

Chapter 7 - Management and Administration

Question 1

Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors- first chocolate and second butter scotch. 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 penalized?

[RTP Nov 21]

OR

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?

[May 2018, MTP Oct 2020]

OR

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

Relevant provision:

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.

Section 92(5) 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.

Given case:

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.

Analysis and conclusion:

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.

Question 2

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

Chapter 7 - Management and Administration

Returns at Kolkata.

- ii. Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

[May 2018]

OR

Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members?

[MTP Mar 19]

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. **Inspection of Register of Members:** 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.

[Note: A presumption may be taken with respect to payment of fees. In such a case, any other person (other than specified above) may also inspect the Register of members of company]

Question 3

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.

[May 2018]

Answer

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT - 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014. 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 indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding

Chapter 7 - Management and Administration

of offences and appeals made against such penalty or punishment;

9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed.

Question 4

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.

[MTP March 21]

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 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.

Question 5

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, Biwadi. 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.

[RTP Nov 19]

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.

Chapter 7 - Management and Administration

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.

Question 6

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.

[July 2021]

Answer

- (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the first financial year.
Hence, the statement that 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 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.
- (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.

Question 7:

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

[RTP May 19]

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.

Question 8

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

Chapter 7 - Management and Administration

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:

- a. Whether the meeting has been validly called?
- b. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- c. Can the delay in giving notice be condoned?

[May 19, RTP Nov 20]

OR

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 the notice of the Annual General Meeting as per the Companies Act, 2013

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.

Question 9

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.

[Nov 19]

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

Chapter 7 - Management and Administration

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 authorized 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.

Question 10

P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could not 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 whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

[MTP Apr 21]

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 id s 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.

Question 11

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.

Chapter 7 - Management and Administration

[MTP April 2022]

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) five members personally present if the number of members as on the date of meeting is not more than one thousand,
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

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).

Question 12

(i) The Articles of Association of DJA 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:

- (1) A, the representative of Governor of Uttar Pradesh.
- (2) D, representing Y Ltd. and Z Ltd.
- (3) E, F, G and H as proxies of shareholders.

Determine whether the quorum was present in the meeting?

(ii) Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)?

[MTP Aug 2018, RTP May 20]

Answer

(i) 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

Chapter 7 - Management and Administration

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. 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.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

- (ii) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Sirhj has given proper notice. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Question 13

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.

[RTP Nov 18, MTP Mar 19, April 21]

Answer

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.

Question 14

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.

- P1, P2 & P3 shareholders
- P4 representing ABC Ltd.
- P5 representing DEF Ltd.
- P6 & P7 as proxies of the shareholders

(1). Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was

Chapter 7 - Management and Administration

present in the meeting.

- (2). What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
- (3). In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
- (4). What happens if there is no Quorum in the Adjourned meeting?

[Nov 18, MTP Nov 21]

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.

- P1, P2 and P3 will be counted as three members.
- 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.
- 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.

(1). 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 KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

(2). 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.

(3). In case of lack of quorum, the meeting will be adjourned as provided in section 103. In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

(4). Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Question 15

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?

[Nov 20]

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, fifteen members personally present may fulfil the requirement

Chapter 7 - Management and Administration

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, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

Question 16

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 case 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?

[MTP Oct 18, April 19, RTP May 21]

Answer

A Proxy form 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.

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 authorizing N to vote was deposited in less than 48 hours before the meeting.

Chapter 7 - Management and Administration

Question 17

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.

OR

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?
[May 2019]

Answer

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.

Question 18

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?

[Jan 2021]

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 form 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.

Chapter 7 - Management and Administration

Question 19

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.

[MTP Mar 18, May 20, RTP Nov 18]

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.

Question 20

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

[RTP Nov 19]

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.

Question 21

'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting

Chapter 7 - Management and Administration

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.

[Nov 18]

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.

Question 22

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?

[May 2019]

Answer

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.

Question 23

Miraj 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. S and Mr. P 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

[May 18, MTP Oct 18, ICAI Module]

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.

Chapter 7 - Management and Administration

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. S and Mr. P as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree

Question 24

At a General meeting of a XYZ Limited, 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.

[MTP Oct 2019]

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.

Question 25

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.

[Nov 18]

Answer

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.

Question 26

Give the points of distinction between ordinary resolution and special resolution

[May 2019]

Answer

Chapter 7 - Management and Administration

Difference between ordinary resolution and Special resolution Ordinary Resolution:

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution—

As per Section 114(2) of the Act, a resolution shall be a special resolution, when-

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and
- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Question 27

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?

[RTP May 18, MTP Oct, 19]

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.

Question 28

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?

[MTP Oct 18, April 19, Jan 21]

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

Chapter 7 - Management and Administration

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 Veena Ltd. can be signed in the absence of Mr. Mohan Rao, by any director, authorized by the Board in this respect.

Question 29

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 authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

[July 21]

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.

Question 30

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?

[RTP May 21]

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 1annual Report with the Registrar

Chapter 7 - Management and Administration

within 30 days from 31st August, 2020.

Question 31

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

[MTP April 21]

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.