of ₹ 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.

Answer

Filing of financial statements in XBRL Mode

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, the following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-

(i) companies listed with stock exchanges in India and their Indian subsidiaries;

(ii) companies having paid up capital of five crore rupees or above;

(iii) companies having turnover of one hundred crore rupees or above;

(iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

Q39. Nov 18 RTP

The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

Answer

(1) Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board,

do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(2) Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
(a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
(b) the making of any necessary consequential alternation.

(3) Framing of rules by the Central Government in relation to revised financial statement or director's report: The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
(b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
(c) require the directors to take such steps as may be prescribed.

Q40. May 18 Exam (6 Marks)

Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2016-17.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.

Answer

Corporate Social Responsibility Committee: According to **Section 135** of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -
(1) net worth of rupees 500 crore or more, or
(2) turnover of rupees 1000 crore or more or
(3) a net profit of rupees 5 crore or more
during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,
-turnover of Rera Ltd. is ₹ 100 crore,

-net profit of ₹ 3 crore and
-net worth of ₹ 253 crore (Net profit + securities premium -accumulated loss= 3 + 300 – 50=253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

Q41. May 18 Exam (4 Marks)

State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013.

Answer

Contents of Directors Responsibility Statement [Section 134(5) of the Companies Act, 2013]:
The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(4) the directors had prepared the annual accounts on a going concern basis;
(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and
(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Q42. May 18 RTP

Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:
(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.
(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

Answer

In accordance with the provisions of the Companies Act, 2013, as contained under **section 134 (1)**, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:
(1) The Chairperson of the company where he is authorized by the Board; or
(2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
(3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two direc tors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Q43. May 18 RTP

Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (₹ In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
(ii) State the composition of the CSR committee unlisted company and a private company.

Answer

Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations -

(i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

(ii) Composition of CSR Committee: The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Chapter 10 - Audit and Auditors
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (3 Marks)

Who will sign the audit report in case of a proprietorship concern or the firm of the auditors and how the qualification/s in the audit report will be dealt with by the auditor at the annual general meeting of the company as per the provisions of the Companies Act, 2013?

Answer:

As per section 145 of the Companies Act, 2013,

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of section 141(2) (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).

The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Q2. May 24 Exam (5 Marks)

Stallworth Ltd., a listed company having a paid up share capital of Rs. 11 crore with a turnover of Rs. 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.

Discuss in the light of the Companies Act, 2013:

(i) The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?

(ii) The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company?

Answer:

According to section 177 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.
If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.
Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.
Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.
Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

Q3. May 24 RTP

PQR Private Limited operates as a manufacturing company, generating a turnover of Rs. 150 crore and holds an outstanding loan of Rs. 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of Rs. 110 crore, but Rs. 35 crore were repaid during the same year). The company's Board has delegated the authority to Chief Executive Officer (CEO) to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Mr. Nagendra (an ex- employee who is a qualified Chartered Accountant) as an internal auditor?

Answer:

According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having—

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.
Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
The internal auditor may or may not be an employee of the company.

Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded 100 crore (irrespective of the fact that the outstanding loan during the year is 75 crore rupees).
Hence, the advice of CEO is not correct.
Internal Auditor may be any professional as decided by the Board and may be even an employee of the company. Hence, the Board of Directors may appoint Mr. Nagendra, an ex-employee who is a qualified Chartered Accountant, as an internal auditor.

Q4. Nov 23 Exam (6 Marks)

Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

(i) 'Ms. Rekha', a practicing Chartered Accountant, and 'Mr. Alok', who is the spouse of 'Ms. Rekha', holds securities of 'Charcoal Ltd.' valued at a face value amount of Rs. 85,000 (with a market value of Rs. 75,000). The directors of Charcoal Ltd. are considering the appointment of 'Ms. Rekha' as an auditor for the company.

(ii) 'Mr. Puri', a practicing Chartered Accountant, has a debt of Rs. 7 lakh owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of 'Mr. Puri' as an auditor for the company.

(iii) 'Ms. Komal', the real sister of 'Mr. Sharad', a Chartered Accountant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of 'Mr. Sharad' as an auditor for the company.

Answer:

(i) As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000. In the present case, Mr. Alok (spouse of Ms. Rekha, the auditor), is having securities of Charcoal Limited having face value of Rs. 85,000, which is within the limit as per requirement of under the proviso to section 141(3)(d)(i). Therefore, Ms. Rekha will be eligible to be appointed as an auditor of Charcoal Limited.

(ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 lakh. In the instant case, Mr. Puri will be disqualified to be appointed as an auditor of RAI Limited as he is indebted to RAI Limited for Rs. 7 lakh.

(iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a Key Managerial Personnel. In the instant case, since Ms. Komal, real sister of Mr. Sharad (Chartered Accountant) is the CFO (a KMP) of Biotech Limited, hence Mr. Sharad will be disqualified to be appointed as an auditor in the said company.

Q5. Nov 23 Exam (6 Marks)

PQR Private Limited operates as a manufacturing company, generating a turnover of 150 crore and holds an outstanding loan of Rs. 75 crore from a public financial institution solely in the previous financial year (with a total loan availed of Rs. 110 crore, but Rs. 35 crore were repaid during the same year). The company's Board has delegated the authority to CEO to designate an internal auditor to conduct internal audit. However, the CEO believes that the company is not legally obligated to have an internal auditor. Analyse the accuracy of the CEO's perspective by referring to the provisions outlined in the Companies Act, 2013. What would be your response if the Board of Directors wanted to appoint the Secretary of the company Mr. A as an internal auditor?

Answer:

1. According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, every private company having:
   (A) turnover of 200 crore rupees or more during the preceding financial year; or
   (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.
   shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.
   Thus, PQR Private Limited is required to appoint an internal auditor as the outstanding loans from public financial institutions during the year have exceeded Rs. 100 crore (irrespective of the fact that the outstanding loan during the year is Rs. 75 crore rupees).
   Hence, the advice of CEO is not correct.
2. Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
   The internal auditor may or may not be an employee of the company
   Hence, the Board of Directors may appoint Mr. A, the Secretary of the company as an internal auditor.

Q6. Nov 23 RTP

Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013.

Answer:

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility

extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.

Q7. May 23 Exam (3 Marks)

SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of Rs.10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

Answer:

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the Audit Committee, as the case may be. But such services shall not include designing and implementation of any financial information system.
In the said instance, the Board of directors of ASR Ltd. requested its Statutory Auditors, SSR & Co. to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.
In case the Statutory Auditors accept the assignment, following penal provisions as specified in section 147 of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm

Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.
Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Q8. Nov 22 Exam (6 Marks)

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co.
With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of Rs.1 lakh.

(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth Rs. 1,50,000.

(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for Rs.10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

Answer:

(i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.
Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of Rs. 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 1 Lakh. such person cannot be appointed as auditor of the company.
In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of Rs. 1 Lakh i.e. of an amount worth Rs. 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.

(iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lakh, shall not be appointed as an auditor.
Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for Rs. 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of Rs. 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

Q9. Nov 22 RTP

Mr. Govind Ram is a partner and in- charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

Answer:

According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years.

Q10. May 22 Exam (5 Marks)

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors as per the provisions of the Companies Act, 2013.

Answer

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

Q11. May 22 Exam (5 Marks)

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

Answer

According to **section 147(5)** of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine. With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.

Q12. May 22 RTP

Abhiyogic Ltd. having 1,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.

Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.

In the context of aforesaid facts, please answer to the following question(s):-
(a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?
(b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company?

Answer

(a) As per **section 140(4)** of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:-

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

(b) As per **Section 140(4)** of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Q13. March 22 MTP (4 Marks)

Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

Answer
(i) As per **section 141 (3)(d)(i)** an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In this case Mr. Shepra, a practicing Chartered Accountant holding shares in X Limited cannot be appointed as auditor of X Limited.

(ii) **Section 141(3)** of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 provides that a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company, shall not be eligible for appointment as an auditor of a company.

The term business relationship shall be construed as any transaction entered into for a commercial purpose except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;

- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the given question, since the transaction is at arm's length price so Mr. Showik can be appointed as an auditor of Primus Hotels Limited.

Q14. March 22 MTP (5 Marks)

The Board of Directors of Mines Limited, a listed company appointed Mr. Guru, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Guru was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
(i) Appointment of Mr. Guru by the Board of Directors.
(ii) Re-appointment of Mr. Guru at the first AGM in the above situation.

Answer
As per **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who

shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:
(i) Appointment of Mr. Guru (as first auditor) by the Board of Directors is valid as per the provisions of section 139(6).
(ii) Appointment of Mr. Guru at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Guru is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

Q15. April 22 MTP (6 Marks)

Gajendra Ltd. was incorporated in 1995 in the town of Alwar. Its main business is manufacturing tiles. It is in the process of appointing statutory auditors for the financial year 2021 -22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gajendra Ltd :
(i) Maninder, a qualified Chartered Accountant, holds equity shares of nominal value of ₹2,00,000 of Narender Ltd., which is an associate company of Gajendra Ltd.
(ii) Dinesh, a qualified Chartered Accountant, whose son owes Gajendra Ltd. a sum of ₹ 99,000
(iii) Rajender, a qualified Chartered Accountant, who has been convicted in the year 2005 by a Court for an offence involving fraud.

Answer
(i) As per **section 141 (3)(d)(i)** of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Hence, Maninder is disqualified to be appointed as an auditor in Gajendra Ltd. as he holds securities in the Narender Ltd. (associate company of Gajendra Ltd.)

(ii) As per **section 141(3)(d)(ii)** a person is disqualified to be appointed as an auditor if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.

Hence, Dinesh is not disqualified as the limit of indebtedness for the auditor or his relative is exceeding Rs.5,00,000 and in this case Dinesh's son owes only ₹ 99,000.

(iii) As per **section 141(3)(h)**, a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction, shall not be qualified to be appointed as an auditor of a company.

Though Rajender was convicted by a court for an offence involving fraud but as a period of 10 years have elapsed, hence, Rajendra is qualified to be appointed as statutory auditor of Gajendra Ltd.

Q16. Dec 21 Exam (2 Marks)

Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard?

Answer

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".

In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in violation of section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

In view of the above, the Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself.

Q17. Dec 21 Exam (2 Marks)

Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor.

Answer

Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of section 141, he shall be deemed to have vacated his office as an auditor.

In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Surya Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Surya Distributors Ltd.

Q18. Dec 21 Exam (5 Marks)

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.

(ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

Answer
(i) First auditor

(1) According to **section 139(7)** of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting. XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy
According to **section 139(8)** of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days. XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Q19. Nov 21 RTP

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6 th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
(i) Appointment of Mr. Teja by the Board of Directors.
(ii) Re-appointment of Mr. Teja at the first AGM in the above situation.

Answer
Refer Q5 March 22 MTP as given above for the provision.

Q20. Oct 21 MTP (3 Marks)

Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of ₹1,20,000 (face value ₹ 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd.

Answer

As per the provisions of **Section 141(3)(d)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].

In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹95,000 in the said company, which is within the prescribed limit.

Q21. Oct 21 MTP (3 Marks)

The Auditor of the company (other than government company) has resigned on 31st December, 2020, while the Financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

Answer

(i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under **section 139 (8)(i)** of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Q22. Oct 21 MTP (5 Marks)

Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013. Explain?

Answer

According to **Section 139(2)** of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re - appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re - appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

Q23. Nov 21 MTP (5 Marks)

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for rupees 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita spouse of Mr. Kumar, a Chartered Accountant, is the store- keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

Answer

(i) As per **section 141(3)(d)(ii)**, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs. In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for ₹6 lacs.

(ii) As per **section 141(3)(f)**, an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Q24. Jul 21 Exam (3 Marks)

State the provisions of the Companies Act, 2013 relating to appointment of First Auditor of a Government Company.

Answer

According to **section 139(7)** of the Companies Act, 2013-

(1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an Extra ordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

Q25. Jul 21 Exam (5 Marks)

AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.

Answer

Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of X Ltd. to remove AB & Associates, auditors of the company at the general meeting held on 25-5-2020 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Q26. May 21 RTP

The Board of Directors of Amit Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of Amit Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer
According to **section 144** of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of Amit Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Q27. March 21 MTP (3 Marks)

Shivam Limited is incorporated on 1.1.2020. The company wants to appoint its first auditor. Please enumerate to the company the relevant provisions of the Companies Act, 2013 with respect to the appointment of first auditor.

Answer
According to **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company and the auditor so appointed shall hold office until the conclusion of the first AGM.

If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and such auditor shall hold office till the conclusion of the first AGM.

Q28. April 21 MTP (6 Marks)

Maya Limited is a public company. Maharashtra Bank (a nationalized bank) is a shareholder holding 18% of the subscribed capital of the company. Explain how the following shall be appointed:
(i) First auditor

(ii) Subsequent auditor

Answer

According to **section 2(45)** of the Companies Act, 2013, "Government company" means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

In the given case, the total shareholding of the Maharashtra Bank in Maya Limited, is just 18% of the subscribed capital of the company. Hence, Maya Limited is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

(i) According to **section 139(6)** of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(ii) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Q29. Jan 21 Exam (3 Marks)

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP', practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP' as auditors of the company.

Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP', a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013.

Answer

As per the provisions of **Section 141 (3)** of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.

In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP' as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

Q30. Nov 20 RTP

Shekhar Limited appointed an individual firm, Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Kamala, wife of Mr. Suresh, invested in the equity shares having face value of ₹ 1 lakh of Shekhar Limited on 15th October, 2019. But Suresh & Company continues to function as statutory auditors of the company. Advice.

Answer

Disqualification of auditor: According to **section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In this case, Mr. Suresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of Shekhar Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Suresh & Company can continue to function as auditors of the Company even after 15th October, 2019 i.e. after the investment made by his wife in the equity shares of Shekhar Limited.

Q31. Oct 20 MTP (3 Marks)

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Vikas, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2020 by an ordinary resolution. Mr. Mukesh, a shareholder of the Company, objects to the manner of appointment of Mr. Vikas on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Mukesh is tenable? Also examine the consequences of the above appointment under the said Act.

Answer

As per the **section 2(45)** of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under **section 139** of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Mukesh is not tenable. The appointment is valid under the Companies Act, 2013.

Q32. Nov 20 Exam (6 Marks)

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
(i) Appointment of Mr. Tel by the Board of Directors.
(ii) Re-appointment of Mr. Tel at the first AGM in the above situation.
(iii) In case Mr. Bell, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. ie., 4 years tenure.

Answer

Refer Q5 March 22 MTP as given above for the provision.

As per the given provisions following are the answers:

(i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

(iii) As per law, auditor appointed shall hold office from the conclusion of 1 st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

Q33. May 20 RTP

New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 201 9. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of₹1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013.

Answer
Refer Q21 Nov 21 RTP as given above for the provision.

Q34. May 20 MTP (5 Marks)

Examine the following situations in the light of the Companies Act, 2013:

(i) Mr. A, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September 2019, in which he accepted the assignment.

Subsequently, in January 2020 he joined as a partner in the consultancy firm where Mr. B is also a partner. Mr. B is also working as a Finance Executive of X Ltd.

(ii) "Mr. Vivek", a practicing Chartered Accountant, is holding securities of Data Ltd. having face value of Rs. 1000/-. Whether Mr. Vivek is qualified for appointment as an Auditor of Data Ltd.?

Answer

(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Mr. A, an auditor of X Ltd., joined as partner with consultancy firm where Mr. B is also a partner and Mr. B is also the Finance executive of X Ltd. Hence,Mr. Ahas attracted clause (3)(c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) As per **section 141(3)(d)(i)**, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Vivekis holding security of Rs.1000 in the Data Ltd, therefore, he is not eligible for appointment as an auditor of Data Ltd.

Q35. Nov 19 Exam (6 Marks)

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 :

(i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:

(ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for ₹ 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.

(iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

Answer

(i) As per **section 141 (3)(d)(i)** of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per

requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

(ii) As per **section 141(3)(d)(ii)**, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for ₹ 6 lacs.

(iii) As per **section 141(3)(f)**, an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Q36. Oct 19 RTP (6 Marks)

(i) The Auditor of the company (other than government company) has resigned on 31st December, 2018, while the Financial year of the company ends on 31st March, 2019. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

(ii) A company includes the following shareholders also:

(I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

Answer

(i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under **section 139 (8)(i)** any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

(ii) According to **section 139(5)** of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor- General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies

under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

Q37. May 19 Exam (3 Marks)

The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer
Refer Q17 May 21 RTP as given above for the provision.

Q38. May 19 RTP

Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd."?

Answer
(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub- section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. Abhi. is holding security of ₹ 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

Q39. Nov 18 Exam (4+2=6 Marks)

(i) CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company?

(ii) Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of ₹ 1,20,000 (face value ₹ 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd.

Answer

(i) (1) As per **section 139** read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

(2) **Section 139(2)** states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

(ii) As per the provisions of **Section 141(3)(d)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 (as prescribed under the Company (Audit and Auditors) Rules, 2014).

In the given instance, CA. Shyam is not disqualified to be appointed as a statutory auditor in M/s Cool Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

Q40. Nov 18 RTP

Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.

CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013 :

(1) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?

(2) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?

(3) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?

(4) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?

Answer

According to **Section 139 (2)** of the Companies Act, 2013,

I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.

II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

III. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.

IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

(1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.

(2) The cooling- off period shall be of 5 years.

(3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

(4) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

Q41. Nov 18 RTP

Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 150000/- (market value ₹ 95000/-)?

Answer

As per **Section 141(3)(d)(i)** of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15thMarch, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a transaction is valid.

Yes, the answer will be different in case where the face value of acquired shares is ₹ 1,50,000. Then in that case:

(i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or

(ii) Auditor has to vacate his office.

Q42. May 18 Exam (3+3=6 Marks)

(i) Rupa Limited, a listed company appointed M/s. VG &ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

(ii) PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

Answer

(i) Tenure of Auditor: Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

(1) an individual as auditor for more than one term of five consecutive years; and
(2) an audit firm as auditor for more than two terms of five consecutive years. Cooling off Period:

(1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be heldin the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

(ii) As per proviso to **section 139(1)** of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

(A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
(B) the proposed appointment is as per the term provided under the Act;
(C) the proposed appointment is within the limits laid down by or under the authority of the Act;
(D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Q43. May 18 RTP

Explain how the auditor will be appointed in the following cases:
(i) A Government Company within the meaning of section 394 of the Companies Act, 2013.
(ii) The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017.

Answer

(i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of **section 139** of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under **section 139(8)(i)** any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Chapter 11 - Companies incorporated outside India
Past Exams, RTP Questions Compiler

Q1. May 24 Exam (2 Marks)

Explain the provisions relating to expert's consent included in the prospectus to be issued in India by the companies incorporated outside India as per the provisions of the Companies Act, 2013.

Answer:

According to section 388 of the Companies Act, 2013,

(i) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,-

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of section 33 (Issue of application forms for securities) and section 40 (Securities to be dealt with in stock exchanges), so far as applicable.

(ii) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Q2. May 24 RTP

Fine Publishers, registered in Tokyo, began operating in India during the financial year 2009. The company has duly submitted all necessary documents to the registrar within the specified due date. On 1st March, 2023, Fine Publishers has shifted its principal office in Tokyo. Is Fine Publishers required to undertake any steps due to change in address of principal office. Give your answer in reference to the provisions of the Companies Act, 2013.

Answer:

Section 380 (3) of the Companies Act, 2013, provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed along with prescribed fees. Accordingly, Fine Publishers is required to submit to the Registrar the new address of the principal office (in Tokyo) of the company within 30 days of such alteration.

Chapter 12 - Limited Liability Partnership Act, 2008
Past Exams, RTP Questions Compiler

Q1. May 24 Exam (3 + 2 Marks)

(i) Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008. (3 Marks)

(ii) Describe the consequences of making a false statement in any return, statement or other document under section 37 of the Limited Liability Partnership Act, 2008.

Answer:

(i) According to section 31 of the Limited Liability Partnership Act, 2008,

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

(2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(ii) According to section 37 of the Limited Liability Partnership Act, 2008,

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement:

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

Q2. May 24 Exam (5 Marks)

A dispute among the partners of Limited Liability Partnership (the LLP) jeopardized the stability of the business. Out of two partners, one due to a quarrel, left the LLP. The other partner alone continued the business of the LLP. You are being an expert in law is requested to explain the provisions governing the LLP being operated by a single partner and its winding up by the Tribunal as per the provisions of the Limited Liability Partnership Act, 2008.

Answer:

According to section 6 of the Limited Liability Partnership Act, 2008,

(i) Every LLP shall have at least two partners.

(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months

and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

As per section 64 of the Limited Liability Partnership Act, 2008, the circumstances in which LLP may be wound up by Tribunal are:

(a) if the LLP decides that LLP be wound up by the Tribunal;

(b) if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;

(c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(d) if the LLP has made a default in filling with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Q3. May 24 RTP

Mohit is a creditor of ABC LLP. He has a claim of Rs. 10,00,000 against the LLP. However, the assets of the LLP are valued at only Rs. 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of Rs. 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

Answer:

A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence, the creditors of ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit can not claim his deficiency of Rs. 3,00,000 from the partners of ABC LLP.

Chapter 3 – The General Clauses Act,1897
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (4 Marks)

State the provisions of the General Clauses Act, 1897 relating to 'gender and number'.

Answer:

Gender and number

According to section 13 of the General Clauses Act, 1897, in all legislations and regulations, unless there is anything repugnant in the subject or context:

(1) Words importing the masculine gender shall be taken to include females, and

(2) Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in section 125(1)(d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply.

Q2. May 24 Exam (2 + 2 Marks)

(i) The Board of Directors of Cool Private Limited, through a resolution passed in the board meeting, granted authorization to Mr. Sharad, the CEO of the company to appoint two employees for the procurement department. Subsequently, Mr. Sharad selected Mr. Suresh and Mr. Hemant for the positions. However, after one month, Mr. Sharad, noticing unsatisfactory performance and lack of honesty in their duties, issued dismissal orders for both employees, citing proper reasons. Mr. Suresh contested his dismissal in the court, arguing that the Board had only empowered Mr. Sharad for appointments and not for dismissals and hence the dismissal order is invalid.
Assess the validity of Mr. Suresh's argument under the provisions of the General Clauses Act, 1897.

(ii) Mr. M issued a cheque of Rs. 3,00,00 dated 31.12.2023 at 10 a.m. to Mr. N as a consideration towards the medical services provided by the later. Mr. N presented the above cheque on 31.03.2024 during the banking business hours. The cheque was dishonoured taking the plea that it was not presented within the requisite time of 3 months as provided under section 138 of the Negotiable Instruments Act 1881.
Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid.

Answer:

(i) According to section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.
In the given question, Mr. Sharad was granted authorization to appoint the said employees. This implies (in terms of the General Clauses Act, 1897) that he also had the power to dismiss or suspend these employees. Hence, Mr. Suresh's argument is not valid.

(ii) As per the section 9 of the General Clauses Act, 1897, in case any legislation or Regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to

use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

The first day in series is 31.12.2023 and last day is 31.03.2024. Hence, applying the above provisions, 31.12.2023 is to be excluded and 31.03.2024 is to be included in calculation as per the General Clauses Act, 1897.

Since, the cheque has been presented within 3 months i.e. on 31.03.2024, it is eligible for honor and payment.

Hence, the plea of dishonouring the cheque is not valid.

Q3. May 24 RTP

Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property?

Answer:

According to section 3(36) of the General Clauses Act 1897, 'Movable Property' shall mean property of every description, except immovable property. While section 3(26) provides, 'Immovable Property' shall include:

(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.

In the given question, Yogveer Singh has sold mango orchard along with all the mango trees. In the lights of provisions of the Act, as trees are benefits arise out of the land and attached to the earth, hence, mango trees are immovable property.

Q4. Nov 23 Exam (4 Marks)

Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.

Answer:

As per section 2(87) of the Companies Act, 2013, Subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company -

(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Taking into account the above provision, X Limited, Y Limited and Z Limited are the subsidiary companies of Moon Pharma Limited.

Regarding the question, Mr. Avinash who is a Whole Time Director (KMP) in Moon Pharma Limited, wants to get appointed as Whole Time Director in X Limited and Y Limited.

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

It can be noted that section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Hence, Mr. Avinash can hold office of Whole Time Director also in X Limited and Y Limited.

Q5. Nov 23 RTP

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

Answer:

By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

Q6. May 23 Exam (3 Marks)

"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897.

Answer:

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Even Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Q7. May 23 Exam (4 Marks)

"Whenever an Act is repealed, it must be considered as if it had never existed." Comment and explain the effect of repeal under the General Clause Act, 1897.

Answer:

"Effect of Repeal" [Section 6 of the General Clauses Act, 1897]: Where any Central legislation or any regulation made after the commencement of this Act, repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

1. Revive anything not enforced or prevailed during the period at which repeal is effected or;
2. Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
3. Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
4. Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
5. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under section 6 of the Act.

Q8. May 23 RTP

M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.

Answer:

"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q9. Nov 22 Exam (3 Marks)

What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

Answer:

"Official Gazette" [Section 3(39) of the General Clauses Act, 1897]: 'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of India, or
(ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

Q10. Nov 22 Exam (4 Marks)

Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for Rs.20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr.

B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

Answer:

According to Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly addressing

(ii) Pre-paying, and

(iii) Posting by registered post.

Case Laws

(i) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.

(ii) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B). However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

Q11. Nov 22 RTP

Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Answer:

According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

Q12. May 22 Exam (3 Marks)

Explain the provision related to 'Effect of Repeal' as per the General Clauses Act, 1897.

Answer

"Effect of Repeal": According to **section 6** of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

➢ Revive anything not enforced or prevailed during the period at which repeal is effected or;

➢ Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

➢ Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

➢ Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

➢ Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Q13. May 22 Exam (3 Marks)

The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following:

(i) Is it required for MCA to publish a draft of the proposed Rules?

(ii) In case of any irregularities in the publication of the draft, can it be questioned?

(iii) Is MCA entitled to make suitable changes in the draft?

(iv) Is it necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft?

Answer

The answer can be given in terms of **section 23** of the General Clauses Act, 1897.

Following shall be the answers in the light of the given information and the relevant legal provisions:

(i) Yes, MCA is required to publish a draft of the proposed Rules for the information of persons likely to be affected thereby.

(ii) No, in case of any irregularities in the publication of the draft, it cannot be questioned. The publication in the Official Gazette of a rule or bye-law after previous publication, shall be conclusive proof that the rule or bye-laws has been duly made. It raises a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

(iii) Yes, MCA is entitled to make suitable changes in the draft before finally publishing them.

(iv) No, it is not necessary to re-publish the Rules in the amended form when the changes made are ancillary to the earlier draft.

Q14. May 22 RTP

Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides

"A company may be formed for any lawful purpose by....." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

Answer
The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.

In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

Q15. March 22 MTP (4 Marks)

Examine the validity of the following statements with reference to the General Clauses Act, 1897:
(i) 'Things attached to the earth' have been held to be immovable property.
(ii) The word "bullocks" could be interpreted to include "cows".

Answer
(i) 'Things attached to the earth' have been held to be immovable property: This statement is valid.

As per **section 3(26)** of the General Clauses Act, 1897, **'Immovable Property'** shall include:
(1) Land,
(2) Benefits to arise out of land, and
(3) Things attached to the earth, or
(4) Permanently fastened to anything attached to the earth.

It is an inclusive definition. The four elements to the definition includes 'things permanently fastened to anything attached to the earth'. Hence, the given statement is correct.

(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Q16. March 22 MTP (3 Marks)

"The act done negligently shall be deemed to be done in good faith."

Comment with the help of the provisions of the General Clauses Act, 1897.

Answer
Good Faith
In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

But, according to **section 3(22)** of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

Q17. April 22 MTP (4 Marks)

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr.Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorised Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words?

Answer
As per the provisions of **section 16** of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

Mr. Munim was appointed in board meeting of Sabarwal Construction Private Limited to appoint five employees for accounts department of company. Mr. Munim appointed five employees. After one month, he issued the order of dismissal to one of those five employees. That employee filed an application in the court challenging the validity of dismissal order with the words that Mr.Munim was authorised only for appointment of employees not for dismissal.

On the basis of above provisions and facts of the case, Mr. Rupal was not correct with his words because as per the General Clauses Act, 1897, power to appoint includes power to suspend or dismiss. Hence, Mr. Munim has power to dismiss Mr. Rupal.

Q18. April 22 MTP (3 Marks)

What is the meaning of the following as per provisions of the General Clauses Act, 1897?

(i) Movable Property

(ii) Person

Answer
(i) Movable Property: According to **section 3(36)** of the General Clauses Act, 1897, 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

(ii) Person: According to **section 3(42)** of the General Clauses Act, 1897, 'Person' shall include any company or association or body of individuals, whether incorporated or not.

Q19. Dec 21 Exam (4 Marks)

A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

Answer

Financial Year: According to **Section 3(21)** of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

Q20. Dec 21 Exam (3 Marks)

Give the definition of the following as per the General Clauses Act, 1897:

(i) "Rule"

(ii) "Oath"

(iii) "Person"

Answer

(i) Rule: As per **section 3(51)** of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath: As per **section 3(37)** of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Refer Q7 April 22 MTP as given above for the provision.

Q21. Nov 21 RTP

Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021?

Answer

Section10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17th May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2021. Three days of grace are to be added. It falls due on 20th August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021.

Q22. Oct 21 MTP (3 Marks)

SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations?

Answer
According to **section 5** of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Hence, in the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Q23. Oct 21 MTP (3 Marks)

Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example.

Answer
"Duty to be taken pro rata in enactments": According to **section 12** of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

Q24. Nov 21 MTP (3 Marks)

The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2021, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Answer
Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2021 will be excluded and 6th November 2021 shall be included, i.e. 31st October, 2021 to 6th November, 2021 (both days inclusive).

Q25. Nov 21 MTP (3 Marks)

What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Answer
"Meaning of Service by post": According to **section 27** of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
(i) properly addressing
(ii) pre-paying, and
(iii) posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Q26. Jul 21 Exam (4 Marks)

Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) Insurance Policies covering immovable property have been held to be immovable property.

(ii) The word "bullocks" could be interpreted to include "cows".

Answer
(i) Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid.

Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Q27. Jul 21 Exam (3 Marks)

Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

Answer
The given answer is based on **section 10** which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

Q28. May 21 RTP

(i) Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.

(ii) What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Answer
(i) Refer Q8 Dec 21 Exam as given above for the provision.

(ii) Refer Q14 Nov 21 MTP as given above for the provision.

Q29. March 21 MTP (3 Marks)

M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

Answer
"Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:
(i) Land,
(ii) Benefits to arise out of land, and
(iii) Things attached to the earth, or
(iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q30. April 21 MTP (3 Marks)

Elucidate the term "Commencement" as per the General Clauses Act, 1897.
Answer
Section 3(13) of the General Clauses Act, 1897, defines the term "Commencement".
"Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have a legal force and effect.

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity. (State of Orissa Vs. Chandrasekhar Singh Bhai — AIR1970 sc 398).

Q31. April 21 MTP (4 Marks)

Mr. R, an advocate, fraudulently deceived his client Mr. Chandan who was taking his expert advise on taxation matters. Now, Mr. R is liable to a fine for his fraudulent act both under the Advocates Act and the Income Tax Act, 1961. State the provision as to whether his offence is punishable under both Acts. Give your answer as per the provisions of the General Clauses Act, 1897.

Answer

"Provision as to offence punishable under two or more enactments" (Section 26 of the General Clauses Act, 1897)

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Thus, Mr. R shall be liable to be punished either under the Advocates Act, 1961 or under the Income Tax Act, 1961, but shall not be punished twice for the same offence. He can be punished under any of the enactments if his offence is established.

Q32. Jan 21 Exam (2+2=4 Marks)

(i) PK and VK had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2018, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?

(ii) Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Answer

(i) Refer Q16 July 21 Exam as given above for the provision.

In the given question, the court fixed the date of hearing of dispute between PK and VK, on 29.04.2018, which was subsequently announced to be a holiday.

Applying the above provisions we can conclude that the hearing date of 29.04.2018, shall be extended to the next working day.

(ii) According to **section 3(23)** of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.

Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Q33. Jan 21 Exam (3 Marks)

"The act done negligently shall be deemed to be done in good faith."
Comment with the help of the provisions of the General Clauses Act, 1897.

Answer

Good Faith
In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

But, according to **section 3(22)** of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

Q34. Nov 20 RTP

Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also.
(1) An Act of Parliament which has not specifically mentioned a particular date.
(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Answer
(1) Refer Q 11 Oct 21 MTP as given above for the provision.

(2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Q35. Oct 20 MTP (3 Marks)

(d) 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.

Answer
In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Q36. Nov 20 Exam (2+2=4 Marks)

Define the following terms with reference to the General Clauses Act, 1897:
(i) Affidavit
(ii) Good Faith

Answer

(i) "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

(ii) Refer Q5 March 22 MTP as given above for the provision.

Q37. Nov 20 Exam (2+2=4 Marks)

(i) Mrs. K went to a Jewellery shop to purchase diamond ornaments. The owners of jewellery shop are notorious and indulging in smuggling activities. Mrs. K purchased diamond ornaments honestly without making proper enquiries. Was the purchase made in Good faith as per the provisions of the General Clauses Act, 1897 so as to convey good title?

(ii) There are two ways to reach city A from city B. The distance between the two cities by roadways is 100 kms and by water ways 80 kms. How is the distance measured for the purpose of any Central Act under the provisions of the General Clauses Act, 1897?

Answer

(i) In the instant case, the purchase of diamond ornaments by Mrs. K from a Jewellery Shop, the owners of which are notorious and indulged in smuggling activities, made in good faith, will not convey good title.

As per section 3 (22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the Indian Contract Act, 1872 is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

(ii) **"Measurement of Distances"** [Section 11 of the General Clauses Act, 1897]: In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Q38. May 20 RTP

Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas.

(And)

What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Answer

Refer Q14 Nov 21 MTP as given above for the provision.

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

Q39. Nov 19 Exam (4 Marks)

What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.

Answer

Refer Q5 March 22 MTP as given above for the provision.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Q40. Nov 19 Exam (3 Marks)

Define the term "Affidavit" under the General Clauses Act, 1897.

Answer
Refer Q25 Nov 20 Exam as given above.

Q41. Nov 19 RTP

Vyas owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Yash. Vyas wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

Answer
Refer Q18 March 21 MTP as given above for the provision.

In the instant case, Vyas sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q42. Oct 19 MTP (4 Marks)

X owned a land with fifty tamarind trees. He sold his land to (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

Answer
Refer Q18 March 21 MTP as given above for the provision.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q43. Oct 19 MTP (3 Marks)

'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897.

Answer
Refer Q24 Oct 20 MTP as given above.

Q44. May 19 Exam (2+2=4 Marks)

(i) The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? (2 Marks)

(ii) Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,
(1) An Act of Parliament which has not specifically mentioned a particular date.
(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Answer
(i) Refer Q 13 Nov 21 MTP as given above for the provision.

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2018 will be excluded and 6th November 2018 shall be included, i.e. 31st October, 2018 to 6th November, 2018 (both days inclusive).

(ii) Refer Q11 Oct 21 MTP AS given above for the provision.

Q45. May 19 RTP

A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

Answer

Refer Q14 Nov 21 MTP as given above for the provision.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

Q46. Nov 18 Exam (4 Marks)

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
(i) The dates during which Komal Ltd. is required to pay the dividend?
(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

Answer
Refer Q33 May 19 Exam as given above for the provision.

(i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).

(ii) Transfer of unpaid or unclaimed divided: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

Q47. Nov 18 Exam (4 Marks)

Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897.

Answer
Provisions applicable to making of rules or bye-laws after previous publications [Section 23 of the General Clauses Act, 1897]:
Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-
(1) Publish of proposed draft rules/ bye - laws: The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
(2) To publish in the prescribed manner: The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
(3) Notice annexed with the published draft: There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
(4) Consideration on suggestions/objections received from other authorities: The authority having power to make the rules or bye-laws, and, where the rules or bye- laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
(5) Notified in the official gazette: The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye- laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Q48. Nov 18 Exam (2 Marks)

'Repeal' of provision is different from 'deletion' of provision. Explain.

Answer
Refer Q24 Oct 20 MTP

Q49. Nov 18 RTP

Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

Answer
"Provision as to offence punishable under two or more enactments" [Section 26]:
Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

Q50. May 18 Exam (4 Marks)

X owned a land with fifty tamarind trees. He sold his land and the (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

Answer
Refer Q4 March 22 MTP as given above for the provision.

In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q51. May 18 Exam (4 Marks)

Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.

Answer
According to **Section 6** of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:
• Revive anything not enforced or prevailed during the period at which repeal is effected or;
• Affect the prior management of any legislation that is repealed or anything performed or undergone or;
• Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
• Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or

• Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Q52. May 18 Exam (2 Marks)

What is the meaning of service by post as per provisions of The General Clauses Act, 1897?

Answer
Refer Q14 Nov 21 MTP as given above for the provision.

Q53. May 18 RTP

A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.

Answer

Refer Q14 Nov 21 MTP as given above for the provision.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

Chapter 4 – Interpretation of Statutes
Past Exams, RTP & MTP Questions Compiler

Q1. May 24 Exam (4 Marks)

Explain the term "Generalia specialibus non derogant", in connection with Interpretation of Statues.

Answer:

It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other. A specific rule will override a general rule. This principle is usually expressed by the maxim, "generalia specialibus non derogant".

However, this rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only then such natural meaning will prevail. The court shall not attempt an interpretation based on equity and harmonious construction.

Q2. May 24 Exam (4 Marks)

What are the differences between interpretation and construction in the legal context, and how do these two concepts relate to each other as per Interpretation of Statute?

Answer:

Difference and Relationship between Interpretation and Construction

The two terms- 'Interpretation' and 'Construction', are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'.

Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

Q3. May 24 RTP

What does the principle of "reading the statute as a whole" imply in the interpretation of statutes? Explain with the help of an example.

Answer:

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations

and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.
Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

Q4. Nov 23 Exam (3 Marks)

Define the concept of 'Doctrine of Noscitur a Sociis' with example in accordance with the provisions of the Interpretation of Statutes.

Answer:

Noscitur a Sociis means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is the meaning of the more general word being restricted to a sense analogous to that of the less general.
Examples of the principal of Noscitur a Sociis are as follows:

Fresh orange juice is not a fruit juice.

While dealing with a Purchase Tax Act, which used the expression 'manufactured beverages including fruit-juices and bottled waters and syrups'.
It was held that the description 'fruit juices' as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (Commissioners. Vs. Savoy Hotel, (1966) 2 All.
E.R. 299)

Private Dispensary of a doctor is not a commercial establishment

In dealing with the definition of commercial establishment in section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, 'commercial establishment means an establishment which carries on any business, trade or profession', the word 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary of a doctor was not within the definition. (Dr. Devendra M. Surti Vs. State of Gujrat, A.I.R. 1969 SC 63)

Q5. Nov 23 Exam (3 Marks)

While interpreting the statutes what will be the effect of 'Usage' or 'Customs and Practices'?

Answer:

Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an o ld statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.
In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and
(ii) 'Contemporanea Expositio est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/ construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/ written.
Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Q6. Nov 23 RTP

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

Answer:

Without prejudice

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

Example**:** Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains....."

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Q7. May 23 RTP , Exam (3 Marks)

Explain the Doctrine of Contemporanea Expositio.

Answer:

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Q8. May 23 RTP , Exam (3 Marks)

When can the Preamble be used as an aid to interpretation of a statute?

Answer:

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there i s any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Q9. Nov 22 Exam (3 Marks)

Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.

Answer:

The Rule of Ejusdem Generis will not apply in the following situations:

1	If the preceding term is general, as well as that which follows this rule cannot be applied.
2	Where the particular words exhaust the whole genus.
3	Where the specific objects enumerated are essentially diverse in character.
4	Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.

Q10. Nov 22 Exam (3 Marks)

Explain the "grammatical" and "logical" interpretation and state the situations where the courts adopt them while interpreting the Statutes in India.

Answer:

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In other words, the emphasis in grammatical interpretation is on "what the law says" and the logical interpretation seeks on the other hand, seeks to ascertain " what the law means".

Application of the principles in the Court: In all ordinary cases, the grammatical interpretation is the sole form allowable. The Court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the Court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the Court is to administer the law as it stands rather it is just or unreasonable.

The Court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that is ostensibly just or reasonable.

However, if there are two possible constructions of a clause, the Courts may prefer the logical construction.

Q11. Nov 22 RTP

How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means

(ii) Includes

Give one illustration for each of the above from statutes you are familiar with.

Answer:

Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—

Definition of Director [Section 2(34) of the Companies Act, 2013] — Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013] — Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Q12. May 22 Exam (3 Marks)

Does an explanation added to a section widen the ambit of a section?

Answer
Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

Q13. May 22 Exam (3 Marks)

What is the effect of proviso? Does it qualify the main provisions of the enactment? Explain it with reference to Interpretation of Statutes.

Answer
Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it.

The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

Q14. May 22 RTP

When can the Preamble be used as an aid to interpretation of a statute?

Answer
While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity.
Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Q15. March 22 MTP (3 Marks)

Write short note on:

(i) Proviso
(ii) Explanation,
with reference to interpretation of Statutes, Deeds and Documents.

Answer
(i) Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

(ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Q16. March 22 MTP (3 Marks)

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

Answer
Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that nocitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

Q17. April 22 MTP (3 Marks)

Write short notes on the following in understanding definitions while interpreting statutes:

(i) Ambiguous definitions
(ii) Definitions subject to a contrary context

Answer
(i) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning

of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

(ii) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

Q18. April 22 MTP (3 Marks)

Radha Limited has entered into a contract with Gopal Limited. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Answer
The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

Q19. Dec 21 Exam (3 Marks)

Explain the Mischief Rule / the rule in Heydon's case for interpretation of statute. Also give four matters it considers in construing an Act.

Answer
Mischief Rule/ Heydon's Rule: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an Act:
(1) what was the law before making of the Act,
(2) what was the mischief or defect for which the law did not provide,
(3) what is the remedy that the Act has provided, and
(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole

object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

Q20. Dec 21 Exam (3 Marks)

In what way are the following terms considered as external aid in the interpretation of statutes:

(i) Historical Setting
(ii) Use of Foreign Decisions

Answer
(i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Q21. Nov 21 RTP

At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

Answer
Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:
(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and
(ii) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

Q22. Oct 21 MTP (3 Marks)

Explain how 'Dictionary Definitions' can be of great help in interpreting/ constructing an Act when the statute is ambiguous.

Answer

Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.

However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in pari materia will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Q23. Oct 21 MTP (4 Marks)

Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Answer
Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:
(i) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.

(ii) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Q24. Nov 21 MTP (3 Marks)

Does an explanation added to a section widen the ambit of a section?

Answer
Refer Q1 May 22 Exam as given above for the provision.

Q25. Nov 21 MTP (3 Marks)

Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example.

Answer

Refer Q8 Dec 21 Exam as given above for the provision.

Q26. Jul 21 Exam (3 Marks)

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.

Answer

Impact of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to **'mean'** such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to **'include'** such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Q27. Jul 21 Exam (3 Marks)

Whether Foreign decisions can be used for construing Indian Statute? Explain.

Answer

Refer Q9 Dec 21 Exam as given above for the provision.

Q28. May 21 RTP

At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

Answer

Refer Q10 Nov 21 RTP as given above for the provision.

Q29. March 21 MTP (3 Marks)

Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute.

Answer

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Q30. March 21 MTP (4 Marks)

Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example.

Answer

Refer Q8 Dec 21 Exam as given above for the provision.

Q31. March 21 MTP (4 Marks)

Differentiate between interpretation and construction.

Answer

'Construction' as applied to a written statute or document means to determine from its known elements its true meaning or the intention of its framers. Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

Difference between Interpretation and Construction:

It would also be worthwhile to note, at this stage itself, the difference between the terms 'Interpretation' and Construction. While more often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T,(2001)]

It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co. AIR 1958)

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

Q32. April 21 MTP (3 Marks)

(i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?
(ii) Does an explanation added to a section widen the ambit of a section?

Answer

(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]

(ii)Refer Q1 May 22 Exam as given above for the provision.

Q33. April 21 MTP (3 Marks)

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Answer

Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be director y and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

Q34. Jan 21 Exam (3 Marks)

Sohel, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Sohel is correct?

Answer

Rule of Literal Construction

Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.

This principle is contained in the Latin maxim "absoluta sententia expositore non indiget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.

Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Sohel (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.

Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Q35. Jan 21 Exam (3 Marks)

What is External Aid to interpretation? Explain how the Dictionary definitions are the External Aids to Interpretations?

Answer

External aids are the factors that help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids.

Refer Q11 Oct MTP as given above for the provision.

Q36. Nov 20 RTP

'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.

Answer

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [Gullipoli Sowria Raj V. Bandaru Pavani, (2009)].

Q37. Oct 20 MTP (3 Marks)

At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'?

Answer

Refer Q10 Nov 21 RTP as given above for the provision.

Q38. Oct 20 MTP (3 Marks)

Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

Answer

Refer Q8 Dec 21 Exam as given above for the provision.

Q39. Nov 20 Exam (4 Marks)

Write a short note on "Proviso" with reference to the rules of interpretation.

Answer

Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax, AIR SC 765).

Q40. Nov 20 Exam (3 Marks)

"Associate words to be understood in common sense manner." Explain this statement with reference to rules of interpretation of statutes.

Answer
Refer Q5 March 21 MTP as given above for the provision.

Q41. May 20 RTP

Explain the function of 'proviso' as an internal aid to construction.

Answer
Refer Q28 Nov 20 Exam as given above for the provision.

Q42. May 20 MTP (3 Marks)

'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.

Answer
Refer Q5 March 21 MTP as given above for the provision.

Q43. May 20 MTP (3 Marks)

How will you interpret the definitions in a statute, if the following words are used in a statute?
(i) Means, (ii) Includes
Give one illustration for each of the above from statutes you are familiar with.

Answer
Refer Q15 July 21 Exam as given above for the provision.

Q44. Nov 19 Exam (4 Marks)

How will you interpret the term "Instrument" used in a statutes?

Answer
'Instrument': In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Q45. Nov 19 Exam (3 Marks)

At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'?

Answer

Refer Q10 Nov 21 RTP as given above for the provision.

Q46. Nov 19 Exam (4 Marks)

Explain whether Foreign Decisions be used for construing Indian Acts.

Answer
The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R,1995 SC 765)

Q47. Oct 19 MTP (3 Marks)

Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

Answer
Refer Q11 Oct 21 MTP as given above for the provision.

Q48. Oct 19 MTP (3 Marks)

Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

Answer
Refer Q8 Dec 21 Exam as given above for the provision.

Q49. May 19 Exam (3 Marks)

'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.

Answer
Refer Q25 Nov 20 RTP as given above for the provision.

Q50. May 19 Exam (3 Marks)

How will you understand whether a provision in a statute is 'mandatory' or 'directory'?

Answer
Refer Q22 April 21 MTP as given above for the provision.

Q51. May 19 Exam (3 Marks)

If it is defined as:
(i) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".
(ii) "Person" includes, _____ under the Consumer Protection Act,1986.

How would you interpret/construct the nature and scope of the above definitions?

Answer
Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Thus,
(i) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall deemed to be company.

(ii) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Q52. May 19 RTP

Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision.

Answer
Refer Q28 Nov 20 Exam as given above for the provision

Q53. Nov 18 Exam (4 Marks)

Write short note on:
(i) Provision
(ii) Explanation,
with reference to interpretation of Statutes, Deeds and Documents.

Answer
Refer Q4 March 21 MTP as given above for the provision.

Q54. Nov 18 Exam (4+2=6 Marks)

(i) Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

(ii) Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

Answer
(i) Refer Q8 Dec 21 Exam as given above for the provision.

(ii) Refer Q11 Oct 21 MTP as given above for the provision.

Q55. Nov 18 RTP

The 'Statute should be read as a Whole'. Explain the statement.

Answer

'Read the Statute as a Whole': It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Q56. May 18 Exam (4 Marks)

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Answer

Refer Q22 April 22 MTP as given above for the provision.

Q57. May 18 Exam (4+2=6 Marks)

(i) Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?
(ii) What is a Document as per the Indian Evidence Act, 1872?

Answer

(i) Refer Q12 Oct 21 MTP as given above for the provision.

(ii) As per Indian the Evidence Act, 1872: 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

For Example: A writing is a document, any words printed, photographed are documents.

Q58. May 18 RTP

Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.

Answer

Refer Q28 Nov 20 Exam as given above for the provision.

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause

Exception' is intended to restrain the enacting clause to particular cases.	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing.

Chapter 12 - The Foreign Exchange Management Act 1999 Past Exams, RTP Questions Compiler

Q1. May 24 Exam (4 Marks)

Explain the rules relating to the remittances made by persons other than individuals requiring approval of RBI as provided in Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued under the Foreign Exchange Management Act, 1999 in respect of the following:

(i) Commission to the agents abroad for sale of residential flats or commercial plots in India.

(ii) Remittances for consultancy services procured from outside India.

(iii) Remittances by way of reimbursement of pre-incorporation expenses.

Answer:

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India as provided under FEMA, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000:

(i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.

(ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
Explanation—For the purposes of this sub-paragraph, the expression "infrastructure' shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.

(iii) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Q2. May 24 Exam (4 Marks)

Mr. L was employed as a fashion designer in Elegant Textile Ltd., a public limited company in Gurugram, India during the financial year 2023 -24. He had efficiently provided his services for 183 days during the above said period. On 01.04.2024, Mr. H. the Human Resource Manager of Jeff Fashion Ltd., Paris (a foreign country) offered him a better employment opportunity in such company.

On 02.04.2024, Mr. L. left India for taking up employment as a production controller at Jeff Fashion Ltd. in Paris. On 30.04.2024 he flew back to India for a 10 day family function in Manali, India.

In light of the provisions of the Foreign Exchange Management Act, 1999 , elucidate: The residential status of Mr. L-

(i) On his return for attending the family function on 30.04.2024.

(ii) In case, instead of vacation, he joins an employment in an Indian company after arriving on 30.04.2024.

Answer:

According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

(i) In the given question, Mr. L will be treated as a person resident outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. In Paris, as he has gone out of India for or on taking up employment outside India.
His return to India for 10 days to attend a family function, will not alter his residential status.

(ii) Mr. L will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

Q3. May 24 RTP

Mr. Shivesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Answer:

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) Remittance out of lottery winnings is prohibited as the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh cannot withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).