

## PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any **four** questions from the remaining **five** questions.

### Question 1

- (a) (i) *The promoters of Rose Garden Ltd. have raised ₹ 5 crore subscribed and paid-up capital- from public through, issue of prospectus during the month of June-2020. They still have 20% unutilized amount out of the total money so raised. The Management of the company has decided to divert the business to food processing activities due to Covid-19 and downtrend in real-estate business. So, the management wants to invest 20% unutilized amount in food processing activities business. The object clause of the memorandum of company empowers it to carry-on real-estate business and any other business that is allied to. The company wants to alter its memorandum so as to include the food processing business activities in its object clause.*

*Examine with the relevant provisions of the Companies Act, 2013 and advise the company the procedure to be followed to change in objects clause for which money was raised by a company after issuing a prospectus.* **(4 Marks)**

- (ii) *Yellow Mart Limited has a balance of ₹ 10,50,000/- in Securities Premium Account and accumulated losses of ₹ 7,85,000/-. The Company proposes to adjust the accumulated losses against the balance in Securities Premium Account. Advise with reference to the Companies Act, 2013, whether the proposal of Yellow Mart Limited is justified.* **(2 Marks)**

- (b) *What are the different sources of ethical standards we should use?* **(4 Marks)**
- (c) *Explain the Self-Awareness and Self-Management Personal Competencies' associated with emotional intelligence.* **(4 Marks)**

### Answer

- (a) (i) According to sub-section (8) of 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—
- (1) 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;

- (2) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the SEBI regulations.

As per the provisions of sub-section (9) and sub-section (10) of section 13 of the Companies Act, 2013, the company will have to file copy of the special resolution with the ROC, who will certify the registration within a period of thirty days from the date of filing of the special resolution. Alteration will be effective only after registration is made by the ROC.

Looking at the above provision, we can conclude that Rose Garden Ltd. can add the object of food processing business activities in its memorandum and divert public money into that business, but only after following the above procedure.

**(ii) Application of Securities Premium Account [Section 52(2) of the Companies Act, 2013:** 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.

Since, the securities premium account may be used only for the above purposes, hence, in the instant case, the proposal of Yellow Mart Limited to adjust the accumulated losses against the balance in Securities Premium is not justified.

**(b) Following are the sources of Ethical Standards that we should use:**

**The Utilitarian Approach:** This approach emphasizes that the ethical action is the one that provides the most good or does the least harm, or, to put it another way, produces the greatest balance of good over harm.

**The Rights Approach (The Deontological Approach):** This approach deals with ethical action that best protects and respects the moral rights of those affected. It starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives.

**The Fairness or Justice Approach:** This approach have contributed the idea that all equals should be treated equally.

**The Common Good Approach:** This approach is based on the notion that life in community is a good in itself and our actions should contribute to that life.

**The Virtue Approach:** This is an ancient approach to ethics, which suggests that ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity.

**(c) Personal Competencies Associated with Emotional Intelligence:**

**Personal Competencies – How You Manage Yourself**

**Self-Awareness**

- *Emotional self-awareness:* Reading your own emotions and recognizing their impact; using 'gut sense' to guide decisions
- *Accurate self-assessment:* Knowing your strengths and weaknesses
- *Self-confidence:* A sound sense of your self-worth and capabilities

**Self-Management**

- *Emotional self-control:* Keeping disruptive emotions and impulses under control
- *Transparency:* Displaying honesty and integrity; trustworthiness
- *Adaptability:* Flexibility in adapting to changing situations or overcoming obstacles
- *Achievement:* The drive to improve performance to meet inner standards of excellence
- *Initiative:* Readiness to act and seize opportunities
- *Optimism:* Seeing the upside in events

**Question 2**

(a) (i) *ABC Ltd. is engaged in the business of manufacturing cement in Unit A, steel in Unit B and pipes in Unit C, at Noida, Ghaziabad and Agra respectively. ABC Ltd. prepares separate balance sheet for Unit C manufacturing pipes and a consolidated Balance sheet and Profit and Loss a/c for Units A and B. Unit C was making profits and Unit A and Unit B were making losses. Decide under the Payment of Bonus Act, 1965, whether employees of Unit A and B can claim bonus on the ground that they are a part of the same establishment? (3 Marks)*

(ii) *Mr. X, an employee of SP Private Limited, to which the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply, leaves his employment and gets re-employment in another establishment to which the PF Act does not apply. Can Mr. X transfer the balance in his PF account?*

*Explain with reference to the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (3 Marks)*

- (b) Answer whether the statement is correct or incorrect with brief reason:
- (i) Promotion Policies based on individual merit and not purely on the basis of seniority is discriminatory. **(2 Marks)**
  - (ii) Water pollution is also a kind of resource depletion. **(2 Marks)**
- (c) Interpersonal communication does not happen in isolation, it is contextual. Explain specifying the context in which Interpersonal communication can happen. **(4 Marks)**

**Answer**

- (a) (i) According to Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of departments or undertakings or has branches irrespective of whether they are situated in the same place or in different places, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under the Act. But proviso to the section states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Referring to the provisions of Section 3, ABC Ltd., which is engaged in different business conducted at three different units i.e. Unit A, Unit B and Unit C located at three separate places in the country, prepares separate balance sheet for Unit C and a consolidated Balance Sheet and Profit and Loss A/c for Units A and B. For the purpose of Bonus under the Act, Unit A and B will be treated as one establishment and Unit C as a separate establishment and accordingly, the employees of the Unit A and B incurring losses cannot claim bonus on the ground that Unit C, a profit making establishment is a part of one single establishment (ABC Limited). However, the employees of the loss making unit i.e. Unit A and B can separately claim the minimum bonus as per section 10 of the Payment of Bonus Act, 1965.

- (ii) **Transfer of accumulated amount to the credit of Employees' Provident Funds on change of employment**

Section 17A (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account

in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

Thus, in the instant case, Mr. X can get transferred the balance in his PF account, if he so desires and the rules in relation to that provident fund permit such transfer.

- (b) (i) **Promotion policies based on individual merit and not purely on the basis of seniority is discriminatory: Incorrect**

**Reason:** Discrimination is action based on prejudice resulting in unfair treatment of people. To discriminate socially is to make a distinction between people on a basis other than individual merit. So, seniority alone cannot be the deciding factor for promotion, individual merit should also be considered while giving promotion.

- (ii) **Water pollution is also a kind of resource depletion: Correct**

**Reason:** Water pollution is also a kind of resource depletion because contamination of air, water or land diminishes their beneficial qualities. Oceanographers have found traces of plutonium, cesium and other radioactive materials in seawater that have apparently leaked from the sealed drums in which radioactive wastes are disposed. An increase in population and economic activity in urban area has also resulted in increased demands of water. The ground water is also shrinking because of the decreasing rainfall and wastage of water.

- (c) **Interpersonal communication does not happen in isolation, it is contextual:** There may be:

**Psychological context**, which is who the communicators are and what they bring to the interaction. Their needs, desires, values, personality, etc., all form the psychological context.

**Relational context**, which concerns reactions to each other.

**Situational context** deals with the “psycho-social-where” one is communicating. For example, an interaction that takes place in a classroom will be very different from one that takes place in a Board room.

**Environmental context** deals with the “physical -where” one is communicating. Furniture, location, noise level, temperature, season, time of day, all are examples of factors in the environmental context.

**Cultural context** includes all the learned behaviours and rules that affect the interaction. If you come from a culture (foreign or within your own country) where it is considered rude to make long, direct eye contact, you will out of politeness avoid eye contact. If the other person comes from a culture where long, direct eye contact signals trustworthiness, then we have in the cultural context a basis for misunderstanding.

**Question 3**

(a) (i) Mr. X had nominated his brother Mr. Y as a nominee for gratuity. Mr. X got married on 11<sup>th</sup> March 2021. Explain with reference to the provisions of the Payment of Gratuity Act, 1972, whether nomination in favor of brother is valid and also explain the procedure for modification of nomination. **(3 Marks)**

(ii) Following is the extract of the Balance sheet of ABC Private Limited:

|                                       |             |
|---------------------------------------|-------------|
| Equity shares of ₹ 10 each fully paid | ₹ 12,50,000 |
| General Reserve                       | ₹ 2,50,000  |
| Profit & Loss A/c                     | ₹ 1,25,000  |
| Secured loan                          | ₹ 17,50,000 |
| Unsecured loan                        | ₹ 10,00,000 |
| Current Assets                        | ₹ 2,00,000  |
| Current liabilities                   | ₹ 5,50,000  |

Assuming the company has obtained necessary authorization and approvals, ascertain the maximum number of shares that can be bought back at ₹ 25 per share, as per the provisions of the Companies Act, 2013. **(3 Marks)**

(b) What is meant by corporate governance? Explain the benefits of good corporate governance. **(4 Marks)**

(c) When employees lack self-confidence and there is a feeling of uncertainty, they form groups and interact about all issues. Explain the type of communication channels created in this situation and the forms in which they are identified. **(4 Marks)**

**Answer**

(a) (i) According to the Payment of Gratuity Act, 1972, if at the time of making a nomination, the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

As per section 2(h)(i) of the Act, Family, in the case of a male employee, shall be deemed to consist of, himself, his wife, his children, whether married or unmarried, his dependent parents (and the dependent parents of his wife and the widow) and children of his predeceased son, if any.

**Modification in nomination by the employee:** If an employee has no family at the time of his first nomination, then within 90 days of acquiring a family, he will submit a fresh nomination in duplicate on Form 'G' to the employer.

A nomination or a fresh nomination shall be duly signed by the employee and if he is illiterate, shall bear the thumb impression of the employee in presence of two witnesses, who shall also sign a declaration to that effect in the nomination, fresh nomination or notice of modification of nomination, as the case may be, and it shall take effect from the date of receipt thereof by the employer.

Hence, in the instant case, the nomination for gratuity by Mr. X in favour of his brother Mr. Y after marriage (of Mr. X), is invalid as he has acquired family now. Mr. X, has to follow the above procedure for modification of nomination in favour of his wife.

**[Note: In the light of given information, it has been assumed that Mr. X had no 'family' before his marriage and therefore his nomination in favour of his brother was valid before marriage]**

- (ii) Provisions regarding buy back of own shares by a company has been enumerated in Section 68 of the Companies Act, 2013.

**Condition I** - According to Section 68(2)(c) of the Companies Act, 2013, 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,

| Particulars  | Amount (₹)      |
|--|-----------------|
| Value of Equity share capital                              | 12,50,000       |
| General Reserve  | 2,50,000        |
| Balance in Profit & Loss Account                           | <u>1,25,000</u> |
| Hence, Total paid-up share capital and Free reserves       | 16,25,000       |
| Maximum amount that can be bought back is 25% of 16,25,000 | 4,06,250        |

Maximum number of shares that can be bought back: ₹ 4,06,250/25 = 16,250 shares

But, as per the proviso stated above, in respect of the buy-back of equity shares in the current 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 the financial year.

Therefore, the reference made to 25% in this clause will be construed with respect to 25% of paid-up equity capital, i.e. 25% of ₹ 12,50,000/- = ₹ 3,12,500/-

Maximum number of shares that can be bought back: 3,12,500/25 = **12,500 nos. of equity shares.**

**Condition II** - As per the provisions of Section 68(2)(d) of the Companies Act, 2013, the ratio of aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and free reserves. Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

In terms of the above provisions, after buy-back, paid –up share capital and free reserves should not exceed half of the aggregate of secured and unsecured debts,

After buy-back,

|                                  | <u>Amount (₹)</u> |
|----------------------------------|-------------------|
| Secured Loan                     | 17,50,000         |
| Unsecured Loan                   | <u>10,00,000</u>  |
| Total Secured and Unsecured Loan | 27,50,000         |

The above should be maximum two times of Share Capital & Free Reserves

Therefore Share Capital & Free Reserve after buy-back to be maximum 13,75,000

**Less:**

Out of above, Free Reserves = General Reserve + P/L A/C Balance = 3,75,000

Hence maximum paid-up share capital after buy back can be 10,00,000

Equity Share Capital at present 12,50,000

Therefore, maximum permissible value of buy back of Equity share Capital  
(12,50,000-10,00,000) = 2,50,000

Buy back price per share 25

No. of equity shares that is maximum permissible for buy back (2,50,000/25) = **10,000**

**Equity Shares**

Reading the above two provisions, we can conclude that the maximum numbers of equity shares that ABC Private Limited can buy-back will be the least of the above two conditions, (12,500 numbers or 10,000 numbers.), which comes to 10,000 numbers of equity shares.

- (b) **Corporate Governance:** Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision-making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

Corporate Governance can also be defined “as the formal system of accountability and control for ethical and socially responsible organizational decisions and use of resources.”

**Benefits of good Corporate Governance:**

1. Protection of investor interests and strong capital markets,
2. Good governance is rewarded with a higher market valuation.
3. Ensure commitment of the board in managing the company in a transparent manner.

**(c) Factors leading to the grapevine phenomenon\ informal communication:**

The grapevine or informal communication becomes active when the following factors are present:

- (a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
- (b) Feeling of inadequacy or lack of self-confidence on the part of the employee, leading to the formation of groups.

Four kinds of the grapevine chains have been identified and they are:

- (a) **Single Strand Chain:** In this type of chain, ‘A’ tells something to ‘B’ who tells it to ‘C’ and so on. This type of chain is the least accurate in passing on the information or message.
- (b) **Gossip Chain:** In it, a person seeks out and tells everyone the information he has obtained. This chain is often used when information or a message regarding a ‘not-on-job’ nature is being conveyed.
- (c) **Probability Chain:** In it, individuals are indifferent to the persons to whom they are passing some information. This chain is found when the information is somewhat interesting but not really significant.
- (d) **Cluster Chain:** In this type of chain, ‘A’ tells something to a few selected individuals and then some of these individuals inform a few other selected individuals.

**Question 4**

- (a) (i) *X bought 1000 quintals of wheat and instructed his agent Y to deliver it to warehouse at Yamuna Nagar. Y, however, located a brand new warehouse at Ganga Nagar which was nearby and deposited 250 quintal of wheat in that warehouse and balance in the warehouse at Yamuna Nagar as instructed by X. The warehouse in Ganga Nagar was destroyed by fire due to short circuit and the entire quantity of 250 quintals of wheat was lost. Is Y liable to X for the loss? Examine with reference to the provisions of the Indian Contract Act, 1872. (3 Marks)*

- (ii) *A induced B by fraud to draw a cheque payable to C or Order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of the Negotiable Instruments Act, 1881-*
- (a) *Whether B the drawer, can recover the amount of the cheque from C's Bankers?*
- (b) *Whether C is the fictitious Payee?*
- (c) *Would your answer be still the same in case C is a fictitious person? (3 Marks)*
- (b) *Explain the concept of sustainable development: How the adoption of green accounting system helps in avoiding policy decision which are non-sustainable for the country? (4 Marks)*
- (c) *It is a basic tenet of human behaviour that any belief or value that has been previously successful in meeting needs will resist change. In view of the statement, state the reasons for 'resistance to change' in an organization. (4 Marks)*

**Answer**

- (a) (i) According to Section 211 of the Indian Contract Act, 1872, an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

In the given question, X (the principal) instructed his agent Y to deliver 1000 quintals of wheat to the warehouse at Yamuna Nagar. The agent was bound to follow the instructions of the principal to deliver the full quantity of 1000 quintals of wheat at the instructed warehouse. However, Y delivered 250 quintals of wheat to warehouse at Ganga Nagar and the balance to instructed warehouse at Yamuna Nagar. Since, the agent acted otherwise than on the instructions of the principal, the loss of 250 quintals of wheat (destroyed at the Ganga Nagar warehouse) should be indemnified to X by Y.

- (ii) According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.

In case bill of exchange is drawn payable to drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious.

The word 'fictitious payee' means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

Applying the above, answers to the questions asked can be as under:

- (a) In this case, B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
  - (b) Here C is not a fictitious payee because the drawer intended him to receive payment.
  - (c) The result would be different if C is not a real person or is a fictitious person or was not intended to have the payment.
- (b) Sustainable Development:** Literally sustainable development refers to maintaining development over time. It may be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfy its requirements – social, economic and others – without jeopardizing the interests of future generations.
- Green accounting systems:** Conventional accounts may result in policy decisions which are non-sustainable for the country. Green accounting on the other hand is, focused on addressing such deficiencies in conventional accounts with respect to environment. If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of 'polluter pays principle'. Removing subsidies that encourage environmental damage is another measure.
- (c) Resistance to change:** It has been observed that a group generally does not take kindly to social changes. On the other hand, the group may bring about its own changes, whether by dictation of its leader or by consensus. The degree to which a group resists change serves as an important index of its personality. It helps us in dealing with it efficiently.

*Reasons Why People Resent or Resist Change*

1. One major reason why people resist change is the potential for loss on a personal level. Objectively, there may be little threat, but people may act as if there is one. Some of the things people feel are at risk during change processes are:
  - Security
  - Friends and contacts
  - Money

- Freedom
  - Pride and satisfaction
  - Responsibility
  - Authority
  - Good working conditions
  - Status
2. While a feeling of threat is a primary reason why people resist change, there are other factors that can mobilize people into resisting any changes from a status quo. These include:
- Change not needed - status quo is working fine
  - Proposed change does more harm than good
  - Lack of respect for person responsible for the change
  - Objectionable way of implementing the change
  - Negative attitude towards the organization before the change
  - no opportunity to have input into change
  - change perceived as implying personal criticism
  - Change simply adds more work and confusion.
  - Change requires more effort than to keep status quo
  - Bad timing of the change
  - A desire to challenge authority
  - Hearing about the change secondhand
3. The uncertainty principle: This states that when people are faced with ambiguous or uncertain situations, where they feel they do not know what to expect, they will resist moving into those situations. In other words, if people don't know what is to come resistive.

**Question 5**

- (a) (i) *Mr. A deposited the proxy form in favour of Mr. B but it was not accepted although it was deposited in time. What can be the grounds for rejection of the proxy form in the light of the provisions of the Companies Act, 2013? (3 Marks)*
- (ii) *The Articles of Association of PQR Limited provided that documents upon the company may be served only through email. Mr. GK Singh sent document to the*

*company by registered post. The company did not accept the document on the ground that sending documents to the company by post was in violation of the Articles. As a result Mr. GK Singh suffered loss. Decide the validity of arguments of the company and claim of Mr. GK Singh for damages in the light of provisions of the Companies, Act, 2013.* **(3 Marks)**

- (b) State with reason whether the following statement is correct or incorrect:
- (i) *Business does not sub-serve environmental ethics.* **(2 Marks)**
- (ii) *Inclusion of environmental consideration as a part of corporate strategy improves corporate performance.* **(2 Marks)**
- (c) *Enumerate the steps that are taken to make critical thinking effective in a business organization.* **(4 Marks)**

**Answer**

- (a) (i) According to section 105(1) of the Companies Act, 2013, any member of a company who is 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 form received at least 48 hours before the meeting will be valid even if the articles provide for a longer period.

As per the facts, Mr. A deposited the proxy form in favour of B though in time, however, the said proxy was not accepted.

Following are some grounds for rejection or non-acceptance of a proxy form submitted by an individual:

- (i) If the proxy form was not in writing or was not in the proper form (MGT-11);
- (ii) If the proxy form was not signed by the member appointing the proxy or by his legal representative or a person duly authorised by him in writing and the form was not stamped;
- (iii) In terms of the proviso to sub-section (1) of section 105 of the Companies Act, 2013, read with the Companies (Management and Administration) Rules, 2014, if the person appointed as proxy has already been appointed as proxy on behalf of fifty or more members and holding ten per cent or more of the total share capital of the company carrying voting rights.
- (ii) Section 20 of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the registrars.

**Serving of document to company:** 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, speed post, courier service, leaving it at its registered office, or means of such electronic or other mode as may be prescribed.

However, 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.

In the given instance, even though the Articles of PQR Limited has specifically provided that documents may be served upon the Company only through email; this is invalid on the ground that the provisions of the Articles cannot be inconsistent with the provisions of the Companies Act, 2013. Therefore, the argument of the Company is not valid. The Company was bound to accept the document sent by Mr. GK Singh by registered post. Since the Company did not accept the documents, Mr. GK Singh who suffered loss due to non-acceptance of the document served through registered post, is entitled for any claim for damages.

- (b) (i) **Incorrect:** With the awareness of social responsibility and ethical norms the motive of business is not only concerned with business interest of the shareholders but also a general concern for the community. Now the business houses have realized that environmental ethics make good business sense if quality, ethics and environmental standards are maintained.
- (ii) **Correct:** Environmental consideration have become a part of corporate strategy, which means incorporating environmental issues in the process of developing a product, in new investments and in the organisational set up. A good environmental practice improves corporate performance. Infact, it has been found that environmental friendly practices have resulted in more saving. Thus, environmental considerations play a key role in corporate strategy.
- (c) **Steps required to make critical thinking effective in a business organisation: To do critical thinking effectively, following skills need to be developed:-**
1. **Analyze Cause and Effect:** One must be able to separate the motive or reason for an action or even (the cause) from the result or outcome (the effect).
  2. **Classify and Sequence:** One must be able to group items or sort them according to similar characteristics.
  3. **Compare and Contrast:** One must be able to determine how things are similar and how they are different.
  4. **Infer:** One must be skilled in reasoning and extending logic to come up with plausible options or outcomes.

5. **Evaluate:** One must be able to determine sound criteria for making choices and decisions.
6. **Observe:** One must be skilled in attending to the details of what actually happened.
7. **Predict:** One must be able to find and analyze trends, and extend these to make sensible predictions about the future.
8. **Rationalize:** One must be able to apply the laws of reason (induction, deduction, analogy) to judge an argument and determine its merits.
9. **Prioritize:** One must be able to determine the importance of an event or situation and put it in the correct perspective.
10. **Summarize:** One must be able to distill a brief report of what happened or what has been learnt.
11. **Synthesize:** One must be able to identify new possible outcome by using pieces of information that is already known.

**Question 6**

- (a) (i) *K Limited, an unlisted company decided to issue sweat equity shares to its employees for which it has passed the special resolution and completed the other formalities. Discuss the validity of the following with respect to issue of shares at a discount as per provisions of the Companies Act, 2013.*
- (a) *Decision to issue the shares to an employee of a subsidiary outside India who joined six months ago;*
  - (b) *Decision to issue shares at a discount to a non-independent part-time director of the company. (3 Marks)*

OR

*P Ltd. intends to raise capital by using shares in different tranches to fund its ongoing project. Advise with reference to the provisions of the Companies Act, 2013, whether P Ltd. has to file a prospectus for every issue or is there any way to avoid repeated issue of prospectus.*

- (ii) *Anand Raj induced Murthy to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Murthy complained that there were many defects in the motorcycle. Anand Raj proposed to get it repaired and promised to pay 40% of the cost of repairs. After a few days, the motorcycle did not work at all. Now Murthy wants to rescind the contract. Referring to the provisions of the Indian Contract Act, 1872, decide whether Murthy can rescind the contract. (3 Marks)*
- (b) *State few examples of self-review threats for finance and accounting professionals when acting as consultants or auditors. (4 Marks)*

- (c) *The Board of Directors of XYZ Limited agrees with Mrs. Madhu to hire her (Mrs. Madhu's) flat at Nagpur on lease for 10 years @ ₹ 20,000 per month for marketing office of the company. You are a senior executive of the Board and the Board asks you to prepare the lease deed for the agreement. Draft a lease deed.* **(4 Marks)**

**Answer**

- (a) (i) As per **Section 2 (88) of the Companies Act, 2013**, the term 'sweat equity shares' means such equity shares as are issued by a company to its **directors or employees** at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

As per Explanation (i) to Rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014, "Employee" means-

- (i) a permanent employee of the company who has been working in India or outside India; or
- (ii) a director of the company, whether a whole- time director or not; or
- (iii) an employee or a director as defined in sub-clauses (i) or (ii) above of a subsidiary, in India or outside India, or of a holding company of the company;

**In terms of the above, the following conclusion can be made:**

- (a) Here issue of shares to any employee of a subsidiary outside India, who joined six months ago, the decision to issue the shares, is valid in light of the stated clause (iii).
- (b) In the light of given clause (ii), employee means a director whether whole-time or not. Here, shares are issued at a discount to non-independent part time director of the Company, will fall under this category, and hence the decision to issue the shares at a discount will be valid.

**OR**

The given case is related to section 31 of the Companies Act, 2013 which deals with the "shelf prospectus". It means a prospectus in respect of which the securities or class of securities included therein are issued for subscription to raise capital in one or more issues over a certain period without the issue of a further prospectus.

Accordingly, in light of section 31 of the Companies Act, 2013, P Ltd. 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 the 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 to be issued for every issue of securities.

- (ii) **Misrepresentation:** According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, without an intent to deceive, which brings an advantage to the person committing it by misleading another to his prejudice or to the prejudice of any one claiming under him.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Murthy could not rescind the contract, as his acceptance to the offer of Anand Raj to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [*Long v. Lloyd, (1958)*].

- (b) Self-review threats may occur when a previous judgment needs to be re-evaluated by the finance and accounting professional responsible for that judgment.

Following are some examples of Self review threat for finance and accounting professionals working as consultants or auditors.

- (i) The **discovery of a significant error** during a re-evaluation of the work of the finance and accounting professional.
- (ii) **Reporting** on the operation of financial systems after being involved in their design or implementation.
- (iii) Having **prepared the original data** used to generate records that are the subject matter of the engagement.
- (iv) A **member** of the assurance team being, or having recently been, a **director or Officer of that client**
- (v) A member of the assurance team being, or having recently been, **employed by the Client** in a position to exert direct and significant influence over the subject matter of the engagement.

(c)

**Lease deed**

This deed of lease of a flat made on.....day of.....between Mrs. Madhu W/o.....r/o.....(hereinafter called the 'lessor') and XYZ Limited .....with registered address..... (hereinafter called the 'lessee')

**Whereas both the lessor and the lessee agree to the following terms and conditions:**

1. That the lessor agrees to lease out the flat numbering.... located in .....in the District of Nagpur to the lessee with effect from..... for a period of ten years on payment of monthly rent. of Rs, 20,000 payable on the fifth day of each month in advance.
2. That the lessee agrees to take the aforesaid flat on lease to be used as marketing office.
3. That the responsibility to pay all rates, taxes and charges in respect with the leased flat, shall rest upon the lessor.
4. That the lessee shall deliver the peaceful vacant possession of the leased flat to the lessor at the termination of the period of lease.
5. That the lessee intending to vacate the leased flat at an early date, shall give notice of his intention to the lessor to vacate the leased flat at the expiry of the period stated in the notice.
6. Default in payment of rent for three consecutive months shall entitle the lessor to enter upon the said flat and determine the lease.

IN WITNESS WHEREOF, the lessor and the lessee have signed this deed on the day and year above stated.

Witness.....

Lessor.....

Witness.....

Lessee.....