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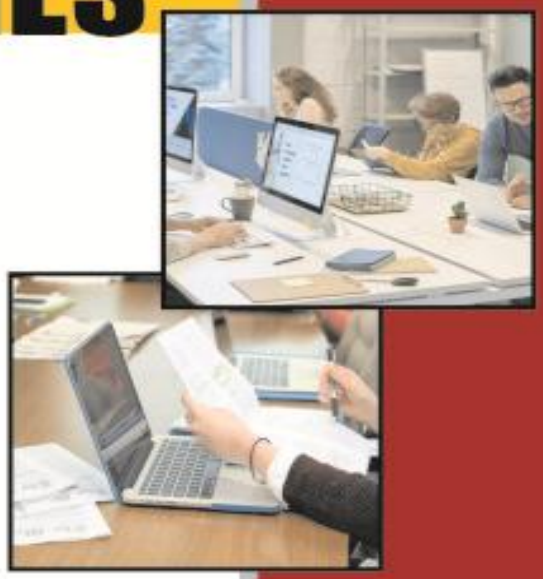

Top 50 Questions

(CA Final & Inter New Scheme)

CA INTER - CORPORATE AND OTHER LAWS

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CA INTER COURSE

CORPORATE AND OTHER LAWS

Top 50 Question

Q-1 Kapila Limited issued equity shares of Rs. 100000 (10000 shares of Rs. 10 each) on 01.04.2022 which have been fully subscribed, whereby Kusha Limited holds 4000 shares abd Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holdings 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.20222.

Examine with relevant provision of the Companies Act, 2013.

(i) Whether kapila limited is a subsidiary of Red Limited?

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

Q-2 In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the board with the responsibility of complying with the provisions of the Act, and neither any directors/directors specified by the board. Examine the persons who can be treated as officer in Default.

Q-3 As at 31st march, 2022, the paid – up shares capital of S. Ltd. is Rs. 1000000 dividend into 1000000 equity shares of Rs. 10 each. of this, H Ltd. is holdings 600000 equity shares and 40000

equity shares are held by others. Simultaneously, S Ltd. is holdings 5% equity shares of H Ltd. out of which 1% shares are held by other. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased members of H Ltd, on the basis of the given information, examine and answer the following queries with reference to the provision of the Companies Act, 2013.

(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2022 – 23?

(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

Q-4 A Group of individuals intend to form a club namely 'Building Pilots Club's as limited liability Company to impact class room teaching and aircraft flight training to trainee pilots. It was decided to from a limited company for charitable purpose under section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.

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

Q-5 Discuss the provisions relating to private placement of shares under the companies Act, 2013.

Q-6 Examine that following offers of ABC Limited are in compliance with provision of the Companies Act, 2013. Related to private placement or should this offer be treated as public:

(i) ABC limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name of issue its equity shares. Out of these four are qualified institutional buyers.

(ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.

(iii) Being a public company can it issue securities in a private placement offers?

Q-7 Can equity shares with Different Voting rights be issued? If Yes, state the Conditions under which such shares may be issued.

Q-8 Natraj Limited is engaged in the manufacturing of glass products. It wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Advise whether it amount to purchase of its own shares. If, in the instant case, the company itself purchasing to redeem its preference shares, does it amount to acquisition of its own shares?

Q-9 Safar Limited having a net worth of Rs. 130 crore wants to accept deposits from its members. It has approached you to advice whether it falls within the category of an eligible company? What special care has to be taken while accepting such deposits from members?

Q-10 states the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

Q-11 Explain the term 'change'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?

Q-12 What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Q-13 KMN Ltd. scheduled its Annual General Meeting to be held on 11th March, 2023 at 11:00 Am. The company has 900 members. On 11th march, 2023 following persons were present by 11:00 A.M.

1. P1, P2 & P3 shareholders.
2. P4 representing ABC Ltd.
3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders.

Based on the above, answer the followings:

(i) Examine with reference to relevant provisions of the Companies Act, 2013. whether quorum was present in the meeting.

(ii) What will be your answer if P$ representing ABC Ltd., reached I the meeting after 11:30 A.M.?

(iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting I terms of date, time & place.

(iv) What happens if there is no Quorum in the Adjourned meeting?

Q-14 Veena Ltd. held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Mohan Rao, the Chairman of the Company's Board of Directors. On September 17, 2000, 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?

Q-15 Referring to the provision of the Companies Act, 2013, examine the validity of the following:

(i) Directors of ABC Tractors Limited propose to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

(ii) Whether a company can declare for the financial year in which it incurred loss.

Q-16 RST Ltd. declared dividend at the rate of 20% for the financial year 2021 – 22 in the AGM scheduled on 15th June 2022. As RST Ltd. is left with certain unpaid and unclaimed dividend, it

transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more that 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for non – compliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

State in the light of the facts, whether the allegation marked by shareholders and claim for the dividend amount, against RST Ltd. is justifiable?

Q-17 Reliance Industries Limited., a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiary of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiary located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company not required to get its financial statement audited under the company law of its incorporation. you are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Q-18 X Ltd. is a listed company having a paid - up share capital of Rs. 25 crore as on 31st March, 2022 and turnover of Rs. 100 crore during the financial year 2021 – 22. The Company Secretary has advised the Board of Directors that X Ltd. is not required to appoint 'Internal Auditor' as the company's paid – up share capital and turnover are less than the threshold Limited prescribed

under the companies Act, 2013. Do you agree with the advice of the Company Secretary? Explain your view referring to the provisions of the Companies Act, 2013.

Q-19 PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. what are the content of the certificate to be issued in accordance with the Companies (Audit & Auditor's Rules, 2014.)?

Q-20 Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as a auditor firm of A.K. Company Limited (Listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20.05.22. In the General meeting of the company held on 15.06.22. the company appointed Gupta & Gupta firm as next auditors of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act, 2013? Explain?

Q-21 Manoj guarantees for Ranjan, a retail textile merchant, for an amount of Rs. 100000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 4 months.

After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for Rs. 40000. Referring to the provision of the Indian Contract Act, 1872. Decide whether Manoj is discharge from all the liabilities to Sharma for any subsequent credit supply. What would be

your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. Rs. 40000?

Q-22 Alpha Motor Ltd. agreed to sell a bike Ashok under hire – purchase agreement on guarantee of Abhishek. Then term were: hire – purchase price Rs. 96000 payable in 24 monthly Instalments of Rs. 8000 each. Ownership to be transferred on the payment of last instalment. State whether abhishek is discharge in each of the following alternative cases under the provisions of the Indian Contract Act, 1872:

(i) A shok paid 12 installments but failed to pay next two installments. Alpha Motor Ltd. sued Abhishek for the payment of arrears and abhishek paid these two instalments i.e. 13^{th} and 14^{th}. Abhishek then gave a notice to Alpha Motor. Ltd. to revoke his guarantee for the remaining month.

(ii) If after 15 months, Abhishek died due to covid – 19.

Q-23 Mr.Muralidharan drew a cheque payable to Mr. Vyas or order. Mr. Vyas lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forget the signature of Mr. Vyas and indorsed it to Mr. Parshwanath as the consideration for goods bought by him from Mr. Parashwanath. Mr. Parashwanath encashed the cheque, on the very same day from the drawee bank. Mr. Vyas Intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank.

Q-24 State briefly the rules laid down under the Negotiable Instruments Act for determining the date of maturity of a bill of exchange.

Q-25 'A' draws a cheque fort 5,000 in favour of 'B'. 'A' had sufficient funds in his bank account to meet it. When the cheque ought to be presented in the bank. The bank fails before the cheque is presented. "B" wants to claim it from 'A'. Decide, whether 'A' is liable as per the Negotiable Instruments Act, 1881.

Q-26 What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could said to be made in good faith.

Q-27 Komal Ltd. declares a dividend for its shareholders in its AGM held on 27 September, 2021. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

(i) The dates during which Komal Ltd. is required to pay the dividend?

(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

Q-28 "The act done negligently shall be deemed to be done in good faith." Comment with the help of the provisions of the General Clauses Act, 1897.

Q-29 Give the difference between interpretation and construction.

Q-30 Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

Q-31 The paid-up share capital of Saras Private Limited is t 1 crore, consisting of 8 lacs Equity Shares of 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of t 10 each, fully paid-up. Jeevan (IVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Plyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

Q-32 Alfa School started imparting education on 01.04.2015, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2022, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

Q-33 Prakhar Ltd. intends to raise share capital by issuing equity shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provision of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?

Q-34 The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

Q-35 How does the Companies Act, 2013 regulate and restrict the following matters in respect of a company going for public issue of shares:

(a) Minimum Amount stated in the Prospectus; and

(b) Application Money payable on shares.

Q-36 Unique Builders Limited decides to pay 2.5% of the value of debentures as underwriting commission to the underwriters but Articles of the company authorize only 2% underwriting commission on debentures. The company further decides to pay the underwriting commission in form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.

Q-37 Growmore Ltd.'s share capital is divided into different classes. Now, Growmore Ltd. intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Ltd. as to obtaining consent from the shareholders in relation to variation of rights.

Q-38 Earth Ltd., public companies offer the new shares (further issue of shares) to persons other than the existing shareholders of the company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference shareholders?

Q-39 Rs. 2,50,000 received from Mr. Raghu, an employee of the company who is drawing annual salary of Rs. 2,00,000 under a contract of employment with the company in the nature

of non-interest bearing security deposit. Whether the amount so received can be treated as deposits?

OR

Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not: Rs. 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of Rs. 1,50,000, as a non-interest bearing security deposit under a contract of employment.

Q-40 Explain the term 'charge'. State the circumstances under which necessity to create a charge arises what is the time limit for registration of charge with the registrar?

Q-41 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.

Q-42 PET Ltd., incurred loss in business upto current quarter of financial year 2021-22. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company has decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd, stating the provisions of declaration of interim dividend under the Companies Act, 2013.

Q-43 Adil is a student of CA Intermediate. His friend (who is also in CA Intermediate) has approached him to explain to him the provisions of the Companies Act, 2013, on the following:

(i) Inspection of books of account and other books and papers of the company.

(ii) Period of preservation of books of account.

Q-44 Explain how the auditor will be appointed in the following cases:

(i) A Government Company within the meaning of Sec. 394 of the Companies Act, 2013.

(ii) The Auditor of the company (other than Government Company) has resigned on 31st Dec., 2022, while the financial year of the company ends on 31st March, 2023.

(iii) A Public Company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Q-45 Manoj guarantees for Ranjan, a retail textile merchant, for an amount of Rs. 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months.

After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for Rs. 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. Rs. 40,000?

Q-46 A bill of exchange is drawn by 'A' in Berkley where the rate of interest is 15% and accepted by 'B' payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonored. An action on the bill is brought against 'B' in India. Advise as per the provisions of the Negotiable Instruments Act, 1881, what rate of interest 'B' is liable to pay?

Q-47 Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2022, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

Q-48 Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard?

Q-49 As at 31st March, 2022, the paid-up share capital of S Ltd. is 1,00,00,000 divided into 10,00,000 equity shares of t 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

(i) Can S Ltd. make further investment in equity shares of H Ltd, during 2022-23?

(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

Q-50 Swati Limited is intending to issue its securities on private placement basis. Explain to the directors of the company, the provisions of the Companies Act, 2013, on the following matters:

(i) Meaning of Private Placement

(ii) Time Limit for Allotment of Securities' and 'repayment of application money in case of default in allotment.

SUGGESTED ANSWERS

A-1 State of Subsidiary company:

- As per Sec. 2(87) of the Companies Act, 2013 "subsidiary company" or "subsidiary". in relation to any other company (i.e., the holdings company), means a company in which the holdings company –
  - **(i)** Controls the composition of the board of Directors; or
  - **(ii)** Exercise or controls more than 50% of the total power either at its own or together with one or more of its subsidiary companies.
- For the purpose of this clause:
  - **(i)** a company shall be deemed to be a subsidiary company of the holdings company even if the control referred to in sub – clause (i) or sub – clause (ii) of is another subsidiary company of the holdings company;
  - **(ii)** The Composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercised of some power exercisable by it at its discretion can appoint or remove all or a remove all or a majority of the directors.
- As per Sec. 19 of the Companies Act, 2013, no company shall, hold any shares in its holdings company and no holdings company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub – section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holdings company.

- In the instant case, Kapila Limited issued 10000 equity shares on 1.4.2022 whereby Kusha Limited & Prem Limited holds 4000 $ 2000 shares respectively in Kapila Ltd., Considering 1 share = 1 voting, Kusha Limited and Prem Limited together holds more than one – half (50%) of the total voting power. Therefore, kapila Limited will be subsidiary to Kusha Limited Prem Limited from 1.4.2022.
- Kapila Limited is already holding 20% equity shares of Red Limited before the date of issue of equity shares i.e. 1.4.2022. Further, Red Limited controls the composition of Board of Directors of Kusha Limited Is a holding company of Kusha Limited and Prem Limited (Subsidiary companies).

  Conclusion: Based on the above discussion, following conclusions may be drawn:

  (i) Kapila Limited shall be deemed to be a subsidiary company of the holdings company (Red Limited) as Red Limited controls the composition of subsidiary Kusha Limited & Prem Limited controls the compositions of subsidiary companies Kusha Limited & Prem Limited as per explanation to Clause (87) of Sec. 2.

  (ii) Kapila Limited can hold shares of Red Limited as Kapila Limited was holding shares even before it became a subsidiary company of the Red Limited.

A-2 Office in Default:

As per Sec. 2(60) of Companies Act, 2013, Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company's namely:

(i) Whole – time directors:

(ii) key management personnel (KMP):

(iii) where there is no KMP, such director or directors as specified by the Board on this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no directors is so specified;

(iv) any person who, under the immediate authority of the Board or any KMP, is charged with any responsibility including maintenance, filling or distribution of accounts or records, authorities, actively participates in, Knowingly permits, or Knowingly falls to take active steps to prevent, any default:

(v) any person in accordance with whose advice, directors or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the board in a professional capacity:

(vi) every directors, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtual of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; and

(vii) In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchants bankers to the issue or transfer.

Conclusion: In the given case, there were o managing directors, a manager, secretary, a person charged by the board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board, therefore, in such situation, all the directors of the company may be treated as officers in default.

A-3 Subsidiary company not to hold shares in its holdings company:

- The paid – up shares capital of S. Ltd. is Rs. 10000000 dividend in to 1000 equity shares of Rs. 10 each. of this, H Ltd. is holding 600000 equity shares.

- Hence, H Ltd. is the holding company of S Ltd. and S. Ltd. is the subsidiary company of H Ltd. by virtual of Sec. 19 of the Companies Act, 2013.
- As per Sec. 19 of the Companies Act, 2013 a company shall not hold any shares in its holdings company either by itself or thought its nominees. Also, Holdings Company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
- However, there are there exceptions to the above mentioned provision:
  (a) where the subsidiary company holds such shares as the legal representative of a deceased members of the holdings company; or
  (b) where the subsidiary company holds such shares as a trustee: or
  (c) where the subsidiary company is a shareholders even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holdings company.

  The subsidiary company referred to above shall have a right to vote at a meetings of the holdings company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b).

  (i) S Ltd. cannot make further investment in equity shares of H Ltd.
  (ii) S Ltd. can exercise voting rights at the AGM of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
  (iii) H Ltd. cannot allot or transfer some of its shares to S Ltd.

A-4 Formation of Companies with Charitable objects, etc.

- As per Sec. 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the C.G. that a person or an association of persons proposed to be registered under this Act as a limited company

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

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

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

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

- in the given case, the decision of the group of individuals to from a limited liability company for charitable purpose u/s section 8 for a period of 10 years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good. Since income only in promoting its objects.
- Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in Sec. 8 of the Companies Act, 2013.

Conclusion: proposal is not feasible as surplus, if any on dissolution, can't be distributed amongst the members on dissolution.

A-5 Provisions related with private Placement:

The term "private placement" means any offer of securities or invitation to subscribe securities to a select group of person's b y a company (other than by way of public offer) through issue of a private placement offer – cum – application, which satisfies the conditions specified in this section.

Conditions for private placement (Sec. 42):

(1) Offer of private placement: a private placement shall be made only to a Selected group of persons who have been identified by the Board ('Identified Persons') through issue of a private placement offer – cum – application.

(2) Number of persons: The offer of securities or invitation to subscribe securities, shall be made maximum to 50 persons or such higher numbers as may be prescribed, in a financial year and on such conditions (including the form and manner or private placement) as may be prescribed.

However, this does not include qualified institution buyers and employees of the company being offered securities under a scheme of employee's stock option.

(3) Deemed public Offer: If a company, listed or unlisted, makes an offer to allot or invitees subscription, or allots, or enters into an agreement to allot, securities to more than prescribed numbers of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public.

(4) Limit on fresh offer: No fresh offer or invitation made earlier has been completed or that offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

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

(6) payment of amount: Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid wither by cheque or demand draft or other banking channel and not by cash.

(7) Time for allotment of Securities: a company, making an offer or invitation under this section shall its securities within 60 days from the date of receipt of the application money for such securities within 60 days from the date of receipt of the application money for such securities. Where the company is not able to allot the securities within started period, it

shall repay the application money to the subscribers within 15 days from the date of completion of sixty days. If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest @ of 12% per annum from the expiry of the sixtieth day.

(8) Separate bank Account: minor received on application shall be kept in a separate bank account in a scheduled bank and shall be utilized only for the following purpose-

- For adjustment against allotment of securities; or
- For the repayment of monies where the company is unable this allots securities.

(9) Public Advertisement: Company offering securities under this section shall not publish any public advertisement or utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(10) Return of Allotment: A company making any allotment making any allotment of securities shall file with the Registrar a return of allotment within 15 days from the date of allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(11) Penalty for contraventions: If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or Rs. 2 crore, whichever is lower, and the company shall also refund all monies with interest to subscribers within a period of 30 days of the order imposing the penalty.

A-6 Private Placement:

- As per Sec. 42 of Companies Act, 2013, a private Placement shall be made only to a selected group of persons who have been identified by the Board through issue of a private placement offer – cum – application. The offer of securities or invitation to subscribe

securities shall be made maximum to 50 persons or such higher number as may be prescribed, in a financial year and on such conditions as may be prescribed. However, this does not include qualified institutional buyers and employees of the company being offered securities under a scheme of employee's stock option.

- As per rule 14 of Companies (Prospectus and allotment of Securities) Rule, 2014, such offer or Invitation shall be made to not more than 200 persons in the aggregate in a financial year. If a company makes as offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions related to prospectus. The restriction would be reckoned individual for each kind of security that is equity share, preference share or debenture.
- NO fresh offer or invitation u/s 42 shall be made unless the allotment with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
- Any offer or invitation not in compliance with the provisions of Sec. 42 shall be treated as a public offer and all provisions will apply accordingly.

Conclusion: Applying the provisions as stated above, following conclusion mat be drawn:

(a) ABC Limited is allowed to raise funds through private placement offer. The company has given offer to 55 persons out of whom 4 are qualified institutional buyers and hence, the offer is given effectively tom only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

(b) Private placement offer of debentures was made before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provision of Sec. 42. Hence, the offers given by company will be treated as public offer.

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

(c) ABC Limited can issue securities in a private placement offer.

A-7 Conditions for the issue of equity shares with differential rights:

As per Sec. 43 of Companies Act 2013, equity share capital of a company; limited by shares may be (a) with voting rights; or (b) with differential voting rights as to dividend, voting or otherwise, unless It complies with the following conditions, namely:

(1) The articles of association of the company authorizes the issue of shares with differential rights:

(2) The issue of shares is authorized by an ordinary resolution passed ay a general meeting of the shareholders. However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares be approved by the shareholders through postal ballot;

(3) the shares with differential rights shall not exceed 74% of the total post – issue paid up equity shares capital including equity shares with differential rights issued at any point of time;

(4) the company has not defaulted in financial statements and annual returns for 3 financial years immediately preceding the financial year in which it is decided to issue such shares;

(5) the company has not subsisting default in the payment of a declared dividend to its share holders or repayment of its matured deposits or redemption of its preference shares or debenture that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

(6) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or state level financial institution or scheduled bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and protection fund to the Centre government;

However, a company may issue equity shares with differential rights upon expiry of 5 years from the end of the financial year in which such default was made good.

(7) The company has not been penalized by Court or Tribunal during the last 3 years of any offence under the RBI Act, 1934, the SEBI Act, 1992, the SCRA, 1956, the FEMA, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

A-8 Financial Assistance to employees and buy back of securities:

- Financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares. However, Sec. 67(3) of the Companies Act, 2013, permits a company to give loans to its employees other than its directors or KMP, for an amount not exceeding their salary or wages for a period of 6 months with a view to enabling them to purchase or subscribe for fully paid – up shares in the company or its holdings company to be held by them by way of beneficial ownership.
- Sec. 69 of the companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfillment of prescribed conditions. purchasing in order to redemption its preference shares. does amount to acquisition or purchase of its own shares. But redemption its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of Sec. 68 of the companies Act, 2013 subject to the fulfillment of prescribed conditions, and upto specified limits and only after following the prescribed procedure.

A-9 Acceptance of Deposits by an eligible company:

- As per Rule 2(1) (e) of the companies (Acceptance of Deposits) Rule, 2014, an "eligible company" as referred to in Sec. 76(1) of the companies Act, 2013 means a public company, having a net worth of not less than Rs. 100 crore or a turnover of not less than Rs. 500 crore and which has obtained the prior consent of the company in general meeting by means of a

special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

- As per Rule 4(a) of the Companies (Acceptance of Deposits) Rules, 2014, an 'eligible company' shall accept or renew any deposits from its members, if the amount of such deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed 10% of the aggregate of the paid – up share capital, free reserves and securities premium account of the company.
- Safar Limited is having a net worth of Rs. 130crores. Hence, it falls in the category of 'eligible company'. The fact that turnover has not been started in the question will not affect this answer, since fulfilling any one criteria will be sufficient.

Conclusion: Safar Limited can accept the deposits, however, it has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid – up shares capital, free reserves and securities premium account of the company.

A-10 Acceptance of deposits by a company from its members:

As per Sec. 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to prescribed rules, accept deposits from its members, subject to the fulfillment of the following conditions, namely:

(a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.

(b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;

(c) Depositing on or before the 30th day of April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposits repayment reserve account;

(d) Certified that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of 5 years had lapsed since the date of making good the default; and

(e) Providing securities, if any for the due repayment of the amount of the deposits or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposits accept by a company shall be repaid with interest in accordance with the term and conditions of the agreement. Where a company fails to repay the deposits or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non – payment and for such other orders as the Tribunal may deem fit.

Exemption to certain private companies:

Clauses with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certificate as to no default committed, shall not apply to a private company:

(i) which accepts from its members monies not exceeding 100% of aggregate of the paid – up shares capital, free reserves and securities premium account; or

(ii) which is a start – up, for 5 years from the date of its incorporation; or

(iii) which fulfils all of the following conditions, namely:

(a) which is not an associate or a subsidiary company of any other company

(b) if the borrowings of such a company from banks or financial institution or any body corporate is less than twice of its paid – up share capital or Rs. 50 crore, whichever is lower; and

(c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section

However, such companies shall file the details of monies accepted to the Registrar in form DPT – 3.

A-11 Meaning of the term 'change':

The term "charge" has been defined in Sec. 2(16) of the Companies Act, 2013 as "an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage".

Necessity for creating a charge:

The answer to these lines in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowed, they mat issue debentures or by obtaining loans from bank/financial institutions. These banks/financial institutions need a surety regarding the repayment to their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. These creations of right on the assets and properties of the properties of the borrower companies. is known as a charge on assets.

Once charge is registered and filed, it becomes information in public domain as to how much company has borrowed against its assets and from whom.

Time Limit for registration of charge with the registrar:

- As per Sec. 77(1) of the companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the

charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

- The Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation, on payment of such additional fees as may be prescribed.
- if the Charge is not registered within the extended period as above, the company shall make an application and Registrar is empowered to allow such registration to be made within a further period of 60 days after payment of prescribed ad valorem fees.
- The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

A-12 Power of Registrar to make entries of satisfaction and release:

Sec. 83 of the Companies Act, 2013 provides power to the Registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company. Accordingly:

(i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge:

(a) that the debt for which the charge was given has been paid or satisfied in whole in part; or

(b) that part of the property or undertaking charges has been released from the charge or has ceased to form part of the company's property or undertaking,

Enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of property or undertaking, as the case may be, despite the fact that no intimation has been received by him from the company.

(ii) The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges kept u/s 81(1).

As per Rule 8 of the Companies (Registration of charges) Rules, 2014 with respect to the payment or satisfaction of charge:

- A company or charge holder shall within a period of 300 days from the date of the payment or satisfaction in full of any charge registered under Chapter VI. give intimation of the same to the Registrar in from No. CHG-4 along with the fee.
- Where the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in from No. CHG-5.

A-13 Quorum and proxies:

(i) As per ec. 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 in the given situation, quorum will be counted as follows:

(1) P1, P2, and P3 will be counted as three members.

(2) If a company is a member of another company. It may authorize a person by resolution to act as its representative at a meeting of the latter company, and 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 to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.

(3) Only members present in person not by proxy are to be counted. Hence, Proxies whether they are members or not will have to be excluded for the purpose of Quorum. Thus, P6 and P7 shall not be counted in quorum.

Based on the above started discussion, it can be concluded that the quorum for AGM is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

(ii) As per sec. 103 of the Companies Act, 2013, if the required quorum is not preset 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, the meeting will be adjourned as provided above.

(iii) In case of lack of quorum, the meeting will be 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.

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

A-14 Signing of the Minutes of the meetings:

- As per Sec. 118 of the Companies Act, 2013 every company shall prepare, sign and keep minutes of proceedings of every general meetings, including the meeting called by the requisitionists and all proceedings of meetings of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.
- As per sec Rule 25 of the Companies (Management and Administration) Rules, 2014 read with Sec. 118 of the Companies Act, 2013, each page of every such book shall be initialed or signed and the last signed by, in the case of minutes of proceedings of a general meetings, by the chairman of the same meeting within the aforesaid period of 30 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.

Conclusion: Minutes of the meeting can be signed in the absence of Mr. Mohan Rao. by any director, authorized by the Board in this respect**.**

A-15

(i) Declaration of Dividend:

Sec. 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of Sec. 73 (Prohibition of acceptance of deposits from public) and Sec. 74 (Repayment of deposits, etc. accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, declaration of dividend by the ABC Tractors Limited is not valid.

(ii) Declaration of Dividend in Case of Loss:

As per 2nd proviso to Sec. 123(1) of the Companies Act, 2013, in the event of inadequacy or absence of profit in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserve. However, such declaration of dividend shall be subject to the conditions as prescribed under rule 3 of the Companies (Declaration and payment of Dividend) Rules, 2014.

A-16 Unpaid dividend Account:

- As per Sec. 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/ claimed to/ by shareholder within 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.
- The Company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as many as prescribed.
- In the given situation, RST Ltd. Failed to give statement of unpaid/unclaimed dividend and so liable for the said non-compliance of Sec. 124 of the Companies Act, 2013.
- Any person claiming to be entitled to any money transferred u/s 124(1) to the Unpaid Dividend account of the company may apply to the company for payment to the money claimed.
- Since RST Ltd. failed to comply with the requirements of this section as to preparing of a statement of unpaid dividend, company shall be liable to a penalty of Rs. 1 lakh and in case of continuing failure, with a further penalty of Rs. 500 for each day after the first during which such failure continues, subject to a maximum of Rs. 10 lakh and every officer of the company who is in default shall be liable to a penalty of Rs. 25000 and in case of continuing failure, with a further penalty of Rs. 100 for each after the first during which such failure continues, subject to a maximum of Rs. 2 lakh.

A-17 Placing Financial statement on website:

- As per Sec. 136(1) of the Companies Act, 2013, a listed company shall place its financial statements including consolidated financial statements, if any, all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company .

- Every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any.
- A listed company which has a subsidiary incorporated outside India(foreign subsidiary):

(a) where such foreign subsidiary required to prepared consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met it consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company, may place such unaudited financial statement on its website and where such financial statement is in all language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Conclusion: Based on the provision as stated above, it can be concluded that Reliance Industries Limited has not complied with the provision of Sec. 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited.

A-18 Requirement of Internal Auditors:

Sec. 138 of the Companies Act, 2013 and Rule 13 of the Companies (Accounts) Rules, 2014 prescribed Sec. Class of companies required to appoint Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors which may be either an individual or a partnership firm or a body corporate, namely:

(A) Every listed company :

(B) Every unlisted public company having:

(i) paid – up share capital of Rs. 50 crore or more during the preceding financial year; or

(ii) Turnover of Rs. 200 crore or more during the preceding financial year; or

(iii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crore or more at any point of time during the preceding financial year; or

(iv) Outstanding deposits of Rs. 25 crore or more at any point of time during the preceding financial year.

Conclusion: X Ltd. is a listed company and hence is required to appoint an internal auditor, irrespective of its paid – up share capital or turnover (as the limit of paid – up share capital or turnover is applicable for unlisted public company). Hence, the advice of the company secretary is not correct.

A-19 Content s of the Certificate to be issued before appointment:

As per proviso of Sec. 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: As per Rule 4 of the Companies (Audit and Auditors) Rule, 2014, the person proposed to be appointed as auditor shall submit a certificate that:

(a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made there under;

(b) the proposed appointment is as per the term provided under the Act;

(c) the proposed appointment is within the limits laid down by or under the authority of the Act; and

(d) The list of proceedings against the auditor or audit firm or any criteria provided in section 141. Mr. with respect to professional matters of conduct, as disclosed in the certificate to the company before accepting the appointment as the auditor of PKC Ltd.

A-20 Appointment of Auditor:

- As per Sec. 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or reappoint:
  (a) An individual as auditor for more than one term of five consecutive year; and
  (b) An audit firm as auditor for more than two terms of five consecutive years.
- An individual auditor who has completed his term shall not be eligible for reappointment as auditor in the same company for five years from the complete of his term. An auditor firm which has completed its two terms shall not be eligible for reappointment as auditor in the same company for five years from the completion of such terms.
- It is also provided that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor for the same company for a period of five years.
- As per Rule 6 of the Companies (Audit and Auditors) Rules, 2014. If a partner, who is i9n charge of an audit firm and also certifies the financial statement of the company retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.
- In the given case, Mr. Yash retired from PQR firm and joined Gupta & Gupta firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm.

Conclusion: Gupta & Gupta firm well also be ineligible, to be appointed as auditor from for a period of 5 years.

A-21 Discharge of Surety by Revocation:

- As per Sec. 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transaction, by notice to the creditor, but the surety remains liable for transaction already entered into.
- As per the above provisions, liability of Manoj is discharge with relation to all subsequent credit supplies made by Sharma revocation of guarantee, because it is case of continuing guarantee.
- However, liability of manoj for previous transaction (before revocation) i.e. for Rs. 40000 remains. He is liable for payment of Rs. 40000 to Sharma because the transaction was already entered into before revocation of guarantee.

A-22 Discharge of Surety Liability:

- A Surety is said to be discharge when the liability as surety comes to an end.
- As per Sec. 130 of the Indian Contact act, 1872, the continuing guarantee may at any time be revoked by the surety as to future transaction by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction; however, he is liable for all the transaction that happened before the notice was given.
- Guarantee for Hire purchase transaction may be covered within the meeting of continuing guarantee as ownership of the goods to be transferred on the payment of last installment.
- As per sec. 131 of the Indian Contact Act, 1872, in the absence of any contact to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transaction taking palace after the death of surety.
- However, the surety's estate remains liable for the past transaction which have already taken plce before the death of the surety.

Conclusion: Based on the facts of the questions and provision of Secs. 130and 131 as stated above following conclusion may be drawn:

(i) Abhishek discharge for the further instalments.

(ii) Surety estate remains liable for the past transaction which has already taken place before the death of surety.

A-23 Protection of liability of the paying Banker:

- Sec. 85 of the Negotiable Instruments Act, 1881 provides the following:

  (1) Where a cheque payable to order purpose to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

  (2) Where a cheque is originally expresses to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding ant indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.
- In the given situation, cheque is drawn payable to "Mr. Vyas or order". It was lost and Mr. Vyas was not aware of the same. The person found the cheque and indorsement it to Mr. Parashwanath, Who encashed the cheque from the drawee bank. After few days, Mr. Vyas intimated about the theft of the cheque, to the drawee bank, by which time, the drawee bank had already made the payment.

Conclusion: Based on the provision of Sec. 85 as stated above, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be indorsement by or on behalf of the payee. Even though the signature of Mr. Vyas is forged, the banker is protected and is discharged. The true owner, Mr. Vyas, cannot recover the money from the drawee bank in this situation.

A-24 Determining the date of maturity of a bill of exchange:

- As per Sec. 22 of Negotiable Instruments Act, 1881, the maturity of a bill, not payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable. Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.
- As per Sec. 23 of Negotiable Instruments Act, 1881, when a bill is made payable at stated number of months after date, the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens.
- When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates with the day of the month which corresponds with the day on which it was so accepted.
- If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month.
- As per Sec. 24 of Negotiable Instruments Act, 1881, in calculating the date. a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, or the day on which the event happens shall be excluded.
- As per Sec. 25 of Negotiable Instruments Act, 1881, when the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day.

A-25 Discharge by the drawer not duly presenting a cheque for payment:

- As per Sec. 84 of the Negotiable Instruments Act, 1881, cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage; the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time.
- In determining what a reasonable time is, regard shall be had to (a) the nature of the instrument (b) the usage of trade and of bankers, and (c) facts of the particular case.
- The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank. in place of drawer. He will be entitled to recover the amount from Bank.

Conclusion: In the given case drawer i.e. A has suffered damage as cheque was not presented by B within reasonable time. Hence, A will be discharged but B will be the creditor of bank for the amount of cheque and can recover the amount from the bank.

A-26 Meaning of Good Faith:

- As per Sec. 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.
- The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.
- The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not mala fide, is presumed to have been done in good faith.
- In the given situation, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done

without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

A-27 Commencement and termination time:

As per Sec. 9 of the General Clauses Act, 1897, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(i) Payment of dividend: In the given instance, Komal Ltd. declared dividend for its shareholder in its AGM held on 27.09.2021. Under the provisions of Sec. 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, Le. From 28.09.2021 to 27.10.2021. In this series of 30 days, 27.09.2021 will be excluded and last 30th. day, Le. 27.10.2021 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28.09.2021 and 27.10.2021 (both days inclusive).

(ii) Transfer of unpaid or unclaimed divided: As per the provisions of Sec. 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2021 to 3rd November, 2021 (both days inclusive).

A-28 Concept of Good Faith:

- Good Faith in general, is anything done with due care and attention, which is not mala fide, is presumed to have been done in good faith.
- As per Sec. 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.
- The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.
- It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.
- The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

A-29 Difference between Interpretation and Construction:

- More often the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed; these two terms have different connotations.
- Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood. It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered

from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense must be understood in that sense.

- Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain; the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.
- In practice construction includes interpretation and the terms are frequently used synonymously.

A-30 Use of word "May" and "Shall":

- The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act. However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.
- in the given situation, Ayush and Vipul, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.
- In this situation, it can be said that maybe the word “ought to be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Maybe here the word used “ought to be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

A-31 Status of Subsidiary company:

- As per Sec. 2(87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

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

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

- For the purposes of this clause:
  - **(a)** a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (1) or sub-clause (i) is of another subsidiary company of the holding company:
  - **(b)** The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.
- In the present case, Jeevan Private Limited and Sudhir Private Limited together hold less than one half of the total share capital.

Conclusion: Applying the provisions as stated above, it can be concluded that Piyush Private Limited (holding of Jeevan Private Limited and Sudhir Private Limited) will not be a holding company of Saras Private Limited.

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

A-32 Powers that can be exercised by the Central Government against Sec. 8 Company:

Sec. 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Sec. 8 companies are registered by the Registrar only when a license is issued by the C.G. to them. Since, Alfa School was a Sec. 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the C.G.

(i) **Revocation of license:** The CG. may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. Before such revocation, the CG, must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

(ii) **Order for Winding up or Amalgamation of the company:** Where a licence is revoked, the C.G. may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) **Order for providing amalgamation to form a single company:** Where a licence is revoked and the C.G. is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

A-33 Shelf Prospectus:

- Sec. 31 of Companies Act, 2013 deals with the provisions relating to issue of Shelf prospectus. As per the Explanation to Sec. 31 of the Companies Act, 2013, the expression "Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.
- So, to avoid issue of prospectus each and every time of issue of shares, Prakhar Ltd. can issue a shelf prospectus

Formalities to be complied with in case of Shelf Prospectus:

- Any class or classes of companies, as the SEBI may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein.
- Shelf prospectus shall indicate a period not exceeding 1 year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus.
- A filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar prior to the issue of a second or subsequent offer of securities under the shelf prospectus.
- The information memorandum shall be prepared in form PAS-2 and filed with the Registrar with fee within 1 month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

A-34 Raising funds through red herring Prospectus:

As the price per share and the number of shares to be issued are left open and to be decided post closure of the issue, company is advised to raise funds through issue of red herring prospectus. A prospectus which does not include complete particulars of the quantum or price of the securities included therein is known as red herring prospectus. Provisions relating to issue of red herring prospectus are covered u/s 32 of the Companies Act, 2013 and stated as below:

1. A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
2. A company proposing to issue a red herring prospectus shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.
3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
4. Filing of Final Prospectus with Registrar and SEBI: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

A-35 Minimum Subscription and Application Money:

Sec. 39 of the Companies Act, 2013 regulates and restricts the minimum amount stated in the prospectus and the application money payable in a public issue of shares.

(a) Minimum amount stated in prospectus (Sec. 39):

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

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

(ii) The sums payable on application for such amount has been paid to and received by the company.

(b) Application money payable on shares:

- The amount payable on application on every security shall not be less than 5% of the nominal amount of the security or such other percentage or amount, as may be specified by the SEBI.
- If the stated minimum amount has not been subscribed and the sum payable on application is not received within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, then the application money shall be repaid within a period of 15 days from the closure of the issue.
- If any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15% pa.
- As per Sec. 40 of Companies Act, 2013, all the moneys received on application from public for subscription to the securities shall be kept in a separate bank account.

A-36 Underwriting Commission in case of Debentures:

- As per Sec. 40(6) of Companies Act, 2013, a company may pay commission to any person in connection with the subscription to its securities subject to some conditions.
- Rule 13 of Companies (Prospectus and Allotment of Securities) Rules, 2014 imposes certain restrictions subject to which underwriting commission may be paid. These restrictions are:

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

(b) The commission may be paid out of proceeds of the issue or the profit of the company or both.

(c) The rate of commission paid or agreed to be paid shall not exceed in case of debentures, 2.5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

- In the given case, Board of directors decides to pay 2.5% commission and articles provide 2%.

Conclusion: Decision of Unique Builders Limited to pay underwriting commission in excess of 2% is not valid.

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

A-37 Variation of Shareholder's Rights:

Sec. 48 of Companies Act, 2013 deals with the provisions relating to variation of shareholder's rights.

(1) Conditions for Variation in Rights:

(a) The holders of not less than 3/4 of the issued shares of that class whose rights are to be varied must give consent in writing or a special resolution passed at a separate meeting of the holders of the issued shares of that class.

(b) The MOA/AOA of the company must contain a provision with respect of such variation.

(c) In the absence of any such provision in the MOA/AOA, such variation must not be prohibited by the terms of issue of the shares of that class.

(d) If variation by one class of shareholders affects the rights of any other class of shareholders, the consent of 3/4 of such other class of shareholders shall also be obtained and the provision of this Section shall apply to such variation.

(2) No consent for variation:

(a) The holders of not less than 10% of the issued shares of a class, who did not consent to or vote in favour of the resolution for the variation, may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless & it is confirmed by the Tribunal.

(b) Application shall be made within 21 days after the date on which the consent was given or the resolution was passed.

(c) The decision of NCLT on application shall be binding on the shareholders.

(d) The Company shall file copy of NCLT order to ROC within 30 days from date of order of NCLT.

A-38 Issue of Further Shares:

Sec. 62(1) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may be offered to other persons as well. These are as under:

(a) Shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

(b) Shares may be offered to any persons, if it is authorized by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the

valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

(c) if any equity shareholder to whom the shares are offered in terms of Sec. 62(1), declines such offer, the Board of Directors may dispose of the shares in such manner as it is not disadvantageous to the shareholders or to the company.

Issue of further shares to Preference Shareholders:

From the wordings of Sec. 62(1), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

A-39 Amounts not considered as deposits:

- Sec. 2(31) of the Companies Act, 2013 defines the term deposit so as to include any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI,
- Rule 2(1)(c) of Companies (Acceptance of Deposit) Rules, 2014 prescribes certain categories of amounts which are not considered as deposits. In accordance with sub-clause (x), any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit is not considered as deposits.

Conclusion: Amount raised by the company will be considered as deposit in terms of sub-clause (x) of the Rule 2(1)(c), as amount received is more than the annual salary under a contract of employment with the company.

A-40 Meaning of the term 'Charge':

The term "Charge" has been defined in Sec. 2(16) of the Companies Act, 2013 as "an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage".

Necessity for creating a charge:

The answer to this lies in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/financial institutions these banks/financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies is known as a charge on assets.

Once charge is registered and filed, it becomes information in public domain as to how much company has borrowed against its assets and from whom.

Time limit for registration of charge with the registrar:

- As per Sec. 77(1) of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.
- The Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation, on payment of such additional fees as may be prescribed.
- If the Charge is not registered within the extended period as above, the company shall make an application and Registrar is empowered to allow such registration to be made within a further period of 60 days after payment of prescribed ad valorem fees,

- The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

A-41 Particulars stated in the annual return (Sec. 92):

Every company is required to file with the Registrar, 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 members and debenture-holders along with the changes therein since the close of the previous financial year;

(4) Its promoters, directors, KMP along with changes therein since the close of the previous financial year;

(5) Meetings of members or a class thereof, Board and its various committees along with attendance details,

(6) Remuneration of directors and key managerial personnel;

(7) Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(8) Matters relating to certification of compliances, disclosures;

(9) Details 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; and

(10) Such other matters as may be prescribed.

A-42 Declaration of Interim Dividend:

- As per Sec. 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
- However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
- In the instant case, interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [ie. (12+15+18)/3=45/3=15%).

Conclusion: Decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

A-43

(i) Inspection by Directors:

As per Sec. 128(3) of the Companies Act, 2013, any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director-nominee, independent, promoter or whole time. The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on authorization by way of the resolution of Board of Directors.

Assistance by officers and Employees

As per Sec. 128(4), where an inspection is made u/s 128(3), the officers and other employees of the company shall give to the person making such inspection all assistance

in connection with the inspection which the company may reasonably be expected to give.

(ii) Period for preservation of books:

As per Sec. 128(5) of the Companies Act, 2013, the books of account, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than 8 years immediately proceeding the relevant financial year.

In case of a company incorporated less than 8 years before the financial year, the books of account for the entire period proceeding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

A-44 Appointment of Auditor:

(i) The appointment and reappointment of auditor of a Government Company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under

- The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an EGM, such auditor shall hold office till conclusion of first AGM.
- In case of subsequent auditor for existing government companies, the C&AG of India shall appoint the auditor within a period of 180 days from the commencement of the

financial year and the auditor so appointed shall hold his position till the conclusion of the AGM.

(ii) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company.

As per Sec. 139(8) of the Companies Act, 2013, any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next AGM.

(iii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply. The auditor shall be appointed as follows:

- The company shall, at the first AGM, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth meeting.
- Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor.
- Further, the company shall inform the auditor concerned of his or its appointment, file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed

A-45 Discharge of Surety by Revocation:

- As per Sec. 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.
- As per the above provisions, liability of Mano) is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.
- However, liability of Manoj for previous transactions (before revocation) L.e. for 40,000 remains. He is liable for payment of 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

A-46 Liability of Drawer of Foreign Bill:

As per Sec. 134 of the Negotiable Instruments Act, 1881, in the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

In the given case, since action on the bill is brought against B in India, he is liable to pay interest at the rate of 6% only.

A-47 Computation of time:

- As per Sec. 10 of the General Clauses Act, 1897, where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or

last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

- In the given situation, Ajit was supposed to submit an appeal to High Court on 30th March 2022, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India.

Conclusion: Based on the above stated provisions, Ajit can submit an appeal on the day on which High Court is open.

A-48 Principles of Grammatical Interpretation and Logical Interpretation:

In order to ascertain the meaning of any law/statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning: Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court:

- In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law.
- However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

- However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

A-49 Subsidiary company not to hold shares in its holding company:

- The paid-up share capital of S Ltd. is Rs. 1,00,00,000 divided into Rs. 10,00,000 equity shares of 10 each. Of this, H Ltd. is holding 6.00.000 equity shares.
- Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of Sec. 2(87) of the Companies Act, 2013.
- As per Sec. 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
- However, there are three exceptions to the above mentioned provisions:
  (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
  (b) Where the subsidiary company holds such shares as a trustee: or
  (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

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

Conclusion: Based on the provisions of Sec. 19 as stated above, following conclusions may be drawn:

(i) S Ltd. cannot make further investment in equity shares of H Ltd.

(ii) S Ltd. can exercise voting rights at the AGM of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) H Ltd. cannot allot or transfer some of its shares to S Ltd.

A-50

(i) Meaning of 'Private Placement':

As per Explanation I to Sec. 42(3), the term "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in section 42.

(ii) Time Limit for Allotment of Securities' and 'repayment of application money in case default in allotment':

A company making an offer or invitation u/s 42 shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% p.a. from the expiry of the 16th day.