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|| Om Namh Shivay ||

These efforts and achievements are dedicated To

My Parents & my Sister

My Teachers

My Friends

For guiding me to see my own avenues & allowing me to go for it.

And

Special Thanks to my Wife

Sai Joshi Khare

For supporting me with all heart and for Making and Updating these notes in the most creative way to make it easiest to learn and remember.

& creative geniuses

Sharad Patil

I can never thank them enough.....

Company and Other Law

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It's not about One big magic in single day

But it's about small small magic Every day !!

- CA CS Darshan Khare

Chapter 1:
Basics of Company Law

Section 2: Definitions

Answer Writing Points For Sec 2(6):Associate Company

1) Associate Company means a company in which other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
2) For the purpose of this clause:
   a) The term "significant influence" means control of at least 20% of total voting power, or of business decisions under an agreement control of or participation in business decisions under an agreement;
   b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
   c) "total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

Answer Writing Points For Sec 2(20): Company

1) A company means "company incorporated under this Act or under any previous company law."
   [Sec 2(67): Previous Company Law means any of the laws specified below:
   a) Acts relating to companies in force before the Indian Companies Act, 1866
   b) The Indian Companies Act, 1866;
   c) The Indian Companies Act, 1882;
   d) The Indian Companies Act, 1913;
   e) The Registration of Transferred Companies Ordinance, 1942;
   f) The Companies Act, 1956;
   g) Any law corresponding to any of the aforesaid acts or the ordinance
   h) The Portuguese Commercial Code]

Answer Writing Points For Sec 2(21): Company Limited By Guarantee

1) "Company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
2) The company in which the investor does not invest any amount at the incorporation or during the life of the company, but they invest the amount max up to amount agreed at the time of winding up of the company depending on the liability of the company is company limited by guarantee.
3) In these companies the members or owners act as guarantor.
4) These companies are normally the non-profit making organisations.
5) There can be different classes of members voting and not voting.
6) Company limited by guarantee do not have capital clause.

Answer Writing Points For Sec 2(22): Company Limited By Share Capital

1) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
2) The Company in which the investor invests the funds at the incorporation or/& during the life of the company or/& at the winding up against the instrument indicating ownership and part in capital of the company is company limited by shares.
3) In these companies the shares are held by the shareholders.
4) These companies are normally profit making organisations.
5) There can be different classes of members based on the shares.
6) Company limited by shares have capital clause in its MOA.

Answer Writing Points For Sec 2(42):Foreign Company

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

i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
ii) conducts any business activity in India in any other manner.

2) As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
   i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
   ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
   iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
   iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
   v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

Answer Writing Points For Sec 2(43): Free Reserves

1) Free reserves means such reserves which, as per the latest audited balance sheet of the Company, are available for distribution as dividend :
2) Provided that;
   a) Any amount representing unrealised gains, Notional Gains or revaluation of assets, whether shown as reserve or otherwise, or
   b) Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

Answer Writing Points For Sec 2(45): Government Company

1) Means any company in which not less than 51% of the paid up share capital is held by-
   a) The central government, or
   b) By any state government or governments, or
   c) Partly by the Central Government and partly by one or more state Governments,
2) And the section includes a company which is a subsidiary company of such a Government company.

Answer Writing Points For Sec 2(46):Holding Company

1) Holding And Subsidiary companies are relative terms.
2) A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Answer Writing Points For Sec 2(55):Member

A "member", in relation to a company, means —
1) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
2) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
3) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

Answer Writing Points For Sec 2(62):One Person Company

1) A company in which only one individual can become the member of the company, it is OPC.
2) Incorporated by only 1 member and maximum members can be 1.
3) Minimum board of directors can be 1 and maximum can be 15. Above 15 can be appointed with GM-SR permissible.
4) Only individual can be member and director of OPC.
5) Choice to restrict the right to transfer share is available to OPC as before well.
6) Max paid up share capital ₹ 50 Lakh or Max annual turnover of ₹ 2 crore.
7) Very Low requirement of compliances. These companies are exempt from

maximum provisions.

8) As there is only one member, the question of issuing prospectus does not arise.

Answer Writing Points For Sec 2(68): Private Company

1) "Private company" means company having a minimum paid-up share capital, which by its articles—
   a) restricts the right to transfer its shares;
   b) except in case of One Person Company, limits the number of its members to two hundred.
2) Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
3) Provided further that—
   a) Persons who are in the employment of the company; and
   b) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
4) Prohibits any invitation to the public to subscribe for any securities of the company.

Answer Writing Points For Sec 2(69): Promoter

1) Promoter means a person –
   a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
   b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
   c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
2) Provided that nothing in sub clause (c) shall apply to a person who is acting merely in a professional capacity.

Answer Writing Points For Sec 2(71): Public Company

1) "Public company" means a company which—
   a) is not a private company;
   b) has a minimum paid up share capital as may be prescribed
   c) 7 or more members are required to form the company
2) Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

Answer Writing Points For Sec 2(71): Public Financial Institutions

1) The Life Insurance Corporation of India, established under sec 3 of the Insurance Corporation Act, 1956(31 of 1956).
2) (the infrastructure Development Finance Company Limited , referred to in clause(vi) of sub-section (1) of section 4A of the Companies Act, 1956(1 of 1956) so repealed under section 465 of this Act;
3) Specified company referred to in the Unit Trust of India (Transfer of undertaking and Repeal) Act, 2002 (58 of 2002);
4) Institutions notified by the Central Government under sub sec (2) of sec 4A of the Companies Act, 1956(1 of 1956) so repealed under section 465 of this Act;
5) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:
6) Provided that no institution shall be so notified unless-
   a) It has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or
   b) Not less than 51% of the paid up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

Answer Writing Points For Sec 2(85):Small Company

1) Small company" means a company, other than a public company: -
   a) having paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

b) having turnover as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

2) **Exceptions: This section shall not apply to:**
   a) a holding company or a subsidiary company;
   b) a company registered under section 8, or
   c) a company or body corporate governed by any special Act.
3) As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees **four** crores and rupees **forty** crores respectively.

Answer Writing Points For Sec 2(87): Subsidiary Company

1) Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
2) Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
   a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
   b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or
3) Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Answer Writing Points For Sec 2(92):Unlimited Company

1) "Unlimited company" means a company not having any limit on the liability of its members.
2) In case of unlimited company the members are liable to the entire amount of liability existing at the time of the winding of the company from company's assets as well as personal assets if necessary.

RTPM23: Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ` 1.5 crore with 40 members and turnover of ` 18 crore, respectively and the said company is not a start-up company.
In the context of aforesaid case-scenario, please answer to the following question(s):- Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements? Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:- (i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively. [LDR IMP]

Provisions: [Section 2(10) of Companies Act, 2013]

1) According to section 2(10) of the Companies Act, 2013, Financial statement in relation to a company, includes—
   a) a balance sheet as at the end of the financial year;
   b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
   c) cash flow statement for the financial year;
   d) a statement of changes in equity, if applicable; and
   e) any explanatory note annexed to, or forming part of, any document referred to in subclause (i) to sub-clause (iv):
2) Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

Explanation:

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

(i) One person company – It is given that the company is having 40 members and also its name does not contain the words 'OPC', so it is not a one person company.
(ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though

its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.

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

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

Answer:

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

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

N04,PM: What is meant by Guarantee Company? State the similarities and dissimilarities between guarantee Company and a Company having Share Capital. [IMP]

Provisions:[Section 2(21) & 2(22) of Companies Act, 2013]

1) **Company Limited by guarantee:** This type of company usually does not have share capital or shareholders, instead it has members who act as guarantors and who give an undertaking of the nominal amount in the event of winding up of company.
2) **Similarities between the Guarantee Company and the Company having share capital:**
   a) The common features between a "guarantee company" and the "company having share capital" are legal entity and limited liability.
   b) In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them.
   c) Both these type of companies have to state this fact in their memorandum that the members' liability is limited.
3) **Dissimilarities between a 'guarantee company' and 'company limited by shares':**
   a) Are that in the former case the members will be called upon to discharge their liability only after commencement of the winding up of the company and only to the extent of amounts guaranteed by them respectively;
   b) Whereas in the case of a company limited by shares, the members may be called upon to discharge their liability at any time, either during the life of the company or during the course of its winding up and the amount payable by the members will be limited to the unpaid amount on shares held by them respectively.
4) It is also clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be had from other sources like endowment, fees, charges, donations etc.
5) **Case law:** Further to note, the Supreme Court in **Narendra Kumar Agarwal vs. Saroj Maloo (1995) 6 SC C 114** has laid down that;
   a) The right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares.
   b) The membership of a guarantee company may carry privileges much different from those of ordinary shareholders in companies limited by shares.

PM: Define the term "Free Reserves" as contained in the Companies Act, 2013.

Provision:[Section 2(43) of the Companies Act, 2013]

"Free Reserves" means such reserves which as per the latest audited balance sheet of a company are available for distribution as dividend provided that:

a) Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise; or

b) Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value shall not be treated as free reserves.

RTPM22: Following are some of the securities, issued by different companies related with each other, as follows:-

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

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

Provision: [Section 2(52) of Companies Act, 2013 & rule 2A of the Companies (Specification of definitions details) Rules, 2014]

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

2) According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-
   a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
      (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
      (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
      (iii) both categories of (i) and (ii) above.
   b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
   c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Answer:

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

	the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. shall not be considered as a listed company.

N22: Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

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

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

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

Provision: [Section 2(52) of Companies Act, 2013 & rule 2A of the Companies (Specification of definitions details) Rules, 2014]

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

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

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

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

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

Answer:

In view of the above provisions of the Act:

(i) ABC Limited is an unlisted company.

(ii) CHG Limited is an unlisted company.

(iii) PRS Limited is an unlisted company.

N05: "Every shareholder of a company is also known as a member, while every member may not be known as a shareholder". Examine the validity of the statement and point out the distinction between a `member' and a `shareholder'

Or

In what way a 'Member' of a company is different from that of a 'shareholder' of the company?[IMP]

Provision: [Section 2(55) of the Companies Act, 2013]

A "member", in relation to a company, means —

4) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

5) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

6) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

Explanation & Answer:

a) From the above definition of a member it is clear that in a company having a share capital, the only way to become a member is through holding shares of the company.

Further, the membership becomes effective only when the name of the person is entered in the register of members

RTPN22: Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid?

Provision: [Section 2(62) of Companies Act, 2013 & Rule 3 of the Companies (Incorporation) Rules, 2014]

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

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

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

Explanation:

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee.

Answer:

Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

N02: Explain clearly meaning of a 'Private' and 'Public' Company under the Companies Act, 2013.

Provision: [Section 2(68) & 2(71) of Companies Act, 2013]

Private Company:

1) Private company means company having a minimum paid-up share capital, which by its articles—
   a) restricts the right to transfer its shares;
   b) except in case of One Person Company, limits the number of its members to two hundred.
2) Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
3) Provided further that—
   a) persons who are in the employment of the company; and
   b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
4) prohibits any invitation to the public to subscribe for any securities of the company.

Public Company:

1) Public company means a company which—
   a) is not a private company;
   b) 7 or more members are required to form the company
   c) Has a minimum paid up share capital as may be prescribed.
2) Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

PM: Define Private Company. Briefly explain the privileges and exemptions for a private company as provided under the Companies Act, 2013.

Provision: [Section 2(68) of Companies Act, 2013]

Definition of Private Company:

1) private company means company having a minimum paid-up share capital, which by its articles –
   a) restricts the right to transfer its shares;
   b) limits the number of its members to 200 (except One Person company)
2) The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member:
3) However, following shall not be included in the number of members:
   a) persons who are in the employment of the company; and
   b) Persons who, having been formerly in employment of company, were members of company while in that employment and have continued to be members after employment ceased.

4) Prohibits any invitation to the public to subscribe for any securities of the company.

Privileges and exemptions to Private Company:

1) Two or more persons may form a private company [3(1)(b)].
2) A private company is not required to have independent directors [149 (4)].
3) A private company is exempt from the provisions of having an audit committee constituted by the Board of Directors [177(1)]
4) The directorship of a private company which is either a holding or a subsidiary company of a public company will not be included in determining the maximum number of directorships that a person may hold in public companies which is restricted to ten[165 (1)].
5) A private company is exempt from the constitution of a Nomination & Remuneration Committee [178(1)], as well as Stakeholders Relationship Committee [178 (5)].
6) It should be noted that as the number of members of a private company has been raised from 50 to 200, some exemptions have been withdrawn due to higher number of members

PM: Sparkle Infotech Ltd. was registered as a Public Company. There are 76 members in the Company as stated below:
(i) Directors and their relatives - 36
(ii) Employees - 12
(iii) Ex-employees (shares were allotted when they were employees) - 8
(iv) 7 couples holding shares jointly in the names of husband and wife (7X2) - 14
(v) Others - 6
Total number of members - 76
The Board of Directors of the Company proposes to convert it into a Private Company. Advise the Board of Directors about the steps to be taken for conversion into a Private Company including reduction in the number of members, if necessary, as per the Companies Act, 2013.

Provision: [Section 2(68) of Companies Act, 2013]

1) A private company cannot have more than 200 members hence the current shareholding will not be an issue.
2) The procedure for converting a public company will require:
   a) Passing of a Special Resolution authorizing the conversion and altering the articles so as to include therein the restrictions specified in Section 2(68)
   b) Changing the name clause of the Memorandum of the company by omitting the word "Private".
   c) Obtaining the approval of the Central Government as required by [14(1)].
   d) Filing of the documents along with a printed copy of the articles as altered with the Registrar within 15 days. [14(2)]

Answer:

The Board of Directors can convert company by following steps mentioned above in provision.

May22: MNP Ltd. is a registered Public Company having the following members:
(i) Directors and their relatives - 18
(ii) Employees - 26
(iii) Ex-employees (shares were allotted during employment) - 15
(iv) Members holding shares jointly (7X2) - 14
(v) Others Members - 137
The Board of Directors of MNP Limited proposes to convert the company into a Private Limited Company. Referring the provisions of the Companies Act,2013 advise:
(i) Whether the company can be converted into a private company?
(ii) Whether existing number of members needs to be reduced for the proposed private company?

Provision: [Section 2(68) of Companies Act, 2013]

1) private company means company having a minimum paid-up share capital, which by its articles –
   a) restricts the right to transfer its shares;
   b) limits the number of its members to 200 (except One Person company)
2) The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member:
3) However, following shall not be included in the number of members:
   a) persons who are in the employment of the company; and

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

4) Prohibits any invitation to the public to subscribe for any securities of the company.

5) As per the provisions of the Companies Act, 2013, if there is any need for the reduction in number of members while converting into a private company, the company must alter its articles.

6) Any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by order of the Central Government on an application made in Form INC-27 and manner as may be prescribed.

Explanation:

MNP Limited is a registered company having the following members:

a) Directors and their relatives -- 18
b) Employees – 26
c) Ex-employees (shares were allotted during employment) – 15
d) Members holding shares jointly (7X2) – 14
e) Others Members – 137

Answer:

1) In the present case, MNP Limited can be converted into a private company as the total number of members after the conversion will be 162, which is within the maximum limit of 200 members. Directors and their relatives = 18. Members holding shares jointly = 7 (For the purpose of a private company, two persons holding one or more shares jointly shall be treated as a single member). Other members = 137. Total = 162 members. [Employees and ex-employees holding shares are excluded from the counting of 200 members].

2) No. The existing number of members need not be reduced for the proposed private company as the total number of members after the conversion will be 162, which is very well within the limit of 200 members.

ICAI-SM: Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

a) Directors and their relatives - 50
b) Employees - 15
c) Ex-Employees (Shares were allotted when they were employees)- 10
d) 5 couples holding shares jointly in the name of husband and wife (5*2)- 10
e) Others - 145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

Provision: [Section 2(68) of Companies Act, 2013]

1) private company means company having a minimum paid-up share capital, which by its articles –
   a) restricts the right to transfer its shares;
   b) limits the number of its members to 200 (except One Person company)

2) The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member:

3) However, following shall not be included in the number of members:
   a) persons who are in the employment of the company; and
   b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Explanation:

In the instant case, Flora Fauna Limited may be converted* into a private company only if the total members of the company are limited to 200.

Total Number of members

(i) Directors and their relatives - 50
(ii) 5 Couples (5x1) - 5
(iii) Others - 145
(iv) Total – 200

Answer:

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

PM: Who shall be considered as promoter according to the definition given in the Companies Act 2013? Explain.

Provision: [Section 2(69) of the Companies Act, 2013]

1) Promoter means a person –
   a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
   b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
   c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
2) Provided that nothing in sub clause (c) shall apply to a person who is acting merely in a professional capacity.

RTPM22: Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013.

Provision: [Section 2(69) of the Company Act, 2013]

According to section 2(69) of the Companies Act, 2013, Promoter means a person:-

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

Explanation & Answer:

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

PM: Which of the institutions are regarded as "Public Financial Institutions" under the Companies Act, 2013?

Provisions: [Section 2 (72) of the Companies Act, 2013]

1) Public Financial Institutions:
   Following institutions are defined as public financial institutions:
   a) The Life Insurance Corporation of India established under the Life Insurance Act 1956;
   b) The Infrastructure Development Finance Co Ltd;
   c) Specified company referred to in Unit Trust of India (Transfer of Undertaking and Repeal Act, 2002;
   d) Institutions notified by the Central Government in consultation with the Reserve Bank of India;
   e) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act.
2) Section 2(72) further provides that no institution shall be notified by the Central Government as above unless:
   a) It is established or constituted by or under any Central or State Government Act; or
   b) Not less than 51 % percent of the paid up share capital is held or controlled by the Central Government or any State Government or partly by the Central Government and partly by one or more State Governments.
3) Criteria for declaring any Financial Institution as PFI:
   a) A Company or Corporation should be established under a Special Act or the Companies Act being Central Act.
   b) Main business of the Company should be Industrial / Infrastructural Financing.
   c) The company must be in existence for at least 3 years and their financial statement should show that their income from Industrial / Infrastructural financing exceeds 50% of their income.
   d) The net worth of the company should be 1000crore

e) The company is registered as Infrastructure Finance Company (IFC) with RBI or as an Housing Finance Company (HFC) with National Housing Bank

f) In the case of CPSUs/SPSUs, no restriction shall apply with respect to financing specific sector(s) and net worth

Answer:

Any financial institution applying for declaration as PFI shall fulfil the aforesaid criteria.

PM & N18-OLD &Dec21: Define the term 'Small Company' as contained in the Companies Act, 2013. [V.IMP]

Provision: [Section 2 (85) of the Companies Act, 2013]

1) "Small company" means a company, other than a public company:-
   a) having paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
   b) having turnover as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
2) **Exceptions: This section shall not apply to:**
   a) a holding company or a subsidiary company;
   b) a company registered under section 8, or
   c) a company or body corporate governed by any special Act.

MTP Oct-21, M18 & RTP-M20: New Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹70 lakh and turnover of ₹30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
(i) Whether the New Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is ₹ 15 crore and the capital is same as ₹ 70 lakh? [LDR IMP]

Provision: [Section 2 (85) of the Companies Act, 2013]

1) Small company" means a company, other than a public company :-
   a) having paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
   b) having turnover as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
2) Nothing in this clause shall apply to :
   a) a holding company or a subsidiary company;
   b) a company registered under section 8, or
   c) a company or body corporate governed by any special Act.
3) As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.

Explanation & Answer:

i) In the present case, New Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹70 lakh and having turnover of ₹30 crore. Since, both criteria of share capital not exceeding ₹4 crores and turnover not exceeding ₹40 crores is met anc the provisions require both the criteria to be met in order to avail the status of a small company, New Private Ltd. can avail the status of small company.

ii) If the turnover of the company is ₹15 crore, then also both the criteria will be fulfilled and New Private Ltd. can avail the status of small company.

PM: Under what circumstances a company becomes subsidiary of another company under the provisions of the Companies Act, 2013?

Provisions:[Section 2(87) of Companies Act, 2013]

1) Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other company is its subsidiary.
2) Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
   a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
   b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or

3) Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Answer:

Under above circumstances a company can become subsidiary of another company under the provision of The Companies Act, 2013.

PM: The paid-up Share Capital of AVS Private Limited is ₹1 crore, consisting of 8 lacs Equity Shares of ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVS Private Limited. XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited. With reference to the provisions of the Companies Act, 2013, examine whether AVS Private Limited is a subsidiary of TSR Private Limited? [LDR.IMP]

Provision:[Section 2(87)of the Companies Act, 2013]

1) Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
2) Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
   a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
   b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or
3) Where a company is the holding company of the company which fulfills any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Explanation:

1) In given case, XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited and holding Rs 4,50, 000 in aggregate in AVS out of total share capital of Rs 8,00,000.
2) Preference share shall not form part of total share capital, since it has been considered as non-convertible.
3) We may conclude that TSR Private limited is holding majority out of total share capital of AVS indirectly through its subsidiary and thus it become holding company of AVS.

Answer:

Hence, TSR Pvt, Ltd will be treated as the holding company of AVS Pvt Ltd.

N17-OLD: The paid-up share capital of SAB Private Limited is ₹1 crore, consisting of 8 lacs Equity Shares of ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether SAB Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of SAB Private Limited?

Provision:[Section 2(87)of the Companies Act, 2013]

1) Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
2) Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
   a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
   b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or
3) Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd.

is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Explanation& Answer:

1) In the present case, JVN Pvt. Ltd. and SARA Pvt. Ltd. together hold less than one half of the total share capital. Hence, PQR Private Ltd. (holding of JVN Pvt. Ltd. and SARA Pvt. Ltd) will not be a holding company of SAB Pvt. Ltd.
2) However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of SAB Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of SAB Pvt. Ltd.

MTPMar-22: Kapila Limited issued equity shares of ₹1,00,000 (10,000 shares of ₹10 each) on 01.04.2021 which have been fully subscribed, whereby Kusha Limited holds 4000 shares and Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holding 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. Examine with relevant provisions of the Companies Act, 2013:
(i) Whether Kapila Limited is a subsidiary of Red Limited?
(ii) Whether Kapila Limited can hold shares of Red Limited?[LDR IMP]

Provision: [Section 2(87) & 19 of the Companies Act, 2013]

1) As per sub-clause (87) of Clause 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—
   a) controls the composition of the Board of Directors; or
   b) 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.
2) For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.
3) Whereas section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
4) Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Explanation:

1) Here in the instant case, Kapila Limited issued 10,000 equity shares on 1.4.2021 whereby Kusha Limited & Prem Limited holds 4000 & 2000 shares respectively in Kapila Ltd., Considering 1 share = 1 vote, Kusha Limited and Prem Limited together holds more than one-half (50%) of the total voting power. Therefore, Kapila Limited will be subsidiary to Kusha Limited & Prem Limited from 1.4.2021.
2) Whereas Kapila Limited is already holding 20% equity shares of Red Limited before the date of issue of equity shares i.e. 1.4.2021.
3) Further, Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. In the light of sub-clause (87) of Clause 2, Red Limited is a holding company of Kusha Limited and Prem Limited (Subsidiary companies).

Answer:

Following are the answers to the questions:

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

(ii) Yes, Kapila Limited can hold shares of Red Limited. In this case Kapila Limited is a subsidiary of Red Limited as Kapila Limited was holding 20% of equity shares of Red Limited even before it became a subsidiary company of Red Limited (i.e. on 01.08.2021), according to the exception to section 19.

July21: The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:
(1) Paid-up equity share capital ₹50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹2,00,00,000.
It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:

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

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

Provision: [Section 2(40), 2(85) & 2(87) of the Companies Act, 2013]

1) Small company" means a company, other than a public company :-
   a) having paid-up share capital not exceeding Rs.50 lakhs or such higher amount as may be prescribed which shall not be more than Rs.10 Cr; and
   b) having turnover as per its last profit and loss account not exceeding Rs.2 Cr or such higher amount as may be prescribed which shall not be more than Rs.100 Cr.
2) Provided that nothing in this clause shall apply to a holding company or a subsidiary company.
   Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say holding company), means a company in which holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.
3) According to section 2 (40), Financial statement in relation to a company, includes—
   a) a balance sheet as at the end of the financial year;
   b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
   c) cash flow statement for the financial year;
   d) a statement of changes in equity, if applicable; and
   e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):
4) Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Explanation & Answer:

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

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

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

IMP Note: As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed Rs 4 Cr and Rs 40 Cr respectively.

[Answer will not change here]

MTP Apr 22: AJD Pvt. Ltd. is having paid up share capital of ₹45 Lakhs and annual turnover of ₹ 185 Lakhs. It is a wholly owned subsidiary of K Ltd.- a listed company. Can AJD Pvt. Ltd. be called a small company as per the provisions of the Companies Act, 2013. [V.IMP]

Provision: [Section 2 (85) of the Companies Act, 2013]

1) As per Section 2(85) of the Companies Act 2013 read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014, "Small Company" means a company, other than a public company, having—
   a) paid-up share capital of which does not exceed Rs. 4 crores ; and

b) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed Rs. 40 crore:

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

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

M.18 Rtp: The paid-up share capital of Saras Private Limited is ₹1 crore, consisting of 8 lacs Equity Shares of ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? [LDR IMP]

Provision:[Section 2(87)of the Companies Act, 2013]

1) In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
   a) controls the composition of the Board of Directors; or
   b) 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:
2) Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
3) Explanation For the purposes of this clause,—
   a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
   b) The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

Explanation:
1) In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together controls less than one half of the total voting power. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and SudhirPvt) will not be a holding company of Saras Pvt. Ltd.
2) However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Answer:
Hence Piyush Private Ltd is not Holding Company of Saras Pvt. Ltd & In Latter Case it shall be Treated as Holding Company of Saras Pvt. Ltd.

M.19 Rtp: The paid-up share capital of Altar Private Limited is ₹1 crore, consisting of 8 lacs Equity Shares of ₹ ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?

Provision: [Section 2(87) of the Companies Act, 2013]

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

a) controls the composition of the Board of Directors; or

b) 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:

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

3) Explanation For the purposes of this clause:

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

Explanation:

1) In the present case, New Private Limited and Ultra Private Limited together controls less than one half of the total voting power. Hence, PQR Private Limited. (holding of New Private Limited and Ultra Private Limited) will not be a holding company of Altar Private Limited.

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

Answer:

Hence PQR Private Limited is not Holding Company of Altar Private Limited & In Latter Case it shall be Treated as Holding Company of Altar Private Limited

N21 RTP: AB Limited issued equity shares of ₹ 1,00,000 (10000 shares of ₹ 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:

(i) Whether AB Limited is a subsidiary of RS Limited?

(ii) Whether AB Limited can hold shares of RS Limited?

(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?

Provision: [Section 2(87)of the Companies Act, 2013]

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

a) controls the composition of the Board of Directors; or

b) 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:

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

3) Explanation For the purposes of this clause:

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

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

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

Explanation:

1) Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.
2) Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.
3) Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Answer:
Following are the answers to the questions:
(i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.
(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01.08.2020), according to the exception to section 19.
(iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

RTPN22: Following are some of the securities, issued by different companies related with each other, as follows:-

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

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

Provision: [Section 2(46) & 2(87)of the Companies Act, 2013]
1) According to section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
2) According to section 2(87) of the Companies Act, 2013, subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—
   a) controls the composition of the Board of Directors; or
   b) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

   Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
3) Explanation—For the purposes of this clause,

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

c) the expression "company" includes any body corporate;

d) "layer" in relation to a holding company means its subsidiary or subsidiaries; As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding – subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Answer:

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

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

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

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

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

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

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

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity. As per the notification dated 27th December 2013, Ministry (MCA) clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013. Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding–subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

N.18: Teresa Ltd. is a company registered in New York (U.S.A.).The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company. [LDR IMP]

Provision: [Section 2 (42) of the Companies Act, 2013]

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

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

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

2) As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
   a) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
   b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
   c) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
   d) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
   e) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

Explanation & Answer:

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

May22: ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

Provision: [Section 2 (42) of the Companies Act, 2013]

As per Section 2 (76) of the Companies Act, 2013, from the point of view of a company, a related party means:

1) Director or his relative.
2) Key Managerial Personnel (KMP) or his relative.
3) A firm in which a director or manager or his relative is a partner.
4) A private company in which a director or manager or his relative is a member or director.
5) A public company in which a director or manager is a director and holds along with his relatives more than 2% of its paid-up share capital.
6) Any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager.
7) Any person on whose advice, directions/instructions, a director or manager is accustomed to act.
8) Any body corporate which is:
   a) a holding, subsidiary or associate of such company; or
   b) a subsidiary of a holding company to which it is also a subsidiary (a fellow subsidiary); or
   c) an investing company or the venturer of the company.
9) Such other persons as may be prescribed.

Explanation & Answer:

ABC Private Ltd. has two wholly-owned subsidiary companies, D Private Limited and E Private Limited.

In the present case, D Private Limited and E Private Limited shall be treated as the related parties as per Sec. 2 (76) (viii) as mentioned above.

Characteristics of Company

Answer Writing Points For Characteristics of Company [Sec 9]

a) **Incorporated association:** The company is artificially created entity and not a natural person like human, plant or animal. It is created by human. It is a creation for some object so it will run for achieving that objects & go beyond for new projects.

b) **Perpetual succession:** Members, owners, promoters, BOD, stakeholders may come and go but company will remain till eternity. The company does not have life equal to its promoters or members. Even after death of all, company can run for ages. The company will only cease to exist when it is dissolved.

c) **Separate Entity:** Company have its own identity, its own legal existence like any other human. It is just that the Company is intangible and exist only on paper. As company is separate legal entity, it has right to enter into contract on its own, it works in its own name. Everything which is done in the company will be known by the name of the company.

d) **Limited Liability:** The liability of the members of the company is normally limited up the amount of the share capital invested in the company. The personal assets of the owners of the company will not be liable for any payment to creditor.

e) **Artificial Judicial person**: As the company is created by human, it's not natural. It's an artificial entity which cannot be formed on its own. It has to be created. But creation will be judicial i.e. legal under any law in force in the territory of any country.

f) **Common Seal:** Human uses signature to show the authentication of document and to mention personal identity. For company signature means Seal. The document is deemed to be signed by company if the document bears the seal of the company.

g) **Transfer of Shares:** The ownership of the company is represented by the shares of the company. So for ease of transactions, the shareholders can transfer the shares of the company with its ownership & it does not affect the company in any way, it only changes the shareholding pattern.

h) **Separation of Ownership from Management:** The Company is combination of the tree pillars: Investor, Management, Auditor. Investor invests the money which is used by management to run the business and is checked by auditor whether money is being properly used or not. Thus the investors need not enter in to day to day transaction of the company or management of the company.

i) **Separate Property:** As company is separate legal entity it has right to enter into contract on its own. Thus company can purchase or sale property on its own. Do transaction on its own. It's like company has its entire separate range of assets or liabilities.

PM: What is a company & Characteristics of Company? [IMP]

Provision: [Section 2(20) of the Companies Act, 2013]

1) A company means "company incorporated under this Act or under any previous company law". The most striking feature of the company is that it comes into existence by a legal process called "incorporation", whereby it acquires the unique characteristic of being a separate legal entity. In other words when a company is registered, it is clothed with a legal personality with the following Characteristics:

2) **Characteristics of Company are as follow:**

a) **Incorporated association:** The Company is not natural person like human plant or animal. It is created by human. It is a creation for some specific object. So it will run for achieving the object and beyond for new objects.

b) **Perpetual succession:** Members, owners, promoters, BOD, stakeholders may come and go but company will remain till eternity. The company does not have life equal to its promoters or members. Even after death of all, company can run for ages. The company will only cease to exist when it is dissolved.

c) **Separate Entity:** Company have its own identity, its own legal existence like any other human. It
is just that the Company is intangible and exist only on paper. As company is separate legal entity, it has right to enter into contract on its own, it work in its own name. Everything which is done in the company will be known by the name of the company.

d) **Limited Liability:** The liability of the members of the company is normally limited up the amount of the share capital invested in the company. The personal assets of the owners of the company will not be liable for any payment to creditor.

e) **Artificial Judicial person**: As the company is created by human, its not natural. Its an artificial entity which cannot be formed on its own. It has to

be created. But creation will be judicial i.e. legal under any law in force in the territory of any country.

f) **Common Seal:** Human uses signature to show the authentication of document and to mention personal identity. For company signature means Seal. The document is deemed to be signed by company if the document bears the seal of the company.

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h) **Separation of Ownership from Management:** The Company is combination of the tree pillars: Investor, Management, Auditor. Investor invests the money which is used by management to run the business and is checked by auditor whether money is being properly used or not. Thus the investors need not enter in to day to day transaction of the company or management of the company.

i) **Separate Property:** As company is separate legal entity it has right to enter into contract on its own. Thus company can purchase or sale property on its own. Do transaction on its own. It's like company has its entire separate range of assets or liabilities.

M03,M11,PM: Explain clearly the concept of "perpetual–succession and "common–seal" in relation to a company incorporated under the Companies Act, 2013.

Provision: [The Companies Act, 2013]

1) **Perpetual Succession:**

a) Perpetual succession means the continued existence of any entity until the time that it is wound up by following a due process of law.

b) A company is an artificial legal person with a perpetual existence. It never dies nor does its existence depend upon the life of its members.

c) It is not in any manner affected by insolvency, mental disorder or retirement of any or all of its members.

d) It is created by a process of law and can be put to an end only by the process of law.

e) Members may come and go but the company will go on forever (until dissolved). It continues to exist even if all its members are dead.

2) **Common Seal:**

a) Since a company has independent existence and since all acts of the company are done in the name of the company and since the company is responsible for its own acts, it must have a "Seal" known as "common seal".

b) The common seal of a company is equivalent to the signature of the company and is therefore required to be affixed on all documents executed by the company.

c) The affixation of the common seal by the company on any document makes the document authentic as an act by the company and the company is bound by such acts.

d) The common seal of the company is kept in safe custody by a responsible officer of the company.

PM: What are the effects of registration of a company?

Provision: [Section 9 of the Companies Act, 2013]

1) From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

2) Accordingly, effects of registration of a company is as follows:

a) The Memorandum and Articles, when registered, would be binding on the company and its members to the same extent as if each one of them had individually signed the documents, so far as the covenants therein are concerned.

b) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

M08,PM:ABC Pvt. Ltd., Company is a Private Company having 5 members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

Provision: [The Companies Act, 2013]

Death of all members of a Private Limited Company, Under the Companies Act, 2013:

1) The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it.
2) This lends stability and perpetuity to company form of business organization. In short a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law.
3) Company's life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).
4) The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

Explanation:

1) In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares".
2) company will cease to exist only when it is wound up by a due process of law.

Answer:

Therefore, even with the death of all members (i.e. 5), ABC (Pvt) Ltd. does not cease to exist.

Lifting of Corporate Veil

Answer Writing Point For Lifting of Corporate Veil:

1) The company has a separate legal entity from its members. This principle is called the 'Veil of Company'.
2) All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
3) This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the company, only if he is acting for the benefit of the company & its members in legitimate manner.
4) Therefore, where there is fraudulent intention to misuse the veil for benefits of his or her own or conducting illegal act, such person will not get benefit of acting behind veil.
5) In such case, the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.

PM: A company is a person separate from its members'. Explain.

Or

PM: Examine the circumstances under which the Courts may disregard the Company's Corporate Personality.

Or

PM: What do you understand by "separate legal entity of the company?" State the circumstances where under the separate legal entity of the company can be ignored and liability can be imposed on the persons regulating the affairs of the company?

Or

PM: Under what circumstances the law disregards the principle that a company is a separate legal entity distinct from its members?

Or

PM: Briefly state the circumstances to lift the status of corporate legal entity of company under the Companies Act, 2013?

Or

N02,PM: Explain clearly the meaning of Lifting the Corporate Veil, as applicable in case of companies incorporated under the Companies Act, 2013. Under what circumstances the veil of a company can be lifted by the court? [LDR IMP]

Provision: [Custom Usage]

Meaning of Lifting the Corporate Veil:

1) The company has a separate legal entity from its members. This principle is called the 'Veil of Incorporation'.
2) All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
3) This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the company, only if he is acting for the benefit of the company & its members in legitimate manner.
4) Therefore, where there is fraudulent intention to misuse the veil for benefits of their own or conducting illegal act, such person will not get benefit of acting behind veil. In such case the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.
5) **The circumstances or the cases in which the Courts have disregarded the corporate personality of the company are:**
   a) **Protection of revenue:** (To prevent evasion of taxation) The Courts may ignore the corporate entity of a company where it is used for tax evasion. **(Juggilal v. Commissioner of Income Tax, B.F. Guzdar v. Commissioner of Income Tax Bombay).**
   b) **Prevention of fraud or improper conduct:** The legal personality of a company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. Professor Gower has rightly observed in this regard that the veil of a corporate body will be lifted where the 'corporate personality is being blatantly used as a cloak for fraud or improper conduct'. Thus where a company was incorporated as a device to conceal the identity of the perpetrator of the fraud, the Court disregarded the corporate personality **(Jones v. Lipman) (Gilford Motor Co. v. Home).**
   c) **Determination of character of a company whether it is enemy:** A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company and declare the company to be an enemy company. **(Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd).**
   d) Where the company is a sham: The Courts also lift the veil or disregard the corporate personality of a company where a company is a mere cloak or sham (hoax). **(Gilford Motor Co. Ltd. v. Home).**
   e) **Company avoiding legal obligation:** Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.
   f) **Company acting as agent or trustee of the shareholders:** Where a company is acting as agent for its shareholders, the shareholders will be liable for the acts of the company **(F.G. Films Ltd., In re.)**
   g) **Avoidance of welfare legislation**: Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. **(Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.).**
   h) **Protecting public policy:** The Courts invariably lift the corporate veil or a disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy. **(Connors v. Connors Ltd.).**

i) **In quasi-criminal cases:** The courts pierce the corporate veil in quasi-criminal cases in order to look behind the legal person and punish the real persons who have violated the law.

Case Laws:

A company in the eyes of law is regarded as an entity separate and distinct from its members. Any of its members can enter into contracts with the company in the same manner as with any other individual.

Further, a shareholder or member of a company cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The company's money and property belong to the company, and not to the shareholders. **(Salomon v. Salomon & Co. Ltd.).**

Answer:

Under above circumstances the veil of a company can be lifted by the court.

N04,PM: Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.

Provision: [Custom Usage]

1) **Concept of 'Veil of Incorporation':**
   a) The company is the separate legal entity from its members. This principle is called the 'Veil of Incorporation'.
   b) All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
   c) This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the company, only if he is acting for the benefit of the company & its members in legitimate manner.
   d) Therefore where there is the fraudulent intention to misuse the veil for benefits of their own or conducting illegal act, such person will not get benefit of acting behind veil. In such case the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.
2) **Circumstances where corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company:**
   a) Trading with enemy country.
   b) Evasion of taxes.
   c) Forming a subsidiary company to act as its agent.
   d) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company and 2 in the case of private company for more than six months.
   e) Under law relating to exchange control.
   f) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

Answer:

Under above circumstances the veil of a company can be lifted by the court and Promoters can be made personally liable for the debts of company.

J90: F, An assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded?

Provision: [Custom Usage]

1) The company is the separate legal entity from its members. This principle is called the 'Veil of Incorporation'.
2) All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
3) This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the

company, only if he is acting for the benefit of the company & its members in legitimate manner.

4) Therefore, where there is the fraudulent intention to misuse the veil for benefits of their own or conducting illegal act, such person will not get benefit of acting behind veil. In such case the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.

Case Law:

The facts of the given case are similar to the case of **Sir Dinshaw Maneckji Petit**, in which it was held that companies and the assessee are no separate legal entity, these are created only for purpose of running from tax burden and as the company has done no business its formed just for purpose of converting dividend income into loan and avoid tax.

Explanation & Answer:

1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself.
2) Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.
3) The legal personality of three private companies may be disregarded because companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend & interest and to hand them over to the assessee as pretended loans.

RTP N22: Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.

Provision: [Section 2(40) of the Companies Act, 2013]

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

Answer:

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

Chapter 2:
Incorporation of the Company and the matters thereto.

Section 3: Formation of Company

Answer Writing Points For Sec 3:

1) A company may be formed for any lawful purpose by—
   a) seven or more persons, where the company to be formed is to be a public company;
   b) two or more persons, where the company to be formed is to be a private company; or
   c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

   by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.
2) In case of OPC the following provisions shall be complied:
   a) Name of one person shall be mentioned who shall act on behalf of member in case of such member's/subscribers death or incapacity of such member/ subscriber.
   b) Written Consent of such nominee also has to be filed with the registrar at the time of filing memorandum and articles of association.
   c) Also such person can withdraw his consent at any time as and when he thinks to do so but as per the rules governing such withdrawal.
   d) Also the member of the OPC has right to change the name of nominee as and when he thinks fit only by giving notice of such change in name.
   e) Also, the member has to intimate the Registrar of company about the change in such name.
   f) Such change in name would not amount to any alteration in memorandum of the company.
3) A company formed under sub-section (1) may be either:
   a) a company limited by shares; or
   b) a company limited by guarantee; or
   c) an unlimited company.

Suggestion:

E-Forms to be filled by company under this section:

INC-2: Application for incorporation and Nomination by Member of OPC (Formation of Company)
INC-3:One Person company nominee's written consent form
INC-4: One person company change in member / Nominee
INC-5: OPC – Intimation of exceeding threshold
INC-6: OPC – Application for Conversion

PM: Explain in brief the mode of incorporation of a company.[IMP]

Provision: [Section 3(1)(a) of the Companies Act, 2013]

1) **Mode of registration/incorporation of company:**
   a) A public company may be formed for any lawful purpose with 7 or more persons by subscribing their names to a memorandum and complying with the requirements of the Companies Act for the registration of companies.
   b) In exactly the same way, under section 3 (1)(b), 2 or more persons can form a private company.
   c) Under section 3 (1)(c) a one person company may be formed by one person in which case the company will be a private company.
2) Persons who conceive the idea of forming the company and form the same under the provisions of the Act are known as promoters. They shall take all necessary steps for its registration.
3) Points to be considered while Incorporating a company:
   a) **Lawful purpose:** The essence of validly incorporated company is that it must consist of a particular number of persons and must be set up for a lawful purpose. Unless the purpose appears to be unlawful *ex facie* or is transparently illegal or prohibited by way of statute, it cannot be regarded as an unlawful purpose.
   b) **Applying for the name:** The promoters of the company should decide upon at least three suitable names in order of preference in order to afford flexibility to the Registrar in deciding on the availability of the best possible available name.

c) **Documents to be filed:** After getting the name approved, certain documents along with the application and prescribed fees should be filed with the Registrar.

d) **Subscribing their names:** Subscribing the names means signing the names in the Memorandum signifying their intention to jointly form a company and take up the number of shares mentioned against each.

e) **Certificate of incorporation:** Upon the registration of the documents mentioned earlier under the head "Documents to be filed for registration of the company" and the payment of the necessary fees, the Registrar of Companies issues a certificate that the company is incorporated, and in the case of a limited company that it is limited.

M.18 OLD: Mr. A and B are partners in a firm AB & Co. since the last 10 years. Now their business has crossed ₹20 crores and they want to form a private limited company to take over the firm's business and to expand it at large scale. They approached their auditor to assist to incorporate a company in the name of AB Trading Private Ltd. Explain in brief what documents are required to be filed with the Registrar of Companies?

Provision: [Section 3(1)(b) of the Companies Act, 2013]

1) As per section 3 (1)(b) of the Companies Act, 2013, a Private company may be formed for any lawful purpose with two or more persons by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration of company.
2) After getting the name approved, the following documents along with the application and prescribed fee, are to be filed with the Registrar:-
   a) Memorandum of Association
   b) Articles of Association
   c) The agreement, if any, which the company proposed to enter into with any individual for appointment as its Managing or Whole Time Director or Manager.
   d) A declaration that requirements of the Act and the rules framed there under have been complied with. This declaration is required to be signed by an advocate of the Supreme Court or High Court or an attorney or a pleader having the right to appear before High Court / CS/ CA in whole time practice in India who is engaged in formation of a company, or by person named in the Articles as a Director, Manager or Secretary of the company.
   e) A company shall, on and from the 30th day of incorporation and all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
   f) Apart from the above the company shall furnish to the Registrar a verification of a registered office under Section 12(2) within 30 days of incorporation in such manner as prescribed.

Answer:

The above documents are required to be filled with the registrar of companies.

Sec.3A : Members severally liable in certain cases

Answer Writing Points For Sec 3A:

1) If at any time;
   a) The number of members of a company is reduced (below statutory minimum limit) i.e
      i) In case of Public Company- Below 7
      ii) In case of Private Company- Below 2 and,
   b) The company carries business for more than 6 months while the number of members is so reduced.
2) Every person shall be severally Liable for the payment of the whole debts of the company contracted during that time (i.e. debts contracted after 6 months), and may be severally sued therefor. If;
   a) Such person is a member of the company during the time that it so carries on business after those 6 months and;
   b) The person is cognisant of the fact that it is carrying on the business with less than 7 members or 2 members, as the case may be.
   c) shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

N.19 RTP: Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The

company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation [LDR IMP]

Provision: [Section 3A of the Companies Act, 2013]

1) A public company may be formed for any lawful purpose with 7 or more persons by subscribing their names to a memorandum and complying with requirements of the Companies Act for registration of companies.
2) In exactly the same way, under section 3 (1)(b), 2 or more persons can form a private company.
3) Under section 3 (1)(c) a one person company may be formed by one person in which case the company will be a private company.
4) According to section 3A of the Companies Act, 2013,
   a) If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two.
   b) and company carries on business for more than 6 months while the number of members is so reduced then,
   c) every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than 7 members or 2 members, as the case may be, shall be severally liable for the payment of whole debts of the company contracted during that time, and may be severally sued therefore.

Explanation & Answer:

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

MTP Nov21: What is the minimum number of persons required to form a Private company and a Public company. Explain the consequences when the number of members falls below the minimum prescribed limit. [V.IMP]

Provision: [Section 3A of the Companies Act, 2013]

1) According to section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by—
   a) 7 or more persons, where the company to be formed is to be a public company;
   b) 2 or more persons, where the company to be formed is to be a private company; or
   c) by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.
2) According to section 3A,
   a) If at any time the number of members of a company is reduced,
      i) in the case of a public company, below 7,
      ii) in the case of a private company, below 2,
      iii) and the company carries on business for more than six months while the number of members is so reduced, then
   b) every person who is a member of company during the time that it so carries on business after those 6 months and is cognizant (aware) of fact that it is carrying on business with less than 7 members or 2 members, as the case may be,
   c) shall be severally liable for the payment of the whole debts of the company contracted during that time (after 6 months) and may be severally sued therefore.

Section 4: Memorandum of Association and Section 13: Alteration of MOA

Answer Writing Points For Name Clause[Sec.13 & 16]:

1) Name selected shall not be identical with or resemble too nearly to name of an existing company registered under this Act or any previous company law;

2) The name shall not be such that use of such name by the company:
   a) will constitute an offence under any law for the time being in force; or
   b) is undesirable in opinion of the Central Government.
3) Without effecting above provisions, a company shall not be registered with a name which contains :
   a) any word or expression which is likely to give impression that company is in any way connected with Central Government, any State Government, or any local authority, corporation or body constituted by Central Government or any State Government under any law for the time being in force; or
   b) such word or expression, as may be prescribed, shall not be used unless the prior approval of the Central Government has been obtained for it.

Application for Name:

1) A person may make an application, in Form INC-1 accompanied by such fees and in such manner, as may be prescribed, to the ROC for reservation of a name set out in the application as –
   a) Name of the proposed company; or
   b) Name to which the company proposes to change its name.
2) Once the request for registration of names is received by Registrar he has to process and register said name for maximum of 20 days from date of approval for the proposed company (60 days for existing company.) (i.e. reserve such name for that company for such period given above)

Suggestion:

If after such registration it is found that registration of name was done by furnishing wrongful or incorrect information then-

1) If such company is yet to be incorporated, then said name will be cancelled and penalty up to Rs. 1,00,000 can be imposed.
2) If the company is incorporated, then it will be ordered to either:
   a) change the said name or
   b) appeal for winding up of the company by passing the resolution within a period of 3 months
   c) take action for striking off the name of the company from the register of companies;
   d) make a petition for winding up of the company.

Alteration of Name:

1) The company needs to pass a GM-SR for alteration of MOA. same resolution will be required for alteration of Name as it is part of MOA.
2) Company need to take prior CG approval in writing for alteration of its name. So that name altered will not show any connection with Govt./local authority.
3) But, if such change in name is due to addition or deletion of word "Private" due to company's conversion from one type of company to another then in such case no approval is required from CG.
4) Application for change in name will be filed in Form INC24,
5) When any change in name of a company is made under sub-section (2), then Registrar shall enter new name in register of companies in place of old name & issue fresh certificate of incorporation with the new name and change in name shall be complete and effective only on issue of such a certificate.
6) Fresh Certificate of Incorporation will be issued in Form INC25.

Suggestion:

E-Forms to be filled by company under this section:

INC-24: Application to CG for change in name.

INC-25: Certificate of incorporation pursuant to change in name

Rectification of Name:

1) If the company is already registered with a name which in the opinion of the Central Government is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law; then company shall change such name within 3 months from order of CG by passing GM-OR for such change.
2) If at any point of time before completion of 3 years of incorporation & registration or change in name of Company an owner/proprietor of trade mark registered under the Trade Marks Act,1999 finds that name of such company

is already used by him or is too similar to the name used by him then:

a) He can file an appeal with Central Government for the same, and

b) If Central government is satisfied of his stand then it shall order company to change such name and

c) Company shall change name within 3 months of order but change should be supported by GM-OR approving such change in name.

3) Where a company changes its name or obtains a new name under subsection (1), it shall within a period of 15 days from date of such change, give notice of change to Registrar along with order of Central Government, who shall carry out necessary changes in certificate of incorporation & the memorandum.

Suggestion:

If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.".

M06: The Directors of "Sunrise Computers Ltd." desire to change the Company's name to "Royal Computers Ltd." and seek your advice. Explain the procedure to be followed, for the said purpose, under the Companies Act, 2013. [LDR IMP]

Provision [Section 13 of the Companies Act, 2013]

1) The company needs to pass a GM-SR for alteration of MOA. So the same resolution will be required for alteration of Name as it is part of MOA.
2) The company needs to take prior CG approval for alteration of its name as it is required u/s 13(6), so that the name altered will not show any connection with government or local authority.
3) But, if such change in name is due to addition or deletion of word "Private" due to company's conversion from one type of company to another then approval of CG not required. [Sec 16(2)]
4) Application for change in name will be filed in form INC24,
5) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.
6) Fresh Certificate of Incorporation will be issued in Form INC25.

Explanation & Answer:

In the given case, the Directors of "Sunrise Computers Ltd." should follow above mentioned procedure in order to change the name to "Royal Computers Ltd."

M03, PM: The Directors of a company registered and incorporated in the name "Mars Textile India Ltd." desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 2013? [IMP]

Provision [Section 13 of the Companies Act, 2013]

1) The company has to pass a GM-SR for alteration of MOA. So the same resolution will be required for alteration of Name as it is part of MOA.
2) The company need to take prior CG approval for alteration of its name as it is required u/s 13(6). So that the name altered will not show any connection with government or local authority.
3) But, if such change in name is due to addition or deletion of word "Private" due to company's conversion from one type of company to another then approval of CG not required. [Sec 16(2)]
4) Application for change in name will be filed in form INC24,
5) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.
6) Fresh Certificate of Incorporation will be issued in Form INC25.

Explanation & Answer:

1) In the given case, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd.is available or not.
2) For this purpose, the company should file the prescribed Form No.1A with the Registrar along with the necessary fees.
3) The Registrar after examination will inform whether the new name is available or not for registration. Thereafter, Mars Textile India Ltd. should follow the above mentioned procedure for changing the name.

M12, PM: Explain the procedure for change of name of a company, as provided in the Companies Act, 2013.

Provision: [Section 13 of the Companies Act, 2013]

1) The company has to pass a GM-SR for alteration of MOA. So the same resolution will be required for alteration of Name as it is part of MOA.
2) The company need to take prior CG approval for alteration of its name as it is required u/s 13(6). So that the name altered will not show any connection with government or local authority.
3) But, if such change in name is due to addition or deletion of word "Private" due to company's conversion from one type of company to another then approval of CG not required. [Sec 16(2)]
4) Application for change in name will be filed in form INC24,
5) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.
6) Fresh Certificate of Incorporation will be issued in Form INC25.

Answer:

The above procedure shall be followed for change of name of a company under the Companies Act, 2013.

J09: India Cosmetics Limited was a registered company under Indian Companies Act, 2013. Later on, another company, India Cosmetics and Accessories Limited was formed and registered. There being similarity in the names of both the Companies, India Cosmetics Limited lodged a complaint against India Cosmetics and Accessories Limited, with the Registrar of Companies, stating that there is sufficient similarity between these two names which may mislead or defraud the public. India Cosmetics and Accessories Limited is intending to alter its name. Advise India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 2013. [LDR IMP]

Provision [Section 16 of the Companies Act, 2013]

1) If the company already registered with the name which is in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law; then company shall change such name within 3 months from order of CG by passing GM-OR for such change.
2) If at any point of time before completion of 3 years of incorporation & registration or change in name of Company an owner/proprietor of trade mark registered under the Trade Marks Act,1999 finds that name of such company is already used by him or is too similar to the name used by him then:
   a) He can file an appeal with Central Government for the same, and
   b) If Central government is satisfied of his stand then it shall order company to change such name and
   c) Company shall change name within 3 months of order but change should be supported by an ordinary resolution of general meeting approving such change in name.
3) Once the name is changed as per order of Central Government, Company has to give notice to registrar within 15 days of such change, Also it has to attach a copy of Order of Central Government stating requirement to change name.
4) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name

in the register of companies in place of old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:
Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with provisions of section 13.

Answer:

India Cosmetics and Accessories Limited is advised to follow the above provisions for the same.

J09: Aman an engineer has started a new company with the name of Nuts and Bolts Private Limited. He got registered a company with the same name. However, Nuts and Bolts is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company change its name at its discretion?

Provision [Section 16 of the Companies Act, 2013]

1) According to section 16 of the Companies Act, 2013 if a company is registered by a name which,:
   a) in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
   b) is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.
2) Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.
3) As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Explanation & Answer:

a) In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years.
b) Therefore, the company cannot be compelled to change its name. As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government.
c) Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Answer Writing Points For Object Clause[Sec.4 & 13]:

1) The memorandum of a company shall state the objects for which company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
2) The company can run with only one object. But what if the company can run a new business at very low cost and make more profit. Thus the objects of the company can be divided in to two parts:
   a) Main Object;
   b) Ancillary objects / supplementary objects.
3) The Company must pass GM-SR for alteration of object clause.
4) In case of a company which has raised funds from public through prospectus has some of such funds unutilized then it can alter its object clause by passing special resolution and:
   a) Details as decided while passing special resolution are published in one English newspaper and one vernacular (i.e. regional) newspaper of place of

registered office. Also, same is published on website of the company indicating such proposed change. And

b) The shareholders who did not agree for change are given chance by the promoters or major shareholders to voluntarily quit their shares according to the guidelines given by the SEBI.

5) The registrar has to register the proposed change in object clause within 30 days of receipt of special resolution by company being published contents as mentioned in subsection 4(a) above.

M07, PM: The object clause of the Memorandum of Association of LSR Private Limited Lucknow, authorised to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer.

Provision: [Section 4 of the Company Act, 2013]

1) In terms of Companies Act, 2013, the powers of the company are limited to:
   a) Powers expressly given in the "Objects Clause" of the Memorandum (which is popularly known as 'express' power), or conferred by the Companies Act, or by any other statute and
   b) Powers reasonably incidental or necessary to the company's main objects (termed as "Implied' powers).
2) The objects clause enables the shareholders, creditors or others to know what its powers are and what the range of its activities is. The objects clause therefore is of fundamental importance to the shareholders, creditors and every other person who deals with the company in any manner what so ever. A company being an artificial legal person can act only within the ambit of the powers conferred upon it by the Memorandum through the "Objects Clause".
3) Every person who enters into a contractual relationship with a company on any matter is presumed to be aware of its objects and is supposed to have examined the Memorandum of Articles of the company to ensure proper contractual agreement. If a person fails to do so, it is entirely at his own peril.
4) It is also pertinent to note that the objects of a company may be changed by following the provisions for the change of Memorandum as laid out in section 13 of the said Act.

Case Law:

Ashbury Railway Carriage Company Vs Richee: The acts beyond the powers of a company are ultra vires and void and cannot be ratified even though every member of the company may give his consent.

Explanation & Answer:

1) In the given case, M/s LSR Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. J. Such act cannot be treated as being within either the 'express' or 'implied' powers of the company.
2) Mr. J who entered into partnership is deemed to be aware of the lack of powers of M/s LSR (Pvt) Ltd. In the light of the above, Mr., J cannot enforce the agreement or liability against M/s LSR Pvt. Ltd under the Companies Act. Mr. J should be advised accordingly.
3) However, under the Indian Contract Act, 1872 where a person derives any benefit either in the absence of a contract or under a void agreement will be liable to make a reasonable payment for the value of such benefit. (Please refer to Quasi Contracts and Void Agreements)

PM: Explain the steps to be taken by a company for starting a business for which there is no provision in the objects clause of the Memorandum of Association.

Provision: [Section 4 (1) (c) of the Companies Act, 2013]

1) The memorandum of a company shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

2) The company can run with only one object. But what if the company can run a new business at very low cost and make more profit. Thus the objects of the company can be divided in to two parts:
   a) Main Object
   b) Ancillary objects / supplementary objects.
3) The Company must pass GM-SR for alteration of object clause.
4) In case of a company which has raised funds from public through prospectus has some of such funds unutilized then it can alter its object clause by passing special resolution and:
   a) Details as decided while passing special resolution are published in one English newspaper and one vernacular (i.e. regional) newspaper of place of registered office. Also, same is published on website of the company indicating such proposed change. And
   b) The shareholders who did not agree for change are given chance by the promoters or major shareholders to voluntarily quit their shares according to the guidelines given by the SEBI.
5) The registrar has to register the proposed change in object clause within 30 days of receipt of special resolution by company being published contents as mentioned in subsection 4(a) above.

Explanation & Answer:

Hence, if a company wishes to start a business which is not provided for in its Memorandum, it must first alter its Memorandum to include that business in its objects clause by following procedure mentioned above.

M05: The management of Ambitious Properties Ltd. has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clauses of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause.

Or

M04: What are the purposes for which "objects" can be altered by a company under the Companies Act, 2013? Briefly explain the procedure to be applied to such matters.

Or

M07, PM: State the purposes for which the object clause of the Memorandum of Association of a public limited company, registered under the Companies Act, 2013, can be altered.

Or

Explain the provisions of law and procedure relating to alteration of object clause stated in the Memorandum of Association of a company under the Companies Act, 2013. [LDR IMP]

Provision: [Section 4 & 13 of the Companies Act, 2013]

1) The memorandum of a company shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
2) The company can run with only one object. But what if the company can run a new business at very low cost and make more profit. Thus the objects of the company can be divided in to two parts:
   a) Main Object;
   b) Ancillary objects / supplementary objects.
3) The alteration of object clause of MOA will require the GM-SR.
4) In case of a company which has raised funds from public through prospectus has some of such funds unutilized then it can alter its object clause by passing special resolution and:
   a) Details as decided while passing special resolution are published in one English newspaper and one vernacular (i.e. regional) newspaper of place of registered office. Also, same is published on website of the company indicating such proposed change. And
   b) The shareholders who did not agree for change are given chance by the promoters or major shareholders to voluntarily quit their shares according to the guidelines given by the SEBI.

5) The registrar has to register the proposed change in object clause within 30 days of receipt of special resolution by company being published contents as mentioned in subsection 4(a) above.

Explanation & Answer:

As per the provision given above management of Ambitious Properties Ltd need to alter its memorandum to carry out such business & by following above procedure given object clause can be amended.

N08,PM: A company was started with the object of building 'A mall with shops'. The building was destroyed by fire and the company wanted to alter the objects clause in the memorandum by substituting the words 'A mall with shops' with the words "Shops, Residential buildings and Warehouses for letting purposes.' Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the companies Act, 2013.

Provision: [Section 13 of the Companies Act, 2013]

1) The memorandum of a company shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
2) The alteration of object clause of MOA will require the GM-SR.
3) In case of a company which has raised funds from public through prospectus has some of such funds unutilized then it can alter its object clause by passing special resolution and:
   a) Details as decided while passing special resolution are published in one English newspaper and one vernacular (i.e. regional) newspaper of place of registered office. Also, same is published on website of the company indicating such proposed change. And
   b) The shareholders who did not agree for change are given chance by the promoters or major shareholders to voluntarily quit their shares according to the guidelines given by the SEBI.
4) The registrar has to register the proposed change in object clause within 30 days of receipt of special resolution by company being published contents as mentioned above.

Explanation:

As per the provision given above such company need to alter its memorandum to carry out such purpose & by following above procedure given object clause can be amended.

Answer:

Hence, the proposed alteration is permissible.

N19 RTP: Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised ` 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

Provision: [Section 13 of the Companies Act, 2013]

1) The memorandum of a company shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
2) The company can run with only one object. But what if the company can run a new business at very low cost and make more profit. Thus the objects of the company can be divided in to two parts:
   a) Main Object;
   b) Ancillary objects / supplementary objects.
3) The alteration of object clause of MOA will require the GM-SR.

4) In case of a company which has raised funds from public through prospectus has some of such funds unutilized then it can alter its object clause by passing special resolution and:
   a) Details as decided while passing special resolution are published in one English newspaper and one vernacular (i.e. regional) newspaper of place of registered office. Also, same is published on website of the company indicating such proposed change. And
   b) The shareholders who did not agree for change are given chance by the promoters or major shareholders to voluntarily quit their shares according to the guidelines given by the SEBI.
5) The registrar has to register the proposed change in object clause within 30 days of receipt of special resolution by company being published contents as mentioned in subsection 4(a) above.

Explanation & Answer:

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

Answer Writing Points for Registered Office Clause [Sec.12 & 13]:

Setting up Registered office of the company:

1) Section 12 (1) states that a company shall have its registered office within 30 days from its incorporation for receiving and acknowledging all communications and notices addressed to it
2) Section 12 (3) further requires every company to:
   a) Paint or affix its name and address of its registered office, and keep the same painted and affixed, on the outside of every office or place in which its business is carried on.
   b) Such display must be, in legible letters in characters and letters of the local language in addition to any other language (if chosen by the company);
3) All the business letters, bill heads, notices shall contain name, address of its registered office and the corporate identity number and other details.
4) From the above provisions of the Companies Act, 2013, the high importance of the registered office of a company can be well understood as it serves as the location where:
   a) All the necessary documents may be served upon, or deposited;
   b) notices, letters, etc., may be issued;
   c) inspection may be done, and
   d) communication may be made.
5) The domicile and the nationality of a company is determined by the place of its registered office.
6) It is also important for determining the jurisdiction of the court governing it.
7) Notice of the situation of the registered office and of every change therein must be sent to the Registrar (otherwise than through a statement as to the address of the registered office in the annual report) within 30 days of the date of incorporation and the date of change.

Change in registered office:

1) If the company want to shift Registered office within same city, then it shall pass BOD-OR.
2) The company shall pass GM-SR in case it wants to shift registered office from one city to another i.e. inter-city. But in same state.
3) In case company wants to shift its registered office from one ROC to another then company shall take approval of both the ROC.
4) Such application to regional Director for shifting of registered office is to be given in Form INC 23 along with such fee as may be prescribed.Confirmation should be received in 30 days from such regional director.
5) Then company shall file copy of INC-23 with the ROC within 60 days & get approval regarding the same in 30 days.
6) In case registered office is shifting from one state to another then prior approval of CG is required.
7) Once the certificate of such change is issued it will be the proof that change in location of registered office has taken place as per the provisions of the act and such change in location will actually start from the date of issue of such certificate.
8) Further, if the Registrar remains the same for the whole state, there will be no

need for the company to seek the confirmation to such change from the Regional Director.

Suggestion:

E-Forms to be filled by company under this section:

INC-22: Notice of situation or changes of situation of registered office.

INC-23: Application to the regional directors for approval to shift the registered office from one state to another state or from jurisdiction of one ROC to another ROC within same state.

PM: Explain the steps to be taken by a company for transfer of its registered office from one State to another?

Provision: [Section 13 of the Companies Act, 2013]

1) The Memorandum of a company includes a clause "Registered Office" which states the state in which the registered office of the company is situated.
2) Section 13 (1) of the Companies Act 2013, allows a company to change any of the clauses of its Memorandum by a special resolution of its members. In some cases the additional approval of the Central Government is necessary.
3) In order to the change its registered office from one State to another the Companies Act, 2013 lays down the following steps and procedure:
   a) **Resolution of the Board of Directors:**
      The first step in changing registered office is that the board of directors must adopt a resolution to that effect and convene a general meeting of members in which the change is approved.
   b) **Special resolution:**
      A special resolution must be passed by the company in the general body meeting of shareholders/members. [Section 13 (1)].
   c) **Approval of the Central Government:**
      Under section 13 (4) the alteration of the Memorandum relating to the change of registered office from one state to another shall not have any effect, unless it is approved by the Central Government on an application in such form and in such manner as may be prescribed.
      Here, the powers of Central Government are delegated to Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong. Hence, the company will have to make the required application after the name is approved by the members by special resolution;
   d) **Disposal of application:**
      Under section 13 (5) the Central Government/Regional Director shall dispose of the application within 60 days and before passing its order, it may satisfy itself that the alteration has the consent of creditors, debenture holders and other persons concerned with the company, or that adequate provisions have been made by the company either for the due discharge of their liabilities or adequate security has been provided for such discharge.
   e) **Registration with Registrar:**
      Under section 13 (7) the company shall file a certified copy of the Central Government order approving the alteration with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same. The Registrar of the State where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration.

Answer:

Above steps to be taken by a company for transfer of its registered office from one State to another.

N.11&PM: What is the importance of registered office of a company? State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013. [LDR IMP]

Provision: [Section 12 & 13 of the Companies Act, 2013]

1) **Importance of registered office:**
   a) Section 12 (1) states that a company shall, on and from the 30th day of its incorporation and at every time thereafter, have a registered office capable of receiving and acknowledging all communications and notices addressed to it.
   b) Section 12 (3) further requires every company to:

i) Paint or affix its name and address of its registered office, and keep the same painted and affixed, on the outside of every office or place in which its business is carried on.

ii) Get its name, address of its registered office and the corporate identity number and other details, on all its business letters, bill heads, notices another official publications;

c) From the above provisions of the Companies Act, 2013, the extremely high importance of the registered office of a company can be well understood as it serves as the location where:

i) necessary documents may be served upon, or deposited;

ii) notices, letters, etc., may be issued;

iii) inspection may be done, and

iv) communication may be made.

d) The domicile and the nationality of a company is determined by the place of its registered office. This is also important for determining the jurisdiction of the Court governing it.

e) Notice of the situation of the registered office and of every change therein must be sent to the Registrar (otherwise than through a statement as to the address of the registered office in the annual report) within 30 days of the date of incorporation and the date of change.

2) This provision is designed to locate the spot where the records of the company could be inspected and where the letters should be addressed and notices served upon the company.

3) In order to shift the registered office from one state to another the following procedure will have to be followed:

a) Hold a Board Meeting for purpose of calling a general meeting of members of the company in which shifting of registered office from one state to another will have to be approved;

b) The general meeting of members will have to pass a special resolution approving change of address of registered office from one state to another as required by section 13 (1) of the Companies Act 2013.

c) Make an application to the Central Government/Regional Directors in such form and manner as may be prescribed, for getting its approval under section 13 (4) of the Companies Act 2013.

d) Under section 13 (7) of the Companies Act 2013, where an alteration of the Memorandum results in transfer of registered office of company from one state to another, a certified copy of the order of the Central Government approving alteration shall be filed by the company with the registrar of each of the states, within such time and in such manner as may be prescribed, and the registrars shall register the same.

e) The registrar of the state where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating alteration.

f) The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

Answer:

Above procedures to be followed by a company for shifting of its registered office from one State to another state.

PM: State with reason, whether the following statement is correct or incorrect, according to the Companies Act, 2013.
Change of Registered Office of Company from one place to another within a State requires confirmation by the Central Government. [IMP]

Provision: [Section 13 of the Companies Act, 2013]

1) A change in the location of its registered office by a company from one place to another within the same state does not result in the alteration of its Memorandum and hence the provisions and requirements under section 13 of the Companies Act, 2013 will not apply.

2) However, under section 12 (5) of the Act, the change in registered office from one town to another within the same state must be approved by a special resolution of the company.

3) Where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to confirmed by the Regional Director on an application made by the company.
4) Further, presuming that where the Registrar remains the same in the two towns, there it will be not required for the company to additionally seek the confirmation to such change from the Regional Director.

Answer:

From the Provision given above we can say that given statement is incorrect.

N06, MTP(N.19)PM: XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain. [LDR IMP]

Provisions: [Section 12 & 13 of the Companies Act, 2013]

1) Change of registered office from one City to another City and from one ROC to another but in same state will require the BOD-OR + GM-SR (for change in city of GM) + Both ROC approval. The ROC approval means the approval of the regional director for the same.
2) Such application to regional Director is to be given in Form INC 23 along with fee.
3) Confirmation of change: is to be given to the company by the regional director within 30 days of application made.
4) Then such confirmation is to be filed with registrar in 60 days of receipt.
5) And finally, the registrar has to certify such change within 30 days of receipt of confirmation of regional director from the company.
6) Once the certificate of such change is issued it will be the proof that change in location of registered office has taken place as per the provisions of the act and such change in location will actually start from the date of issue of such certificate.
7) Further, if the Registrar remains the same for the whole state, there will be no need for the company to seek the confirmation to such change from the Regional Director.

Explanation:

Even though the location or Registered Office clause in Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune (i.e. Change in same state) result in alteration of Memorandum as Maharashtra & Tamilnadu are the only 2 states who have 2 ROC in one state therefore XY Ltd need to comply with above provision to change its registered office from Mumbai to Pune.

Answer:

Hence XY Ltd to comply above formalities for shifting of registered office as stated above.

N04,PM: M/s ABC Ltd. a company registered in the State of West Bengal desires to shift its registered office to the State of Maharashtra. Explain briefly the steps to be taken to achieve the purpose.
Would it make a difference, if the Registered Office is transferred from the Jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State.

Provision [Section 12 & 13 of the Companies Act, 2013 is as follows]

1) The change in the address of the registered address of a company requires an alteration to Memorandum. In order to shift the registered office from the one State other, the Company has to take the following steps:
   a) Hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office will have to be approved;

b) The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state to the other.

c) Make an application to the Central Government in such form and manner as may be prescribed, for getting its approval.

d) Where an alteration of Memorandum results in transfer of registered office of company from one state to another, a certified copy of order of Central Government approving alteration shall be filed by company with registrar of each of the states, within such time and in such manner as may be prescribed, and registrars shall register same.

e) The registrar of the state where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

f) The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

2) Change of registered office from the jurisdiction of one Registrar to the other Registrar within the same State:

a) A change of registered office from jurisdiction of one registrar to another does not involve an alteration to Memorandum of a company as the location clause in Memorandum merely states name of the state, which is not changed by such relocation.

b) However, except on the authority of a special resolution passed by a company, registered office of company shall not be changed from one city or town to another within same state.

c) In case of change of registered office from jurisdiction of one registrar to another such change must be confirmed by Regional Director also, on an application made in this behalf by company, he shall certify registration within a period of 30 days from date of filing of such confirmation.

d) Certificate shall be conclusive evidence that all requirements of this Act with respect to change of registered office have been complied with and change shall take effect from date of certificate.

Explanation:

In given above case M/s ABC Ltd. a company registered in the State of West Bengal desires to shift its registered office to the State of Maharashtra for such purpose company need to comply with above provision given in (1) and Prior approval of Central Government must be taken before complying other provisions as the registered office is shifting from one state to another.

July21: Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.

(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Provision: [Section 12 & 13 of the Companies Act, 2013 is as follows]

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

1) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.

2) Section 12 talks about shifting of Registered office only, In the second case the corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Shifting of corporate office under the board resolution is valid.

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

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

M08, M09 & PM: VD Company Ltd. is registered in Tamil Nadu within the jurisdiction of the Registrar of Companies, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of Registrar of Companies, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office. [LDR IMP]

Provision: [Section 12 of the Companies Act, 2013]

1) Change of registered office from one City to another City and from one ROC to another but in same state will require the BOD-OR + GM-SR (for change in city of GM) + Both ROC approval.
2) The ROC approval means the approval of the regional director for the same.
3) Application to regional Director is to be given in Form INC 23 along with fee.
4) Confirmation of change is to be given to the company by the regional director within 30 days of application made.
5) Then such confirmation is to be filed with registrar in 60 days of receipt.
6) And finally, the registrar has to certify such change within 30 days of receipt of confirmation of regional director from the company.
7) Once the certificate of such change is issued it will be the proof that change in location of registered office has taken place as per the provisions of the act and such change in location will actually start from the date of issue of such certificate.
8) If any of the default is made to comply with the provisions of this section then the Company & Every officer who is found liable for default will have to pay penalty of Rs. 1000 per day for each day till all the provisions are followed.

Answer:

VD Company Ltd. should follow the above mentioned steps company to give effect to the proposed shifting of its registered office.

MTPM23: Examine the validity of the following different decisions/proposals regarding change of office by A Limited under the provisions of the Companies Act, 2013:

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

Provision: [Section 12 of the Companies Act, 2013]

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

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

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

Answer Writing Points for Capital Clause & Subscription Clause& its Alteration [Sec. 13 & 61]:

1) Power to alter share capital is available only to a limited company having share capital.
2) Alteration of share capital can be done only if AOA authorises it.
   a) Alteration is to be done by alteration of MOA in general meeting.
   b) Ordinary resolution is sufficient for such alteration.
3) A limited company having a share capital may alter its capital by following ways:
   a) **Increase** authorised share capital by issuing fresh shares.
   b) **Consolidate or divide** all or any of its share capital. (e.g. 10 shares X Rs.10 each = 1 share of Rs.100 and vice versa).
      Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner
   c) **Convert and Reconvert** its fully paid up shares into stock and such stock into fully paid up shares of any denomination.
   d) **Sub-divide** all or any of its shares into shares of smaller amount than fixed by MOA. (e.g. 1 share of Rs100, Rs.60 paid up, is subdivided into 10 shares of Rs.10, Rs.6 paid up)
   e) **Cancel** shares which have not been taken or agreed to be taken by any person. The cancellation under sub section (1) above shall not be treated as reduction of share capital.
4) Further, under section 64 where a company alters its share capital in any of above mentioned ways, company shall file a notice in prescribed form with ROC within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
5) Section 13 provides for the procedure to be followed for alteration of the Memorandum, as under:
   a) Company shall pass special resolution for such alteration in general meeting.
   b) The company must file with the Registrar the special resolution passed by the company to effect an alteration in the capital clause of the Memorandum;
   c) No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.

M08,PM: The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered and procedure to be followed for the said alteration. [V. IMP]

Provision: [Section 61(1), 13 of the Companies Act, 2013]

1) A limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting as under:
   a) it may increase its authorized share capital by such amount as it thinks expedient;
   b) it may consolidate and divide all or any of its share capital of a larger amount than its existing shares
   c) convert all or any of its paid up shares into stock and reconvert that stock into fully paid shares of any denomination
   d) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum

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

2) Further, under section 64 where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum

3) Section 13 provides for the procedure to be followed for alteration of the Memorandum, as under:

a) A special resolution must be passed to effect the alteration. For this purpose, a Board Meeting must be held to convene a general meeting of the members and all legal provisions in this behalf followed including the circulation of a detailed explanatory note on the proposed change along with the notice for the general meeting;

b) The company must file with the Registrar the special resolution passed by the company to effect an alteration in the capital clause of the Memorandum;

c) No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.

Explanation & Answer:

The Directors of Mars India Ltd can alter the capital clause of Memorandum of Association of their company by following the ways given in above provisions of companies Act,2013 & shall comply with procedure to alter the same.

Answer Writing Points for Alteration Liability Clause[Sec.13]:

1) The alteration of the liability clause is sort of internal reconstruction of the company.
2) The liability of the members can be increased by express approval of each member i.e. by GM-UR.
3) Unlimited liability of the shareholders can be made limited by:
   a) Passing GM-SR and filing it within 30 days with ROC.
   b) Obtain the sanction or approval of the tribunal and filing of the same in 3 months from the date of order.
   c) Alteration will be effective from the date of registration.

N10,PM: RSP Limited, with a limited liability of its members by guarantee of Rs. 10 lacs to each member. The company increases the liability of the members from Rs.10 to15 lacs by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 2013 decide, whether the members of the company are liable for the increased liability. [V.IMP]

Provision: [Section 13 of the Companies Act, 2013]

1) As said in section 61 of the Act, a company can alter the provisions of its memorandum if such change is supported by Ordinary resolution and all other provisions required for alteration are fulfilled.
2) Any change done by the company in its memorandum will have its legal effect only when all the provisions related to the change under this section are fulfilled.

Explanation:

1) The limitation of liability is an essential clause in the Memorandum and on registration of the company becomes binding on all present and future members.
2) The present question states that the liability of the members has been increased by the company without clarifying the mode. The company can act only through its Board of Directors or through its members.
3) The Board of Directors do not have the authority to alter the clause; hence it means that the alteration was approved by the members at a general meeting.
4) However, section 13 of the Act which deals with the alteration of the Memorandum does not provide for the alteration of its liability clause. Hence, the liability of members cannot be altered once the company is formed.

Answer:

The alteration in the given question is therefore invalid.

Section 5: Article of Association And Section 14: Alteration Of Article Of Association

Answer Writing Points for Article of Association:

1) The articles of association are in fact the bye-laws of the company according to which directors and other officers are required to perform their functions as regards the management of the company, its accounts and audit.
2) Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-
   a) The articles of a company shall contain the regulations for management of the company.
   b) Articles shall also contain such matters, as are prescribed under rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
   c) Articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in case of a special resolution, are met or complied with.
   d) The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
   e) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
   f) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company
   g) Company may adopt all/any of regulations contained in model articles applicable to such company.
   h) In case of any company, which is registered after commencement of this Act, in so far as registered articles of such company do not exclude or modify regulations contained in model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in same manner & to the extent as if they were contained in duly registered articles of company.
   i) Nothing in this section shall apply to articles of a company registered under any previous company law, unless amended under this Act.

Answer Writing Points for Sec 14 :Alteration of Article of Association:

1) Articles of association are in fact bye-laws of company according to which directors &other officers are required to perform their functions as regards management of company, its accounts & audit.
2) Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:
   a) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
   b) **Filing of alteration with the registrar:** Every alteration of articles and a copy of order of Tribunal approving alteration, shall be filed with Registrar, together with a printed copy of altered articles, within a period of 15 days, who shall register the same.
   c) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
   d) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be.

Suggestion:

If a company makes any default in complying with stated provisions, Company & every officer who is in default shall be liable to a penalty of Rs.1000 for every copy of articles issued without such alteration. **[Section 15]**

M08: Under the Articles of Association of Sunshine Ltd. Company directors had power to borrow up to Rs.10,000 without the consent of the general meeting. The Directors themselves lent Rs.35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 2013, whether the company is liable? If so, what is the extent of liability of the company in this case?

Provision: [Section 5 of the Company Act, 2013]

The articles of association are in fact the bye-laws of the company according to which directors and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Doctrine of Ultra-vires:

The company shall not work beyond the powers of its MOA and AOA. The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company. The company shall not work beyond the same. Any act done beyond the MOA and AOA will be considered as void-ab-initio.

Answer:

In the given case, the company is not liable to the directors.

PM: The Articles of Association of a Limited Company provided that 'X' shall be the Law Officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid? [V.IMP]

Provision: [Section 5 of the Companies Act, 2013]

1) The Articles of a company contain the regulations for the management of a company. The Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company.
2) The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same.
3) However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.

Explanation:

2) In this case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct.
3) In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company.

Answer:

Hence, the action taken by the company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid. **(Eley V Positive Govt. Security Life Assurance Co., Major General Shanta Shamsher jung V Kamani Bros. P. Ltd.)** However, by altering the Articles by a special resolution under section 14 of the Act and Mr. X can be removed.

M.20 RTP: Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.

Provision: [Section 5 of the Companies Act, 2013]

1) As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.
2) The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

3) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

Explanation& Answer:

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

N08,PM: The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The Company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly.

Provision: [Sections 10 & 14 of the Companies Act, 2013 are as follows]

1) The Memorandum and Articles, when registered, would be binding on the company and its members to the same extent as if each one of them had individually signed the documents, so far as the covenants therein are concerned.
2) Articles can be altered as per the provisions of the act and any conditions mentioned in the memorandum by passing special resolution in general meeting.
3) Whenever the article is altered with special resolution then such change should be intimated to registrar within 15 days of change along with copy of altered articles.
4) Once the change is made in articles then it will be treated as if it is the original fact mentioned in the articles.

Explanation & Answer:

In the given case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of B will stand and A will be terminated.

M11: Describe the procedure for converting a private company into a public company under the provisions of the Companies Act, 2013.

Provision: [Section 14 of the Companies Act, 2013 & Rule 33 of The Companies (Incorporation) Rules, 2014]

1) Articles can be altered as per the provisions of the act and any conditions mentioned in the memorandum by passing special resolution in general meeting.
2) Articles can also be altered to give effect to the conversion of –
   a) Public company to private company, or
   b) Private company to Public company.
3) But, if a private company alters its articles in such a way that it stops following the restrictions related to private company then such company will no longer have its status as private company from the date of effect of such alterations.
4) For conversion of Private to public company or vice versa it should be filed in Form INC27 with fees and Approval from Central government is also to be filed.
5) Whenever the article is altered with special resolution and order of the tribunal if any as the case may be, then such change should be intimated to registrar within 15 days of change along with copy of altered articles and order of tribunal if any.
6) Once the change is made in articles then it will be treated as if it is the original fact mentioned in the articles.

Answer:

Above procedure need to be complied for converting a private company into a public company under the provision of the Companies Act, 2013.

PM: Define a Private Company. Explain the procedure for conversion of a Public Company into a Private Company. [LDR IMP]

Provision: [Section 2(68) & 14 of Companies Act, 2013]

Definition of a Private Company:

1) A 'private company' means a company which by its Articles:
   a) restricts the right to transfer its shares;
   b) except in case of One Person Company, limits the number of its members to two hundred.
2) Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
3) Provided further that—
   a) persons who are in the employment of the company; and
   b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
4) Prohibits any invitation to the public to subscribe for any securities of the company.

Procedure for conversion of a Public Company into a Private Company:

1) Section 14 states that subject to the provisions of the Companies Act 2013 and the conditions contained in the Memorandum, a company may, by special resolution, alter its Articles including alterations which may have the effect of converting a public company into a private company (or vice versa).
2) Further any alteration which has the effect of converting a public company into a private company will not have any effect except with the approval of the Tribunal which may pass such order as it deems fit.
3) Hence, the broad procedure for conversion of a public company into a private company would comprise of the following steps:
   a) Check that the Memorandum of Association does not contain any restrictive clause. If yes, alteration of the Memorandum will be necessary through a special resolution;
   b) Alteration of Articles to incorporate the restrictions required u/s 2 (68) by a special resolution
   c) Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of Central Government on an application made in such form and manner as may be prescribed
   [Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies Amendment Act, 2019 shall be disposed of by Tribunal in accordance with provisions applicable to it before such commencement.]
   d) After approval of Tribunal, every alteration of the articles and a copy of the order of Tribunal approving alteration shall be filed with the Registrar, of Tribunal approving the alteration shall be filed with the Registrar, within a period of 15 days, who shall register the same.
   e) Any alteration of articles registered as above shall be valid as if it were originally in the articles.

Answer:

Company shall follow above procedure for conversion of a Public Company into a Private Company.

N02,PM: Explain the limitations relating to alternation of Articles of Association of a company.

Provision: [Section 14 of the Companies Act, 2013]

1) The articles of association are in fact the bye-laws of the company according to which directors and other officers are required to perform their functions as regards the management of the company, its accounts and audit.
2) Articles can be altered as per the provisions of the act and any conditions mentioned in the memorandum by passing special resolution in general meeting.
3) Generally speaking the right of a company to alter its Articles is without and restriction. However, section 14 of the Act limits the right of the company to alter its Articles by imposing the following restrictions:
   a) The alteration cannot override its Memorandum or in any way conflict with the provisions thereof.

b) It cannot be in violation of any provision of the Companies Act or any other statute.

c) It cannot allow an activity which is illegal (as a company can be formed only for a lawful object).

d) An alteration to the Articles cannot increase the liability of its member which has been already defined in the Memorandum.

M04: What is the procedure laid down in the provisions of the Companies Act, 2013 for converting a private company into a public company?

Provision: [Section 14 of the Companies Act, 2013 & Rule 33 of the Companies (Incorporation) Rules, 2014]

1) Articles can be altered as per the provisions of the act and any conditions mentioned in the memorandum by passing special resolution in general meeting.
2) Articles can also be altered to give effect to the conversion of –
   a) Public company to private company, or
   b) Private company to Public company.
3) But, if a private company alters its articles in such a way that it stops following the restrictions related to private company then such company will no longer have its status as private company from the date of effect of such alterations.
4) For conversion of Pvt. to public company or vice versa it should be filed in Form INC27 with fees and Approval from Central government is also to be filed.
5) Whenever the article is altered with special resolution and order of the tribunal if any as the case may be, then such change should be intimated to registrar within 15 days of change along with copy of altered articles and order of tribunal if any.
6) Once the change is made in articles then it will be treated as if it is the original fact mentioned in the articles.

Answer:

Above procedure need to be complied for converting a private company into a public company under the provision of the Companies Act,2013

N03: Board of Directors of a private company decided to convert it into a public company. State the steps to be taken for such conversion in order to comply with the requirements under the Companies Act, 2013.

Provision: [Section 14 of the Companies Act, 2013 & Rule 33 of The Companies (Incorporation) Rules, 2014].

1) The company should convene a General Meeting to pass a GM-SR to amend the Name Clause in the memorandum by removing the word 'Private'.
2) Further, the GM-SR must also be passed a for deleting from its articles the restricting clauses of a private company under Section 2(68). Similarly all other clause in the articles which do not apply to a public company should be deleted and those which apply to private companies should be inserted such as increasing the number of shareholders to at least 7 and number of directors to at least 3. These resolutions will be passed clause by clause
3) An application should be made to the Tribunal for approval to the various resolutions passed.
4) The documents along with the order of Tribunal will be filed with the Registrar along with a copy of the revised Articles and fees in form no. INC 27 for registration within 15 days of change.
5) On registration by the Registrar the process will be complete.

Explanation & Answer:

The Board of Directors of the private company should convene a Board Meeting to take necessary decision to fix the time, place and agenda for convening a General Meeting of members & follow the above mentioned procedure.

N.18 RTP: The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.
Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.[V.IMP]

Provision: [Section 5 & 14 of the Companies Act, 2013].

1) The articles of association are in fact the bye-laws of the company according to which directors and other officers are required to perform their functions as regards the management of the company, its accounts and audit.
2) Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:
   a) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
   b) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 days in such manner as may be prescribed, who shall register the same.
   c) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
   d) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

Explanation & Answer:
Board of Directors of Sindhu Limited need to follow the above provisions for alteration of Articles of Association for purpose of carrying out proposed changes in their clauses of Articles of Association.

M.18 OLD: The Board of Directors of PV Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Please advise the company about the procedure to be followed for alteration of Articles of Association.[V.IMP]

Provision: [Section 5 & 14 of the Companies Act, 2013].

1) The articles of association are in fact the bye-laws of the company according to which directors and other officers are required to perform their functions as regards the management of the company, its accounts and audit.
2) Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:
   a) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
   b) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 days in such manner as may be prescribed, who shall register the same.
   c) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
   d) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

Explanation & Answer:
Board of Directors of PV Limited need to follow above provisions for alteration of Articles of Association for purpose of carrying out proposed changes in their clauses of Articles of Association.

MTPOct22: The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions.

Provision: [Section 5 of the Company Act, 2013

1) **Entrenchment:** Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So, entrenchment means making something more protective.
2) **Section 5** of the Companies Act, 2013 describes the provisions relating to entrenchment.
   a) **Articles may contain provisions for entrenchment [Section 5(3)]**: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
   b) **Manner of inclusion of the entrenchment provision [Section 5(4)]:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
   c) **Notice to the registrar of the entrenchment provision [Section 5(5)]:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Section 6: Act to override MOA and AOA

Answer Writing Points For Sec 6:

1) The provisions of this act shall have overriding effect on the provisions contained in:
   a) The memorandum or articles of a company, or
   b) Agreement executed by it; or
   c) Any resolution passed by the company in general meeting or its board whethr the same be registered, executed or passed as the case may be, before or after the commencement of this act and
2) Any provision contained in the memorandum, articles, agreement or resolutions in above shall, to the extent it is repugnant to the provisions, become or be void, as the case may be.

Section 7: Incorporation of Company

Answer Writing Points For Sec 7:

1) A company shall file an application in Form INC2: for OPC & INC7: for other company with fees as prescribed under rules for registration with registrar along with documents mentioned below.
2) Following documents are to be submitted with registrar of companies under whose jurisdiction proposed company is going to be established:
   a) Memorandum & Articles of the company which is signed by the subscribers.
   b) Declaration of:
      i) Advocate, CA, CS,CMA who is engaged in formation of company and
      ii) The person whose name is mentioned in the memorandum as director/manager/Secretary of the company in the memorandum
   c) Also, a declaration in Form INC 9 & 10 from all the subscribers and the First directors that:
      i) He is not punishable under any of offences related to promotion formation or managing of any other company,
      ii) He has not committed any fraud or misstatements or any breach of duty towards any other company. Also,
      iii) Information mentioned in documents submitted at the time of formation of company is true and correct to the best of his knowledge and belief.
   d) An additional address for correspondence till its registered office is established.
   e) The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in case of a subscriber being a body corporate, such particulars as may be prescribed.
   f) Above mentioned details are also required to be taken of first directors of company along with their Directors Identification Number.
   g) Following details of directors along with their consent to act as a Director of proposed company:
      i) Similar holdings of the directors in any other company.
      ii) There any kind of interest in any other company, etc.
3) Registrar on the basis of documents and information filed, shall register all the

documents and information in register and issue a certificate of incorporation in prescribed form to the effect that proposed company is incorporated under this Act.

4) On and from date mentioned in certificate of incorporation, Registrar shall allot to the company a corporate identity number in Form INC11, which shall be a distinct identity for company and which shall also be included in the certificate.

Suggestion:

1) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with Registrar in relation to registration of a company, he shall be liable for action under section 447 as follows:
   a) 6 months to 10 years of jail; &/or
   b) Penalty from amount of fraud to 3 times of amount of fraud.
2) Where a company has been incorporated by furnishing false or incorrect information or by any fraudulent action, Tribunal may, on an application made to it, on being satisfied that:
   a) pass such orders, as it may think fit, for regulation of management of company including changes, if any, in its memorandum & articles, in public interest or in interest of company and its members and creditors; or
   b) direct that liability of the members shall be unlimited; or
   c) direct removal of the name of the company from the register of companies; or
   d) pass an order for the winding up of the company; or
   e) pass such other orders as it may deem fit.
3) **E-Forms to be filled by company under this section:**
   INC-7: Application for Incorporation of Company
   INC-8: Declaration by professionals
   INC-9: Declaration from subscribers and directors
   INC-10: Particulars of every subscriber to be filed with the ROC at time of incorporation
   INC-11: Certificate of Incorporation

M08 & M12: State whether the following statement is True or False and give reasons
A certificate of incorporation issued by the Registrar of Companies is not valid if all the signatures of the subscribers to memorandum of association have been forged.

Provision: [Section 7 of Companies Act 2013]
Certificate of Incorporation is Conclusive evidence nothing can invalidate Certificate of Incorporation. Even illegal object or Forged Subscribers will only invalidate object & memorandum but that will not affect the valid incorporation of company.

Explanation:
Being a fundamental right under the Constitution of India to go for legal proceedings, the registration of the company can be challenged but it will not in any way affect or cancel the registration of the company and the Memorandum and Articles

Answer:
As per above discussion statement 'A certificate of incorporation issued by Registrar of Companies is not valid if all signatures of the subscribers to memorandum of association have been forged 'is False

M07:Mr. Ram Lal and his friend desire to incorporate a Public Company and approach you for help. Advise.

Provision [Section 2(71) & 7 of the Company Act, 2013]

1) A Public company can be formed for any lawful purpose with a minimum of 7 persons acting as subscribers to the memorandum.
2) For registration of the company, following documents and information are required to be filed with registrar within whose jurisdiction the registered office of the company is proposed to be situated-
   a) The Memorandum of Association (MOA) and Articles of Association (AOA) of company duly signed by all subscribers to the memorandum.
   b) A declaration by a person who is engaged in the formation of the company (an Adv., CA, CMA or CS in practice), and by a person named in the articles (director, manager/secretary of company), that all requirements of this Act

and rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

c) An affidavit from each of the subscribers to memorandum and from persons named as first directors, if any, in the articles stating that –

i) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

ii) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

iii) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

d) The address for correspondence till its registered office is established.

e) The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in case of a subscriber being a body corporate, such particulars as may be prescribed.

f) the **particulars** (names, including surnames or family names, the Director Identification Number, residential address, nationality) **of the persons mentioned in the articles as the first directors** of the company and such other particulars including proof of identity as may be prescribed; and

g) The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Explanation:

1) In the given case, Ram, Lal & his friend should file the above mentioned documents & information along with the prescribed fees to the jurisdictional ROC.

2) The ROC shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

3) On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

Answer:

Ram Lal & his friend should follow the above mentioned approach & on incorporation, the company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

M11,PM: Which documents are required to be filed with the Registrar of Companies at the time of registration of a company under the provisions of the Companies Act, 2013[LDR IMP]

Provision: [Section 7 of the Companies Act 2013 & Rule 12 of Companies (Incorporation) rules 2014]

1) A company shall file an application in form INC2: for OPC & INC7: for other company with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for registration of a company with the registrar along with the following documents mentioned below.

2) Following documents are to be submitted with the registrar of companies under whose jurisdiction the proposed company is going to be established:

a) Memorandum & Articles of the company which is signed by the subscribers.

b) Declaration of:

i) Advocate, CA, CS, Cost accountant who is engaged in formation of the company and

ii) The person whose name is mentioned in the memorandum as director/manager/Secretary of the company in the memorandum

c) Also, a declaration from all the subscribers and the First directors that:
   i) He is not punishable under any of the offences related to promotion formation or managing of any other company,
   ii) He has not committed any fraud or misstatements or any breach of duty towards any other company. Also,
   iii) The information mentioned in the documents submitted at the time of formation of the company is true and correct to the best of his knowledge and belief.
d) An additional address to communicate till registered office of proposed company is established.
e) Following information about every subscriber of the company:
   i) Full Name,
   ii) Residential Address,
   iii) Nationality,
   iv) Etc., Along with Proof of Identity
   v) In case where subscriber is a body corporate then other proofs and details as are required to prove its identity are to be furnished.
f) Above mentioned details are also required to be taken of the first directors of the company along with their Directors Identification Number.
g) Following details of the directors along with their consent to act as a Director of the proposed company:
   i) Similar holdings of the directors in any other company.
   ii) There any kind of interest in any other company, etc.

Answer:

Above documents are required to be filed with the Registrar of Companies at the time of registration of a company under the provisions of the Companies Act, 2013

M06,PM: What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 2013?When may a Public Company commence business after issuing prospectus to subscribe its share? [IMP]

Provision: [Section 7 of the Companies Act, 2013]

1) Certificate of Incorporation is Conclusive evidence nothing can invalidate the Certificate of Incorporation.
2) The Registrar shall on the basis of documents and information filed for the formation of a company, shall register the documents and information and issue a certificate that the company is incorporated in the prescribed form to the effect that the proposed company is incorporated under this Act.
3) Further, on and from the date of incorporation mentioned in the certificate of incorporation the Registrar shall allot to the company a Corporate Identification Number (CIN) which shall be the distinct identity of the company and which shall also be included in the certificate of incorporation.
4) The company becomes a legal entity from the date mentioned in the certificate of incorporation and continues to be so till it is wound up.
5) Commencement of Business:

   A company having a share capital cannot commence any business or exercise borrowing power unless:
   a) A declaration is filed, by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the Memorandum has paid the amount in respect of the paid up value of shares agreed to be taken by him and that the paid up capital of the company is not less than Rs. 5 Lakhs in case of a public company and Rs. 1 Lakh in case of a private company, as on the date of the declaration; and
   b) The company has filed with the Registrar a verification of its Registered Office.

Answer:

Company can commence business by the time as given in above provision of Companies Act, 2013.

MTP-Apr23: Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of the companies act, 2013?

Provision: [Section 7 of the Companies Act, 2013]

As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants:

a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or
b) direct that liability of the members shall be unlimited; or
c) direct removal of the name of the company from the register of companies; or
d) pass an order for the winding up of the company; or
e) pass such other orders as it may deem fit: Provided that before making any order under this sub-section,—
   (i) the company shall be given a reasonable opportunity of being heard in the matter; and
   (ii) the Tribunal shall take into consideration the transactions entered into by the company.

Also the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.

Certificate of Incorporation as Conclusive Evidence

N08: The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

Provision: [Section 3 & 9 of the Companies Act, 2013]

1) A company may be formed for any lawful purpose by 7 or more persons in case of public company, 2 or more persons in case of private company and 1 person in case of a one person company.
2) From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may from time to time, become members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company under this Act.

Case Law:

In Bowman v. Secular Society Ltd., the court held that the statute does not provide that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate.

Explanation:

1) In the present case the Registrar was at fault in issuing the certificate of incorporation but the issue of the certificate of incorporation does not give the company the right to do illegal business. On applying the above provisions in the present problem, the company's contention is wrong.
2) Though a certificate of incorporation is a conclusive evidence of its formation and existence, it does not render its illegal objectives as legal.
3) Therefore, the contention of the company that the nature of business cannot be gone into after the certificate of incorporation has been obtained is not tenable. Moreover, the illegality of its objects is adequate grounds for the Registrar to rectify his gross mistake and suo motto take necessary steps to cancel the certificate of incorporation.

Answer:

Under this Act a company can be formed for a lawful purpose. Hence, a company cannot be formed for an unlawful purpose or for carrying on illegal business.

Section 8: Non Profit making organization / Charitable Organization

Answer Writing Points For Sec 8:

1) When the Central Government is satisfied that:
   a) A company is to be registered with object of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other related object, or
   b) Wants to apply its profit or other income in promoting its object, &
   c) Does not pay any dividend to its members, and
2) Central Government gives written consent to register a company or registrar to register a company & can grants permission if he is satisfied that all provision of this section are satisfied then Government may grant license to such company to get registered itself as a section 8 company.

3) In order to get it registered as above, a company has to give application in Form No. INC.12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for a license under section 8(1).
4) Memorandum and articles of association of such proposed company are to be filed in form INC 13.
5) And declarations required to be filled by related persons are to be filled in form INC 15.
6) A power of attorney in favour of Practicing CA/CS/CMA/ advocate for presentation before ROC to make corrections & collect incorporation certificate must also be filed on non-judicial stamp paper.
7) Company registered under this section will have status of a limited company as registered under section 7.
8) The company becomes operative on receipt of the certificate of incorporation.
9) If CG feels that company has done some fraudulent act or contravene provisions of this section, then CG may revoke/cancel the license so granted and direct company to convert itself to a limited company and change its name by adding words like 'Limited' or 'Private Limited' OR amalgamate the same to other Section 8 Company if it is in Public interest.

Suggestion:

1) If Company makes any default in complying any provisions of section, then company will be liable:
   a) Fine of minimum 10 lakhs up to Rs. 1 crore, and
   b) Every director and any other officer who is found guilty for such default will be punishable with: Fine of Rs. 25000 to 25 lakhs.
2) **E-Forms to be filled by company under this section:**
   INC-12: Application for granting license under section 8
   INC-13: Memorandum of association
   INC-14: Declaration by professionals to be filed at the time of incorporation of the company with charitable objective with the ROC.
   INC-15: Declaration by each of the persons making application to the Registrar of Companies for the grant of licence under section.
   INC-16: License under sec 8(1) of the Companies Act, 2013
   INC-17: License under sec 8(5) of the Companies Act, 2013
   INC-18: Application to regional director for conversion of the sec 8 company into company of any other kind
   INC-19: Notice by sec 8 company which is seeking for conversion into some other kind of company.
   INC-20: Intimation to ROC revocation / surrender of license uncer sec 8.

N07, PM: Mr. V, along with six other persons desires to float a company for charitable purposes, as permissible under Section 8 of the Companies Act, 2013. He seeks your advice about the procedure to be followed to give effect to the above proposal. Advise him.

Provision: [Section 8 of the Companies Act, 2013 & Rule 19 of Companies (Incorporation) Rules, 2014]

1) If company is to be proposed for :
   a) Nonprofit earning objects.
   b) Also it will apply its profit to full fill its object.
   c) It will not give dividends to its members
   If all above conditions are fulfilled, CG grants license to company to get itself register under section 8.
2) In order to get it registered as above, a company has to give application in Form No. INC.12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for a license under subsection (1) of section 8.
3) Memorandum and articles of association of such proposed company are to be filed in form INC 13.
4) And the declarations required to be filled by related persons are to be filled in form INC 15.
5) A power of attorney in favour of Practicing CA/CS/CMA or an advocate for presentation before ROC to make corrections and collect incorporation certificate must also be filed on non-judicial stamp paper.

6) Company registered under this section will have status of a limited company as registered u/s 7.
7) The company becomes operative on receipt of the certificate of incorporation.

Explanation & Answer:

Mr.V and the six other persons with him should prepare and sign the MOA and AOA and follow the above mentioned procedure to give effect to the above proposal.

M11: What is the law and procedure relating to registration of a non–profit organization as a company under the Companies Act, 2013?

Or

M04: Explain the provisions of the Companies Act, 2013 relating to registration of a non-profit organisation as a company. What procedure is required to be adopted for the said purpose.[LDR IMP]

Provision: [Section 8 of the Companies Act, 2013]

1) When the Central Government is satisfied that:
   a) A company is to be registered with the object of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other related object, or
   b) Wants to apply its profit or other income in promoting its object, &
   c) Does not pay any dividend to its members, and
2) Central Government gives written consent to register a company under this section or in case were company gives application to registrar to register itself under this section & registrar can grants such permission if he is satisfied that all provision of this section are satisfied then Government may grant license to such proposed company to get registered itself as a section 8 company.
3) In order to get it registered as above, a company has to give application in Form No. INC.12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for a license under subsection (1) of section 8.
4) Memorandum and articles of association of such proposed company are to be filed in form INC 13.
5) And the declarations required to be filled by related persons are to be filled in form INC 15.
6) A power of attorney in favour of Practicing CA/CS/CMA or an advocate for presentation before ROC to make corrections and collect incorporation certificate must also be filed on non-judicial stamp paper.
7) Company registered under this section will have the status of a limited company as registered under section 7.
8) The company becomes operative on receipt of the certificate of incorporation.

Answer:

Hence, the above procedure is required to be adopted for registration of a non–profit organization as a company under the Companies Act, 2013

PM: Can a non-profit organization be registered as a company under the Companies Act? If so, what procedure does it have to adopt?

Provisions: [Section 8(1) of Companies Act, 2013]

1) According to section 8 (1) of the Companies Act 2013, the Registrar of Companies may allow person or an association of persons to be registered as a Company under the Companies Act
   a) if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity, protection of environment or any such other useful object and
   b) intends to apply its profits or other income in promotion of its objects.
   c) However, such company has to prohibit payment of any dividend to its members.
2) Procedure to be followed to be registered as a non-profit organization :
   a) An association of persons intending to carry any or all or some of the activities mentioned in section 8 (1) as mentioned above, has to apply to the Registrar of Companies seeking its permission for being set up as a company under the Act.

b) The central government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8 (1) without the addition of word "Limited" or words "Private Limited" as the case may be, to its name.

c) After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1).

d) Under section 8 (2) a company registered under section 8 (1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

3) This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.

Answer:

Hence, the above procedure is required to be adopted for registration of a non–profit organization as a company under the Companies Act, 2013

M.19: A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.
Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Provision: [Section 8 of the Companies Act, 2013]

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

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

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

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

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

3) Company registered under this section will have status of a limited company as registered u/s 7.

4) The company becomes operative on receipt of the certificate of incorporation.

Explanation:

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

2) 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 sub-section (9) of Section 8 of the Companies Act, 2013.

Answer:

Therefore, the proposal is not feasible.

MTP(N.18): Mr. X, in association with his relative formed a company to promote education for the children of poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of funds were contributed by public for the fulfilment of the benevolent object. However, on the compliant against

the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child.

Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013.

Provision: [Section 8 of the Companies Act, 2013]

1) As per the Section 8 of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of 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.
2) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
3) Where a licence is revoked and where the Central Government 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, 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.

Explanation:

1) According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013.
2) However, an object for which both the Companies formed were promoting different objects.

Answer:

Accordingly, the order passed by the Central Government after the revocation of license, is not in compliance of the Section 8 of the Companies Act, 2013.

July21: State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

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

(ii) Whether the Company may be wound up?

(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?

Or

MTPOct22: P Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Ac t, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Y, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

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

(ii) Whether the Company may be wound up?

(iii) Whether the P Cricket Club can be merged with Z Net Private Limited, a company engaged in the business of networking?

Provision: [Section 8 of the Companies Act, 2013]

1) According to **Section 8(6)** of the Companies Act, 2013, the Central Government may by order revoke the licence of company where the company contravenes any of the requirements or the conditions of section 8 subject to which a

licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

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

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

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

Answer:

(i) Hence, in the instant case, Central Government can revoke the license given to State Cricket Club/ P State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

(ii) Hence, the stated company may be wound up.

(iii) In the instant case, State Cricket Club/P State Cricket Club cannot be merged with Cool Net Private Limited as the objects of both the companies are different and not similar.

RTPM22: One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies. However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid. Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company?

Provision: [Section 8 of the Companies Act, 2013]

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

Explanation & Answer:

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

b) As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid.

c) Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Section 9: Effect of Registration

PM& N08: The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

Provision: [Section 3 & 9 of the Companies Act, 2013]

1) A company may be formed for any lawful purpose by 7 or more persons in case of public company, 2 or more persons in case of private company and 1 person in case of a one person company. Hence, a company cannot be formed for an unlawful purpose or for carrying on illegal business.

2) Section 9 of the Act further provides that from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may from time to time, become members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company under this Act.
3) Under this Act a company can be formed for a lawful purpose. Hence, a company cannot be formed in the first place for an illegal business activity.

Explanation:

1) In the present case the Registrar was at fault in issuing the certificate of incorporation but the issue of the certificate of incorporation does not give the company the right to do illegal business.
2) On applying the above provisions in the present problem, the company's contention is wrong.
3) Though a certificate of incorporation is a conclusive evidence of its formation and existence, it does not render its illegal objectives as legal.

Case Law:

In **Bowman v. Secular Society Ltd.,** the court held that the statute does not provide that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate.

Answer:

Therefore, the contention of the company that the nature of business cannot be gone into after the certificate of incorporation has been obtained is not tenable. Moreover, the illegality of its objects is adequate grounds for the Registrar to rectify his gross mistake and suo motto take necessary steps to cancel the certificate of incorporation.

N03, N07:A company was incorporated on 6th October, 2019. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2019. The company on 10th October, 2019 entered into a contract which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 2013, whether the company can be exempted from the said contractual liability.[LDR IMP]

Provision: [Section 9 of the Companies Act, 2013 & section 70 of the Indian Contract Act, 1872]

1) Right from the date of Incorporation as mentioned in the certificate of incorporation the company will have the status of body corporate and that:
   a) All the subscribers and other persons whose names are mentioned in memorandum will become members and directors as the case may be,
   b) Also, company will have following:
      i) Common Seal,
      ii) Perpetual Succession,
      iii) Sale or purchase of movable or immovable property or Tangible and intangible Assets in the name of the company,
      iv) Also will have right to sue and be sued as company.

Case Law:

No contracts can bind a company before it becomes capable of contracting after incorporation. Two consenting parties are necessary to a contract, whereas the company before incorporation is a non-entity [**Kelner v. Baxter 1866**].

Explanation & Answer:

1) A company even after incorporation cannot ratify a contract entered into before its incorporation as a void contract cannot be ratified.
2) Normally, the correct procedure will be for the promoters to enter into any pre incorporation contract in their personal names and after the company is formed, to enter into a fresh contract in the name of the company on the same terms and conditions. However, this will depend on the other contracting parties if they wish to enter into such contracts.
3) However, in evaluating the liability of companies in pre incorporated contracts the provisions of the Indian Contract Act, 1872 must be considered, wherein a person lawfully does anything for another person, or delivers anything to him, without intending to do so gratuitously, and such other person enjoys the

benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

M22: Sapphire Private Limited has registered its articles along with memorandum as on 15th July 2021, The directors of the company seeks your advice regarding effect of registration of the company on the company itself and on its members.

Provision: [Section 9 of the Companies Act, 2013]

1) As per Section 9 of the Companies Act, 2013, from the date of the incorporation, the subscribers to the memorandum and all other persons who may from time to time become members of the company shall be a body corporate by the name contained in the memorandum.
2) Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold or dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.
3) As per Section 10 of the Companies Act, 2013, subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member.
4) It means that on the basis of MOA and AOA:
   a) The company is liable to members.
   b) Members are liable to the company.
   c) But, members are not liable to each other.

Answer:

Sapphire Private Limited has registered its articles along with the memorandum as of 1st July 2021.

In the present case, after the registration of articles and memorandum, the effects as mentioned in Sections 9 & 10 of the Companies Act, 2013 shall take place.

Section 10 : Effect of MOA & AOA

1) The Memorandum and Articles, when registered, would be binding on the company and its members to the same extent as if each one of them had individually signed the documents, so far as the covenants therein are concerned.
2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

M04,PM: The Articles of Association of a Limited Company provided that `X' shall be the Law Officer of the company and he shall be removed except on the ground of proved misconduct. Decide, whether company's action is valid? [V.IMP]

Provision: [Section 5 & 10 of the Companies Act, 2013]

1) The Articles of a company contain the regulations for the management of a company.
2) The Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company.
3) The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same.
4) However, company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on general rule of law that a stranger to a contract cannot acquire any right under contract.

Explanation:

In the given case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company.

Answer:

Hence action taken by company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid.

Suggestion:

However, by altering Articles by a special resolution under section 14 of Act & Mr X can be removed.

M07,PM: Though six out of seven signatures to the Memorandum of Association of a company were forged, the company was registered and the Certificate of Incorporation issued. Can the registration of the company be challenged subsequently on the ground of forged signatures?

Or

PM: The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a Certificate of Incorporation. The plaintiff contended that (a) conditions of registration were not duly complied with, and (b) that there were no seven subscribers to the Memorandum. Will the Court uphold his contention?

Provision: [Section 10 of the Companies Act, 2013]

The Companies Act, 2013 states that subject to the provisions of the Act, the Memorandum and Articles shall, when registered, bind the company and the members thereof, to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.

Explanation & Answer:

Yes, (being a fundamental right under the Constitution of India to go for legal proceedings) the registration of the company can be challenged but it will not in any way affect or cancel the registration of the company and the Memorandum and Articles.

Section 10A: Commencement of Business etc.

Answer Writing Points For Sec 10A:

1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—
   a) a declaration is filed by a director within a period of 180 days of date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
   b) The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.
2) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of 180 days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII."
3) The declaration under section 10A by a director shall be in Form INC 20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and contents of the said form shall be verified by a CS or CA or CMA, in practice
4) Provided that in case of a company pursuing objects requiring registration or approval from any sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India, etc., registration or approval, from such regulator shall also be obtained and attached with declaration

Suggestion:

1) If any default is made in complying with requirements of this section, the company shall be liable to a penalty of RS. 50,000 and every officer who is in default shall be liable to a penalty of RS. 1000 for each day during which such default continues but not exceeding an amount of RS. 1,00,000.
2) E-Forms to be filled under this section:
   INC-20A: Declaration for commencement of business.

Section 15: Alteration of MOA or AOA to be noted in every copy

Answer Writing Points For Sec 15:

1) Every alteration made in the memorandum or articles of a company shall be

noted in every copy of the memorandum or articles.

2) If a company makes any default in complying with the provisions , the company and every officer who is in default shall be liable to a penalty of ₹1000 for every copy of the memorandum or articles issued without such alteration.

Section 17: Copies of MOA and AOA

Answer Writing Points For Sec 17:

1) Every company on being so requested by a member shall send the copies of memorandum, articles and every agreement and every resolution passed in meeting.
2) In case of default the company and every officer in default shall be liable for penalty of ₹1000 for each day during such default continues or ₹1 lakh, whichever is lower.

Section 18: Conversion of the Company

Answer Writing Points For Sec 18:

Procedure for conversion of a Public Company into a Private Company:

1) Section 14 states that subject to the provisions of the Companies Act 2013 and the conditions contained in the Memorandum, a company may, by special resolution, alter its Articles including alterations which may have the effect of converting a public company into a private company (or vice versa).
2) Further any alteration which has the effect of converting a public company into a private company will not have any effect except with the approval of the Tribunal which may pass such order as it deems fit.
3) Hence, the broad procedure for conversion of a public company into a private company would comprise of the following steps:
   a) Check that the Memorandum of Association does not contain any restrictive clause. If yes, alteration of the Memorandum will be necessary through a special resolution;
   b) Alteration of the Articles to incorporate the restrictions required u/s 2 (68) by a special resolution
   c) Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of Central Government on an application made in such form and manner as may be prescribed

   [Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies Amendment Act,2019 shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.]
   d) After approval of the Tribunal, every alteration of articles and a copy of the order of the Tribunal approving the alteration shall be filed with Registrar, of the Tribunal approving the alteration shall be filed with the Registrar, within a period of fifteen days, who shall register the same.
   e) Any alteration of the articles registered as above shall be valid as if it were originally in the articles.

Procedure for conversion of a Private Company into a Public Company:

1) Articles can be altered as per the provisions of the act and any conditions mentioned in the memorandum by passing special resolution in general meeting.
2) Articles can also be altered to give effect to the conversion of –
   a) Public company to private company, or
   b) Private company to Public company.
3) But, if a private company alters its articles in such a way that it stops following the restrictions related to private company then such company will no longer have its status as private company from the date of effect of such alterations.
4) For conversion of Pvt. to public company or vice versa it should be filed in Form INC27 with fees and Approval from Central government is also to be filed.
5) Whenever the article is altered with special resolution and order of the tribunal if any as the case may be, then such change should be intimated to registrar within 15 days of change along with copy of altered articles and order of tribunal if any.
6) Once change is made in articles then it will be treated as if it is the original fact mentioned in the articles.

Section 19: Subsidiary Company shall not hold shares in its Holding Company

Answer Writing Points For Sec 19:

1) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
2) Following are the exceptions to the above rule:
   a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
   b) where the subsidiary company holds such shares as a trustee; or
   c) where the subsidiary company is a shareholder even before it became a subsidiary company of holding company but in this case it will not have a right to vote in meeting of holding company.

PM: With reference to the provisions of the Companies Act, 2013 explain the circumstances under which a subsidiary company can become a member of its holding company. Examine the position of the following with regard to membership in a company:
i. An Insolvent
ii. Partnership Firm.

Provisions: [Section 19 of the Companies Act, 2013]

1) A subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void.
   The section however does not apply where:
   a) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or
   b) the subsidiary company holds such shares as a trustee, or
   c) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.
2) **Position of the following with regard to membership in a company:**
   i. **Partnership Firm:**
   Section 2 (55) of the Companies Act 2013 defines a member as a subscriber to the memorandum of association whose name is entered in the Register of Members following the incorporation of the company, every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company and any person holding shares in a company and whosename is entered as the beneficial owner in the records of the depository.A partnership firm may therefore hold shares in a company provided its name appears in the register of members of the company. However, as a firm is not a legal entity it will be able to hold shares in the individual names of partners as joint shareholders. However, this will not apply to a "Limited Liability Partnership". **(Ganesh Das Ram Gopal v. R.G.Cotton Mills Ltd.)**Under section 8 (3) of the Companies Act 2013, a firm may be a member of a company incorporated under section 8 i.e. a company formed as a charitable or social venture.
   ii. **An Insolvent:**
   An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver. **(Morgan v. Gray)** allotment or transfer of shares is by way of security for the purpose of a transaction.

RTP N19: S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholder of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. and `50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way?

Provisions: [Section 19 of the Companies Act, 2013]

1) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
2) Following are the exceptions to the above rule:
   a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
   b) where the subsidiary company holds such shares as a trustee; or
   c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

Explanation:
In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee.

Answer:
Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

M.19: As at 31st March, 2018, the paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 :
(i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018 19?
(ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
(iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?[LDR IMP]

Provisions: [Section 19 of the Companies Act, 2013]

1) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
2) Following are the exceptions to the above rule:
   a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
   b) where the subsidiary company holds such shares as a trustee; or
   c) where the subsidiary company is a shareholder even before it became a subsidiary company of holding company but in this case it will not have a right to vote in meeting of holding company.

Explanation & Answer:
1) The paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.
2) Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013.
3) In the instant case,
   a) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.
   b) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
   c) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies & any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

MTP(N.18):Give answer in the following cases as per the Companies Act, 2013

(i) X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) In continuation of above facts, Mr.R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the director of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd.

Provisions: [Section2(87) & 19 of the Companies Act, 2013]

1) A subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void.
2) The section however does not apply where:
   a) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or
   b) the subsidiary company holds such shares as a trustee, or
   c) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.
3) As per section 2(87) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.

Explanation & Answer:

On the basis of the above provisions, following are the answers:

(i) In the given case, X ltd. already holds shares in ABZ Ltd. before becoming its subsidiary. The given situation falls within the purview of the exceptions when such transfer of shares by holding company to its subsidiary is permissible. So this transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) This situation falls within the purview of exemption stating that such subsidiary company who holds such shares as legal representative of a deceased member of holding company, are entitled to hold the shares of the holding company. So Mr. N being the legal representative of deceased member of Holding company was entitled for holding of shares of ABZ Ltd.

MTP(M23): Virjesh Limited is a company in which Hrishkesh Limited is holding 60% of its paid up share capital. One of the shareholders of Hrishkesh Limited made a charitable trust and donated his 10% shares in Hrishkesh Limited and Rs 50 crores to the trust. He appoints Virjesh Limited as the trustee. All the assets of the trust are held in the name of Virjesh Limited. Can a subsidiary company hold shares in its holding company in this way ?

Provisions: [Section 19 of the Companies Act, 2013]

1) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees.
2) 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.
3) Following are the exceptions to the above rule;
   a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
   b) Where the subsidiary company holds such shares as a trustee; or
   c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

Explanation & Answer:

a) In the given case, one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company.

b) It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Vrijesh Limited can hold shares in Hrishkesh Limited.

MTP(M23): Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and Rs. 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited. As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited.

Provisions: [Section 19 of the Companies Act, 2013]

1) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees.
2) 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.
3) Following are the exceptions to the above rule;
   a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
   b) Where the subsidiary company holds such shares as a trustee; or
   c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company

Explanation & Answer:

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

Section 20: Service of Document

Answer Writing Points For Sec 20:

1) Under the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
2) However, in case where securities are held with a depository, records of beneficial ownership may be served by such depository on the company by means of electronic or other mode.
3) A document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.
4) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by company in its annual general meeting.
5) The Companies Act, 2013 does not lay down provisions relating to the service of documents either on the company or on members by the company.
6) By drawing parallels from the Indian Contract Act, 1872 and other applicable laws, the service of any document which is sent by post is complete against the sender when it is put in course of transmission or in post to be out of the power of the sender.

M07 & MTP Nov21: Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company. When is service of document deemed to be effective in case the document is sent by post? Explain. [LDR IMP]

Provision: [section 20 of the Companies Act, 2013]

1) Under the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

2) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.
3) A document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.
4) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.
5) The Companies Act, 2013 does not lay down provisions relating to the service of documents either on the company or on members by the company.
6) By drawing parallels from the Indian Contract Act, 1872 and other applicable laws, the service of any document which is sent by post is complete against the sender when it is put in course of transmission or in post to be out of the power of the sender.

Answer:

Therefore, where a document is sent by post, it is enough if the letter containing the document is properly addressed and sent by ordinary post.

N03,PM:The Articles of Association of Mars Company Ltd. provide that documents may be served upon the a company only through Fax. Ramesh dispatches a document to the company by post, under certificate of posting. The company does not accept it on the ground that it is in violation of the Articles of Association. As a result Ramesh suffers loss. Examine with reference to the provisions of the Companies Act, 2013:

a. Whether refusal of document by the company is valid?
b. Whether Ramesh can claim damages on this basis?

Provision: [Section 20 of the Companies Act, 2013]

1) Any document can be officially handed over to the company or an officer of the company by sending them to the registered office of the company through:
   a) registered/speed post, or
   b) Courier, or
   c) Leaving such document at registered office, or
   d) Electronic, or
   e) Other mode as prescribed.
2) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.
3) The Companies Act, 2013 does not lay down provisions relating to the service of documents either on the company or on members by the company.
4) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Explanation & Answer:

1) In given case, Company cannot refuse to accept the document merely because it was not sent by Fax as required by its Articles and its act of refusal is invalid.
2) In the second part of the problem, Ramesh can claim damages on this basis from the Company as his loss is the direct result of such refusal by the company.

N22: The Article of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss. Explain with reference to the provisions of the Companies Act, 2013:

(iv) Whether refusal of document by the company is valid?
(v) Whether Suresh can claim damages for it?

Provision: [Section 20 of the Companies Act, 2013]

Any document can be officially handed over to the company or an officer of the company by sending them to the registered office of the company through:

a) registered/speed post, or
b) Courier, or
c) Leaving such document at registered office, or
d) Electronic, or
e) Other mode as prescribed.

Explanation & Answer:

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

Taking into account the above provision,

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

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

M08, PM: The Articles Association of PQR Ltd. provided that documents upon the company may be served only through E–mail. Arvind sent a document to the company by registered post. The company did not accept the document on the ground that sending documents to the company by post was in violation of the Articles. As a result, Arvind suffered loss. Decide the validity of argument of the company and claim of Arvind for damages in the light of provisions of the Companies Act, 2013.

Provision: [Section 20 of the Companies Act, 2013]

1) Any document can be officially handed over to the company or an officer of the company by sending them to the registered office of the company through:
- **a)** registered/speed post, or
- **b)** Courier, or
- **c)** Leaving such document at registered office, or
- **d)** Electronic, or
- **e)** Other mode as prescribed.

2) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

3) The Companies Act, 2013 does not lay down provisions relating to the service of documents either on the company or on members by the company.

4) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Explanation & Answer:

1) Hence, the Company cannot refuse to accept the document merely because it was not sent by E-mail as required by its Articles and its act of refusal is invalid.

2) In the second part of the problem, Arvind can claim damages on this basis from the Company as his loss is the direct result of such refusal by the company.

M.19 OLD: Ashok, a director of Gama Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

(i) Whether the contention of Ashok is valid.

(ii) Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held?

Provision:[Section 20 of the Companies Act, 2013]

1) Any document can be officially handed over to the company or an officer of the company by sending them to the registered office of the company through:
- **a)** registered/speed post, or
- **b)** Courier, or
- **c)** Leaving such document at registered office, or
- **d)** Electronic, or
- **e)** Other mode as prescribed.

2) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

3) The Companies Act, 2013 does not lay down provisions relating to the service of documents either on the company or on members by the company.

4) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Explanation:

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

Answer:

Accordingly, the questions asked may be answered as under:

(i) The contention of Ashok shall be tenable, for the reason that the notice was not properly served.

(ii) In the given circumstances the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India.

MTPN22: Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company?

Provision: [Section 20 of the Companies Act, 2013]

1) Under section 20 of the Companies Act, 2013 Any document can be officially handed over to the company or an officer of the company by sending them to the registered office of the company through:
   - **a)** registered/speed post, or
   - **b)** Courier, or
   - **c)** Leaving such document at registered office, or
   - **d)** Electronic, or
   - **e)** Other mode as prescribed.
2) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.
3) Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.
4) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting

Section 21:Authentication of documents, proceedings and contracts

Answer Writing Points For Sec 21:

A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by ;

- **a)** Any key managerial personnel, or
- **b)** An officer or employee of the company duly authorized by the board in this behalf.

Section 22:Execution of bill of exchange

Answer Writing Points For Sec 22:

1) Bills of exchange, promissory notes etc. will be deemed to be executed if they are signed or accepted or endorsed by any person who is impliedly or expressly authorized to do so.
2) Company can authorize any person in writing by affixing common seal, if any on such written document to execute in general or for any special contract or deed on behalf of the company in or outside India.
3) However, in case a company does not have a common seal, the above authorization shall be made by 2 directors or by a director and the company secretary, wherever the company has appointed a company secretary.
4) If such authorized person signs any document or executes any contract or deed then the company is liable to continue such contract deed.

Doctrine of Ultra Virus & Doctrine of Constructive Notice

Answer Writing Points for Doctrine of Ultra Virus and Constructive Notice:

1) **Doctrine of Ultra-vires:**
   - **a)** The company shall not work beyond the powers of its MOA and AOA. The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company.
   - **b)** The company shall not work beyond the same.
   - **c)** Any act done beyond the MOA and AOA will be considered as void-ab-initio.
2) **Doctrine of Constructive Notice:**
   - **a)** The MOA and AOA are public documents. The outsider or the 3rd party dealing with the company shall have the knowledge of the MOA and AOA of the company.
   - **b)** Anything which is not approved as per MOA and AOA or beyond its powers will be considered as invalid in law.
   - **c)** All the requirements of MOA and AOA shall be complied by the company before entering into contract with the 3rd party or outsider.
   - **d)** If the contract is beyond the limits of MOA or AOA it will be void and 3rd party or outsider cannot claim any compensation for the same as it is assumed that he had knowledge of contravention through MOA or AOA.

M10: The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however, entered into an agreement with Q to supply 100 laptops worth Rs. 5 lacs for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra-vires the company.
Examine the validity of the company's refusal of payment to Q under the provisions of the Companies Act, 2013. [LDR IMP]

Provisions: [Custom Usage]

1) **Doctrine of Ultra-vires:**
   - **a)** The company shall not work beyond the powers of its MOA and AOA. The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company.
   - **b)** The company shall not work beyond the same.
   - **c)** Any act done beyond the MOA and AOA will be considered as void-ab-initio.
2) **Doctrine of Constructive Notice:**
   - **a)** The MOA and AOA are public documents. The outsider or the 3rd party dealing with the company shall have the knowledge of the MOA and AOA of the company.
   - **b)** Anything which is not approved as per MOA and AOA or beyond its powers will be considered as invalid in law.
   - **c)** All the requirements of MOA and AOA shall be complied by the company before entering into contract with the 3rd party or outsider.
   - **d)** If the contract is beyond the limits of MOA or AOA it will be void and 3rd party or outsider cannot claim any compensation for the same as it is assumed that he had knowledge of contravention through MOA or AOA.

Case Law:

The powers of the company are limited to the powers expressly given by the memorandum or conferred by the Companies Act or other statute and powers reasonably incidental or necessary to the company's main purpose. The acts beyond the powers of the company are ultra-vires and void and cannot be ratified even though every member of the company may give his consent **[Ashbury Railway Carriage Company Vs. Riche]**.

Explanation:

1) In the given case, RST Limited is authorised to publish and sell text-books for students. It has no power to enter into agreement with Q to sell 100 laptops.
2) Such an act can never be treated as express or implied power of the company. Q is deemed to be aware of the lack of powers of RST Ltd.
3) In the light of above, Q cannot enforce the agreement or liability against RST Ltd.

Answer:

Hence the refusal of the company for the payment to Q is valid. It is also supported by the **Ganga Metal Refining Company (Private) Limited CIT case (1963)38 CC**.

N08: State correct or incorrect
An ultra–vires transaction will not affect the right of a Company to acquire property.

Provisions: [Custom Usage]

1) When money of a company is spent ultra vires in acquiring a property, the right of the company over that property would be secure. This is because the property represents corporate capital, though acquired wrongly.
2) However, where the payment for an ultra vires acquired property/asset has not been made, the vendor can obtain a tracing order to recover the property from the hands of the company.
3) A company cannot be allowed to benefit from such transactions at the cost of the other party

Answer:

The Statement 'An ultra–vires transaction will not affect the right of a Company to acquire property' is therefore Correct.

N07, PM: X, a chemical manufacturing company distributed Rs. Twenty Lacs to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 2013 decide whether the said distribution of money was "Ultra vires" the company?

Provisions:[Custom Usage]

1) The company shall not work beyond the powers of its MOA and AOA.
2) The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company.
3) The company shall not work beyond the same. Any act done beyond the MOA and AOA will be considered as void-ab-initio.

Case Law:

Distribution of Rupees Twenty Lacs by a company engaged in Chemical manufacturing is not 'Ultravires' since it was conducive to the continued growth of the company as chemical manufacturers **(Evans vs Brunner, Mood & Co. Ltd.1921).**

Explanation:

In order for a contract to be ultra vires, it would be essential to refer to its objects clause. Restrictions of the type mentioned in the question are not an item of the Objectives Clause.

Answer:

Hence, the issue of ultra vires does not arise to such a donation.

M08:Explain the doctrine of "Ultra–vires". What are the legal effects of ultra–vires transactions under the Companies Act, 2013?

Provisions: [Custom Usage]

1) The company shall not work beyond the powers of its MOA and AOA.
2) The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company.
3) The company shall not work beyond the same. Any act done beyond the MOA and AOA will be considered as void-ab-initio.
4) Effect of Ultra-Vires Transactions:
   If outsider enters into any contract with company which is beyond the scope of MOA and AOA then contract will be considered as void and outsider cannot claim any compensation for the same from company.

N03:Briefly explain the doctrine of "Ultravires" under the Companies act, 2013. What are the consequences of Ultravires acts of the company.

Or

PM: Explain fully the doctrine of Ultravires and states its implications[IMP]

Provisions: [Custom Usage]

1) The company shall not work beyond the powers of its MOA and AOA.
2) The MOA and AOA are the limitations of the company which are stated and approved by the members i.e. owners of the company.
3) The company shall not work beyond the same. Any act done beyond the MOA and AOA will be considered as void-ab-initio.

4) If outsider enters into any contract with company which is beyond the scope of MOA and AOA then contract will be considered as void and outsider cannot claim any compensation for the same from company.

Case Laws:

The decisions given in the following leading cases, have proved the point in question, that ultra vires acts of the company are void and inoperative wholly. The cases are:

i) Ashbury Railway Carriage and Iron Co. Ltd. V. Riche (I875)
ii) Re German Date Coffee Co. (1882)
iii) Egyptian Salt Co. v. Port said Salt Association (1931)

Implications of ultra vires Acts:

The implications of ultra vires contracts are as under:

a) Neither party can enforce the contract
b) It is an established legal requirement that persons entering into contracts with the company must satisfy themselves that the terms of the same are within the powers of the company and not ultra vires.
c) There is no claim on the part of any party to enforce an ultra vires contract nor can he claim any compensation.
d) There is no personal liability on the part of the directors of the company unless they have represented an ultra vires contract fraudulently as a permissible one.

M03: Briefly explain the doctrine of "Constructive Notice" under the Companies Act, 2013. Are there any exceptions to the said doctrine?

Provisions: [Custom Usage]

1) The MOA and AOA are public documents. The outsider or the 3rd party dealing with the company shall have the knowledge of the MOA and AOA of the company.
2) Anything which is not approved as per MOA and AOA or beyond its powers will be considered as invalid in law.
3) All the requirements of MOA and AOA shall be complied by the company before entering into contract with the 3rd party or outsider.
4) If the contract is beyond the limits of MOA or AOA it will be void and 3rd party or outsider cannot claim any compensation for the same as it is assumed that he had knowledge of contravention through MOA or AOA.
5) There is exception to doctrine of "Constructive Notice:
   a) There is one limitation to the doctrine of constructive notice of the Memorandum and the Articles of a company. The outsiders dealing with the company are on their part entitled to assume that as far as the internal proceedings of the company are concerned, everything has been done properly in accordance with the Memorandum and Articles and the Act.
   b) They are only bound to read the registered documents and satisfy themselves that the proposed dealing is not inconsistent therewith, but are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum and the Articles.
   c) This limitation of the doctrine of constructive notice is known as the 'doctrine of indoor management 'or the rule laid down in the celebrated case of **Royal British Bank v. Turquand.**

Answer:

Thus, whereas the doctrine of constructive notice protects the company against outsiders, the doctrine of indoor management seeks to protect outsiders against the company.

Doctrine of Indoor Management

Answer Writing Point For Doctrine of Indoor Management:

1) The doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company.
2) if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.
3) Doctrine of Indoor Management safeguards the third party from any

misconduct done or executed by the inner management.

4) Following are some of the exceptions to Doctrine of Indoor Management –
   a) The rule does not protect any person when the person dealing with the company has notice, of the irregularity. The transaction must be executed in good faith. [Moris vs. Kenssen (1946) A.C.459; Devi Ditta Mal vs. The Standard Bank of India (1972) I.C. 568]
   b) The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business.
   c) When a sole director and principal shareholder of a company paid into his own account with a bank a cheque drawn in favour of the company, the said bank was held to be put upon an enquiry and the bank could not rely upon the ostensible authority of the director [Underwood vs. Bank of Liverpool (1924) I.K.B. 775]
   d) When an instrument purporting to be executed on behalf of the company is a forgery. The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity [Ruben vs. Great Fingal Consolidated (1966) A.C. 439: Official Liquidator vs. Commr. Of Police (1969) I Comp. L.J. (Mad.)]

M12: Explain the doctrine of 'Indoor Management' as applicable in case of companies. Explain also the circumstances in which an outsider dealing with a company cannot claim any relief on the basis of doctrine of 'Indoor Management'.

Or

M07,PM: Explain the doctrine of 'Indoor management' in brief.

The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.

Provisions: [Custom Usage]

1) The doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.
2) Exceptions to Doctrine of Indoor Management –
   a) The rule does not protect any person when the person dealing with the company has notice, of the irregularity. The transaction must be executed in good faith. **[Moris vs. Kenssen (1946) A.C.459; Devi Ditta Mal vs. The Standard Bank of India (1972) I.C. 568]**
   b) The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business. When a sole director and principal shareholder of a company paid into his own account with a bank a cheque drawn in favour of the company, the said bank was held to be put upon an enquiry and the bank could not rely upon the ostensible authority of the director **[Underwood vs. Bank of Liverpool (1924) I.K.B. 775]**
   c) When an instrument purporting to be executed on behalf of the company is a forgery. The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity **[Ruben vs. Great Fingal Consolidated (1966) A.C. 439: Official Liquidator vs. Commr. Of Police (1969) I Comp. L.J. (Mad.)]**

Explanation:

1) In the instant problem doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to A and thereby to B.
2) The title of the buyer cannot be better than that of the seller (Sale of Goods Act, 1930).

3) Also the above mentioned case of Ruben vs. Great Fingal Consolidated stresses, that doctrine cannot apply to forgery which must be regarded as nullity.

Answer:

Hence, 'B' will not succeed in getting the share registered in his name.

PM: "The Doctrine of Indoor Management always protects the persons (outsiders) dealing with *a* company." Explain the above statement. Also, state the exceptions to the above rule.

Or

N.18 & MTP Oct21: The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. [LDR IMP]

Provisions:[Custom Usage]

1) According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.
2) They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.
3) They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles.
4) This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.
5) **Exceptions:**

In the following circumstances an outsider dealing with the company cannot claim any relief on the ground of "indoor management":

a) **Knowledge of irregularity**: Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. **(T.R. PRATT (Bombay) Ltd. v. E.D.Sasson& Co. Ltd.)**
b) **Negligence:** Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of this rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry **(AnandBihariLel v. Dinshaw& Co.),(Under-Wood v. Bank of Liver Pool).**
c) **Act void ab initio and forgery**: Where the acts done in the name of a company are void ab initio, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction.
d) **Acts outside the scope of apparent authority**: If an officer of a company enters into a contract with a third party and if the act of the officer is apparently beyond the scope of his authority, the company is not bound **(Kreditbank Cassel v. Schenkers Ltd.).**

Explanation & Answer:

1) whereas the doctrine of constructive notice protects the company against outsiders, the doctrine of indoor management seeks to protect outsiders against the company.
2) The Doctrine of Indoor Management protects the persons (outsiders) dealing with *a* company but in case any of the above exception to the Doctrine of Indoor Management exists the same cannot protect the outsider dealing with the company.

PM: A Managing Director of a company borrowed a sum of money by executing a document in which he forged the signature of two other directors who are required to sign as per requirements of articles. Can the company deny liability to creditors?

Provisions: [Custom Usage]

1) According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.
2) They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.
3) They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles.

Explanation:

1) In **Ruben v. Great Fingall Consolidated,** it was held that Doctrine of Indoor Management could not be extended to cases of forgery.
2) Transaction effected by forgery is void ab initio.
3) However, in **Sri Krishan v. Mondal Bros. & Co.** it was held that a company may be held liable for any fraudulent Acts of its officers acting under ostensible authority.

Answer:

Therefore, in the instant case, company will not be allowed to deny liability in order to defeat bona fide claims of the creditor

M.19 OLD: The directors of Smart Computers limited borrowed a sum of money from Mr.Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority. Hence, the company is not bound to repay the loan to Mr.Tridev, In the light of the contention of shareholders, decide whether the company is bound to pay the loan

Provisions: [Custom Usage]

1) According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.
2) Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.
3) The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
4) What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Explanation& Answer:

In the given question, Mr.Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly.

Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr.Tridev.

MTPN22: The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain.

Provisions: [Custom Usage]

1) According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.
2) Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.
3) The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
4) The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Pre – Incorporation& Provisional Contracts

M04,N11: Distinguish between "pre–incorporation contracts" and "provisional contracts" under the Companies Act, 2013.[IMP]

Pre-incorporation vs. Provisional Contracts: Following are the points of distinction between Pre-incorporation contracts and Provisional-contracts

Basis of differences	Pre-incorporation Contracts	Provisional Contacts
Meaning	Contracts which are entered into, by the persons proposing to float a company in the name of the prospective company before it have come into existence.	Contracts which are entered into by a company after obtaining the Certificate of Incorporation but before it become eligible to commence business under section 11 of the Companies Act.
Nature & Consequences	Contracts are void ab initio as the company is not in existence and hence cannot enter into a contract either in its own name or through agents. A company is neither bound by nor can it enforce a pre-incorporation contracts nor can it ratify the same after incorporation as being non-existent it cannot appoint agents on its behalf.	Contract shall be binding upon the company from the date on which the company is entitled to commence business
Execution	As the company is not in existence , so company is neither bound by nor can it enforce a pre-incorporation contracts nor can it ratify the same after incorporation	Contracts entered into by a company after its incorporation and before it is entitled to commence business are provisional only and are not binding on the company until the trading company completes the added formalities under section 11 (1) (a) and (b)

N09: Contracts which are entered into, by agents or trustees on behalf of a prospective company before it has come into existence are called

a. Provisional contracts

b. Pre–incorporation contracts

c. Both provisional and pre–incorporation contracts
d. None of the above

Answer:

b. Pre-incorporation contracts. [Contracts which are entered into, by the persons proposing to float a company in the name of the prospective company before it has come into existence are Pre-incorporation contracts while Contracts which are entered into by a company after obtaining the Certificate of Incorporation but before it becomes eligible to commence business under section 11 of the Companies Act, 2013 are provisional contracts.]

M08:Before the incorporation of the company, the promoters of the company entered into an agreement with Mr.Jainson to buy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr.Jainson whether he has any remedy under the provisions of the Companies Act, 2013?[LDR IMP]

Provision: [Pre-incorporation vs. Provisional Contracts]

1) Pre-incorporation contracts are those contracts which are entered into, by the promoters on behalf of a prospective company, before it has come into existence e.g. with the proprietor of business to sell it to the prospective company.
2) Under section 9 of the Companies Act, 2013 a company comes into existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned.
3) The right to enter into contracts, sue or get sued arise only on the incorporation of the company as stated in section 9. Before its incorporation a company does not exist.
4) Being non-existent in can neither act in its own behalf nor expressly or implicitly appoint agents to act on its behalf. Hence, any contract entered into in the name of the company (as is the case in the question), becomes void ab initio as there are no two parties to the contract, one party does not exist.
5) Hence, a company even after incorporation cannot ratify a contract entered into before its incorporation as a void contract cannot be ratified under the Indian Contract Act, 1872.
6) Further, under the principle of constructive notice every person entering into a contract with a company is presumed to have knowledge of its documents such as the Memorandum, Articles and resolutions passed by members as these are public documents available for scrutiny at the registered office of a company.
7) Hence, a person who enters into a pre incorporation contract with the promoters does so at his own peril.

Explanation & Answer:

1) Hence the vendor cannot sue or be sued by the company in respect of a contract even after its incorporation.
2) However, in evaluating the liability of companies in pre incorporated contracts the provisions of section 70 of the Indian Contract Act, 1872 must be considered.
3) Section 70 of the Indian Contract Act, 1872 clearly states that where a person lawfully does anything for another person, or delivers anything to him, without intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

N07: What is meant by 'Pre–Incorporation Contracts'? Can these contracts be enforced by the prospective company after its incorporation against the third parties with whom the promoters had entered into certain contracts? Explain.

Provision: [Pre-incorporation vs. Provisional Contracts]

1) Pre-incorporation contracts are those contracts which are entered into, by the promoters on behalf of a prospective company, before it has come into existence e.g. with the proprietor of business to sell it to the prospective company.

2) Under section 9 of the Companies Act, 2013 a company comes into existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned.
3) The right to enter into contracts, sue or get sued arises only on the incorporation of the company as stated in section 9. Before its incorporation a company does not exist.
4) Being nonexistent, it can neither act in its own behalf nor expressly or implicitly appoint agents to act on its behalf.
5) Further, under the principle of constructive notice, every person entering into a contract with a company is presumed to have knowledge of its documents such as the Memorandum, Articles and resolutions passed by members as these are public documents available for scrutiny at the registered office of a company.
6) Hence, a person who enters into a pre incorporation contract with the promoters does so at his own peril.

Explanation & Answer:

1) Hence, any contract entered into in the name of the company (as is the case in the question), becomes void ab initio as there are no two parties to the contract, one party does not exist.
2) Hence, a company even after incorporation cannot ratify a contract entered into before its incorporation as a void contract cannot be ratified under the Indian Contract Act, 1872.
3) However, in evaluating the liability of companies in pre incorporated contracts the provisions of section 70 of the Indian Contract Act, 1872 must be considered.
4) Section 70 of the Indian Contract Act, 1872 clearly states that where a person lawfully does anything for another person, or delivers anything to him, without intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Chapter 3:
Prospectus & Allotment Of Securities

Section 2(55): Member
Section 11 of Indian Contract Act: Competent person

N02,PM: Describe the ways to become a member of a company. A company issued 20 partly paid equity shares and registered them in the name of the minor describing him as minor. The father of the minor signed the application on the minor's behalf. After sometime company went into liquidation. The company filed a suit against father of the minor to recover the remaining amount on the shares. Whether the company will succeed? Advice.

Or

PM: State the manner in which a person may acquire membership of a public company.[V.IMP]

Provision: [Section 2(55) of the Company Act, 2013 & Section 11 of the Indian Contract Act, 1872]

1) "Member", in relation to a company, means -
   a) The subscriber to memorandum of company who shall be deemed to have agreed to become member of company, and on its registration, shall be entered as member in its register of members;
   b) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
   c) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
2) From the above it is clear that a person can become a member only after his name is entered as a beneficial owner in the register of members of the company and in the records of a depository.
3) However, in order to have his name entered in these documents the avenues available to a person to become a member are as under:
   a) By subscribing to the Memorandum (for forming a company);
   b) By agreeing in writing to become a member of the company – this is done in any one of the following ways:
      i) Applying for shares or securities in the company in response to a public issue;
      ii) Purchasing the shares or securities of the company from the stock exchange in which such shares and securities are listed for trading;
      iii) Purchasing shares or securities in terms of a private placement made by the company.
   c) By registration as a member in the register of members and the records of the depository consequent upon transmission of such shares on the death of the registered member.
4) **Member as a minor:**
   a) Since becoming a member of a company requires a contractual relationship to exist between the person and the company, it is essential that a person who is not competent to enter into a contract cannot become a member in a company.
   b) Under the Indian Contract Act, 1872 every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject.
   c) Therefore, a minor cannot become a member of a company. However, in case a minor has been admitted to a partnership it has been held that he enjoys the benefits of a partner without incurring any liability as long as he is a minor. This has been upheld in other cases as well.

Explanation:

1) In the present case therefore, as the shares are registered in the name of the minor, he shall enjoy all the benefits of a member without incurring any liability.
2) The question of his father becoming liable does not arise as he is not a member of the company.

Answer:
Therefore, the company will not succeed in making the father of the minor member liable.

N04,PM: M/s Honest Cycles Ltd. has received an application for transfer of 1,000 equity shares of Rs. 10 each fully paid up in favour of Mr.Balak. On scrutiny of the application form it was found that the applicant is minor. Advise the company regarding the contractual liability of a minor and whether shares can be allotted to the Balak by way of transfer.

Provision: [Section 11 of the Indian Contract Act, 1872]

1) The issue of membership of a minor is not covered in the Companies Act, 2013 and the legal implications of a minor's membership will have to be examined from the Indian Contract Act, 1872.
2) Under section 11 of the Indian Contract Act, 1872 a minor, being incompetent to contract, cannot become member of a company. Any contract entered into by a minor is void ab initio as was held **in Mohri Bibi vs Dhramadas Ghosh (1930)**

Explanation:

1) However, it is an established matter of law as evidenced in a number of cases, that in case a minor is bound in a contractual relationship he shall enjoy the benefits under the contract without being liable for anything.
2) Hence, if the company registers the minor as a member, he will incur no liability for the company as long as he is a minor.
3) Going by practical legal application, companies do not register minor as members at all.

Answer:
In view of the above, M/s Honest Cycles Ltd may still give membership to Balak through the transfer of 1000 shares, as the shares are fully paid up and no further liability is attached to them in any case.

N11,PM: Examine the position of a minor in relation to obtaining membership in a company under the provisions of the Companies Act, 2013.

Or

PM: How far can a minor become a member of a company under the Companies Act, 2013?

Provision: [Section 11 of the Indian Contract Act, 1872]

1) The issue of membership of a minor is **not covered in the Companies Act, 2013** and the legal implications of a minor's membership will have to be examined from the Indian Contract Act, 1872.
2) Under section 11 of the Indian Contract Act, 1872 a minor, being incompetent to contract, cannot become member of a company. Any contract entered into by a minor is void ab initio as was held **in Mohri Bibi vs Dhramadas Ghosh (1930)**
3) A company is not allowed to register a minor as a member except under guardianship of a person competent to enter into a contract.

Explanation & Answer:

1) Hence, to take an example if X a minor wants to be registered as a member in a company, he must enter into the contract with the company through a guardian who will execute all the documents.
2) The company in turn will register the minor as a member clearly mentioning the fact of his minority and mentioning the guardianship of the person under whom the minor has purchased the securities.
3) Irrespective of the mode of becoming a member, the minor can be registered as a member only under the guardianship of a person capable of entering into a contract.

N10,PM: RSP Limited, allotted 500 fully paid-up shares of Rs. 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of Members. Later on, the company came to know of this fact. The company cancelled the allotment and struck-off his name from the Register of Members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court under the provisions of the Companies Act, 2013.

Provision: [Section 11 of the Indian Contract Act, 1872]

1) The issue of membership of a minor is **not covered in the Companies Act, 2013** and the legal implications of a minor's membership will have to be examined from the Indian Contract Act, 1872.

2) Under section 11 of the Indian Contract Act, 1872 a minor, being incompetent to contract, cannot become member of a company. Any contract entered into by a minor is void ab initio as was held **in Mohri Bibi vs Dhramadas Ghosh (1930)**

Case Law:

In the case of **Palaniappa vs Official Liquidator AIR 1942**, it was observed that if the directors allot shares to a minor in response to his application, without knowing that he was a minor and enter his name in the Register of Members, as soon as the company comes to know of this fact, it can eschew / cancel the allotment and strike the name of the minor off the Register of Members.

Explanation & Answer:

1) As a contract with a minor is void, the company cannot be allowed to take undue advantage under the contract. Hence the company must refund the entire money to the minor.
2) On the basis of above the contention of Z is not valid. The company is empowered to cancel the allotment and strike the name of Z off the Register of Member.
3) But the decision of the company to forfeit the entire share money of Z is wrong. The company must refund the money to the Z.

N06: With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified.

Provisions: [Section 2(70) of the Company Act, 2013]

1) A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.
2) The prospectus is the main document on the basis of which the prospective investors decide whether or not they should subscribe to the securities offered by the company.
3) The information in the prospectus is vital in every material aspect and any misstatements or concealment of material facts may result in huge losses to the investing public.

Case Law:

It was held in the case of **Peek Vs. Gurney** that the remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

Explanation & Answer:

Since X purchased shares through the stock exchange open market which cannot be said to have bought shares on the basis of prospectus. X cannot bring action for deceit against the directors. X will not succeed.

PM: Explain the meaning and role of the Prospectus.

Provision: [Section 2(70) of the Companies Act, 2013]

1) **Meaning of Prospectus:**
   a) The term Prospectus as any document described or issued as a prospectus, and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.
   b) In this context, it should be noted that prospectus is not an offer in itself but an invitation to make an offer, signifying thereby that on acceptance of such an invitation by any member of the public, no binding contract between him and the company comes into being.
   c) Application for purchase of shares or debentures or for making a deposit constitutes an offer by the subscriber to the company and it is only on its acceptance by the company that a binding contract comes into existence.
2) **Role:**
   d) The prospectus is the main document on the basis of which the prospective investors decide whether or not they should subscribe to the securities offered by the company.

e) The information in the prospectus is vital in every material aspect and any misstatements or concealment of material facts may result in huge losses to the investing public.

f) Therefore, the Companies Act vide section 34 and 35 of the Companies Act, 2013 imposes both criminal liability and civil liability for untrue and misleading statements in the prospectus.

PM: What are the requirements as to the issue of the Prospectus? [IMP]

Provision: [Section 2(70) of the Companies Act, 2013]

1) A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.
2) The prospectus is the main document on the basis of which the prospective investors decide whether or not they should subscribe to the securities offered by the company.
3) The information in the prospectus is vital in every material aspect and any misstatements or concealment of material facts may result in huge losses to the investing public.
4) Comprehensive rules and regulations have been incorporated into the Companies Act, 2013 in respect of this basic document which is the only source of vital information for the investors to ascertain the soundness or otherwise of the company.
5) Since the prospectus is intended to save the investing public from victimisation, the Legislature has aimed at securing the fullest disclosure of all material and essential particulars and laying the same before all the prospective buyers of shares and imposing stringent liabilities for violations.
6) Briefly the rules and regulations are as follows:
   a) **Matters to be stated in a Prospectus** –
   In order to provide a thorough and comprehensive information on all aspects of the company and the proposed issue, section 26 (1) of the Companies Act, 2013 lists down a large list of items that must be stated in the Prospectus.
   b) **Registration of prospectus** –
   Section 26 (4) provides that no prospectus shall be issued by or on behalf of a company or in relation to an intended company, unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person or his duly authorized representative, who is named therein as a director or proposed director of the company.
   Under sub section (7) it is provided that the Registrar shall not register the prospectus unless the requirements for registration under section 26 are complied with and the prospectus is accompanied by the consent of all the persons named in the prospectus.
   c) **Approval of prospectus by various agencies**:
   The draft prospectus has to be approved by various agencies before it is filed with the ROC of the concerned State.
   d) **The lead financial institution underwriting the issue, if applicable:**
   The draft prospectus is vetted by SEBI to ensure adequacy of disclosures. However, vetting by SEBI does not amount to approval of prospectus. SEBI does not take any responsibility for the correctness of the statements made or opinions expressed in the prospectus.

Section 23: Issue of Securities By Company

Answer Writing Points For Sec 23:

1) A Public company can issue its securities by ways of namely:
   a) To public through prospectus or;
   b) Private placements or;
   c) By rights or bonus issue
2) A private company can issue its securities by ways of namely:
   a) Right issue or bonus issue or;
   b) Private placement only.
   c) Private company cannot issue its securities using public offer as it is prohibited.

Section 25: Deemed Prospectus

Answer Writing Points For Sec 25:

1) Any document/ Book inviting subscription from public whether in a well drafted formal prospectus but also roughly drafted prospectus will be deemed prospectus.
2) All enactments and rules of law as to the contents in a prospectus and as to liability in respect of misstatements and omissions therein shall apply to deemed prospectus.
3) From the above provision it is quite clear that the deemed prospectus is not intended to be a document with any exceptions or concessions vis-a-vis a prospectus.
4) It is designed to prevent companies from making misleading statements through various documents, notices or circulars while keeping the formal prospectus document clean.
5) In given below situation there is no need to issue prospectus such as:
   a) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to any securities.
   b) Where securities are offered through private placement by complying with the provisions related thereto in the Companies Act, 2013.
   c) Where securities are issued through a rights issue or a bonus issue in accordance with the applicable provisions of the Act and in case of listed companies also in accordance with the provisions of the rules and regulations made by SEBI in this behalf.

M04,PM: Explain the concept of "Deemed Prospectus" under the Companies Act, 2013. Point out the circumstances where under issuing of prospectus is not mandatory. [LDR IMP]

Provision: [Section 23 & 25 of the Company Act, 2013]

1) Any document by which an offer for sale of any securities is made to the public and the company allots or agrees to allot securities in terms thereof, then such document shall for all purposes, be deemed to be a prospectus.
2) All enactments and rules of law as to the contents in a prospectus and as to liability in respect of misstatements and omissions therein shall apply and shall have effect as they apply to a prospectus.
3) From the above provision it is quite clear that the deemed prospectus is not intended to be a document with any exceptions or concessions vis a vis a prospectus.
4) It only broadens the scope of a prospectus to include not only the formal document issued as a prospectus but also all nature of communication made by the company with the intention of selling an issue.
5) It is designed to prevent companies from making misleading statements through various documents, notices or circulars while keeping the formal prospectus document clean.
6) When Prospectus need not be issued:
   a) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to any securities.
   b) Where securities are offered through private placement by complying with the provisions related thereto in the Companies Act, 2013.
   c) Where securities are issued through a rights issue or a bonus issue in accordance with the applicable provisions of the Act and in case of listed companies also in accordance with the provisions of the rules and regulations made by SEBI in this behalf.

Answer:

Under the above mentioned conditions in (5) the issuing of prospectus is not necessary under the provisions of the Companies Act, 2013.

M11,PM: State the conditions where under the issuing of prospectus is not necessary under the provisions of the Companies Act, 2013.

Provision: [Section 23 & 25 of the Company Act, 2013]

1) Under section 23 (1) of the Companies Act, 2013 no company can issue securities of any nature to the public except through a prospectus.
2) Further under section 25 of the Act any document, by which the offer for sale of securities of the company is made to the public such document, shall be deemed to be a prospectus issued by the company.

Explanation:

Hence, in case of public issue of securities there is no situation under which a company can dispense with the issue of a prospectus as any document offering the sale will be deemed to be a prospectus. However, the issue of prospectus is not necessary in the following exceptional cases:

a) Where a company makes a private placement through issue of a private placement letter in terms of section 42 of the Companies Act, 2013
b) Where securities are offered to existing holders of such securities under a rights issue or a bonus issue in accordance with the provisions of this Act.
c) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to any securities.

Answer:

Under the above mentioned conditions, the issuing of prospectus is not necessary under the provisions of the Companies Act, 2013.

Section 26: Contents of prospectus

Answer Writing Points For Sec 26:

1) Prospectus should be in proper dated form.
2) Prospectus should signed. If it is company then it should be signed by 2 directors and if it is a firm then such prospectus should be signed by half of the partners.
3) Prospectus shall state such information and set out such reports on financial information as specified by SEBI.
4) Financial reports of last 5 years should exists in such prospectus.
5) Prospectus before issuing to public should be filled with ROC and such copy shall be signed by every directors of the company.
6) Expert has given his written consent to the issue of prospectus, who is not involved in formation of company and not withdrawn such consent before delivery of copy of prospectus to ROC.
7) Attach copies as required by SEBI.
8) The section is not applicable to existing shareholders or debenture holders also it is not applicable to issue of shares or debentures of similar nature which are already issued by company.
9) Any default in complying with the provisions, fine to company and every person who is party to the issue of prospectus is Rs 50000 to Rs 3 lakhs.
10) Not applicable to Existing Shareholders & issue of shares/debenture of similar nature already issued.

N04,PM: The Board of Directors of M/s Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus or filing a statement in lieu of prospectus with the Registrar of Companies, Mumbai. Explain the remedies available to the investors in this regard.

Provision [Section 23 & 26 of the Company Act, 2013]

1) A public company can issue securities to the public only by issuing a prospectus.
2) Under section 23 (1) of the Companies Act, 2013 no company can issue securities of any nature to the public except through a prospectus.
3) The prospectus is the main document on the basis of which the prospective investors decide whether or not they should subscribe to the securities offered by the company.
4) The Act lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue.

Explanation & Answer:

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under the Act.

Section 27: Variation in Terms of Contract or Objects in Prospectus

Answer Writing Points For Sec 27:

1) Company shall pass a special resolution in general meeting to vary –
   a) the terms of any contract referred to in the prospectus, or
   b) the objects for which the prospectus was issued; and
2) Prescribed details of the notice shall be published in two newspapers, one in English and other in vernacular language, circulating in the city in which the registered office of the company is situated.
3) Any money raised through such prospectus shall not be used; for buying, trading, or otherwise dealing in equity shares of any other listed company. (i.e.

Securities other than equity shares of other listed company + any security of an unlisted company can be dealt with such money raised through prospectus.)

4) Shareholders who have not agreed i.e. dissenting shareholders to proposal to vary terms/objects shall be given an exit offer by:
   a) promoters or
   b) controlling shareholders
5) Exit price, manner and conditions for such shareholders shall be prescribed by the SEBI regulations.

Suggestion:

E-Forms to be filled by company under this section:

PAS-1: Advertisement giving details of notice of special resolution for verifying the terms of any contract referred to in the prospectus of altering the objects for which prospectus was issued.

Section 28: Offer for sale of shares by certain members of company

Answer Writing Points For Sec 28:

1) Offer for sale is an offer of securities by existing shareholders of the company to the public for subscription through an offer document.
2) All the provisions of prospects of public issue shall also be applicable to offer for sale.
3) All the expenses incurred by the company for the offer for sale shall be reimbursed by such shareholders who are offering their shares to public.
4) Following provisions are applicable to public issue but are not applicable for offer for sale:
   a) Provisions relating to minimum subscription;
   b) Provisions for minimum application value;
   c) Provisions requiring any statement to be made by the BOD in respect of utilization of money; and
   d) Any other provision or information which cannot be compiled or gathered by the offeror.

Section 29: Public offers of Securities to be in Dematerialized form

Answer Writing Points For Sec 29:

1) Dematerialisation is mandatory for:
   a) For every company making public offer
   b) Prescribed companies
2) Any company not making public offer may, at its option:
   a) Convert its securities
   b) Issue its securities
3) No issuer shall make a public issue or rights issue of specified securities unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued.

Section 30: Advertisement of Prospectus

M21 RTP: Keya Limited decides to issue 1,00,000 securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

Provision [Section 30 of the Company Act, 2013]

According to Section 30, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:

a) the objects,
b) the liability of members and the amount of share capital of the company,
c) the names of the signatories to the memorandum,
d) the number of shares subscribed for by the signatories, and
e) the capital structure of the company.

Section 31: Shelf Prospectus / Information Memorandum

Answer Writing Points For Sec 31:

1) Shelf Prospectus means a prospectus in respect of which 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.

2) 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 which 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, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required
3) It shall be filed with ROC at the time of 1st offer of securities included therein.
4) Shelf Prospectus shall be valid One year from the date of opening of the first offer of securities under that prospectus.
5) In respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
6) When a company has undergone some changes regarding its financial position or created new charge, such changes shall be filled with ROC within prescribed time (one month prior to the issue of subsequent offer).
7) However, if a company or any other person has received applications for allotment of securities along with advance payments, then the company or such other person shall intimate the changes to such applicants, and give an option to withdraw their application and if such applicants desire to withdraw their application, all monies received from them shall be refunded within 15 days.
8) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be called as prospectus.
9) The information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Suggestion:

E-Forms to be filled by company under this section:

PAS- 2: Information Memorandum

M03,PM: Explain the concept of "Shelf Prospectus" in the light of Companies Act, 2013. What is the law relating to issuing and filing of such prospectus?

Or

PM: When is a company required to issue a 'shelf prospectus' under the provisions of the Companies Act, 2013? Explain the provisions of the Act relating to the issue of 'shelf prospectus' and filing it with the Registrar of Companies.

Or

N05,N08: What is meant by "Shelf prospectus"? Who can file a "Shelf prospectus" with the Registrar of Companies? Stating the provisions of Companies Act, 2013 point out the circumstances under which such prospectus is required to be filed with the Registrar of Companies.

Or

N.18: What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act, 2013. [LDR IMP]

Provision: [Section 31 of the Company Act 2013 & Rule 10 of the Companies (Prospectus and Allotment of Securities) Rules, 2014]

1) '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.
2) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required
3) It shall be filed with ROC at the time of 1st offer of securities included therein.
4) Shelf Prospectus shall be valid One year from the date of opening of the first offer of securities under that prospectus.

5) In respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
6) When a company has undergone some changes regarding its financial position (e.g. borrowed a long term loan), or created new charge between the first offer and subsequent offer under shelf prospectus, an Information Memorandum containing details of such changes shall be filed with ROC within prescribed time (one month prior to the issue of subsequent offer).
7) However, If a company or any other person has received applications for allotment of securities
along with advance payments, then the company or such other person shall intimate the changes to such applicants, and an option to withdraw their application shall be given to such applicants, and if such applicants desire to withdraw their application, all monies received from them shall be refunded within 15 days.
8) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.
9) The information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Answer:

Any Company as the SEBI may provide by regulation may file Shelf Prospectus & above are the circumstances under which such prospectus is required to be filed with the Registrar of Companies.

M06: What are the provisions relating to "Information Memorandum" contained in the Companies Act, 2013?

Provision: [Section 31 of the Companies Act, 2013]

1) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.
2) However, a company shall be required to file an information memorandum on 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 any previous offer of securities and the succeeding offer of securities and such other changes as may be prescribe, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.
3) Where an information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be the prospectus.
4) The information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Answer:

Above are the provisions relating to "Information Memorandum" contained in the Companies Act,
2013.

July21: ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

Provision: [Section 31 of the Companies Act, 2013]

1) Information Memorandum together with Shelf Prospectus is deemed Prospectus. The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Section 31]
2) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

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

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

3) Where an information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be the prospectus. No further prospectus is required for issue of securities.

Answer:

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

N.18 Rtp: Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. Should follow to avoid repeated issuance of prospectus?

Provision: [Section 31 of the Company Act, 2013]

1) '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.

2) any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required

3) It shall be filed with ROC at the time of 1st offer of securities included therein.

4) Shelf Prospectus shall be valid 1 year from date of opening of first offer of securities under that prospectus

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

Answer:

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

Section 32: Red Herring Prospectus

Answer Writing Points For Sec 32:

1) Prospectus, which does not include complete particulars of quantum or price of securities included therein, is known as Red Herring Prospectus. It shall be issued before issue of actual prospectus.

2) Red-herring prospectus shall be filed by company with the ROC at least 3 days prior to the opening of subscription and offer.

3) A Red-Herring Prospectus shall carry same obligations as applicable to the actual prospectus.

4) Any changes between a Red-Herring Prospectus and a prospectus shall be highlighted as Variations in actual prospectus.

5) Once the offer is closed, the company shall file actual prospectus containing details of –

a) total capital raised (Debt + Share Capital),

b) closing price of securities, and

c) Any other details not included in Red-Herring Prospectus with the ROC and SEBI.

M08,PM: What is meant by 'Red–herring prospectus'? State the circumstances under which such prospectus is required to be filed with the Registrar of Companies. What is the requirement relating to filing of final prospectus in such cases? [LDR.IMP]

Provision: [Section 32 of the Companies Act, 2013]

1) Red-Herring Prospectus:

A prospectus which does not include complete particulars of the quantum or price of the securities included therein. It shall be issued before the issue of actual prospectus.

2) Red-herring prospectus shall be filed by the company with the ROC at least 30 days prior to the opening of the subscription and the offer.
3) A Red-Herring Prospectus shall carry the same obligations as applicable to the actual prospectus.
4) Any changes between a Red-Herring Prospectus and a prospectus shall be highlighted as Variations in actual prospectus.
5) Once the offer is closed, the company shall file actual prospectus containing details of –
   a) total capital raised (Debt + Share Capital),
   b) closing price of securities, and
   c) any other details not included in Red-Herring Prospectus with the ROC and SEBI.

Explanation & Answer:

1) On the basis of offers received, company will finalise issue price & issue size and then close the offer.
2) After closure of offer of securities, a final prospectus will be prepared stating the total capital raised whether by way of debts, or share capital and the closing price of securities and any other details as were not complete in red-herring prospectus.
3) The prospectus will be filled with ROC and also with SEBI in case of listed company.

M22: 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?

Provision: [Section 32 of the Companies Act, 2013]

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

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

Explanation & Answer:

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

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

34: Criminal Liability for Misstatements in Prospectus

Answer Writing Points For Sec 34:

1) When prospectus includes any statement which is –
   a) untrue or misleading in form or context, or
   b) where any inclusion or omission of any matter is likely to mislead,
   Every person who authorises issue of such prospectus shall be liable u/s 447(i.e. Punishment for Fraud).
2) Section 447 says that any person who is found to be guilty of fraud, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least 10 lakh rupees or 1 % of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times amount involved in fraud.
3) If where fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.
4) Provided further that where the fraud involves an amount less than 10 lakh rupees or 1 % of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to 50 lakh rupees or with both.
5) Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, & did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

N11,PM: What is the law relating to criminal liability for misstatement in the prospectus under Section 34 of the Companies Act, 2013? [IMP]

Provision: [Section 34 of the Company Act, 2013]

1) When prospectus includes any statement which is –
   a) untrue or misleading in form or context, or
   b) where any inclusion or omission of any matter is likely to mislead,
   Every person who authorises the issue of such prospectus shall be liable u/s 447(i.e. Punishment for Fraud).
2) Section 447 says that any person who is found to be guilty of fraud, Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or 1 % of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.
3) Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.
4) Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.
5) Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that statement was true or the inclusion or omission was necessary.

Answer:

Above is the law relating to criminal liability for misstatement in the prospectus under Section 34 of the Companies Act, 2013

N.18 OLD: ACE Builders Ltd. issued a prospectus which contained mis-statement about the prospects of the Company from a project to be undertaken with an intent to defraud the applicants for securities. Discuss the provisions of law relating to criminal liability for mis-statement in the prospectus under the Section 34 of the Companies Act, 2013.

Provision: [Section 34 of the Companies Act, 2013]

1) When prospectus includes any statement which is –
   a) untrue or misleading in form or context, or
   b) where any inclusion or omission of any matter is likely to mislead,

   Every person who authorises the issue of such prospectus shall be liable u/s 447(i.e. Punishment for Fraud).
2) Section 447 says that any person who is found to be guilty of fraud, Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
3) Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
4) Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.
5) Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Answer:

Above is the law relating to criminal liability for misstatement in the prospectus under Section 34 of the Companies Act, 2013.

Dec21: RD Ltd. issued a prospectus. All statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allotee of shares claims to avoid contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

Provision: [Section 34 of the Companies Act, 2013]

1) According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.
2) Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) of section 35, shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Explanation:

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

Answer:

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

35: Civil Liability for Misstatements in Prospectus

Answer Writing Points For Sec 35:

1) expert" includes an engineer, a Valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
2) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:
   a) is a director at the time of the issue;
   b) has authorised himself to be named and is named in the prospectus as a director;
   c) is a promoter;
   d) has authorised the issue of the prospectus; and
   e) is an expert referred to in sub-section (5) of section 26,

   Shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.
3) A person shall not be liable under sub-section (1) if he proves that
   a) consent to become an expert was withdrawn before the issue of prospectus;
   b) The prospectus was issued without his knowledge or consent AND on becoming aware of its issue, he gave a reasonable public notice of it.
4) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:
   a) personally responsible,
   b) without any limitation of liability,
6) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

N06: When is an expert not liable for untrue statements in the prospectus issued by a company?

Or

N02: Who is an Expert'? When an expert is not liable for the misstatement in the prospectus of a public company?[LDR IMP]

Provision: [Section 2(38) & 35 of the Company Act, 2013]

1) "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
2) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:
   a) is a director at the time of the issue;
   b) has authorised himself to be named and is named in the prospectus as a director;
   c) is a promoter;
   d) has authorised the issue of the prospectus; and
   e) is an expert referred to in sub-section (5) of section 26,

   shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.
3) A person shall not be liable under sub-section(1) if he proves that
   a) consent to become an expert was withdrawn before the issue of prospectus;
   b) the prospectus was issued without his knowledge or consent AND on becoming aware of its issue, he gave a reasonable public notice of it.
4) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:
   a) personally responsible,
   b) without any limitation of liability,
   c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Answer:

Hence if Expert proves that misstatement was out of his knowledge then expert is not liable for such Misstatement in the prospectus of a public company.

M08,PM: Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. X purchased some partly paid shares of the company in good faith on the Stock Exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide:
(i) Whether Mr. X is liable to pay the unpaid amount?
(ii) Can Mr. X sue the directors of the company to recover damages?

Provision [Section 35 of the Company Act, 2013]

1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:
   a) is a director at the time of the issue;
   b) has authorised himself to be named and is named in the prospectus as a director;
   c) is a promoter;
   d) has authorised the issue of the prospectus; and
   e) is an expert referred to in sub-section (5) of section 26,

   shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.
2) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:
   a) personally responsible,
   b) without any limitation of liability,
   c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
3) A person shall not be liable under sub-section(1) if he proves that
   a) consent to become an expert was withdrawn before the issue of prospectus;
   b) the prospectus was issued without his knowledge or consent AND on becoming aware of its issue, he gave a reasonable public notice of it.

Explanation & Answer:

(i) Yes, X is liable to pay the unpaid amount on the shares. As X has purchased partly paid shares, so he is liable for the remaining value of the shares. At the time of winding up he is liable to contribute as a contributory. The related case law in this subject matter is **Peak vs. Gurney**.

(ii) No, X cannot sue the directors to recover damages for the misstatement in the prospectus. The shareholder must have relied on the statement in the prospectus in applying for shares offered by it to hold the responsible persons liable.

(iii) If a person purchases shares in the open market, the prospectus is non-operative as far as he is concerned. In the present case, Mr. X purchased shares on the stock exchange even if he did so on good faith he had not relied on the statement in prospectus. Therefore, he cannot sue the directors of the company to recover damages

N09,PM: Modern Furniture's Limited was willing to purchase teakwood estate in Chhattisgarh State. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh State. The report was found inaccurate. Mr. 'X' purchased the shares of Modern Furniture's Limited on the basis of the above statement in the prospectus. Will Mr. 'X' have any remedy against the company? When will an expert not be liable? State the provisions of the Companies Act, 2013 in this respect. [N09]

Provision [Section 35 of the Companies Act, 2013]

1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:
   a) is a director at the time of the issue;
   b) has authorised himself to be named and is named in the prospectus as a director;
   c) is a promoter;

d) has authorised the issue of the prospectus; and

e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.

2) A person shall not be liable under sub-section(1) if he proves that

a) consent to become an expert was withdrawn before the issue of prospectus;

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

3) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:

a) personally responsible,

b) without any limitation of liability,

c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Explanation:

1) The remedy to an investor who has invested on the strength of the statements in the prospectus and such statements have turned out to be false or misleading, should also be assessed from the Indian Contract Act, 1872 which provides for various remedies for contracts induced by coercion, undue influence, misrepresentation, frauds or mistake.

2) In the present case, MrX has already purchased the shares which means the transaction has been completed, hence the option of rescinding it at his option does not arise.

3) On the other hand Mr X can claim compensation for any loss or damage that he might have sustained from the purchase of shares. But this is possible only if he has sustained any loss or damage which has not been mentioned in the case given above.

Answer:

Hence, Mr X will have no remedy either against the company or the expert based on the facts of the case given.

M.19 OLD: Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr.Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr.Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Or

M.20 RTP: Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

Provision: [Section 35 of the Companies Act, 2013]

1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:

a) is a director at the time of the issue;

b) has authorised himself to be named and is named in the prospectus as a director;

c) is a promoter;

d) has authorised the issue of the prospectus; and

e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.

2) An expert will not be liable for any mis- statements in the prospectus under the following situations:
   a) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
   b) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
   c) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
   d) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Explanation:

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

Answer:

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

PM: A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.

Provision: [Section 34 & 35 of the Companies Act, 2013]

1) The Companies Act, 2013 vide sections 34 and 35 lay down the criminal and civil liabilities of the guilty parties in case of misstatements and misleading inclusions and omissions in a prospectus.
2) Further, section 36 lays down the punishment for fraudulently inducing persons to invest moneys.
3) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:
   a) personally responsible,
   b) without any limitation of liability,
   c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Explanation:

1) The present case before us is not in respect of liability for a possible misstatement but on the right of the allottee to avoid the contract of purchasing the shares from the company.
2) In order to decide this, key factor is to determine if any material misrepresentation or concealment of a material fact has taken place and if such misrepresentation is fraudulent.
3) The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made.

4) The question here is a direct issue arising from the consequence of misrepresentation on the contract and is governed by the Indian Contract Act, 1872.
5) Section 19 of the Indian Contract Act, 1872 states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Answer:

Hence, in the given case the allottee can avoid the contract of allotment of shares. **(Rex V. Lord Kylsant)**.

PM: When director is not liable for a misstatement in a prospectus?

Provision: [Section 35 (2) & Proviso to section 34 of the Companies Act, 2013]

1) No criminal liability for any misstatement in a prospectus under this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
2) When a director is not liable for civil liability [Section 35 (2)]:

   No civil liability for any misstatement under this section shall apply to a person if he proves that:

   a) having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
   b) the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Answer:

In above cases director is not liable for misstatement in a prospectus.

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

Provision:[Section 34 & 35 of the Companies Act, 2013]

1) The only situations when a director will not incur any liability for misstatements in a prospectus are as under:
   a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
   b) No civil liability for any misstatement under section 35 shall apply to a person if he proves that:
      i) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
      ii) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Explanation:

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

Answer:

Therefore, in the present case director cannot hide behind the excuse that he had relied on promoters for making correct statements in prospectus. He will be liable for misstatements in prospectus.

PM: State the liability of an 'Expert' in case of misrepresentation in the prospectus. When an expert will not be liable for his untrue statements made in the prospectus?[IMP]

Provision: [Section 34 and 35of the Companies Act, 2013]

1) "Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
2) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who:
   a) is a director at the time of the issue;
   b) has authorised himself to be named and is named in the prospectus as a director;
   c) is a promoter;
   d) has authorised the issue of the prospectus; and
   e) is an expert referred to in sub-section (5) of section 26,

   shall, without prejudice to section 36, be liable to pay compensation to every person who has sustained such loss or damage.
3) Where intent to defraud is proved, every person referred to in sub-section (1) shall be:
   a) personally responsible,
   b) without any limitation of liability,
   c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Explanation and Answer:

1) Thus, the liability of an expert in case of misrepresentation in the prospectus will arise in terms of section 35 and will be specific to any misstatements made by him as an expert.
2) An expert will not be liable for any misstatements in the prospectus under the following situations:
   a) Section 26 (5): that having given his consent, he withdrew it in writing before delivery of the copy of prospectus for registration or
   b) Section 35 (2): that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
   c) An expert will only be liable for any misstatements made by him in the capacity of an expert and not for any other statement in the prospectus.

PM: What is the extent of liability of an expert, in relation to publication of prospectus, for any misstatement in the report given by him?

Provision: [Section 2(38) of the Companies Act, 2013]

1) When prospectus includes any statement which is –
   a) untrue or misleading in form or context, or
   b) where any inclusion or omission of any matter is likely to mislead,

   Every person who authorises the issue of such prospectus shall be liable u/s 447(i.e. Punishment for Fraud).
2) Section 447 says that any person who is found to be guilty of fraud, Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
3) Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
4) Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.
5) Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds

to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

6) Under section 35where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, then the company and every person defined in this section including an expert, shall, without prejudice to any punishment to which he may be liable under section 36, be further liable to pay compensation to every person who has sustained such loss or damage.

Answer:

Thus, the liability of an expert in case of misrepresentation in the prospectus will arise in terms of section 35 and will be specific to any misstatements made by him as an expert

MTP N.19: An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

Provision: [Section 34 and 35of the Companies Act, 2013]

1) Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013.
2) Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such misstatements.
3) The only situations when a director will not incur any liability for misstatements in a prospectus are as under:
   a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of prospectus believe, that statement was true or the inclusion or omission was necessary.
   b) No civil liability for any misstatement under section 35 shall apply to a person if he proves that:
      i) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
      ii) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Explanation and Answer:

Therefore, in the present case director cannot hide behind excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for misstatements in the prospectus.

N22: Aarna Ltd. was dealing in export of cotton fabric to specified foreign countries. The company was willing to purchase cotton fields in Punjab State. The prospectus issued by the company contained some important extracts of the expert report. The report was found untrue. Mr. Nick purchased the shares of Aarna Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Would Mr. Nick have any remedy against the company? State the circumstances where an expert is not liable under the Companies Act, 2013.

Provision: [Section 35 of the Companies Act, 2013]

1) Under Section 35 (1) of the Companies Act 2013 (the Act), where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.
2) **Circumstances when an expert is not liable:**
   An expert will not be liable for any misstatement in a prospectus under the following situations:

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

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

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

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

Explanation and Answer:

a) In the present case, Mr. Nick purchased the shares of Aarna Limited on the basis of the expert's report published in the prospectus. Mr. Nick can claim compensation for any loss or damage that he might have sustained from the purchase of shares.

b) Since, Mr. Nick did not suffer any loss due to purchase of such shares, he cannot claim any compensation for any loss or damage.

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

Section 36: Penalty for fraudulently inducing persons to invest money

Answer Writing Points For Sec 36:

A person shall be liable for penal action for fraud u/s 447 if, -

a) he commits any fraudulent act i.e. either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, and

b) He commits such fraudulent acts as above to induce another person to enter into, or to offer to enter into —

- **i)** any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting, securities;
- **ii)** any agreement the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- **iii)** Any agreement for, or with a view to obtaining credit facilities from a bank or financial institution.

M04,PM: A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.[IMP]

Provision [Section 34, 35 & 36 of the Company Act, 2013 & section 19 of the Indian Contract Act, 1872]

1) The Companies Act, 2013 vide sections 34 and 35 lay down the criminal and civil liabilities of the guilty parties in case of misstatements and misleading inclusions and omissions in a prospectus.

2) Further, section 36 lays down the punishment for fraudulently inducing persons to invest moneys.

3) Where intent to defraud is proved, every person referred in this section shall be:

- **a)** personally responsible,

b) without any limitation of liability,

c) for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Explanation:

1) The present case before us is not in respect of liability for a possible misstatement but on the right of the allottees to avoid the contract of purchasing the shares from the company.
2) In order to decide this, key factor is to determine if any material misrepresentation or concealment of a material fact has taken place and if such misrepresentation is fraudulent.
3) The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made.
4) The question here is a direct issue arising from the consequence of misrepresentation on the contract and is governed by the Indian Contract Act, 1872.
5) Section 19 of the Indian Contract Act, 1872 states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Answer:

Hence, in given case allottees can avoid contract of allotment of shares.

Section 37: Action by Affected Persons

Answer Writing Points For Sec 37:

1) Following action can be taken by a person or group/association of persons u/s 34, 35 and 36:
   a) File a suit
   b) Take any other action.
2) In the case of class action suit, the class or the group of people filing the case need not be present in the court and can be represented by one petitioner.

N08,PM: M applies for share on the basis of a prospectus which contains misstatement. The shares are allotted to him, who afterwards transfers them to N. Can N bring an action for a rescission on the ground of misstatement? Decide under the provisions of the Companies Act, 2013.

Provision: [Section 37 of the Company Act, 2013]

Misstatement in prospectus:

No, N cannot bring an action for rescission of the contract to buy shares from M on the ground of misstatement as under section 37 of the Companies Act, 2013 a suit may be filed or any other action may be taken under section 34 or section 35 or section 36 only by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

PM: State the remedies available against a company to a subscriber for allotment of shares on the faith of a misleading prospectus. What conditions must be satisfied by such a subscriber before opting for the remedies?

Provision: [Section 37 of the Company Act, 2013]

1) The remedies available to a subscriber arise more from the Indian Contract Act, 1872 than from the Companies Act, 2013. A misstatement in a prospectus will cover both an information included and an information omitted from the prospectus and may result from either a mistake, or a misrepresentation or a fraudulent statement.
2) The Companies Act, 2013 lays down the punishment for the company and the responsible parties which will include directors, promoters, experts etc. but does not mention the legal remedies available to an aggrieved investor apart from making the guilty persons liable to pay compensation to every person who has sustained loss or damage from purchase of securities on the strength of a prospectus containing misstatements.
3) Hence, we have to turn to the Indian Contract Act, 1872 which vide section 19 states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

4) On the other hand, a party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true

Explanation & Answer:

Therefore to summarize remedies available to a subscriber for misstatements in prospectus are as under:

1) He may claim compensation from directors, promoters or experts for any loss or damage sustained by such purchase;
2) He may avoid the contract under section 19 of the Indian Contract Act, 1872 ; or
3) He may enforce the contract and be placed in the position in which he would have been if the representation made has been true. This is an unlikely situation and may not be practically possible.
4) Hence, for all practical purposes he will have the remedies under (i) and (ii) above.

Section 39: Allotment of Securities by Company

Answer Writing Points For Sec 39:

1) No Allotment shall be made of any securities of a company offered to public for subscription unless-
   a) The amount stated in the prospectus as the minimum amount has been subscribed; and
   b) The sums payable on application for such amount has been paid to and received by the company-
2) As per SEBI Regulations, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities.
3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the SEBI, the amount received under sub-section (1) shall be returned within a period of 15 days from the closure of the issue.
4) 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 % per annum.
5) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.
6) The Company Act, 2013 provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Suggestion:

E-Forms to be filled by company under this section:

PAS-3: Return of Allotment

M08,PM: Explain the provisions and main contents of "Return of Allotment" under the Companies Act, 2013.[V.IMP]

Provision: [Section 39 of the Company Act, 2013 & Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules 2014]

1) Whenever a company having a share capital makes an allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.
2) Manner for filing of the return of allotment:
   Whenever a company having a share capital makes any allotment of its securities, the company shall, within 30 days thereafter, file with the Registrar a return of allotment in Form PAS–3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.
3) Attachments and inclusions in Form PAS 3:
   a) A list of allottees states their names, address, occupation, if any, and number of securities allotted to each duly certified by the signatory of the Form PAS – 3 as being complete and correct as per the records of the company.
   b) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the

Form PAS – 3 a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with copy of any contract of sale if relating to a property or an asset, or a contract for services or other consideration.

c) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS –3.

Answer:

Above are the main content of Return of Allotment & provision regarding the same.

M05: State briefly the provisions relating to minimum subscription and consequence of non-receipt of minimum subscription as per the Companies Act, 2013 and the provisions as per SEBI guidelines.[V.IMP]

Provision: [Section 39 of the Company Act, 2013]

1) No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -
   a) The amount stated in the prospectus as the minimum amount has been subscribed; and
   b) The sums payable on application for such amount has been paid to and received by the company-
2) As per SEBI Regulations, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities.
3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within a period of 15 days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15 % per annum.
4) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.
5) The Company Act, 2013 provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Answer:

Above are the provision provisions relating to minimum subscription and consequence of non-receipt of minimum subscription as per the Companies Act, 2013 and the provisions as per SEBI guidelines.

M03,PM: After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of ₹X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is voilative of the provisions of the Companies Act, 2013. Comment.[LDR IMP]

Provision: [Section 39 of the Company Act, 2013]

1) No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -
   a) The amount stated in the prospectus as the minimum amount has been subscribed; and
   b) The sums payable on application for such amount has been paid to and received by the company-
2) As per SEBI Regulations, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities.
3) If the stated minimum amount has not been subscribed and the sum payable on application is not
   received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within a period of 15 days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in

default shall jointly and severally be liable to repay that money with interest at the rate of 15 % per annum.

4) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

5) The Company Act, 2013 provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Explanation:

The company has received only 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of sub-section (1). The company is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available.

Answer:

Therefore, in the present case, X is within his rights refuses to accept the allotment of shares which has been illegally made by the company.

July21: Johnson Limited goes for Public issue of its shares. The issue was over subscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.
State, who are the persons considered as officers in default under the Companies Act, 2013.
Examine who will be considered in default in the instant case?

Provision: [Section 39 of the Company Act, 2013]

1) As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

2) As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in 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, namely:—

a) whole-time director (WTD);
b) key managerial personnel (KMP);
c) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
d) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
e) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
f) every director, in respect of a contravention of any of the provisions of this Act,
g) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Explanation & Answer:

In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

PM: When is an Allotment of Shares treated as an irregular allotment? State the effects of an irregular allotment.

Or

M.19: Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.[V.IMP]

Provision: [Section 39 of the Companies Act, 2013]

1) The Companies Act, 2013 does not separately provide for the term "Irregular Allotment" of securities. Hence, one will have to examine the requirements of a proper issue of securities and consider the consequences of non-fulfilment of those requirements.

2) In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. Irregular allotment therefore arises in the following instances:
   a) Where a company does not issue a prospectus in a public issue as required by section 23; or
   b) Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
   c) Where the prospectus has not been filed with the Registrar for registration under section 26 (4);
   d) The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
   e) The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
   f) In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.
3) Effects of irregular allotment:
   a) The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act, 2013 does not mention (unlike the previous Companies Act) that in case of an irregular allotment the contract is voidable at the option of the allottee.
   b) Under section 26 (9) of the Companies Act, 2013 if a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
   c) Similarly, in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time.
   d) Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39 (5).
   e) Under section 40 (5) any default made in respect of getting the approval to listing of securities in one or more recognized stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.
   f) Hence, under various provisions of the Companies Act, 2013 stringent punishment has been provided for against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.

Answer:

Above are the instances & effects of irregular allotment under The Companies Act,2013.

N.18 OLD: MPN Limited allotted shares to the public without issuing a prospectus. Discuss the validity of such allotment and list out any five circumstances when allotment can be deemed to be irregular.

Provision: [Section 39 of the Companies Act, 2013]

1) The Companies Act, 2013 does not separately provide for the term "Irregular Allotment" of securities. Hence, one will have to examine the requirements of a proper issue of securities and consider the consequences of non-fulfilment of those requirements.
2) In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. Irregular allotment therefore arises in the following circumstances:

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

Answer:

Above are the circumstances of irregular allotment under The Companies Act,2013.

Section 40: Securities to be dealt with in stock exchanges

Answer Writing Points For Sec 40:

1) A company may pay commission to any person in connection with subscription.
2) The rate percent, or the amount of the commission paid or agreed to be paid shall be disclosed properly.
3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.
4) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:
   a) It shall be authorized in the company's articles of association.
   b) Such commission may be paid out of proceeds of the issue or from the profit of the company or Both.
   c) The rate of commission to be paid shall not exceed in any case 5 % of the price or rate 27uthorized by articles whichever is less for shares and 2.5 % of the price or as specified in articles of company whichever is less in case of debentures.
   d) the prospectus of the company shall disclose-
      i) the name of the underwriters;
      ii) the rate and amount of the commission payable to the underwriter; and
      iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
   e) Commission shall not be paid on such shares which are not offered to the public.
   f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

N05,PM: In what way does the Companies Act, 2013 regulate the payment of ₹underwriting commission'? Explaining the provisions of the Act, state the conditions to be complied with before payment of such commission can be made to underwriters of the company.

Or

Explain clearly the meaning of the term 'Underwriting' and 'Underwriting Commission'. In what way, does the Companies Act, 2013 regulate payment of such Commission? Explain.[LDR IMP]

Provision: [Section 40 of the Company Act, 2013 & Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014]

1) A company may pay commission to any person in connection with subscription.
2) The rate percent, or the amount of the commission paid or agreed to be paid shall be disclosed properly.
3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.
4) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely :
   a) the payment of such commission shall be authorized in the company's articles of association;

b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares 5 % of the
price at which the shares are issued or a rate 28uthorized by the articles, whichever is less, and in case of debentures, shall not exceed 2.5 % of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
d) the prospectus of the company shall disclose-
i) the name of the underwriters;
ii) the rate and amount of the commission payable to the underwriter; and
iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Explanation & Answer:

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

N10,PM: Unique Builders Limited, decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.

Provision: [Section 40 of the Company Act, 2013 & Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014]

1) A company may pay commission to any person in connection with subscription.
2) The rate per cent, or the amount of the commission paid or agreed to be paid shall be disclosed properly.
3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.
4) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:-
a) the payment of such commission shall be authorized in the company's articles of association;
b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five per cent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
d) the prospectus of the company shall disclose-
i) the name of the underwriters;
ii) the rate and amount of the commission payable to the underwriter; and
iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
- there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Explanation & Answer:

1) In view of the above the decision of Unique Builders Ltd to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.
2) The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

PM: Define Minimum Subscription. When it is liable to be refunded? Can share application money be deposited in any bank?

Provision: [Section 39 & 40 of the Companies Act, 2013]

1) Minimum subscription is the minimum amount out of the total amount of securities issued by a company which is stated in the prospectus as such.
2) A company under section 39 (1) of the Companies Act, 2013 cannot proceed with the allotment of securities to the public unless the amount stated in the prospectus as the minimum amount has been subscribed and the amounts payable on the application for the minimum amount so stated has been received by the company by cheque or by other instrument.
3) Further section 39 (2) states that the amount payable on application on every security must not be less than 5% of the nominal value (face value) of the security or such other percentage or amount as may be specified by SEBI by making regulations in this behalf.
4) However, it must be noted that the minimum amount stated in the prospectus as such may not necessarily be the same as the amount payable on application in respect of securities offered.

   On the other hand the moneys payable on application cannot be lower than the minimum amount as stated in the prospectus.
5) Under section 39 (3) if the stated minimum amount has not been subscribed and the sum payable on application, is not received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.
6) Section 40 (3) provides for the deposit of the application moneys received from the public for subscription to the securities offered, in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than adjusting the same against the allotment of securities or refunding the same in case allotment is not made for any reason.

PM: What is 'Minimum Subscription' and "Opening of Subscription List" in Public Issue of Shares?[V.IMP]

Provision: [Section 39 of the Companies Act, 2013]

1) Minimum subscription is the minimum amount out of the total amount of securities issued by a company which is stated in the prospectus as such.
2) A company under section 39 (1) of the Companies Act, 2013 cannot proceed with the allotment of securities to the public unless the amount stated in the prospectus as the minimum amount has been subscribed and the amounts payable on the application for the minimum amount so stated has been received by the company by cheque or by other instrument.
3) The purpose behind the provision of minimum subscription is to prevent a company from starting its business without adequate financial resources.
4) This is also an investor protection measure as the company has to refund the amounts collected on applications in case the minimum subscription as stated in the prospectus is not received.
5) There is a time gap between the date when an issue is opened and when the issue closes. The opening of the issue marks the date when the members of the public can begin to make applications for purchasing the securities offered and the closing date is the date after which the company will not accept any further applications.
6) Both these dates are required to be mentioned in the prospectus under section 26 of the Companies Act, 2013. The date on which the offer for securities open is called the opening of the subscription list in a public issue of shares.

PM: In what way does the Companies Act, 2013 regulate and restrict the following in respect of a company going for public issue of shares:
(i) Minimum Subscription, and
(ii) Application Money payable on shares being issued? Explain.

OR

If a company does not receive the minimum subscription, it should refund money received from applicants within such time as may be prescribed.[V.IMP]

Provision: [Section 39 of the Companies Act, 2013]

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

1) No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -
   a) The amount stated in the prospectus as the minimum amount has been subscribed; and
   b) The sums payable on application for such amount has been paid to and received by the company-
2) As per SEBI Regulations, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities.
3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within a period of 15 days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15 % per annum.
4) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.
5) The Company Act, 2013 provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Answer:

If a company does not receive the minimum subscription, it should refund money received from applicants as may Provided in above provision in such manner as may be given in above.

PM: A public limited company which went in for Public issue of shares had applied for listing of shares in three recognised Stock Exchanges and out of it only two had given permission for listing. Can the company proceed for allotment of shares?

Provision: [Section 40 of the Companies Act, 2013]

1) Under section 40 (1) of the Companies Act, 2013 every company making a public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
2) Section 40 (2) further states that where a prospectus states that an application under subsection (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.
3) From the above it is clear that not only has the company to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer.

Explanation & Answer:

Hence, under the Companies Act, 2013 by making the offer of shares before getting the approval from the stock exchanges, it has violated the provisions of section 40 and under section 40 (5) will be punishable with a fine which shall not be less than ₹5 Lakhs but may extend to ₹50 Lakhs and every officer in default shall be punishable with a fine of not less than ₹50,000/- but which may extend upto ₹ 3 Lakhs.

[**Note:** The company seems to have defaulted because the question talks about proceeding with allotment which means that the offer has been made and applications received].

M.18: TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the

Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

Provision: [Section 40 of the Companies Act, 2013]

1) A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
2) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:-
   a) the payment of such commission shall be authorized in the company's articles of association;
   b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
   c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5 % of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed 2.5 % of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
3) the prospectus of the company shall disclose—
   a) the name of the underwriters;
   b) the rate and amount of the commission payable to the underwriter; and
   c) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
4) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
5) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Answer:

The Board of TDL Ltd shall comply with above given provisions of payment of underwriter's commission as per Companies Act, 2013.

M.19: Modem Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares. Examine the validity of the above decision under the provision of the Companies Act, 2013

Provision: [Section 40 of the Companies Act, 2013]

1) Section 40(6) of the Companies Act, 2013 provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed. Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides the conditions.
2) As per Rule 13(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5 % of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
3) The payment of such commission shall be authorized in the company's articles of association & commission may be paid out of proceeds of the issue or the profit of the company or both.

Explanation &Answer:

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

M.18 RTP: Kapoor Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act,2013.

Provision: [Section 40 of the Companies Act, 2013]

1) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:-
   a) the payment of such commission shall be authorized in the company's articles of association;

b) the commission may be paid out of proceeds of the issue or the profit of the company or both;

c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5 % of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed 2.5 % of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

2) the prospectus of the company shall disclose—
   a) the name of the underwriters;
   b) the rate and amount of the commission payable to the underwriter; and
   c) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

3) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;

4) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Explanation & Answer:

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

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

Section 42: Offer or Invitation for Subscription of Securities on Private Placement

Answer Writing Points For Sec 42:

1) Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions.

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

3) Requirements of offer or invitation for subscription of securities on private placement:
   a) According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.
   b) The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding 50 or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the Companies (Prospectus and Allotment of Securities) Rules, 2014.
   c) If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.
   d) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
      i) Have been completed, or
      ii) That offer or invitation has been withdrawn , or
      iii) Abandoned by the company.(Not applicable to specified IFSC Public and IFSC private Companies)
   e) Any Offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this 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.
   f) All monies payable towards subscription of securities under this section

shall be paid through cheque or demand draft or other banking channels but not by cash.

g) A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities.(90 days in case in the case of specified IFSC Public and IFSC Private Companies)

4) Where 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 date of completion of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60th day.

5) Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than-

c) For adjustment against allotment of securities; or

d) For the repayment of monies where the company is unable to allot securities.

6) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filled with the registrar within a period of 30 days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

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

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

Suggestion:

1) 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 two crore rupees, 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.

2) E-Forms to be filled by company under this section:

PAS-4: Private Placement Offer Letter

PAS-5: Record of Private Placement Offer to be kept by the company.

N.18: Discuss the provisions relating to private placement of shares under the Companies Act, 2013.[LDR IMP]

Provision: [Section 42 of the Companies Act, 2013]

1) Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions.

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

3) Requirements of offer or invitation for subscription of securities on private placement:

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

b) The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding 50 or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant

Rules given in the *Companies (Prospectus and Allotment of Securities) Rules, 2014*.

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

d) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-

i) have been completed, or

ii) that offer or invitation has been withdrawn, or

iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)

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

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

g) A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities. (90 days in the case of specified IFSC Public and IFSC Private Companies)

4) Where 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 date of completion of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12 % per annum from the expiry of the 60th day

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

a) for adjustment against allotment of securities; or

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

6) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of 30 days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

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

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

9) 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 2 crore rupees, whichever is lower, and the company shall alsc refund all monies with interest to subscribers within a period of 30 days of the order imposing the penalty.

Answer:

The above provision shall be complied by the company for private placement of shares under the Companies Act, 2013.

Dec.21: Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:

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

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

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

Provision: [Section 42 of the Companies Act, 2013]

1) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.
2) However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.
3) Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.
4) It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
5) Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.
6) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

Explanation & Answer:

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

(ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer. In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

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

MTPOct22: Purple Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures. Being a public company is it possible for Purple Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

Provision: [Section 42 of the Companies Act, 2013]

1) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.
2) However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.
3) Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.
4) It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
5) Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.
6) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

Explanation & Answer:

a) In the given case Purple Limited, though a public company can raise funds through private placement as provisions related to private placement allow even a public company to raise funds through this route.
b) The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons.
c) From this point of view, the company complies the private placement provisions. However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.
d) 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.

Rule 13 of Companies Rules 2014: Payment of Commission

PM: Examine the validity of the following referring to the provisions of the Companies Act, 2013 and/or Rules:
"The Articles of Association of X Ltd. contained a provision that upto 4% of issue price of' the shares may be paid as underwriting commission to the underwriters. The Board of Directors of X Ltd. decided to pay 5% underwriting commission.

Provision: [Rule 13 of Companies (PROSPECTUS AND ALLOTMENT OF SECURITIES) Rules, 2014]

Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

Explanation & Answer:

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid.

PM: The Board of Directors of a company decide to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013? [LDR.IMP]

Provision: [Relevant Rule 13 of the Companies Prospectus and Allotment of Securities rules, 2014]

1) A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:-
   a) the payment of such commission shall be authorized in the company's articles of association;
   b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
   c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5 % of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed 2.5 % of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
2) the prospectus of the company shall disclose—
   a) the name of the underwriters;
   b) the rate and amount of the commission payable to the underwriter; and
   c) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
3) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
4) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Explanation:

1) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
2) The same rules allow the commission to be paid out of proceeds of the issue or the profit of the company or both.

Answer:

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid while the decision to pay out of the proceeds of the share issue is valid.'

Chapter 4:
Share Capital and Debentures

Section 43: Kinds of Share Capital

Answer Writing Points For Sec 43:

1) Share capital of company limited by shares shall be of two kinds:
   - a) Equity share capital-
     - i) With voting rights or;
     - ii) With differential rights as to dividend, voting or otherwise in accordance with such rules as may prescribed
   - b) Preference share capital
2) However, nothing contained in this act shall affect the rights of preference shareholders who are entitled to participate in the proceeds of the winding up before the commencement of this act.

N07,M08: State whether the following statements are true or false:

a. **A public company cannot issue equity shares with differential rights as to dividend**
b. **A Public Company can issue either redeemable or irredeemable preference shares.**

Provision: [Section 43 of the Company Act, 2013]

a. **Answer:**
False - Those with voting rights; orthose with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

b. **Answer:**
False - A company limited by shares may, if so authorized by its articles, issue preference shares which are liable to be redeemed within a period not exceeding 20 years from the date of their issue subject to such conditions as may be prescribed.

Section 46: Certificate of shares

Answer Writing Points For Sec 46:

1) Share certificate is a prime facie evidence for tittle & ownership to shares of such company.
2) If any share certificate were worn out, de-faced, mutilated or torn or if there were no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof.
3) However, in case it is lost or destroyed, a proof thereof to the satisfaction of the company shall be required.
4) Every certificate shall be issued on payment of Rs.20.
5) The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, without the prior consent of the Board and with payment of such fees as the Board thinks fit, not exceeding Rs.50 per certificate.
6) Where such certificate is issued it shall be stated on face of it and recorded in Register that it is "duplicate issued in lieu of share certificate No.....". and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate.
7) Duplicate share certificates shall be issued
   a) In case of unlisted companies, within a period of 3 months and
   b) In case of listed companies it shall be issued within 45 days from the date of submission of complete documents with company respectively.

Suggestion:

E-Forms to be filled by company under this section:

SH-1: Certificate of shares for physical form

SH-2: Duplicate share certificate for Physical form

N11,PM: What is the law and procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 2013 in case the original share certificate is lost or destroyed? [LDR IMP]

Provision:[Section 46 of the Company Act, 2013 & Rule 6 of the Companies (Share Capital & Debentures) Rules, 2014]

1) If any share certificate be worn out, de-faced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof.
2) However, in case it is lost or destroyed, a proof thereof to the satisfaction of the co. shall be required.
3) Every certificate shall be issued on payment of Rs.20.
4) The duplicate share certificate shall not be issued in lieu of those that are lost or destroyed, without the prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding Rs.50 per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced.
5) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is "duplicate issued in lieu of share certificate No.....". and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate.
6) In case unlisted companies, the duplicate share certificates shall be issued within a period of 3 months and in case of listed companies such certificate shall be issued within 45 days from the date of submission of complete documents with the company respectively.

Answer:

Above are the procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 2013 in case the original share certificate is lost or destroyed.

N09,PM:Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

Provision: [Section 46 of the Companies Act, 2013]

1) A share certificate is a prima facie evidence of the fact that the person named therein is the owner of such number of shares as are specified therein.
2) It must be issued under the common seal of the company.
3) However, a forged transfer is a nullity. It does not give the transferee any title to the shares. Similarly any transfer made subsequently by the transferee will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Case Law:

If the company acts on a forged transfer and removes the name of the real owner from the Register of Members, then the company is bound to restore the name of the real owner as the holder of the shares and to pay him any dividends which he ought to have received **(Barton v. North Staffordshire Railway Co. 38 Ch D 456).**

Explanation:

In the given case, therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z' have any rights against the company even though they are bona fide purchasers.

Answer:

Since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.

M.19 OLD: Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013.[IMP]

Provision: [Section 46 of the Companies Act, 2013]

1) A share certificate is a prima facie evidence of the fact that the person named therein is the owner of such number of shares as are specified therein.
2) It must be issued under the common seal of the company.
3) However, a forged transfer is a nullity. It does not give the transferee any title to the shares. Similarly any transfer made subsequently by the transferee will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Case Law:

If the company acts on a forged transfer and removes the name of the real owner from the Register of Members, then the company is bound to restore the name of the real owner as the holder of the shares and to pay him any dividends which he ought to have received **(Barton v. North Staffordshire Railway Co. 38 Ch D 456).**

Explanation:

In the above case, therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

Answer:

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

N21 RTP: 500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?

Provision: [Section 46 of the Companies Act, 2013]

1) According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.
2) Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.
3) However, a forged transfer is a nullity. It does not give the transferee any title to the shares. Similarly, any transfer made by transferee to transferor will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.
4) Therefore, if the company acts on a forged transfer and removes the name of the real owner from the Register of Members, then the company is bound to restore the name of real owner as the holder of the shares and to pay him any dividends which he ought to have received.

Explanation & Answer:

1) In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name.
2) However, neither Mr. Amit nor Mr. Abhi have any rights against the company even if they are bona fide purchasers. But as Mr. Abhi acted on the faith of share certificate issued by company, he can demand compensation from Mr. Amit.

Share Warrant and Share Certificate

Answer Writing Points For Share Warrant and Share Certificate:

Sr.No	Share certificate	Share warrant
1	A share certificate is a prima facie evidence of document of title, stating that the holder is entitled to specified number of shares	A share warrant is a bearer document stating that the holder is entitled to certain number of shares specified therein.
2	Share certificate can be issued by a public and private company	Share warrant can be issued only by public companies.
3	A share certificate can be issued for a fully paid and partly paid up shares	A share warrant can be issued only with respect of fully paid up shares
4	The holder of a share certificate is normally a member of the company	The bearer of a share warrant can be a member only if the articles provide.
5	A share certificate is not a negotiable instrument	A share warrant is by mercantile usage a negotiable instrument
6	The shares can be transferred by execution of a transfer deed and its delivery along with the share certificate. The transfer is complete when it is registered by the company.	A share warrant can be transferred by mere delivery and no registration of transfer with the company is required.

M03, N05, N07: What do you understand by "share–warrant"? How is a share–warrant different from "share certificate"? [IMP]

Answer:

Share Warrant:

1) A share warrant is a bearer document stating that the holder is entitled to certain number of shares specified therein.
2) Share warrant can be issued only by public companies.
3) A share warrant can be issued only with respect of fully paid up shares
4) The bearer of a share warrant can be a member only if the articles provide.
5) A share warrant is by mercantile usage a negotiable instrument
6) A share warrant can be transferred by mere delivery and no registration of transfer with the company is required.
7) No stamp duty is payable on transfer of a share warrant

Share Certificate:

1) A share certificate is a prima facie evidence of document of title, stating that the holder is entitled to specified number of shares
2) Share certificate can be issued by a public and private company
3) A share certificate can be issued for a fully paid and partly paid up shares
4) The holder of a share certificate is normally a member of the company
5) A share certificate is not a negotiable instrument.
6) The shares can be transferred by execution of a transfer deed and its delivery along with the share certificate. The transfer is complete when it is registered by the company.
7) Stamps duty is payable on transfer of shares specified in a share certificate
8) In order to qualify as a Director, the person should acquire shares in his own name.

PM: Differentiate between 'Share Warrant' and 'Share Certificate' under the Companies Act, 2013.

Answer:

Distinction between a share warrant and a share certificate:

Sr.No	SHARE CERTIFICATE	SHARE WARRANT
1	A share certificate is a prima facie evidence of document of title, stating that the holder is entitled to specified number of shares	A share warrant is a bearer document stating that the holder is entitled to certain number of shares specified therein.
2	Share certificate can be issued by a public and private company	Share warrant can be issued only by public companies.

3	A share certificate can be issued for a fully paid and partly paid up shares	A share warrant can be issued only with respect of fully paid up shares
4	The holder of a share certificate is normally a member of the company	The bearer of a share warrant can be a member only if the articles provide.
5	A share certificate is not a negotiable instrument	A share warrant is by mercantile usage a negotiable instrument
6	The shares can be transferred by execution of a transfer deed and its delivery along with the share certificate. The transfer is complete when it is registered by the company	A share warrant can be transferred by mere delivery and no registration of transfer with the company is required.

Section 47: Voting Rights of Members

Answer Writing Points For Sec 47:

1) Section 47 governs voting rights of members. Normally every holder of an equity share has right to vote, on every resolution placed before the company.
2) If the voting on resolution is put to a poll, his voting right in that case shall be in proportion to his share in the paid up capital of the company.
3) A member may exercise his right to vote personally or through a proxy.
4) Preference shareholder can vote only if it directly affects their rights attached to the preference share capital.
5) Preference shareholder can also vote in case of
   a) any resolution for the winding up of the company or for the repayment or
   b) reduction of its preference share capital, it shall be in proportion to his share in the paid-up preference share capital of the company.
6) Further, the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.
7) Provided further that preference shareholders given a right to vote on all the resolution placed before the company, if in case dividend in respect of their shares has not been paid for a period of two years or more.

PM: What are the rights of preference shareholders if dividends remained unpaid? Would your answer be different if preference shares are non-cumulative?

Or

PM: ABC Ltd. has not given dividend to its preference shareholders. In this regard state the rights of preference shareholders and non-cumulative Preference Shareholders on dividend.[V.IMP]

Provision: [Section 47 of the Companies Act, 2013]

1) Every member of a company limited by shares who is holding preference shares shall be entitled to vote on only those resolutions placed before company which affect directly rights attached to preference shares held by him.
2) Further, in case of any resolution by a poll on the winding up of the company or for the repayment or reduction of equity or preference share capital, his voting right shall be proportionate to his share in the paid up preference share capital of the company.
3) Provided that where dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all resolutions placed before company.

Answer:

The above provision lays down the rights of preference shareholders who have not been paid dividend for a continuous period of 2 years and this does not change whether the shares are cumulative or noncumulative.

[Note: Vide Notification G.S.R. 464 (E) dated 5th June 2015, in case of private companies section 47, shall not apply where memorandum/ articles of private company so provides. Also Vide Notification G.S.R. 465 (E) dated 5th June 2015, in case of Nidhis, Section 47(1)(b) which deals with the right of equity

shareholders, shall apply subject to modification that no member shall exercise voting rights on poll in excess of 5% of total voting rights of equity shareholders]

PM: Examine the different aspects of the voting rights of a member.[V.IMP]

Provision: [Section 47 of the Companies Act, 2013]

1) Section 47 governs the voting rights of members. Under section 47 (1) every holder of an equity share has the right to vote, on every resolution placed before the company.
2) if the voting on the resolution is put to a poll his voting right in that case shall be in proportion to his share in the paid up capital of the company. A member may exercise his right to vote personally or through a proxy.
3) Section 47 (2) provides for every holder of preference shares in the share capital of the company has a right to vote only on a resolution which directly affects the rights attached to the preference share capital.
4) The sub section further provides that in the case of any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital, the preference shareholder's voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.
5) Further, the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.
6) Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Section 48: Variation of Shareholders' Rights

Answer Writing Points For Sec 48:

1) Where a share capital of the company is divided into different classes of shares, rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than 75 % of the issued shares of that class or
2) By means of a special resolution passed at a separate meeting of the holders of the issued shares of that class
3) if provision with respect to such variation is contained in the memorandum or articles of the company; or
4) In the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class
5) Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of 75 % of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
6) Where the holders of not less than 10 % of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:
7) Provided that an application under this section shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

N.18RTP: Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

Provision: [Section 48 of the Companies Act, 2013]

1) Where a share capital of company is divided into different classes of shares, rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:
   a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
   b) in absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:
2) Provided that if variation by one class of shareholders affects rights of any other class of shareholders, consent of three-fourths of such other class of shareholders shall also be obtained and provisions of this section shall apply to such variation.
3) Where holders of not less than 10 % of the issued shares of a class did not consent to such variation or vote in favour of special resolution for variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:
4) Provided that an application under this section shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Answer:

Growmore Limited shall obtain the above consent and follow the above provisions for variation of shareholders rights

M.18: Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.[LDR IMP]

Provision: [Section 48 of the Companies Act, 2013& Rule 4 of the Companies (Share capital and Debenture) Rules, 2014]

1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-
   a) the articles of association of the company authorizes the issue of shares with differential rights;
   b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
   c) However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
   d) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
   e) the company is having consistent track record of distributable profits for the last 3 years;
   f) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
   g) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
   h) 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 amount in IEPF to the Central Government;

2) 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.
3) Company has not been penalized by Court or Tribunal during last 3 years of any offence under the RBI Act, 1934, the SEBI Act, 1992, the SCRA Act, 1956, the FEMA Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Answer:
Hence, to issue equity shares with differential voting rights above condition as given in provisions shall be complied by Company under The Companies Act, 2013.

Section 49: Uniform calls for same class of shares

Answer Writing Points For Sec 49:

1) A call shall be made uniformly on all the shares falling under the same class.
2) Shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

Section 50:Call in Advance

Answer Writing Points For Sec 50:

1) A company may accept from any member the whole or part of the amount remaining unpaid on any shares held by him if it is authorised by its articles and even if no part of that amount has been called up.
2) Further if a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him until that amount has been called up.
3) When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:
   a) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up.
   b) The shareholder's liability to the company in respect of the call for which the amount is paid is distinguished.
   c) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
   d) The amount received in advance of calls is not refundable.
   e) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
   f) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

Section 51: Payment of dividend in proportion to amount paid up

Answer Writing Points For Sec 51:

1) The dividend is paid as a proportion of nominal value of shares.
2) However the articles of a company may provide that the dividend shall be paid in proportion to the amount paid up on each share.

N05,PM:"Moonstar Ltd." is a authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. ₹A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by "Moonstar Ltd.".
Referring to the provisions of the Companies act, 2013, state the rights and liabilities of Mr. A, which will arise on the payment of calls made in advance.[V.IMP]

Provision: [Section 50 of the Company Act, 2013 & is as follows]

1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
2) The Companies Act recognizes the right of a company to receive calls in advance provided it is authorized by its Articles to do so.

3) Further if a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him until that amount has been called up.
4) When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:
   a) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up.
   b) The shareholder's liability to the company in respect of the call for which the amount is paid is distinguished.
   c) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
   d) The amount received in advance of calls is not refundable.
   e) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
   f) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

Explanation:

In the given case Mr. A, a shareholder of the 'Moonstar Ltd'., has deposited in advance the remaining amount due on his shares without any calls made by 'Moonstar Ltd'. 'Moonstar Ltd' was authorized to accept the unpaid calls by its articles. Hence, there is no irregularity in the transaction.

Answer:

However, Mr A will not derive any additional voting rights by virtue of such advance calls paid by him.

N.18 OLD: PQR Ltd. had issued 10000 shares of ₹ 10 each, on which company called up ₹ 7.50 per share. However, Mr. C, a shareholder of PQR Ltd., deposited in advance the remaining amount due on his shares without any calls made by PQR Ltd. Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr. C, which will arise by the payment of calls made in advance.

Provision [Section 50 of the Company Act, 2013 & is as follows]

1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
2) The Companies Act recognizes the right of a company to receive calls in advance provided it is authorized by its Articles to do so.
3) Further if a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him until that amount has been called up.
4) When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:
   a) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up.
   b) The shareholder's liability to the company in respect of the call for which the amount is paid is distinguished.
   c) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
   d) The amount received in advance of calls is not refundable.
   e) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
   f) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

Answer:

Above rights and liabilities of Mr C, will arise by the payment of calls made in advance under The Companies Act, 2013.

Section 52: Application of Premium money received

Answer Writing Points For Sec 52:

1) There is no law which requires a company to issue its shares above par because they are saleable at a premium in the market. It is a question for the directors to decide. **[Hilder v. Dexter [1902]**
2) No provision in articles is required.
3) Aggregate amount of the premium received shall be transferred to a "securities premium account".
4) The provisions of the act w.r.t. transfer of premium to 'Securities Premium Account' shall apply irrespective of the fact that the securities have been issued for cash or for consideration other than cash.
5) If 'Securities Premium Account is used for any purpose other than purposes permitted under the Act, it shall be treated as Share Capital of the company and provisions of act as are applicable to reduction of share capital shall apply.
6) Securities Premium Account' can be utilized for the following purposes –
   a) Issuing fully paid bonus shares to members,
   b) Writing off the preliminary expenses,
   c) Writing off the expenses of, or commission paid, or discount allowed on issue of shares or debentures,
   d) Providing for the premium payable on the redemption of redeemable preference shares or debentures,
   e) For buy back of shares u/s 68.
7) The class of companies which are prescribed and whose financial statement comply with accounting standards prescribed for such class of companies shall utilise premium for following purposes-
   a) Issuing fully paid bonus shares to members,
   b) Writing off expenses of, or commission paid, or discount allowed on issue of shares or debentures,
   c) For buy back of shares u/s 68.

M12,PM: Explain the provisions of the Companies Act, 2013, relating to the utilization, by a company, of the amount standing to the credit of Securities Premium Account.

Or

PM: Whether a company can issue shares at premium? State the purposes for which the Share Premium account can be used under the provisions of the Companies Act, 2013.

Or

MTPM23: State the purposes for which the securities premium account can be utilized?

Provision [Section 52 of the Company Act, 2013]

1) There is no restriction contained in the Companies Act, 2013 on sale of shares at a premium, i.e. at a price higher than their nominal value. However, SEBI guidelines have to be observed as they indicate when an issue has to be at a premium.
2) According to the guidelines issued by SEBI a company may offer shares to the public at a premium under the following circumstances:
   a) The company or its promoter company has a minimum of 3 year consistent record of profitable workings;
   b) The promoters take up at least 50% of the shares offered in the issue;
   c) The entire issue is on the same terms including the premium charged;
   d) The justification for the proposed premium is fully justified and explained in the prospectus.
3) The premium on any shares issued may either be received in cash or in kind. Section 52 (1) of the Companies Act, 2013 requires a company which issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account".
4) Under section 52 (2) the Securities Premium Account may be applied by the company only for the following purposes:
   a) Towards the issue of unissued shares of the company to the members of the company a fully paid bonus shares; or
   b) In writing off the preliminary expenses of the company; or
   c) In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

d) In providing for the premium payable on the redemption of any redeemable preference shares or debentures of the company; or
e) For the purchase of its own shares or other securities under section 68 of the Companies Act, 2013

Answer:

Hence from given provision it is proved that company can issue its share on premium & Securities Premium can used for the purpose as given in point 4 above.

N02,M11: Whether shares at premiums can be issued by a company? What are the purposes for which the share premium account can be used under the provisions of the Companies Act, 2013? [LDR IMP]

Provision: [Section 52 of the Companies Act, 2013]

1) There is no law which requires a company to issue its shares above par because they are saleable at a premium in the market. It is a question for the directors to decide. - **Hilder v. Dexter [1902]**
2) No provision in articles is required.
3) Aggregate amount of the premium received shall be transferred to a "securities premium account".
4) The provisions of the act w.r.t. transfer of premium to 'Securities Premium Account' shall apply irrespective of the fact that the securities have been issued for cash or for consideration other than cash.
5) If 'Securities Premium Account is used for any purpose other than purposes permitted under the Act, it shall be treated as Share Capital of company and provisions of act as are applicable to reduction of share capital shall apply.
6) Securities Premium Account' can be utilized for the following purposes –
   a) Issuing fully paid bonus shares to members,
   b) Writing off the preliminary expenses,
   c) Writing off the expenses of, or commission paid, or discount allowed on issue of shares or debentures,
   d) Providing for the premium payable on the redemption of redeemable preference shares or debentures,
   e) For buy back of shares u/s 68.
7) The class of companies which are prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies shall utilise the premium for the following purposes-
   a) Issuing fully paid bonus shares to members,
   b) Writing off the expenses of, or com-mission paid, or discount allowed on issue of shares or debentures,
   c) For buy back of shares u/s 68.

Explanation & Answer:

Hence, a company can issue shares at premium. Share premium account can be used for the above mentioned purposes under the provisions of the Companies Act, 2013.

M.19 RTP: Walnut Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹ 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

Or

M.18 OLD:WW Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹ 3 crores in its Share Premium Account as on 31-3-2017. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

Provision: [Section 52 of the Companies Act, 2013]

1) According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and
2) The provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.
3) The securities premium account may be applied by the company—
   a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

b) in writing off the preliminary expenses of the company;
c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
e) for the purchase of its own shares or other securities under section 68

Explanation & Answer:
Hence, a company can issue shares at premium. Share premium account can be used for the above mentioned purposes under the provisions of the Companies Act, 2013.

Section 53: Prohibition on Issue of Shares at Discount

Answer Writing Points For Sec 53:

1) Under section 53 (1) of the Companies Act, 2013 a company cannot issue shares at a discount except as provided in section 54.
2) Under section 53 (2) any share issued by a company at a discount shall be void. Hence, the general rule under section 53 is that a company cannot issue shares at a discount.
3) However, section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely: -
   a) the issue is authorised by a special resolution passed by the company;
   b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
   c) Where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

N.18 OLD: A company cannot issue shares at a discount as per Section 53 of the Companies Act, 2013. Explain the exception to this provision, if any, with reference to Companies Act, 2013.

Provision: [Section 53 of the Companies Act, 2013]

1) Under section 53 (1) of the Companies Act, 2013 a company cannot issue shares at a discount except as provided in section 54.
2) Under section 53 (2) any share issued by a company at a discount shall be void. Hence, the general rule under section 53 is that a company cannot issue shares at a discount.
3) However, section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:-
   a) the issue is authorised by a special resolution passed by the company;
   b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
   c) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

MTPOct22: Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of ` 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ` 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the

suggestion of underwriter and offered the shares at a discount of ` 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

1) Decide whether the advise of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act, 2013

2) What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

Provision: [Section 53 of the Companies Act, 2013]

1) According to section 53 of the Companies Act, 2013, except as provided in section 54, a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.
2) According to section 54 of the Companies Act, 2013, notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the prescribed conditions are fulfilled.

Explanation & Answer:

1) As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advise of the underwriter to issue shares at a discount is not valid.

2) In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

Section 54:Issue of Sweat Equity Share

Answer Writing Points For Sec 54:

1) Equity shares which are issued by a company to its directors or employees at a discount or for consideration other than cash for providing their know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called.

2) Section 54 overrides section 53 i.e. it is an exception to Section 53.

3) Sweat Equity Shares must belong to a class of shares already issued by the company i.e. a whole new class of shares in the name of 'Sweat Equity' cannot be issued.

4) Company shall pass GM-SR for Issue of Sweat Equity Shares.

5) Special Resolution must specify the following particulars –

- **a)** Number of shares
- **b)** Current market price
- **c)** Consideration if any
- **d)** The class of directors or employees (e.g. whole time directors/permanent employees) to whom shares are to be issued

6) Such Issue shall comply with SEBI regulations-for listed companies & Rule 8 of The Companies - for unlisted companies (Share Capital & Debentures) Rules, 2014.

Suggestion:

E-Forms to be filled by company under this section:

SH-3: Issue of Sweat Equity Shares

M04: Can a company issue shares at discount? What is the law, in this relation, laid down in the Companies Act, 2013?

Or

What are the rules relating to issue of shares at a discount?

Or

Whether a company may issue shares at discount? [V.IMP]

Provision: [Section 53, 54 & 2(88) of the Company Act, 2013]

1) A company cannot issue shares at a discount except as provided in section 54.

2) Any share issued by a company at a discounted price shall be void.

3) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely :

- **a)** the issue is authorised by a special resolution passed by the company;
- **b)** the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- **c)** not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

Explanation & Answer:

1) Thus, the general rule under section 53 is that a company cannot issue shares at a discount. However, only sweat equity shares can be issued at a discount under section 54.
2) Section 2 (88) further defines "sweat equity shares" as such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

N03,M05,PM: Explain the meaning of the term "Sweat Equity". What are the provisions of the Companies Act, 2013 relating to issue of ₹Sweat Equity'?[LDR IMP]

Provision: [Section 2(88) & 54 of the Company Act, 2013]

1) Equity shares which are issued by a company to its directors or employees at a discount or for consideration other than cash for providing their know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called.
2) Section 54 overrides section 53 i.e. it is an exception to Section 53.
3) Sweat Equity Shares must belong to class of shares already issued by company i.e. a whole new class of shares in name of 'Sweat Equity' cannot be issued.
4) Issue of Sweat Equity must be authorised by SR.
5) Special Resolution must specify the following particulars –
   a) Number of shares
   b) Current market price
   c) Consideration if any
   d) The class of directors or employees (e.g. whole time directors/permanent employees) to whom shares are to be issued
6) Issue is in compliance with:
   a) SEBI regulations - for listed companies
   b) Rule 8 of The Companies - for unlisted companies (Share Capital & Debentures) Rules, 2014.

N03,M08: A Public Company proposes to issue 'Sweat Equity Shares' to its employees. Referring to the provisions of the Companies Act, 2013, state the conditions required to be fulfilled by the Company.

Provision: [Section 54 of the Company Act, 2013]

1) Section 54 overrides section 53 i.e. it is an exception to Section 53.
2) Sweat Equity Shares must belong to a class of shares already issued by the company i.e. a whole new class of shares in the name of 'Sweat Equity' cannot be issued.
3) Issue of Sweat Equity must be authorised by SR.
4) Special Resolution must specify the following particulars –
   a) Number of shares
   b) Current market price
   c) Consideration if any
   d) The class of directors or employees (e.g. whole time directors/permanent employees) to whom shares are to be issued
5) Issue is in compliance with:
   a) SEBI regulations - for listed companies
   b) Rule 8 of The Companies - for unlisted companies (Share Capital & Debentures) Rules, 2014.

Answer:

Public Company shall comply with the above condition to issue Sweat Equity Shares' to its employees.

PM: State the conditions which must be fulfilled before issuing the shares at discount contained in the Companies Act, 2013.

Provision: [Section 54 of the Companies Act, 2013]

1) Notwithstanding anything contained in Section 53 (Providing for issue of shares at a discount), a company may under section 54 of the Companies Act, 2013 issue sweat equity shares if the following conditions are fulfilled:
   a) The shares being issued belong to a class of shares which have already been issued.
   b) The issue should be authorised by a special resolution passed by the company in general meeting.
   c) The resolution should specify number of shares, current market price, consideration, if any and the class or classes of directors or employees to whom such shares are to be issued.
2) Where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.
3) Under section 54 (2) the rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Answer:

Above condition must be fulfilled before issuing the shares at discount contained in the Companies Act, 2013.

M.19 RTP: Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid- up share capital of ₹ 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.

Provision: [Section 54 of the Companies Act, 2013]

1) equity shares which are issued by a company to its directors or employees at a discount or for consideration other than cash for providing their know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called.
2) Section 54 overrides section 53 i.e. it is an exception to Section 53.
3) Sweat Equity Shares must belong to a class of shares already issued by the company i.e. a whole new class of shares in the name of 'Sweat Equity' cannot be issued.
4) Issue of Sweat Equity must be authorised by SR.
5) Special Resolution must specify the following particulars –
   a) Number of shares
   b) Current market price
   c) Consideration if any
   d) The class of directors or employees (e.g. whole time directors/permanent employees) to whom shares are to be issued
6) Issue is in compliance with:
   a) SEBI regulations - for listed companies
   b) Rule 8 of The Companies - for unlisted companies (Share Capital & Debentures) Rules, 2014.
7) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Answer:

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

N21 RTP: Yellow Pvt. Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up

to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain?

Or

MTP N21: Kat Pvt. Ltd., is an unlisted company incorporated on 2.6.2012. The company have a share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees on 5.7.2021. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provisions for issue of sweat equity shares by a start-up company, with reference to the provisions of the Companies Act, 2013? Explain.

Provision: [Section 54 & of the Companies Act, 2013 & Rule 8 of Companies (Share capital and debentures) Rules, 2014]

1) Sweat Equity Shares is governed by Section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.
2) According to rule 8 (4) proviso, states that a startup company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.
3) According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ nontransferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.
4) Issue of Sweat Equity must be authorised by SR.

Explanation & Answer:

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum 3 years period from the date of allotment.

Section 55: Issue & Redemption of Preference Shares

Answer Writing Points For Sec 55:

1) Authorization is required in AOA for issue of preference shares.
2) Normally Preference shares are issued for redemption in 20 years but company can issue preference shares for more than 20 years but up to 30 years in case such issue is for infrastructural Project as specified under Schedule VI.
3) The company shall redeem its shares within 20 years in case of normal companies. In case of projects under schedule VI company shall redeem such share on annual basis i.e. minimum 10% each year starting from 21st year.
4) No AOA approval is required for redemption of preference shares.
5) Preference shares which are fully paid up only that shares can be redeemed.
6) Redemption of preference shares shall be out of:
   a) Profits available for dividend, or
   b) Proceeds of fresh issue of shares made for the purpose of such redemption.
7) Company shall create Capital Redemption Reserve Under section 69 up to nominal value of such preference shares.
8) Company shall also pay premium on preference shares & such premium should be paid out of Profits or Securities Premium Account under section 52.
9) As per section 64 notice of redemption of preference shares shall be given to ROC within 30 days in form SH-7 along with a copy of altered memorandum.
10) Shares which are not redeemed by company are called unredeemable preference shares. Company can redeem such shares by issuing further preference shares in place of such shares equal to amount due on such shares.
11) On issue of such Further redeemable preference shares, it shall be deemed to redeem the unredeemed preference shares are redeemed.

12) Condition for such issue of further preference shares shall be as follow:
   a) The consent of holders of 75% in value of UPSs is obtained.
   b) The approval of the Tribunal, on a petition made by it in this behalf, is obtained.
   c) The Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.
   d) The issue of further redeemable preference shares or the redemption of preference shares shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

M07,PM: Explain in brief 'Equity Share Capital' and 'Preference Share Capital'.[IMP]

Provision [Sections 43, 47 & 55 of the Companies Act, 2013]

1) The share capital of a company limited by shares shall be of two types:
   a) equity share capital; and
   b) preferential share capital.
2) Further the section provides for two kinds of Equity Share Capital as:
   a) Those with voting rights; or
   b) Those with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.
3) Explanation to section 43 of the Companies Act, 2013 defines the "preference share capital" with reference to the share capital of a company as that part of the issued share capital of the company which carries a preferential right with respect to:
   a) the payment of dividend, either as a fixed amount or as a fixed percentage and which may be tax free or subject to tax;
   b) Repayment in the event of the winding up of the company or repayment of capital.
4) Under section 47 (1) of the Companies Act, 2013 every member of the company limited by shares, who holds equity shares therein, shall have the right to vote on every resolution placed before the company and his voting right on a poll shall be proportionate to his share in the paid up equity capital of the company.
5) On the other hand under section 47 (2) of the Act, every member of a company limited by shares who is holding preference shares shall be entitled to vote on only those resolutions placed before the company which affect directly the rights attached to preference shares held by him.
6) Further, in case of any resolution by a poll on the winding up of the company or for the repayment or reduction of equity or preference share capital, his voting right shall be proportionate to his share in the paid up preference share capital of the company.
7) The Companies Act, 2013 vide section 55 (1) further provides that no company limited by shares shall, after the commencement of this Act, issue any preference shares which are not redeemable. Hence, under the new company law, preference shares must be redeemed.

M22: SKS Limited issued 8% ` 1,50,000; Redeemable Preference Shares of ` 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?
Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Provision [Sections 55 of the Companies Act, 2013]

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

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

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

Explanation & Answer:

a) In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.
b) If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares

Section 56:Transfer and Transmission of Securities

Answer Writing Points For Sec 56:

1) Transmission of shares takes place when shares are transferred under the operation of law, either on the death of the registered shareholder or on his being adjudged as insolvent.
2) Where the holder is a company and it goes into liquidation the shares held by it are transmitted to its official liquidator.
3) Upon the death of a member, the shares of the deceased vest in his legal representatives and his estate becomes liable for calls if the shares are not fully paid up.
4) In a like manner the official assignee or the receiver, as the case may be, is also entitled to be registered as a member in the place of shareholder who has been adjudged as insolvent **[R. W. Key and Sons (1902) IC, 467].**
5) However, the executors or administrators as also the legal representative of a deceased member may decline to be registered as members for various reasons. In that event the legal representatives or the liquidators in case of the winding up of a corporate shareholder shall be entitled to transfer the shares directly

Suggestion:

E-Forms to be filled by company under this section:
SH-4 & SH-5: Instrument of Transfer

M06,N08,PM: Explain the meaning of "Transmission of Shares" under the Companies Act, 2013. In what ways is "transmission of shares" different from "Transfer of Shares".[IMP]

Provision: [Section 56 of the Companies Act, 2013]

1) Transmission of shares takes place when shares are transferred under the operation of law, either on the death of the registered shareholder or on his being adjudged as insolvent.
2) Where the holder is a company and it goes into liquidation the shares held by it are transmitted to its official liquidator.
3) Upon the death of a member, the shares of the deceased vest in his legal representatives and his estate becomes liable for calls if the shares are not fully paid up.
4) In a like manner the official assignee or the receiver, as the case may be, is also entitled to be registered as a member in the place of shareholder who has been adjudged as insolvent **[R. W. Key and Sons (1902) IC, 467].**
5) However, the executors or administrators as also the legal representative of a deceased member may decline to be registered as members for various reasons. In that event the legal representatives or the liquidators in case of the winding up of a corporate shareholder shall be entitled to transfer the shares directly.
6) Distinction between transfer and transmission of shares:

Sr.no	Transfer of shares	Transmission of shares
1	It is affected by a voluntary/deliberate act of the	It takes place by operation of law e.g. due to death, insolvency

	parties by way of a contract.	or lunacy of a member.
2	It takes place of or consideration.	No consideration is involved.
3	The transfer or has to execute a valid instrument of transfer.	There is no prescribed instrument of transfer.
4	As soon as the transfer is complete, the liability of the transfer or ceases.	Shares continue to be subject to the original liabilities.

M.18 OLD: Distinguish between transfer and transmission of shares.

Provision: [Section 56 of the Companies Act, 2013]

Distinction between transfer and transmission of shares:

Sr.no	Transfer of shares	Transmission of shares
1	It is affected by a voluntary/deliberate act of the parties by way of a contract.	It takes place by operation of law e.g. due to death, insolvency or lunacy of a member.
2	It takes place for consideration.	No consideration is involved.
3	The transfer or has to execute a valid instrument of transfer.	There is no prescribed instrument of transfer.
4	As soon as the transfer is complete, the liability of the transfer or ceases.	Shares continue to be subject to the original liabilities.

M07,PM:X, a registered shareholder of Y Limited left his share certificates with his broker. A forged the transfer deed in favour of Z, accompanied by these share certificates lodged the transfer deed along with the share certificates with the company for registration. The Company Secretary, who had certain doubts, wrote to X informing him of the proposed transfer and in the absence of a reply from him (X) within the stipulated time, registered the transfer of shares in the name of Z. Subsequently, Z sold the shares to J and J's name was placed in the register of shareholders. Later on, X discovered that forgery has taken place. Referring to the provisions of the Companies Act, 2013, state the remedy available to X and Z in the given case. Explain

Provision: [Section 46 & 56 of the Companies Act, 2013]

1) A share certificate is a prima facie evidence of the fact that the person named therein is the owner of such number of shares as are specified therein.
2) It must be issued under the common seal of the company.
3) However, a forged transfer is a nullity. It does not give the transferee any title to the shares. Similarly any transfer made subsequently by the transferee will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Case Law:

X can also claim any dividend, which may not have been paid to him during the intervening period. **(Barton Vs North Staffordshire).**

Explanation & Answer:

1) A forgery is a nullity in law and does not give any title to the persons who acquire an asset by forgery even if they have acted in good faith irrespective of the number of transactions done. In the present case, in spite of all transactions happening, X will be restored as the member by the company.
2) Remedies available to X:

   Since a forged transfer is a nullity, it does not pass any legal title to the transferee. The true owner can have his name restored on the register of member. A forged document can never have any legal effect.

N07,PM:How nomination facility shall operate in case of transmission of shares under the provisions of the Companies Act, 2013?

Or

N03,PM: Examine the provisions of the Companies Act, 2013 regarding 'nomination' in case of transmission of shares[IMP]

Provision [Section 56 of the Company Act, 2013]

1) Under the Companies Act, 2013 a company is required to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.
2) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal

representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

3) Under the Companies Act, 2013 the company must register the shares either in favour of the legal representative as the nominee of the deceased member or in favour of a third person to whom the shares have been transferred by the legal representative.
4) The Companies Act recognizes the ownership of the shares with the legal representative whether registered or not.
5) This means that a person who has acquired the right to the securities of a member by the operation of any law can further transfer those shares to a third person without being registered as a member himself.
6) Transmission of shares generally happens when a person acquires the shares of a deceased member by virtue of being his legal representative.
7) In case the shares are not registered in the name of the legal representative though his ownership is undisputed, he will not have any voting rights unless the shares are registered in his name.

M08,PM: Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of 4 months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?

Provision [Section 56 of the Companies Act, 2013]

1) Every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of 1 month from the date of receipt by the company of the instrument of transfer.
2) Further, where any default is made in complying with the provisions which deals with transfer and transmission of shares,
   a) the company shall be punishable with fine which shall not be less than Rs. 20,000 but which may extend to Rs. 5,00,000 and
   b) every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1,00,000.
3) The jurisdiction binding on the company is that of the state in which the registered office of the company is situated.

Case Law:

The facts of the given case are similar to **H.V. Jaya Ram Vs. ICICI Ltd., 1998**. In this case the Special Court for Economic Offences in the State of Karnataka rejected the appellant's complaint against the respondent company on the ground that since the company had its registered office at Mumbai it is only the court which has territorial jurisdiction over the registered office of the company that can entertain the petition and not the court located in the State of Karnataka where the shareholder is residing. The High Court also upheld the order of the Special Court. On appeal Supreme Court held that cause of action for failure to deliver share certificate arises where the registered office of the company is situated and not in the jurisdiction of the Court located in the place where the complaint resides.

Explanation & Answer:

Hence, as per given case study and provision, Ramesh though resident of Delhi his Registered office is situated in Mumbai therefore in the given case the Delhi court is not competent to take action in the matter and Ramesh need to file complaint about the same in the court of Mumbai.

Section 57: Punishment For Personation of shareholder

Answer Writing Points For Sec 57:

1) If any person deceitfully personates the owner of any security or interest in a company or of any share warrant or coupon issued in pursuance of this act;
2) And thereby obtains or attempts to obtain any such security or interest or any

such share warrant or coupon or receives or attempts to receive any money due to any such owner.

3) He shall be punishable with:
   a) Jail up to 1 year may extend up to 3 years.
   b) Fine of ₹100000 maximum up to ₹500000.

Section 58: Refusal of registration and appeal against refusal

Answer Writing Points For Sec 58:

1) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
2) In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.
3) Under section 58(4), if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
4) Section58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
   a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
   b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

PM: State the differences in restrictions in transfer and effect of refusal to transfer of shares in a public and a private company?

Provision [Section 56 of the Companies Act, 2013]

2) In simple words the restriction in a transfer of shares means the conditions that must be met before shares can be transferred by a shareholder to another person.
3) Such restrictions are applicable to private companies within the definition of such companies under section 2(68) of the Companies Act, 2013. Restrictions reduce the freedom in transferring shares.
4) Refusal to transfer of shares on the other hand, means an irregularity in a particular transaction which renders the registration of the transfer of shares impossible until the irregularity is removed.
5) Refusal to register a transfer of shares is an act of another wise permitted transaction whereas a restriction on a transfer is an obstacle to the transaction itself.
6) Therefore, a shareholder may appeal to the Tribunal under section 58 (5) against a refusal to transfer but there is no remedy against a restriction imposed on transfer of shares in the Articles.
7) It may be mentioned that restrictions on transfer are a distinguishing feature of private companies whereas under section 58(2) the securities of a public company are freely transferable.

PM: A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X. or Mr. Y respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.[V.IMP]

Provision: [Section 58 of the Companies Act, 2013]

1) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
2) In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

3) Under section 58(4), if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
4) Section58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
   a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
   b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

Answer:
In the present case Mr. X can make an appeal before the tribunal and claim damages.

PM: A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X. or Mr. Y respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.

Provision: [Section 58 of the Companies Act, 2013]
1) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
2) In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.
3) Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
4) Section58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
   a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
   b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;.

Answer:
In the present case Mr. X can make an appeal before the tribunal and claim damages.

M.18 Rtp: Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms.Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr.Nilesh or Ms.Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Or

MTP N21: Mr. Nirmal has transferred 1000 equity shares of Perfect Private Limited to his sister Ms. Mana. The company did not register the transfer of shares and also did not send a notice of refusal to Mr. Nirmal or Ms. Mana within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company?

Provision: [Section 58 of the Companies Act, 2013]
1) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
2) In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

3) Under section 58(4), if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
4) Section58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
   a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
   b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;.

Answer:
In the present case Ms. Mukta/ Ms. Mana can make an appeal before the tribunal and claim damages.

MTP N.19: Mr. Transferor has transferred 1000 shares of Perfect Ltd. to Ms. Receiver. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Transferor or Ms. Receiver respectively within the prescribed period. Examine the given situation and discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Provision: [Section 58 of the Companies Act, 2013]
1) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.
2) In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.
3) Under section 58(4), if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
4) Section58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—
   a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
   b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

Answer:
In the present case Ms. Receiver can make an appeal before the tribunal and claim damages.

M.18: Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

Provision: [Section 58 of the Companies Act, 2013]
1) According to Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.
2) Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order:

a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or
b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

Explanation & Answer:

In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Section 59:Rectification of Register of Members

Answer Writing Points For Sec 59:

1) Rectification of register of members shall occur:
   a) If the name of any person is, without sufficient cause, entered in the register of members of a company, or
   b) after having been entered in the register, is, without sufficient cause, omitted therefrom, or
   c) if a default is made, or unnecessary delay takes place in entering in the register,
2) Such person whose name is omitted or not entered or unnecessary delayed may appeal in such form as may prescribed to Tribunal or to a competent court outside India in respect of rectification of foreign register of members.
3) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order:
   a) either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of 10 days of the receipt of the order or
   b) direct rectification of the records of the depository or
   c) the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.
4) If the company is; listed & shares are in dematerialized form, then NCLT will pass an order to alter the register and file the same to NCDL or CDSL with approval of SEBI.

N02:A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to B. Whether the company can refuse? Decide the liability of A' and of the company towards B'.[IMP]

Provision [Sections 59 of the Companies Act, 2013]

1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register,
2) the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.
3) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of 10 days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.
4) A forged transfer is a nullity. It does not give the transferee any title to the shares. Similarly any transfer made subsequently by the transferee will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Explanation:

1) A forged transfer is a nullity in law. It does not give the transferee concerned any title to the shares. Since the forgery is an illegality therefore it cannot be a source of a valid transfer of a title.
2) Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate. Even then the illegality cannot be converted into legality.

Answer:

Therefore, in this case company is right to refuse to do the transfer of the shares in the name of the transferee B without any liability.
As regards the liability of A incurs a criminal liability under the Indian Penal Code & make compensation to B for the same.

Section 61:Power of Limited Company to Alter its Share Capital

Answer Writing Points For Sec 61:

1) Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:
   - **a)** increase its authorized share capital by such amount as it thinks expedient;
   - **b)** consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
   - **c)** convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination
   - **d)** sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum.
   - **e)** cancel shares which, at the date of passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
2) Further, under section 64, where a company alters its share capital in any of the above mentioned ways, company shall file a notice in prescribed form with Registrar within 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
3) Alteration of MOA specifies a GM-SR for alteration of any clause including capital clause.
4) But under section 61 Ordinary resolution is sufficient for alteration of capital clause as section 61 overrides section 13 (i.e. Specific section shall override the general section) therefore only GM-OR is sufficient.

MTPN.19: The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered.[LDR IMP]

Provision [Section 61 of the Companies Act, 2013]

1) Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:
   - **a)** increase its authorized share capital by such amount as it thinks expedient;
   - **b)** consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
   - **c)** convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination
   - **d)** sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum.
   - **e)** cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
2) Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
3) The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of section 13 of the Companies Act, 2013.

4) But under section 61 Ordinary resolution is sufficient for alteration of capital clause as section 61 overrides section 13 (i.e. Specific section shall override the general section) therefore only GM-OR is sufficient.

Answer:

The Directors of Mars India Ltd can alter its share capital by various ways as given in the above provisions of Companies Act,2013.

N.17 OLD: Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ₹ 100/- each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the Company in the share market and requested the Company to reduce the face value of each share to ₹10/- and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the Company can alter its share capital as per the provisions of the Companies Act, 2013

Provision [Section 61 of the Companies Act, 2013]

As per section 61 of the Companies Act, 2013, a limited company having share capital may, if so authorised by its articles, may alter its memorandum in its general meeting so as to divide all or any of its share capital of a larger amount than its existing shares or sub-divide the whole or any part of its shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

Explanation& Answer:

1) In the given instance, shareholders of A Limited in the Annual General Meeting, requested the company to reduce the face value of each shares (i.e. from ₹ 100 to ₹ 10) and increase in the number of shares, then is fixed by the memorandum (i.e., from 10 lacs to 1 crore).
2) According to the above stated provision, it is possible on the part of the company to alter its share capital by sub-dividing its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, provided it is authorised by its articles.
3) The company has to alter its memorandum in its general meeting as per the procedure contained in the provisions of section 13 of the Companies Act, 2013.

N22: Anika Limited has an Authorized Capital of 10,00,000 equity shares of the face value of `100 each. Some of the hides expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the mock made and requested the company to reduce the face value of each share to `10 and increase the number of shares to 1,00,00,000. Examine, whether the request of the shareholders is considerable and if so, how the company can alter its share capital as per the provisions of the Companies Act 2013?

Provision [Section 61 of the Companies Act, 2013]

1) According to Section 61(1)(d) of the Companies Act, 2013 (the Act), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum.
2) However, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
3) Section 64 of the Act states that a company shall, within 30 days of its share capital having been altered in the manner provided in Section 61 (1), give notice to the Registrar in prescribed form along with an altered memorandum.

Explanation& Answer:

a) In the given situation, shareholders of Anika Limited, in the AGM requested Company to reduce face value of each share (from Rs.100 to Rs.10) & increase number of shares than fixed by memorandum (from 10 Lakh to 1 crore).
b) According to the above provision, Anika Limited, having authorized capital of 10,00,000 equity shares (face value ` 100 each) can reduce face value of each

share to ` 10 each and increase shares to 1,00,00,000 [thereby keeping total amount of authorized share capital to ` 10,00,00,000], if authorised by AOA. Hence, the request of the shareholders is considerable.

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

d) But under section 61 Ordinary resolution is sufficient for alteration of capital clause as section 61 overrides section 13 (i.e. Specific section shall override the general section) therefore only GM-OR is sufficient.

M22: As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ` 100 Lakh divided into 10 Lakh equity shares of ` 10 each. The subscribed and paid-up share capital on that date is ` 80 Lakh divided into 8 Lakh equity shares of ` 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid. In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to

(i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and

(ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.

Provision [Section 61 of the Companies Act, 2013]

1) According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association.

2) The provisions are as under:

a) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

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

Explanation:

a) According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT.

b) The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal is invalid.

Answer:

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

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

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

M.19 OLD: Rashi Computers Limited was incorporated in the year 2018 having paid up share capital of ₹10 crores. Now the company wants to convert its share capital into stock. Can the company do so? State also whether the company may create stock as its capital at the time of incorporation.

Provision [Section 61 of the Companies Act, 2013]

1) Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:
   a) Increase its authorized share capital by such amount as it thinks expedient;
   b) Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.
   c) Convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination
   d) Sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
   e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
2) The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of section 13 of the Companies Act, 2013.

Explanation& Answer:

1) Hence, Rashi Computers Limited incorporated in the year 2018 having paid up share capital of ₹10 Crores can convert its share capital into stock by provision under section 61(1)(c) of the Act.
2) No, the company cannot create stock as its capital at the time of incorporation as in the Memorandum of Association, the number of shares has to be written along with the subscribers name. The shares can be converted into stock on a later date but the company cannot be incorporated with stock.

Section 62:Further Issue of Share Capital

Answer Writing Points For Sec 62:

1) Further issue of share capital can be made for
   a) Existing shareholders
   b) Existing employees
   c) Third person
2) Company shall pass GM-SR for further issue of share capital.
3) Offer shall be made by notice specifying the no. of shares offered.
4) Time limit given to accept the offer shall not less then 15 days or such lesser number of days **as may be prescribed** but not more than 30 days of offer.
5) Notice shall be sent to shareholders through speed post or electronical mode at least 3 days before the opening issue.
6) Unless otherwise provided in AOA the shareholders will have a right of renouncement and same will be mentioned in the notice.
7) Nothing in section 62 shall restrict the power of the company to allot shares on account of conversion of loans or debentures into shares, provided that-
   a) The terms of issue of such debentures or loans contained a term of such conversion in future, and
   b) Such term was approved by the company by passing a SR before issuing such debentures or loans.

Suggestion:

E-Forms to be filled by company under this section:

SH-6: Issue of ESOP/ESPS.

M06,PM: Mars India Ltd. owed to Sunil Rs. 1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs. 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013.

Provision [Section 62 of the Companies Act, 2013]

1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a

consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

2) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

3) Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

Explanation & Answer:

In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.

M05: Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:

(i) When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;

(ii) Matters considered in determining the terms and conditions of such conversion;

(iii) Remedy available to the company if conversion or terms of conversion is not acceptable to it.

Provision [Section 62 of the Company Act, 2013]

1) Where any debentures have been issued or loans have been obtained from the Government by a company, the Central Government may, if in its opinion it is necessary in public interest so to do, by order direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term for providing for an option for such conversion.

2) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following matters / circumstances:
   - a) The financial position of the company;
   - b) The terms of issue of the debentures or such loans, as the case may be;
   - c) The rate of interest payable on such debentures or the loans;
   - d) Public interest and
   - e) Such other matters as may be considered necessary.

3) **Remedies open to the company:** If the terms and conditions of such conversion are not acceptable to the company, company may, within 60 days from the date of communication of such order appeal to the Tribunal which shall after hearing the company and the Government pass such orders as it may deem fit.

Explanation & Answer:

i) Therefore, the Central Government is fully empowered to convert the debentures of loans given by it to a company into shares even if the terms of issue of such debentures or loans do not include a term for providing for an option for such conversion.

ii) Matters to be considered shall be as per given above provision in Point 2 for condition of such conversion.

iii) Remedy for company if conversion or terms of conversion is not acceptable to it are as per given provision in Point 3 above.

M07,PM: VRS Company Limited is holding 45% of total Equity shares in SV Company Limited. The Board of Directors of SV Company Limited (incorporated on January 1, 2014) decided to raise the share capital by issuing further Equity shares. The board of Directors resolved not to offer any shares to VRS Company Limited on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Limited. The Articles of Association of SV Company Limited provide that the new shares be offered to the existing shareholders of the company. On March 1, 2017 new shares were offered to all the shareholders except VRS Company Limited. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of

the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.

Provision: [Section 62 of the Companies Act, 2013]

1) 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.
2) The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

Case Law:

In case of **Gas Meter Ltd. Vs Diaphragm, & General; leather Co. Ltd** where the facts of the case were similar to those given in the present case, the articles of Diaphagm Co. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting Gas Co., which held its controlling shares. It was held that Diaphragm company had no legal authority under the Companies Act to do so.

Explanation & Answer:

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violative of the provisions, as also substantiated by the ruling in the above referred case.

PM: A listed company at Bombay Stock Exchange, intends to offer its new shares to non-members. State whether it is permitted under the Companies Act, 2013.

Or

PM: When can a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company? Can these shares be offered to the Preference Shareholders?[LDR IMP]

Provision: [Section 62(1) of the Companies Act, 2013]

1) As per the provisions of the Companies Act, 2013 contained in section 62 (1) (a),(b) and (c)further shares in a company limited by shares may be issued to non-members under certain circumstances.
2) Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
3) However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-
   a) Under section 62 (1) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
   b) Under section 62 (1) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
   c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.
4) Preference Shareholders:
   Whether (Further Issue of Capital) can be offered to:
   From the wordings of Section 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.

Explanation & Answer:

Hence to issue shares to non-members company need to comply with the condition given above & shares to be issued to preference shareholder shall pass special resolution regarding the same as given in above provision

N.18RTP: Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

Provision: [Section 62 of the Companies Act, 2013]

1) As per the provisions of the Companies Act, 2013 contained in section 62 (1) (a),(b) and (c) further shares in a company limited by shares may be issued to non-members under certain circumstances.
2) Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
3) However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-
   a) Under section 62 (1) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
   b) Under section 62 (1) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
   c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.
4) Preference Shareholders - whether (Further Issue of Capital) can be offered to: From the wordings of Section 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

Explanation & Answer:

Hence to issue shares to non-members Earth Ltd need to comply with the condition given above & shares to be issued to preference shareholder shall pass special resolution regarding the same as given in above provision.

M.18 Old RTP: Misha India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013.

Or

MTPM23: Shilpi Developers India Limited owed to Sunil ` 10,000. On becoming this debt payable, the company offered Sunil 100 shares of ` 100 each in full settlement of the debt. The said shares were allotted to Sunil as fully paid-up in lieu of his debt. Examine the validity of this allotment in the light of the provisions of the Companies Act, 2013.

Provision [Section 62 of the Companies Act, 2013]

1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
2) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:
3) Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

Explanation & Answer:

In the present case, Misha India Ltd/ Shilpi Developers India Limited is empowered to allot the shares to Sunil in settlement of its debt to him. The issue

will be classified as issue for consideration other than cash and thus must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.

N.17 OLD: Shyam Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Jaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached XYZ Ltd. for subscribing to the shares of the Company for expansion purposes. Can Shyam Dairy Ltd. issue shares only to XYZ Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

Provision: [Section 62 of the Companies Act, 2013]

According to Section 62 (1) of the Companies Act, 2013 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 –

1) Existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
2) 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.
3) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), 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 such conditions as may be prescribed.

Explanation & Answer:

Since, in the given case Shyam Dairy Ltd. approached XYZ Ltd. for subscribing to the shares of the company for its expansion and XYZ Ltd. is neither an existing equity shareholder of the company nor an employee, Shyam Dairy Ltd., if it is authorised by a special resolution, may issues shares to XYZ Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Section 63: Issue of Bonus Shares

Answer Writing Points For Sec 63:

1) According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
   a) its free reserves;
   b) the securities premium account; or
   c) the capital redemption reserve account.
2) Conditions for issue of Bonus Shares: No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
   a) it is authorised by its Articles;
   b) it is authorised by BOD-OR
   c) It is authorised by GM-OR
3) Provided that no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.
4) It has not defaulted in respect of payment of
   a) interest or principal in respect of fixed deposits or debt securities issued by it;
   b) statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
   c) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
5) But the company has to ensure that the bonus shares shall not be issued in lieu of dividend

N.18: ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018: ₹

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

Directors of the company seeks your advice in following cases:

(i) Whether company can give bonus shares in the ratio of 1:3?
(ii) What if company decide to give bonus shares in the ratio of 1:2?[LDR IMP]

Or

MTP Oct 21: Silver Oak Ltd. has following balances in their Balance Sheet as on 31st March, 2018: ₹

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

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

Provision [Section 63 of the Companies Act, 2013]

1) As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
   a) its free reserves;
   b) the securities premium account; or
   c) the capital redemption reserve account:
2) Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
3) The bonus shares shall not be issued in lieu of dividend.

Explanation & Answer:

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

Accordingly:

a) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
b) In case ABC Limited/ Silver Oak Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., ½ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.

N.17 OLD: MN Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2017 shows the following position:

Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each)	₹ 2,50,00,000
Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹ 10/- each, fully paid-up)	₹ 1,00,00,000
Free Reserves	₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Advise [LDR IMP]

Or

N.20 RTP: Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:

Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each)	₹ 2,50,00,000
Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹ 10/- each, fully paid-up)	₹ 1,00,00,000
Free Reserves	₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

Or

M21 RTP: Shiva Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good

reputation and its Balance Sheet as at March 31, 2020 showed the following position:

1. Authorized Share Capital (25,00,000 equity shares of ₹ 10/- each) ₹2,50,00,000

2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ₹ 10/- each, fully paid up) ₹ 1,00,00,000

3. Free Reserves ₹ 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Or

MTPM22: Bhuj Cement Limited is engaged in the manufacture of different types of cements and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2023 showed the following position:

1. Authorized Share Capital (25,00,000 equity shares of ` 10/- each) ` 2,50,00,000

2. Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of ` 10/- each, fully paid-up) ` 1,00,00,000

3. Free Reserves ` 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

Provision: [Section 63 of the Companies Act, 2013]

1) According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
   a) its free reserves;
   b) the securities premium account; or
   c) the capital redemption reserve account.
2) Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
3) **Conditions for issue of Bonus Shares:** No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
   a) it is authorised by its Articles;
   b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
   c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
   d) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
   e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
   f) it complies with such conditions as may be prescribed.
4) But the company has to ensure that the bonus shares shall not be issued in lieu of dividend

Explanation & Answer:

a) For the issue of bonus shares MN Ltd./Surya Ltd./ Shiva Cement limited/Bhuj Cement Limited will require reserves of ` 50,00,000 (i.e. half of ` 1,00,00,000 being the paid-up share capital), which is readily available with the company.

b) Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, MN Ltd./Surya Ltd./ Shiva Cement limited/ Bhuj Cement Limited may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Dec21& MTPN22: Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Particulars		Rs.
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹ 10 each	**1,00,000**	
1,00,000 equity shares of ₹ 10 each	**10,00,000**	**11,00,000**
Issued & Subscribed Capital:		
8000,12% Preference Shares of ₹ 10 each fully paid up		**80,000**
90,000 equity shares of ₹ 10 each, ₹ 8 paid up		**7,20,000**
(b) Reserve and Surplus		

General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		
(a) Long-term borrowings:		
Secured Loan: 12% partly convertible Debenture @ ₹ 100 each		5,00,000

On 1st April, 2020 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer following questions according to the Companies Act, 2013, in above case:

(A) Which of the above-mentioned sources can be used by company to issue bonus shares?

(B) Calculate the amount to be capitalized from free reserves to issue bonus shares?

(C) If the company did not ask for the final call on April 1st, 2020. Can it still issue bonus shares to its members?

Provision [Section 63 of the Companies Act, 2013]

1) According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
   a) its free reserves;
   b) the securities premium account; or
   c) the capital redemption reserve account.
2) Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
3) Section 63 (2) provides that the company can issue bonus shares only when the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

Explanation & Answer:

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

(B) Amount of bonus shares to be issued	= 90,000 shares x 1/4 = 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	= 22,500 x ₹10 per share = ₹ 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+25,000+2,00,000 = ₹ 3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be ₹ 2,25,000.	

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

Section 64: Notice to Registrar for Alteration of Share Capital

Answer Writing Points For Sec 64:

1) A company shall give a notice to ROC in case of-
   a) alteration of share capital u/s 61(1).
   b) increase in the authorised share capital consequent to order of CG u/s 62.
   c) redemption of preference shares u/s 55.
2) Manner of giving notice shall be as follow:
   a) the notice shall be in Form No. SH 7.
   b) it shall be filed within 30 days of such alteration.
   c) it shall be filed with the ROC.
   d) It shall be accompanied by the altered memorandum

Suggestion:

1) If company does not give notice to ROC within such time as may be prescribed above then in such case company and every officer in default shall be liable for a Penalty of Rs. 1,000 per day of default; or Rs.5,00,000 Whichever is Less (i.e. penalty shall not, in any case, exceed Rs.5,00,000/-)
2) E-Forms to be filled by company under this section:
   SH-7: Notice to ROC for alteration of share capital.

Forfeiture

Answer Writing Points For Forfeiture:

1) The Companies Act, 2013 prescribes the rules and procedures of forfeiture of shares to be mentioned in the Articles of Association. Therefore, the forfeiture of shares is governed by the Articles rather than the Act itself.
2) However, Table F of the First Schedule of the Act lays down the draft Articles of a company limited by shares which may be adopted either in full or with some modifications.
3) In accordance with the Act and Table F the conditions and applicable rules for forfeiture of shares are as under-
   a) In accordance with the Articles: Forfeiture-must be authorized by the Articles of the company and must be for the benefit of the company.
   b) Notice prior to forfeiture: Before shares can be forfeited, the company must serve a notice on the defaulting shareholder requiring payment of unpaid call together with any interest which may have accrued. (Article 28: Table F).
   c) Give not less than 14 days' time from the date of service of notice for the payment of the amount due (Article 29 of Table F);
   d) State that in the event of non-payment of the amount due within the period mentioned in the notice, the shares in respect of which the call was made will be liable to be forfeited, (Article 29. Table F). The notice of forfeiture must also specify the exact amount due from the shareholder. If the notice is defective in any respect, the forfeiture will be invalid.
   e) Resolution of the Board: If a defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors must pass a resolution forfeiting the shares (Article30). If the resolution is not passed, the forfeiture is invalid. If, however, the notice threatening the forfeiture incorporates the resolution of forfeiture as well, e.g., when it states that in the event of default the shares shall be deemed to have been forfeited, no further resolution is necessary.
   f) Good faith: The power to forfeit shares must be exercised by the directors in good faith and for the benefit of the company.
4) Effect of forfeiture are as follow:
   a) Cessation of membership: A person whose shares have been forfeited ceases to be a member in respect of the shares so forfeited. He, however, remains liable to pay to the company all moneys which, at the date of forfeiture were payable by him to the company in respect of the shares.
   b) Cessation of liability: The liability of the person whose shares have been forfeited ceases if and when the company receives payment in full of all such money in respect of the shares,
   c) Forfeited shares become the property of the company and may be reissued or otherwise disposed of on such terms and in such manner as the Board thinks fit. The purchaser would be liable to pay all the calls due on the shares including the call for which shares were forfeited.
   d) But where the articles provide that a shareholder whose shares have been forfeited is to remain liable for the call occasioning the forfeiture, the purchaser is liable only for the difference between the amount of the call and the sum realized on reissue, should this be less than the call.

M03,PM: What are the conditions and procedure where under shares may be forfeited under the Companies Act, 2013?

Provision: [Conditions for Effecting Forfeiture]

1) Shares can be forfeited if the following conditions are fulfilled:-
   a) Shares can be forfeited only if authorised by Articles of Association of the Company.
   b) Ordinarily forfeiture of shares can take place only for the non-payment of calls due to company and in such cases, calls must have been validly made. But articles may provide other grounds for forfeiture.
   c) Forfeiture is in the nature of penal proceedings. It is valid if only if the provisions of the Articles are strictly complied with.
   d) The power of forfeiture must be exercised bonafide, in the interests of the company.

2) The procedure to be followed is laid down in Table F of Schedule I to the Companies Act, 2013. Articles of a company, usually, contain similar provisions. The procedure to be followed is narrated below:
   a) The company must serve a notice on the defaulting shareholder requiring payment of the unpaid call together with any interest which may have accrued (Articles 28 of Table F).
   b) The notice must -
      i) give not less than 14 days' time from the date of service of notice for the payment of the amount due.
      ii) state that in the event of non-payment of the amount due within the period mentioned in the notice, the shares in respect of which the call was made will be liable to be forfeited (Article 30 of Table A).
      iii) The notice of forfeiture must also specify the exact amount due from the shareholder. If the notice is defective in any respect e.g. where it does not specify the amount claimed by the company, or where it claims a wrong amount, the forfeiture will be invalid.
   c) If the defaulting share holder does not make the payment of amount within the specified time as required by the notice, the directors must pass a resolution forfeiting the shares (Article 30 of Table F).

Section 66: Reduction of Share Capital

Answer Writing Points For Sec 66:

1) Given below are condition that shall be followed by the company for reduction of share capital under this act:
   a) The company should be limited by shares or guarantee.
   b) The reduction should be approved by the Tribunal.
   c) Special resolution is required to be passed to that effect.
   d) Company is not in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.
   e) MOA of the company shall be altered accordingly.
2) Reduction of share capital in a company may be executed in following ways. A company may:
   a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
   b) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
   c) pay off any paid-up share capital which is in excess of the wants of the company.
3) The Tribunal shall give notice of every application made to it for reduction of capital to:
   a) the Central Government,
   b) the ROC,
   c) the Securities and Exchange Board, in the case of listed companies, and
   d) the creditors of the company
4) The Tribunal shall take into consideration the representations, if any, made to it by that Government, ROC, Securities and Exchange Board and the creditors within a period of 3 months from the date of receipt of the notice.
5) However, where no representation has been received from the Central Government, ROC, Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.
6) The Tribunal may make an order confirming the reduction on such terms and conditions it thinks fit if it is satisfied that:
   a) the debt or claim of every creditor of the company has been discharged or determined or secured; or
   b) his (creditor's) consent is obtained.
7) The order of confirmation of the reduction by the Tribunal shall be published by the company in such manner as the Tribunal may direct.
8) Section does not apply to buyback of its own securities by a company u/s 68

Section 67: Purchase by a company of its own shares

Answer Writing Points For Sec 67:

1) Company not to finance others for buy back of own securities. This provisions is applicable to a public company only
2) A public co. shall not, whether directly or indirectly, give to any person a-
   a) Loan
   b) Guarantee
   c) Security
   d) Any other financial assistance, For purchase of –
      i) Its own shares; or

ii) Shares in its Holding Company.

3) Exceptions to above:
   a) Lending by banking companies.
   b) Lending by the company for subscription by Trustees for the benefit of the employees; subject to "SR + Prescribed requirements"
   c) Lending by the company to its own employees for beneficial holding; subject to "not to director's/key managerial persons + loan amount not exceeding their salary/wages for a period of 6 months"

PM: MNO Private Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to the HR (Human Resource) Manager, who is not a Key Managerial Personnel (KMP) of MNO Private Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up Equity Shares of ₹ 1000 each in MNO Private Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Or

MTP(Oct 2020): OEMR Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to its Human Resource Manager Mr. Shyam Kumar, who does not fall in the category of Key Managerial Personnel and draws a salary of ₹ 40,000 per month, to buy 500 partly paid-up equity shares of₹ 1000 each in OEMR Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Provision: [Section 67(3) & 2(51) of the Companies Act, 2013]

1) A company is allowed to give a loan to its employees subject to the following limitations:
   a) The employee must not be a Key Managerial Personnel;
   b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
   c) The shares to be subscribed must be fully paid shares
2) Section 2 (51) of the Companies Act, 2013 defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer or any other officer who may be prescribed.

Explanation:

In the given instance, HR Manager is not a KMP of the MNO Private Ltd./OEMR Limited He is drawing salary of ₹30,000 per month/40,000 per month and loan taken to buy 500 partly paid up equity shares of ₹1000 each in MNO Private Ltd.

Answer:

Keeping the above provisions of law in mind, the company's (MNO Private Ltd./OEMR Limited) decision is invalid due to two reasons:

1) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakhs/2.4 Lakhs.
2) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

N08,PM: Apex Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard.

Provision [Section 67 of the Companies Act, 2013]

1) No public company is allowed to give, directly or indirectly or by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.
2) However, section 67 (3) makes an exception by allowing companies to the give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
3) Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Explanation & Answer:

Hence, Apex Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them. However, the key managerial personnel will not be eligible for such assistance.

N10:The Board of Directors of XYZ Private Limited, a subsidiary of SRN Limited, decides to grant a loan of Rs.2.00 lac to P, the Finance Manager of the company getting salary of Rs.30,000 per month, to buy 400 partly paid-up equity share of Rs. 1,000 each of XYZ Limited. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013. [LDR IMP]

Provision [Sections 2(51), 2(71) & 67 of the Company Act, 2013]

1) public company" means a company which—
   a) is not a private company;
   b) has a minimum paid-up share capital of 5 lakh rupees or such higher paid-up capital, as may be prescribed.
   c) Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
2) Company not to finance others for buy back of own securities. This provisions is applicable to a public company only
3) A public co. shall not, whether directly or indirectly, give to any person a-
   a) Loan
   b) Guarantee
   c) Security
   d) Any other financial assistance, For purchase of –
      i) Its own shares; or
      ii) Shares in its Holding Company.
4) Exceptions to above:
   a) Lending by banking companies.
   b) Lending by the company for subscription by Trustees for the benefit of the employees; subject to "SR + Prescribed requirements"
   c) Lending by the company to its own employees for beneficial holding; subject to " not to directors/key managerial persons + loan amount not exceeding their salary/wages for a period of 6 months"
5) Section 2 (51) defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the chief executive, company secretary, whole time director, Chief Financial Officer or any other officer who may be prescribed.

Explanation & Answer:

In the given case, XYZ Private Limited is a deemed Public Company in the light of above provisions & hence the provisions of section 67 are applicable. Further, we can assume that Mr P being a finance manager is not a KMP of the company. Keeping the above provisions of law in mind, the Board's decision is invalid due to two reasons:

1) The amount being more than 6 months' salary of Mr P, which should have restricted the loan to Rs. 1.8 Lakhs.
2) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing in fully paid shares.

N.18RTP: Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

Provision [Section 67 of the Companies Act, 2013]

1) No public company is allowed to give, directly or indirectly or by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.
2) However, section 67 (3) makes an exception by allowing companies to the give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
3) Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Explanation & Answer:

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them. However, the directors or key managerial personnel will not be eligible for such assistance.

M.20 RTP:K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Provision [Section 67 of the Companies Act, 2013]

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

1) The employee must not be a Key Managerial Personnel;
2) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
3) The shares to be subscribed must be fully paid shares.

Explanation:

In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹ 30,000 per month and loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in K Ltd.

Answer:

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

1) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakh.
2) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

M.20 RTP: K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Provision [Section 67 of the Companies Act, 2013]

As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

a) The employee must not be a Key Managerial Personnel;
b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
c) The shares to be subscribed must be fully paid shares.

Explanation:

In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹ 30,000 per month and loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in K Ltd.

Answer:

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

1) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakh.
2) The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Section 68: Buy Back of shares / Power of company to purchase its own shares

Answer Writing Points For Sec 68:

1) a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of
   a) its free reserves [i.e. reserves which are available for distribution as dividend, as per the latest audited balance sheet of a company),
   b) the securities premium account
   c) the proceeds of any shares or other specified securities.
2) No buy back shall be made of eligible securities out of proceeds of an earlier issue of same kind of eligible security.
3) Company shall comply with following conditions for buy back of shares of own company:
   a) The buy-back shall be authorised by the AOA of the Company.
   b) If company want to buy back shares up to 10 % of its shares, then BOD-OR is sufficient Whereas if company want to buy back more than 10 % but up to 25 % then GM-SR shall be passed.

c) The ratio of the aggregate of secured and unsecured debt owed by the company after the buyback of shares shall not be more than twice the equity capital and free reserve after such buy back. (i.e. Debt-Equity shall be 2:1) However, the Central Government may prescribe a higher ratio of the debt for a class or classes of companies.
d) All the shares or other specified securities for which buy-back is in process shall be fully paid-up.
e) The buy-back of listed securities should be complied with SEBI regulations.
f) The buy-back of unlisted securities shall be in complied with Rules prescribed.
g) There shall be 1-year gap between two buybacks.

4) The buy back with respect to listed securities is in accordance with the regulations made by the SEBI in this behalf.
5) Under section 68 (4), every buy–back shall be completed within 12 months from the date of passing the special resolution or a resolution passed by the Board where the buyback is up to 10% of the aggregate of paid up capital and free reserves.

Suggestion:

1) If a company makes any default in complying with the provisions of this section or with SEBI regulations, penalty shall be Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000 and For Every officer in default shall be liable Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000
2) E-Forms to be filled by company under this section:

SH-8 to SH-11 & SH-15: Buy Back of shares or other securities.

PM: ABC Company Limited at a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its Equity Share Capital. The Articles of the Company empower the company for buy-back of shares. The company further decide that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act 2013, and stating the sources through which the buy-back of companies own shares be executed. Examine.

a. Whether company's proposal is in order.

b. Would your answer be still the same in case the company instead of 30% decides to buy–back only 20% of its Equity Share Capital?

Provision: [Section 68 of the Company Act, 2013]

1) a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of
   a) its free reserves [i.e. reserves which are available for distribution as dividend, as per the latest audited balance sheet of a company),
   b) the securities premium account
   c) the proceeds of any shares or other specified securities.
2) No buy back shall be made of eligible securities out of proceeds of an earlier issue of same kind of eligible security.
3) Company shall comply with following conditions for buy back of shares of own company:
   a) The buy-back shall beauthorised by the AOA of the Company.
   b) If company want to buy back shares upto 10 % of its shares then BOD-OR is sufficient Whereas if company want to buy back more then 10 % but upto 25 % then GM-SR shall be passed.
   c) The ratio of the aggregate of secured and unsecured debt owed by the company after the buy back of shares shall not be more than twice the equity capital and free reserve after such buy back. (i.e Debt-Equity shall be 2:1) However, the Central Government may prescribe a higher ratio of the debt for a class or classes of companies.
   d) All the shares or other specified securities for which buy-back is in process shall be fully paid-up.
   e) The buy-back of listed securities should be complied with SEBI regulations.
   f) The buy-back of unlisted securities shall be in complied with Rules prescribed.
   g) There shall be 1 year gap between two buybacks.

Explanation:

In the given case, the following facts are noteworthy:

1) The Articles permit buy back – This is in order;
2) The approval of the members is by way of an ordinary resolution – This is invalid as the resolution required is a special resolution;

3) The buyback approved is 30% of the Equity Share Capital – The maximum limit allowed for buy back is 25% of the aggregate of the paid up capital and free reserves. Since the value of free reserves is not mentioned this cannot be commented upon.
4) The company plans to pay for the buy back from the proceeds of an earlier equity issue - This is in violation of section 68 (1) of the Act

Answer:

Taking into account the above factors, the questions as asked in the problem can be answered as under:

1) The company's proposal for buy-back is not in order as it has passed only an ordinary resolution and the out of the proceeds of an earlier equity issue in violation of section 68 (1).
2) The answer to the second question shall also be the same as the irregularity and contravention will not be affected by the buyback being 20%.

M07: German Pharmaceuticals Limited is a zero debt company having 10 lakhs Equity shares of Rs. 10 each. The Directors desire to buy back its own shares. Can it do so? If so, how?

Provision [Section 68 of the Company Act, 2013]

1) a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of
   a) its free reserves [i.e. reserves which are available for distribution as dividend, as per the latest audited balance sheet of a company),
   b) the securities premium account
   c) the proceeds of any shares or other specified securities.
2) No buy back shall be made of eligible securities out of proceeds of an earlier issue of same kind of eligible security.
3) Company shall comply with following conditions for buy back of shares of own company:
   a) The buy-back shall be authorised by the AOA of the Company.
   b) If company want to buy back shares upto 10 % of its shares then BOD-OR is sufficient Whereas if company want to buy back more then 10 % but upto 25 % then GM-SR shall be passed.
   c) The ratio of the aggregate of secured and unsecured debt owed by the company after the buy back of shares shall not be more than twice the equity capital and free reserve after such buy back. (i.e Debt-Equity shall be 2:1) However, the Central Government may prescribe a higher ratio of the debt for a class or classes of companies.
   d) All the shares or other specified securities for which buy-back is in process shall be fully paid-up.
   e) The buy-back of listed securities should be complied with SEBI regulations.
   f) The buy-back of unlisted securities shall be in complied with Rules prescribed.
   g) There shall be 1 year gap between two buybacks.

Explanation:

Yes, as per the given provision above German Pharmaceuticals Limited can buy back its own share by following the above given procedure.

N07,N08,PM: ADJ Company Limited decides to buy–back its own shares. Advice the company's Board of Directors about the sources out of which the company can buy-back its own shares. What conditions are attached to the buy–back scheme of the company in accordance with the provisions of the Companies Act, 2013? Explain

Or

What are the conditions for the company for the buy–back of its own shares? Whether there is any time limit for the completion of buy–back of its shares?[LDR IMP]

Provision [Section 68 of the Companies Act, 2013]

1) a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of
   a) its free reserves [i.e. reserves which are available for distribution as dividend, as per the latest audited balance sheet of a company),
   b) the securities premium account
   c) the proceeds of any shares or other specified securities.
2) No buy back shall be made of eligible securities out of proceeds of an earlier issue of same kind of eligible security.

3) Company shall comply with following conditions for buy back of shares of own company:
   a) The buy-back shall be authorised by the AOA of the Company.
   b) If company want to buy back shares upto 10 % of its shares then BOD-OR is sufficient Whereas if company want to buy back more then 10 % but upto 25 % then GM-SR shall be passed.
   c) The ratio of the aggregate of secured and unsecured debt owed by the company after the buy back of shares shall not be more than twice the equity capital and free reserve after such buy back. (i.e Debt-Equity shall be 2:1) However, the Central Government may prescribe a higher ratio of the debt for a class or classes of companies.
   d) All the shares or other specified securities for which buy-back is in process shall be fully paid-up.
   e) The buy-back of listed securities should be complied with SEBI regulations.
   f) The buy-back of unlisted securities shall be in complied with Rules prescribed.
   g) There shall be 1 year gap between two buybacks.
4) The buy back with respect to listed securities is in accordance with the regulations made by the SEBI in this behalf.
5) Under section 68 (4), every buy–back shall be completed within 12 months from the date of passing the special resolution or a resolution passed by the Board where the buyback is upto 10% of the aggregate of paid up capital and free reserves.

Explanation & Answer:

a) Board of Directors of ADJ company can buy back shares from the sources given in above point (1) & shall comply with the given condition to buy back shares of company in accordance with the provision of Companies Act,2013.
b) Time limit for completion of buy back of shares is 12 months from the date of passing of resolution (i.e One Year) in manner given above.

PM:A Company wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the company. Does 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? [V.IMP]

Provision: [Section 67 of the Company Act, 2013]

1) Yes, the financial assistance to its employees by the company to enable them to subscribe for the shares of the company will amount to the company purchasing its own shares.
2) However, section 67(3)permits a company to the give loans to its employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
3) Section 68 of the Companies Act, 2013 however, allows a company to buy back its own shares under certain circumstances and subject to fulfilment of prescribed conditions.
4) Purchasing in order to redemption its preference shares, does amount to acquisition or purchase of its own shares. But this is allowed in terms of section 68 of the Companies Act, 2013 subject to the fulfilment of prescribed conditions, and upto specified limits and only after following the prescribed procedure.

Explanation & Answer:

Therefore, providing financial assistance to its employees amounts to purchase of its own shares & same applies even if the shares are of type of redeemable preference shares.

M.18 RTP: Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed?

Provision: [Section 68 of the Companies Act, 2013]

1) In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.
2) Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:
   a) Free reserves or
   b) Security Premium account or
   c) Proceeds of the issue of any shares or other specified securities
3) However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

Explanation & Answer:

Therefore, Kavish Ltd cannot buyback all its equity shares from the existing shareholders they can do the same only upto 25 % of the aggregate of its paid up capital and free reserve as given in above provision.

M.18: X gen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following
i) Is special resolution required to be passed?
ii) What is the time limit for completion of buy-back?
iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

Provision: [Section 68 of the Companies Act, 2013]

1) Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares or other specified securities unless-
   a) The buy-back is authorized by its articles;
   b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where:
      i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
      ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
2) As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).
3) Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

Explanation & Answer:

a) As per the stated facts, X gen Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.
b) Referring to the above provisions, the answers will be as follows:
   i) No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
   ii) Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
   iii) The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.
c) The above buy-back is possible when backed by the authorization by the articles of the company.

N.18 Old RTP: Large Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following
i) Is special resolution required to be passed?
ii) What is the time limit for completion of buy-back?
iii)What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

Provision: [Section 68 of the Companies Act, 2013]

1) Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares or other specified securities unless-
   a) The buy-back is authorized by its articles;
   b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where:
      i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
      ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
2) As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).
3) Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

Explanation & Answer:

a) As per the stated facts, Large Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.
b) Referring to the above provisions, the answers will be as follows:
   i) No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
   ii) Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
   iii) The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.
c) The above buy-back is possible when backed by the authorization by the articles of the company.

M.19: Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.[V.IMP]

Provision: [Section 68& 70 of the Companies Act, 2013]

1) Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:
   a) its free reserves; or
   b) the securities premium account; or
   c) the proceeds of the issue of any shares or other specified securities.
2) However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
3) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
   a) through any subsidiary company including its own subsidiary companies; or
   b) through any investment company or group of investment companies; or
   c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;
4) But where the default is remedied and a period of 3 years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.
5) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of

Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Answer:

Public Limited Company shall use above given funds given in point (1) for purchase of its own shares and if any above Circumstances incurred as given in provisions of given act then company is prohibited to buy back its own shares.

July21: "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard

Provision: [Section 68 of the Companies Act, 2013]

1) According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.
2) Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Answer:

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of 6 months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of 1 year from the completion of buy back subject to certain exceptions" is not valid.

Section 69: Transfer to CRR Account

Answer Writing Points For Sec 69:

1) When a company purchases its own shares out of free reserves or out of security premium account then a sum equal to nominal value of such shares shall be transferred to CRR A/C.
2) The details of such transfer shall be disclosed in balance sheet.
3) The CRR A/C shall only be utilized for issue of fully paid bonus shares to existing shareholders.

N04,M08: DJA Company Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 advise whether the above buy back of equity shares by the company is possible. Also state the sources out of which buy–back of shares can be financed.

Or

A public company proposes to purchase its own shares. State the source of funds that can be utilised by the company for purchasing its own shares and the requirements to be complied with by the company under the Companies Act before and after the shares are so purchased.[LDR IMP]

Provision [Section 68,69 of the Company Act, 2013]

1) Under section 68 (1) of the Companies Act, 2013 a company can purchase its own shares or other specified securities. The purchase should be out of:
   a) its free reserves; or
   b) the securities premium account; or
   c) the proceeds of the issue of any shares or other specified securities.
2) However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
3) 'Specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time. [Explanation (1) under Section 68],

4) Under section 68 (2) of the Companies Act, 2013 a company shall not purchase its own shares or other specified securities unless:
   a) the buy-back is authorised by its articles;
   b) a special resolution (also Declaration of Solvency to be filed with ROC &SEBI in case shares are listed on any recognised stock exchange), authorising the buy-back is passed at a general meeting of the company;
   c) the buy-back is 25% or less than of the aggregate of the paid-up capital and free reserves of the company;

   Provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
   d) the ratio of the aggregate of the secured and unsecured debt owed by the company is not more than twice the capital and free reserves after such buy-back;.
5) all the shares or other specified securities for buy-back are fully paid-up;
6) Buy-back of the shares or other specified securities listed on any recognised stock exchange is accordance with regulations made by SEBI in this behalf;
7) Buy-back in respect of shares or other specified securities other than those specified in Clause (f) above is in accordance with such guidelines as may be prescribed.
8) Under section 68 (3) of the Companies Act, 2013 the notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating;
   a) a full and complete disclosure of all material facts;
   b) the necessity for the buy-back;
   c) the class of shares or securities intended to be purchased under the buy-back;
   d) the amount to be involved under the buy-back; and
   e) the time limit for completion of buy-back.
9) Under section 68 (4) of the Companies Act, 2013 every buy back must be completed within a period of 1 year from the date of the passing of the special resolution, or the Board Resolution where the buyback is upto 10% of the aggregate of the paid up capital and free reserves of the company.
10) Under section 68 (5) a company proposing to buy back its own shares must file with the Registrar and with SEBI a declaration of solvency signed by at least two directors out of which one must be the Managing Director. This must be filed before proceeding with the buy back.
11) Requirements to be complied with after buy-back:
   a) The securities bought back should be extinguished and physically destroyed within 7 days after completion of buy-back [Section 68 (7)].
   b) After completion of buy-back, a company cannot issue same kind of shares or security (which was bought back) for a period of 6 months. Allotment of rights issue renounced by members is also not permissible in this period. However, following are permitted:
      i) issue of security of a different class that is other than one which was bought back,
      ii) bonus issue,
      iii) subsisting obligations such as conversion of warrants,
      iv) stock option to employees
      v) sweat equity
      vi) conversion of preference shares or debentures into equity shares [Section 68(8)].
   c) The company should maintain a register showing securities bought back and consideration paid for the buy-back, date of cancellation of securities, date of extinguishment and physical destruction of securities other prescribed particulars [Section 68(9)].
12) After completion of buy-back, a return has to be filed with the Registrar of Companies and Securities and Exchange Board of India if the company is listed within 30 days giving details as prescribed [Section 68(10)].
13) If the buy-back is from free reserves, a sum equal to the nominal value of Shares purchased will be transferred to capital redemption reserve account.

Details of such transfer will be disclosed in the balance sheet of the company [(Section 69 (1)].

Section 70: Prohibition For Buyback in certain circumstances

Answer Writing Points For Sec 70:

1) A company cannot buy back shares or other specified securities directly or indirectly:
   a) Through any subsidiary company including its own subsidiaries; or
   b) Through investment or group of investment companies; or
2) If a default is made by the company in:
   a) The repayment of deposit accepted either before or after the commencement of his Act, or any interest payment thereon,
   b) redemption of debentures or preference shares or
   c) payment of dividend to any shareholder, or
   d) repayment of any term loan or interest thereon to any financial institution or banking company.
3) The prohibition does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.
4) Company shall not buyback its shares if it has not complied with provision of:
   a) Sec.92 - Annual Return
   b) section 123 -declaration of dividend
   c) section 127 - punishment for failure to distribute dividend
   d) section 129 – Provision relating to financial statement.

PM: Elucidate the circumstances in which a company cannot buy back its own shares as per the provisions of the Companies Act, 2013. M/s Growmore Pharma Limited is planning to buyback of its shares during the current year but the company has defaulted in the payment of term loan & interest thereon to its bankers. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013.[LDR IMP]

Provision: [Section 70 of the Companies Act, 2013]

1) A company cannot buy back shares or other specified securities directly or indirectly:
   a) Through any subsidiary company including its own subsidiaries; or
   b) Through investment or group of investment companies; or
2) If a default is made by the company in:
   a) The repayment of deposit accepted either before or after the commencement of his Act, or any interest payment thereon,
   b) redemption of debentures or preference shares or
   c) payment of dividend to any shareholder, or
   d) repayment of any term loan or interest thereon to any financial institution or banking company.
3) The prohibition does not apply if the default has been remedied and a period of 3 years has elapsed after such default ceased to subsist.
4) Company shall not buyback its shares if it has not complied with provision of:
   a) Sec.92 - Annual Return
   b) section 123 -declaration of dividend
   c) section 127 - punishment for failure to distribute dividend
   d) section 129 – Provision relating to financial statement.

Explanation:

Under the Companies Act, 2013, company can buy-back even if it has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank, provided default has been remedied and period of 3 years has elapsed after such default ceased to subsist.

Answer:

Therefore, M/s. Growmore Pharma Limited needs to follow the procedure as highlighted above for buy-back of shares.

Section 71: Debentures

Answer Writing Points For Sec 71:

1) Conditions for issue of debentures:
   - a) By Passing GM-SR company can issue convertible debentures in same way to Issue non-convertible debenture company shall pass BM-OR.
   - b) No voting rights on debentures
   - c) Company shall create DRR
   - d) Company shall appoint debenture trustee
   - e) Redemption as per terms & condition of issue.
   - f) NCLT can put restriction on incurring any further liability by issue of debenture.
2) Company shall create DRR account which shall only be used for redemption of debentures.
3) As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a DRR for the purpose of redemption of debentures, in accordance with the conditions given below:
   - a) The DRR shall be created out of the profits of the company available for payment of dividend;
   - b) The company shall create Debenture Redemption Reserve (DRR) in accordance with the following conditions:
     - i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions(FIs) within the meaning of clause (72) of Section 2 of the Companies Act 2013, DRR will be as applicable to NBFCs registered with RBI.
     - ii) For NBFCs registered with RBI under Section 45-1A of the RBI (Amendment) Act, 1997 for Housing Finance Companies registered with the National Housing Bank, no DRR is required
     - iii) No DRR is required in the case of privately placed debentures.
     - iv) For other companies including manufacturing and infrastructure companies there is no adequacy of DRR
     - v) For unlisted companies issuing debentures on private placement basis, the DRR will be 10% of the value of debentures.
   - c) Every company required to create DRR shall on or before 30th day of April in each year, as the case may be, a sum which shall be not less than 15%, of the amount of its debentures, maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods, namely:
     - i) i) in deposits with any scheduled bank, free from any charge or lien;
     - ii) in unencumbered securities of the Central Government or any State Government;
     - iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (e) of Section 20 of the Indian Trust Act, 1882;
     - iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trust Act, 1882;
     - v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.
     - vi) Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on the 31st day of March of that year.
   - d) d) In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of nonconvertible portion of debenture issue in accordance with this sub-rule.
   - e) Amount credited to Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

Suggestion:

E-Forms to be filled by company under this section:

SH-12: Debenture

N03&PM: What are the provisions of the Companies Act, 2013 relating to the appointment of "Debenture Trustee" by a company? Whether the following can be appointed as ₹Debenture Trustees' :

a) A shareholder who has no beneficial interest

b) A creditor whom the company owes Rs. 499 only

c) A person who has given a guarantee for repayment of amount of debentures issued by the company. [V.IMP]

Provision:[Section 71 of the Company Act, 2013 is as follows]

1) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

2) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

3) Further according to the rules, no person shall be appointed as a debenture trustee, if he-

a) Beneficially holds shares in the company;

b) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

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

d) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

e) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

f) Has any pecuniary relationship with the company amounting to 2 %. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

g) Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

Explanation & Answer:

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

a) A shareholder who has no beneficial interest can be appointed as a debenture trustee.

b) A creditor whom company owes Rs. 499 cannot be so appointed. The amount owed is immaterial.

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

N04&PM & N.18 OLD:: Explain briefly the distinction between shares and debentures and state whether a company can issue debentures with voting rights.[IMP]

Provision [Section 71 of the Company Act, 2013]

1) Shares are a part of capital of a company whereas debentures constitute a loan.

2) The shareholders are the owners of the company whereas debenture holders are creditors.

3) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.

4) Interest on debentures is payable even if there are no profits. Dividend can be paid to shareholders only out of the profits of the company.

5) Debentures have generally a charge on the assets of the company but shares do not carry any such charge.

6) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.

7) Debentures get priority over shares in the matter of repayment in the event of liquidation of the company.

8) No company can issue any debentures carrying voting rights. It is prohibited to issue debenture with voting rights but shares can be issued with voting rights.

Answer:

Hence from the above given points one can distinct share from debenture and the issue regarding voting rights of debentures.

N02: State the types of debentures which may be issued by a public company.

Provision [Section 71 & 2(30) of the Company Act, 2013]

1) Different types of debentures may be enumerated as follows:

a) **Unsecured debentures:**

Such debentures do not carry any charge on the assets of the company. The holders of these debentures do not have any security as to repayment of principal or interest thereon.

b) **Secured debentures:**

Such debentures are secured by a mortgage of the whole or part of the assets of the company and known as mortgaged or secured debentures. Such debentures may be of one or more of the following types:

a) **Redeemable:**

These debentures are redeemable on the expiry of the term for which they have been issued. Secured debentures shall be redeemable within a period of10 years from the date of issue and in case of infrastructure projects, within a maximum period of 30 years.

b) **Irredeemable:**

These debentures are Irredeemable i.e which are not repayable at the end of a definite period. These debentures are repayable when company goes into liquidation.

c) **Partly convertible:**

These debentures are convertible into equity shares of the company for part of their face values and the balance face value is redeemed;

d) **Fully convertible:**

These debentures are not redeemable in cash but are converted into equity shares after the prescribed period as per the terms of issue.

PM: Board of Directors of PQR Limited wants to create a 'Debenture Redemption Reserve (DRR)' for the redemption of debentures issued by the company under the provisions of the Companies Act, 2013. Explain the provisions of the Companies (Share Capital and Debenture) Rules, 2014 in this regard.[LDR IMP]

Provision: [Section 71 of the Companies Act, 2013 & Companies (Share Capital and Debentures) Rules, 2014]

1) Where debentures are issued by a company under Section 71 of the Companies Act, 2013, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

2) As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

b) The company shall create Debenture Redemption Reserve (DRR) in accordance with the following conditions:

i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions(FIs) within the meaning of clause (72) of Section 2 of the Companies Act 2013, DRR will be as applicable to NBFCs registered with RBI.

ii) For NBFCs registered with RBI under Section 45-1A of the RBI (Amendment) Act, 1997 for Housing Finance Companies registered with the National Housing Bank, the adequacy of DDR will be 25% of the value of debentures issued through public issue as per present SEBI (issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

iii) For other companies including manufacturing and infrastructure companies the adequacy of DRR will be 25% of the value of debentures

issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.

c) Every company required to create Debenture Redemption Reserve shall on or before 30th day of April in each year, as the case may be, a sum which shall be not less than 15%, of the amount of its debentures, maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods, namely:

- **i)** in deposits with any scheduled bank, free from any charge or lien;
- **ii)** in unencumbered securities of the Central Government or any State Government;
- **iii)** in unencumbered securities mentioned in sub-clauses (a) to (d) and (e) of Section 20 of the Indian Trust Act, 1882;
- **iv)** in unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trust Act, 1882;
- **v)** the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.
- **vi)** Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on the 31st day of March of that year.

d) In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

Dec21 & RTPN22: What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

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

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

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

Provision: [[Section 71 of the Companies Act, 2013]

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

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

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

- **a)** beneficially holds shares in the company;
- **b)** is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- **c)** has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

Answer:

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

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

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

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

N22: The Board of Directors of SRD Limited, an unlisted public company, engaged in the business of manufacturing of two wheelers; intend to issue debentures in order to finance its project of electric scooter manufacturing. The company seeks your advice regarding the maximum amount of debentures it can issue to raise the desired funds. The company has provided the following abstracts from its financial statements ended on 31st March, 2022:

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

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

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

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

Provision: [[Section 71 of the Companies Act, 2013]

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

a) Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures.

b) Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through special resolution

c) if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount.

d) Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

2) Issue of Debentures with an Option to Convert into Shares:

a) According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.

b) It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

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

Explanation & Answer:

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

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

securities premium amount (A)	

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

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

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

Here, Short– term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers. Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = ` 90,00,000. Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ` 90,00,000.

Chapter 5:
Acceptance of Deposits By Companies

Section 73: Prohibition on Acceptance of Deposits from Public

Answer Writing Points For Sec 73:

1) Acceptance of deposit by company from its members: As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely—
   a) By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
   b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
   c) Depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";
   d) Providing such deposit insurance in such manner and to such extent as may be prescribed;
   e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
   f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.
2) Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.
3) Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
4) Exemptions to Private Limited Companies In case of private company - Points (a) to (e) above shall not apply to private Companies-
   a) which accepts from its member's monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or
   b) which is a start-up, for five years from the date of its incorporation; or
   c) which fulfils all of the following conditions, namely: -
      i) It is not an associate or a subsidiary company of any other company;
      ii) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
      iii) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:
5) Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Suggestion:

E-Forms to be filled by company under this section:

DPT-1: Form and particulars of advertisement or circular

DPT-3: Return of deposit to be filed with ROC

M.18: Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.[V.IMP]

Provision [Section 73 of the Indian Companies Act, 2013 & Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]

1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.
2) However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.
3) The company shall execute a deposit trust deed in DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement.
4) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -
   a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
   b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
   c) has any material pecuniary relationship with the company;
   d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
   e) is related to any person specified in clause (a) above.
5) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.
6) However, in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Answer:

Above are the provisions regarding 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

N.18: State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies? [LDR IMP]

Provision: [Section 73 of the Indian Companies Act,2013]

1) Acceptance of deposit by company from its members: As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—
   a) By issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
   b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
   c) Depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";
   d) Providing such deposit insurance in such manner and to such extent as may be prescribed;

e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

2) Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.

3) Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

4) Exemptions to Private Limited Companies

In case of private company - Points (a) to (e) above shall not apply to private Companies-

a) which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or

b) which is a start-up, for five years from the date of its incorporation; or

c) which fulfils all of the following conditions, namely:-

i) It is not an associate or a subsidiary company of any other company;

ii) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and

iii) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

5) Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

M.19: State, with reasons, whether the following statements are True or False?

i) ABC Private Limited may accept the deposits from its members to the extent of ₹ 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ₹ 50.00 Lakh.

ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

Or

State, with reasons, whether the following statements are true or false?

i) XYZ Private Limited may accept the deposits from its members to the extent of ₹ 60.00 Lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹ 60.00 Lakh.

ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

Provision: [Section 73 of the Indian Companies Act,2013 & Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014]

1) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35 % of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

2) Provided that a private company may accept from its members monies not exceeding 100 % of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

3) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other

deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company

Explanation & Answer:

i) Therefore, the given statement of eligibility of ABC Private Ltd./XYZ Private Ltd. to accept deposits from its members to the extent of ₹ 50.00 lakh/60.00 lakh is True.

ii) Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

Section 76: Acceptance of Deposits from Public by Certain Companies

Answer Writing Points For Sec 76:

1) According to section 76 of The Companies Act,2013 A public company having a net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.
2) Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
3) Provided further that every company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets.
4) The amount of charge shall not be less than the amount of deposits accepted.

Suggestion:

E-Forms to be filled by company under this section:

DPT-2: Appointment of trustee for depositors

M.19: Ashish Ltd. having a net-worth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members.[LDR IMP]

Provision [Section 76 of the Indian Companies Act, 2013]

1) According to section 76 of The Companies Act,2013 A public company having a net worth of not less then 100 crore rupees or turnover of not less then 500 crore rupees can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe
2) Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
3) Provided further that every company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribe.

Explanation & Answer:

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfil the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

N.17 OLD:ABC Ltd. having a net worth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members

Provision [Section 76 of the Indian Companies Act, 2013]

1) According to section 76 of the Companies Act, 2013, a public company,
   a) having net worth of not less than 100 crore rupees or
   b) turnover of not less than 500 crore rupees,
   can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.
2) Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
3) Provided further that every company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Explanation & Answer:

1) Since, ABC Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members.
2) If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

N.17 OLD: Perfect Limited Company raised the secured deposit of`100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:
Land & Building ` 60 crores
Plant & machinery ` 20 crores Factory Shed ` 20 crores Trade Mark ` 20 crores Goodwill ` 25 crores Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Provision [Section 76 of the Indian Companies Act, 2013]

1) As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets.
2) The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.
3) In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.
4) The other notable points are:
   a) The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
   b) Total value of security should not be less than the amount of deposits accepted and interest payable thereon.
   c) The market value of assets subject to charge shall be assessed by a registered valuer.
   d) The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

Explanation:

In the given question,

Particulars	Amount (in rs)
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 crore

Answer:

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

Section 76A: Punishment for contravention of Sec 73 and Sec 76

Answer Writing points For Sec 76A:

1) In case of contravention of Sec 73 or Sec 76 or rules made thereunder then penalty shall be
   a) The company shall repay the deposit along with the interest due and will also be punishable with fine which shall not be less than ₹1 crore or twice the amount of deposit accepted by the company, whichever is lower rupees but which may extend to ₹10 crore.
   b) And every officer in default shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than ₹25 lakh but which may extend to ₹2 crore.
2) The officer of the company who is in default has contravened such provisions knowingly or wilfully with the intension to deceive the company or its shareholders or its depositors or creditors or tax authorities he shall be liable u/s 447.

July21: The Promoters of Jayshree Spinning Mills Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid ?

Provision [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]
According to Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, the following
Amount is not considered as deposit:
Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of The stipulation of any lending financial institution or a bank subject to the fulfillment of following Conditions:

a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
b) the loan is provided by the promoters themselves or by their relatives or by both; and
c) Such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Explanation & Answer:

1) Hence, in the instant case, the unsecured loan contributed by promoters of Jayshree Spinning Mills Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.
2) In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of Jayshree Spinning Mills Limited will be regarded as deposit.

MTP Oct21: Comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:
(i) ₹5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.
(ii) ₹2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹1,50,000, as a non-interest bearing security deposit under a contract of employment.

Provision: [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]
According to Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, the following Amount is not considered as deposit:
Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of The stipulation of any lending financial institution or a bank subject to the fulfillment of following Conditions:

a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
b) the loan is provided by the promoters themselves or by their relatives or by both; and
c) Such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Explanation & Answer:
In terms of this Rule the answers to the given situations shall be as under:

(i) ₹ 5,00,000 raised by Rohit Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

(ii) ₹ 2,00,000 received by Rishi Limited from its employee Mr. Tarun, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹ 1,50,000

Dec21: Discuss the following situations in the light of 'Deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company ₹ 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Shriram Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its member for tenure, which is less than six months. Is there any possibility to do so?

(iii) The turnover of Y Ltd. is ₹ 400 crore as per last audited financial statement and net worth is ₹ 50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013?

Answer [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

(i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives Rs. 25 lakhs or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received ₹ 20.00 lacs from Paras in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of ₹ 25.00 lacs. Hence, the amount of ₹ 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than 6 months.

Further, maximum period of acceptance of deposit cannot exceed 36 months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than 6 months subject to the conditions that:

a) such deposits shall not exceed 10%. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

b) such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

In the given case of Shriram Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than 6 months.

It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after 3 months from the date of such deposits.

(iii) As per Rule 2 (1) (e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76 (1), 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 in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution. Thus, a public company can accept deposit from public if it is an eligible company.

In the given question, Y Ltd. has a turnover of ₹ 400 crore and net worth of ₹ 50 crore. Hence, it cannot be termed as an eligible company and thus cannot accept deposits from the public.

M22: Explain, provision relating to 'Credit Rating' which an 'Eligible Company' should follow to raise public deposits as per Companies Act, 2013.

Provision [Section 73 of the Companies Act 2013]

1) An eligible company that desires to raise public deposits shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on the due date) from a recognised credit rating agency.
2) The rating obtained, which ensures adequate safety, shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.
3) Also, a copy of the credit rating, which is being obtained at least once a year, shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.
4) Further, the credit rating shall not be below the minimum investment grade rating or other specified credit ratings for fixed deposits.
5) It shall be obtained from any one of the approved credit rating agencies as specified for Non- Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

RTPM22: Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ` 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ` 1 crore will be considered as deposit?

Provision: [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

As per sub-clause (ixa) of Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

Answer:

Hence, ` 1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

RTPM22: Answer the following citing relevant provisions of the Companies Act, 2013:

a) Wire Electricals Limited having paid-up capital of ` 1.00 crore availed a term loan of ` 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?

Answer: [Rule 2 (1) (c) & Rule 3 (5) of the Companies (Acceptance of Deposits) Rules, 2014]

a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of

Mr. Taar that the term loan of ` 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account. Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.

MTPOct22: Rashmika Ltd. received share application money of ` 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit. The share application money of ` 5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ` 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.
You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

Provision: [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

1) According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following category of receipt is not considered as deposit:
Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money or advance towards allotment of securities, pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

2) It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

3) Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

Explanation & Answer:

a) In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit.

b) Further, on 30.07.2021 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Kumar (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

c) In the light of the facts of the question and provisions of Law:

(1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2021.

(2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakh adjusted against payment due to be received from Mr. Kumar, cannot be treated as refund.

MTPOct22: Sasha Private Limited received ` 3,00,000 from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift. Decide as per the relevant provisions of the Companies Act, 2013, whether the said amount received by the company will be considered as deposits or not.

Provision: [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

1) According to sub-clause (viii) of Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who, at the time

of the receipt of the amount, was a director of the company or a relative of the director of the private company, is not considered as deposit.

2) Director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

Explanation:

Rs. 3,00,000 received by Sasha Private Limited, from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c).

Answer:

Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'. As an additional requirement, the company shall disclose the details of money so accepted in the Board's report

MTPOct22: Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits. (Write any three)

Answer: [Rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014]

1) According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:
   - **a)** any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of 365 days from the date of acceptance of such advance: However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.
   - **b)** any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;
   - **c)** any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
   - **d)** any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
   - **e)** any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
   - **f)** any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
   - **g)** any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;
2) However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.
3) Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

Chapter 6:
Registration of Charges

Section 2(16): Definition of Charge

Answer Writing Points For Sec 2(16)& Sec 86:

Charge:

1) When parties agree that property shall be made available as security for the payment of debt in a transaction for value, this is termed as that charge is created.
2) The term charge has been defined in section 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.
3) Every company is under an obligation to keep at its registered office a register of charges & enter therein all charges specifically affecting property of company & all floating charges on undertaking or any property of company.

PM & N21 RTP: Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

Provision [Section 2(16) & 86 of the Companies Act, 2013]

1) Charge:

When parties agree that property shall be made available as security for the payment of debt in a transaction for value, this is termed as that charge is created.

The term charge has been defined in section 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.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

2) According to section 86 of the Companies Act, 2013, If any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of Rs. 5 lakhs and every officer of the company who is in default shall be liable to a penalty of Rs.50,000.
3) Further if any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.

M.18: Define Charge. Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013.

Provision [Section 2(16) of the Companies Act, 2013]

Section 2(16) of the Companies Act, 2013 defines "charge" 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.

Where the instrument or deed relates solely to the property situated outside India, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar shall be verified by a certificate issued either-

a) under the seal, if any, of the company, or
b) under the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or
c) under the hand of some person other than the company who is interested in the mortgage or charge.

MTPOct22: Krish (Private) Limited on 7th May 2022 obtained ` 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ` 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private)

Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

Provision [Section 2(16) of the Companies Act, 2013]

1) As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.
2) Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender.
3) Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Explanation & Answer:

a) Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender.
b) Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it. Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director.
c) Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company

Section 77: Application for Registration of Charge

Answer Writing Points For Sec 77:

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner,
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed
5) Provided further that if the registration is not made within the period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
6) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.
7) Effect of subsequent registration- Any subsequent registration shall not affect any right acquired in respect of any property before the charge is actually registered.

Suggestion:

E-Forms to be filled by company under this section:
CHG-1: Registration of creation or modification of the charge
CHG-2 & CHG-3: Certificate of registration

M06,PM: What do you understand by "Charge" under the Companies Act, 2013? Point out the circumstances where under a floating charge becomes a fixed charge.
Distinguish between "Fixed charge" and "Floating charge".[V.IMP]

Provision [Section 2(16) & 77 of the Companies Act, 2013]

1) The word "Charge" has not been adequately defined in the Companies Act, 2013. So, the meaning of the term should be drawn from its use in normal parlance. A charge means a lien or a claim on an asset against a loan taken, providing that the owner cannot dispose off the asset without clearing off the loan. It also provides that in case the borrower defaults on the loan, the lender may dispose of the asset and use the proceeds to adjust his claim on the loan and pay the excess amount received to the borrower.
2) Since, physical possession of the asset as a security is not possible in respect of all assets, those assets which cannot be physically taken over the by lender as securities, are charged in favour of the lender by executing a loan and a charge document.
3) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation or such extended period as has been approved by the Registrar.
4) Floating charge crystallizes under the following circumstances:
   a) When the company goes into liquidation, or
   b) When the company ceases to carry on business, or
   c) When a receiver is appointed, or
   d) When default is made in paying the principal and/or interest and the holder of the charge brings an action to enforce his security.
5) Distinction between fixed charge and floating charge:

	Fixed charge	Floating charge
1.	It is a legal charge.	It is an equitable charge.
2.	It is a charge on specific, ascertained and existing asset.	It is a charge on present and future assets. No specific assets.
3.	Company cannot deal with the assets except with the consent of the charge holder.	Company is free to use or deal with the assets the way it likes until the charge becomes fixed.
4.	Registration of fixed charge on movable assets is not	Registration of all floating charge on all kinds of assets is compulsory
5.	Fixed charge has always priority over floating charge.	Ambulatory and shifting in character.

M12,M04,N08,PM: What do you understand by the term 'Floating charge'? State the characteristics of a floating charge.

Provision [Section 77 of the Companies Act, 2013]

1) A floating charge is an equitable charge which is not a specific charge on any property of the company. Thus, the company may, despite the charge, deal with any of the assets in the ordinary course of business. It is of the essence of a floating charge that it person in whose favour the charge is created, intervenes.
2) The main characteristics of a floating charge as described in **Re.Yorkshirewool combers Association** are as follows:
   a) It is a charge on a class of the company's assets, present and future, that class being one which, in the ordinary course of the business is changing from time to time.
   b) Generally, it is contemplated that the company carry on its business in an ordinary way with such a class of assets till some event occurs on which the

charge is to settle down on the property as then existing and the charge becomes fixed. The moment the charge crystallises, it becomes a fixed charge.

c) Floating charge allows unrestricted use of the asset held as security.

d) It is a cover against all the assets of the business. As and when the value of the assets change, the value of the charge also changes.

e) In case of floating charge, the borrower is not required to obtain the consent of the lender. The company can buy or sell the charged asset freely in the normal course of business.

M.18: 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? [V.IMP]

Provision [Section 2(16) & 77 of the Companies Act, 2013]

1) The term charge has been defined in section 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.

2) 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.

3) 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.

4) 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 an information in public domain as to how much company has borrowed against its assets and from whom.

5) Every company shall be duty bound to register its charges with the ROC within 30 days.

6) The above duty to register the particulars of charge applies irrespective of –

a) whether the assets charged are tangible or not

b) whether these are situated in India or outside

c) whether charge is created in India or outside India

7) Particulars of charge shall be:

a) signed by the company and the charge-holder

b) filed together with the instruments, if any, creating such charge

c) in prescribed form,

d) in prescribed manner

e) on payment of prescribed fee.

8) Provided that the Registrar may, on an application by the company, allow such registration to be made

a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or

b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed

9) Provided further that if registration is not made within period specified then

a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.

N05,PM: XYZ Limited realized on 3rd November, 2015 that particulars of a charge created on 11th September, 2015 in favour of a bank were not filed with the Registrar of Companies for registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 11th August, 2015 instead of 11th September, 2015? Explain with reference to the relevant provisions of the Companies act, 2013.

Provision [Section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed
5) Provided further that if registration is not made within period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
6) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

Explanation & Answer:

a) In this case particulars of charge have not been filed within the prescribed period of 30 days. Taking advantage of extended period, XYZ Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.
b) There will be no change in the situation if the charge was created on 11th August,2015.

M08,PM: A charge requiring registration with Registrar of Companies was created on 1st February, 2018 by XYZ Limited. The Secretary of the Company realised on 15th March, 2018 that the charge was not filed with the Registrar. State the steps to be taken by the Secretary to get the charge registered with the Registrar. [LDR IMP]

Provision [Relevant section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made

a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed

5) Provided further that if registration is not made within period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
6) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.
7) Effect of subsequent registration- Any subsequent registration shall not affect any right acquired in respect of any property before the charge is actually registered.

Explanation:

The Secretary may take advantage of the extension by ROC up to 300 days and immediately file the particulars of charge with the Registrar, giving adequate reasons for the delay.

Answer:

If the Registrar is satisfied, he may condone the delay in registration on payment of additional fees.

PM: Explain the meaning and significance of the 'Pari-Passu' clause in a debenture. State the particulars to be filed with the Registrar of Companies in case of such debentures secured by a charge on certain assets of the company. [V.IMP]

Provision: [Section 77 of the Companies Act, 2013]

1) Pari-passu is a Latin phrase meaning "equal footing" that describes situations where two or more assets, securities, creditors, or obligations are equally managed without preference.
2) Pari-Passu clause in a debenture means that all the debentures of that particular series are to be paid rateably, if, therefore, security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately.
3) If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue, and if they are all issued on the same date they will be payable according to their numerical order.
4) A company, however, cannot issue a new series of debentures so as to rank 'pari-passu' with any prior series unless the power to do so is expressly reserved and contained in the document of offer.
5) Registration of charge:
   a) Under section 77 (1) of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.
   b) In terms of Rule 3 of the Companies (Registration of Charges), Rules 2014 for the registration of charge in respect of debentures the following documents should be submitted to the Registrar:
      i) The particulars of charge;

ii) Instrument for the creation or the modification of the charge;
iii) Application in prescribed Form

PM: Is registration of a charge compulsory? If not, what are the effects of non-registration? [IMP]

Provision: [Section 77 & 78 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed
5) Provided further that if registration is not made within period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
6) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.
7) Any subsequent registration shall not affect any right acquired in respect of any property before the charge is actually registered.

Explanation & Answer:

Hence, Registration of charge by company is duty of the company if not done then the same shall be done by charge holder and The obligation to repay the amount secured by the charge shall remain unaffected.

PM: ABC Limited realised on 2nd May, 2014 that particulars of charge created on 12th March, 2014 in favour of a Bank were not filed with the Register of Companies for Registration, what procedure should the Company follow to get the charge registered with the Registrar of Companies?
Would the procedure be different if the charge was created on 12th February, 2014 instead of 12th March, 2014? Explain with reference to the relevant provisions of the Companies Act, 2013.

Provision: [Section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge

c) in prescribed form,
d) in prescribed manner
e) on payment of prescribed fee.

4) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed
5) Provided further that if registration is not made within period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
6) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

Explanation:

In this case particulars of charge have not been filed within the prescribed period of 30 days. However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed.

Answer:

Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge. There will be no change in the situation if the charge was created on 12th February,2014.

MTP N.19: MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with Registrar of Companies. What procedure should the company follow to get the charge registered? Would procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to relevant provisions of Companies Act, 2013.

Provision: [Section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made:
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed

Explanation:

a) The charge in the present case was created after 02-11-2018 (*i.e.* the date of commencement of the Companies Amendment Act, 2019) to which another

set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

b) MNC Limited should immediately file particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

c) If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of 60 days has already expired from the date of creation of charge.

d) However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of 60 days but the company is required to pay advalorem fees.

e) Since first 60 days from creation of charge were expired on 11th May, 2019, MNC Limited can still get the charge registered within a further period of 60 days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

N.18: What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges. [LDR IMP]

Provision: [Section 77 & 78 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.

2) The above duty to register the particulars of charge applies irrespective of –
- **a)** whether the assets charged are tangible or not
- **b)** whether these are situated in India or outside
- **c)** whether charge is created in India or outside India

3) Particulars of charge shall be:
- **a)** signed by the company and the charge-holder
- **b)** filed together with the instruments, if any, creating such charge
- **c)** in prescribed form,
- **d)** in prescribed manner
- **e)** on payment of prescribed fee.

4) Provided that the Registrar may, on an application by the company, allow such registration to be made
- **a)** In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
- **b)** In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed

5) Provided further that if registration is not made within period specified then
- **a)** In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- **b)** In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.

6) According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

7) The register of charges and instrument of charges, shall be open for inspection during business hours:
- **a)** by any member or creditor without any payment of fees; or
- **b)** by any other person on payment of such fees as may be prescribed, subject to such reasonable restrictions as company may, by its AOA, impose.

M.19: State, with reasons, whether the following statements are True or False? The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

Provision: [Section 77 of the Companies Act, 2013]

1) As per section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India,

to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

2) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before the commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed

Answer:

Hence, the given statement is True.

RTPM22: Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

a) What procedure should the company follow to get the charge registered?

b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013.[LDRIMP]

Provision: [Section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

Explanation & Answer:

a) Krish Limited did not register the charge with Registrar of companies till 15th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021). Taking advantage of clause (b) of first proviso to section 77 (1), Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of 60 days but the company is required to pay ad valorem fees.

c) If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of 60 days has already expired from the date of creation of charge.

d) Since the first 60 days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of 60 days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non - registration of charge.

MTPM23: Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013.

Provision: [Section 77 of the Companies Act, 2013]

1) Every company shall be duty bound to register its charges with the ROC within 30 days.

2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside
   c) whether charge is created in India or outside India
3) Thus, charge may be created within India or outside India. Also the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

Explanation:

a) In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.
b) As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Answer:

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

Section 78: Application For Registration of charge

Answer Writing Points For Sec 78:

1) When a company fails to register the charge within 30 days of its creation, the person in whose favour the charge is created may apply to the registrar along with the instrument created for the charge.
2) Registrar may, within 14 days allow such registration on payment of prescribed fees & additional fees. If company shows sufficient cause as to why the charge should not be registered, registrar may not allow such registration.
3) However before registering such charge, ROC shall give a notice to company.

M22: Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:
(1) Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
(2) When can the Registrar refuse to register the charges the present scenario?

Provision [Section 78 of the Companies Act, 2013]

1) Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.
2) Accordingly, if a charge is created, company is primarily responsible for registering the charge however it fails to do so within the prescribed period of 30 days [as provided in section 77], person in whose favour charge is created (i.e. charge-holder) may apply to Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner.

Explanation:

(1) In light of above provisions, the Nationalized Bank can get the charges registered.
(2) However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Section 79: Sec 77 to apply in certain matters

Answer Writing Points For Sec 79:

1) The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law.
2) Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
3) Section 79 of the Companies Act, 2013 provides that "whenever the terms or conditions or the extent or operation of any charge registered under section 77 of the Act are modified; it shall be the duty of the company to send to the

Registrar the particulars of such modifications and get such modification registered.

4) The provisions applicable to the registration of a charge under section 77 shall apply to modification of the charge.
5) Some examples of modification are as under:
   a) where the charge is modified by varying any terms and conditions of the existing charge by agreement;
   b) where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
   c) where the modification is by ceding a pari passu charge;
   d) change in rate of interest (other than bank rate);
   e) change in repayment schedule of loan; (this is not applicable in working loans which are repayable on demand) and
   f) partial release of the charge on a particular asset or property.

Suggestion:

E-Forms to be filled by company under this section:

CHG-1: Registration of creation or modification of the charge

J09: While sanctioning working limit, the rate of interest had been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India. There was a change in the interest rate due to Reserve Bank of India notification issued later. The Bank insisted on filing a return of modification of charges. Is the stand of the bank correct? Discuss in the light of the provisions of the Companies Act, 2013. [IMP]

Provision [Section 79 of the Companies Act, 2013]

1) The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law.
2) Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
3) Section 79 of the Companies Act, 2013 provides that "whenever the terms or conditions or extent or operation of any charge registered under section 77 of the Act are modified; it shall be the duty of company to send to the Registrar the particulars of such modifications and get such modification registered.
4) The provisions applicable to the registration of a charge under section 77 shall apply to modification of the charge.
5) Some examples of modification are as under:
   a) where the charge is modified by varying any terms and conditions of the existing charge by agreement;
   b) where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
   c) where the modification is by ceding a pari passu charge;
   d) change in rate of interest (other than bank rate);
   e) change in repayment schedule of loan; (this is not applicable in working loans which are repayable on demand) and
   f) partial release of the charge on a particular asset or property.

Answer:

In the light of the above, the stand of the bank is correct.

Section 80: Date of Notice of Charge

Answer Writing Points For Sec 80:

1) Where any charge on any property or assets of a company or its undertakings is registered u/s77 a person shall be deemed to have notice of such registration, who is acquiring such property, assets, undertaking part thereof.
2) Thus, every person proposing to deal with a company should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into transaction.
3) In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot claim the loss from the company for it shall be deemed that he had notice of charge.

M.18 RTP: Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

Provision: [Section 80 of the Companies Act, 2013]

1) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
2) Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Answer:

Thus, the contention of NRT Ltd. is correct

MTP Nov21: Mr. Pam purchased a commercial property in Delhi belonging to ABC Limited after entering into an agreement with the company. At the time of registration, Mr. Pam comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of ABC Limited is correct?

Provision: [Section 80 of the Companies Act, 2013]

1) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
2) Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Answer:

In view of above, the contention of ABC Limited is correct.

Section 82: Company to Report Satisfaction of Charges

Answer Writing Points For Sec 82:

1) The term satisfaction of charge means that the company has either paid off the debt against which charge was created or assets charged have been disposed of and the debt paid off. In either case, full payment of debt results in satisfaction of charge and when this happens charge must be got vacated.
2) Under section 82 (1) a company shall give intimation to Registrar in prescribed form, of payment or satisfaction in full of any charge registered under this Chapter within a period of 30 days from date of such payment or satisfaction.
3) Section 82 (2) provides that the Registrar shall, on receipt of intimation under sub-section (1), send a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar.
4) If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges and shall inform the company that he has done so.
5) Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge

Suggestion:

E-Forms to be filled by company under this section:

CHG-4: Satisfaction of charge

PM: Explain briefly the provisions relating to registration, modification and satisfaction of charges. [LDR IMP]

Provision: [Section 77, 78, 79, 82 & 83 of the Companies Act, 2013]

Section.77 - Registration of charge by Company

1) Every company shall be duty bound to register its charges with the ROC within 30 days.
2) The above duty to register the particulars of charge applies irrespective of –
   a) whether the assets charged are tangible or not
   b) whether these are situated in India or outside

c) whether charge is created in India or outside India

3) Particulars of charge shall be:
   a) signed by the company and the charge-holder
   b) filed together with the instruments, if any, creating such charge
   c) in prescribed form,
   d) in prescribed manner
   e) on payment of prescribed fee.
4) Provided that the Registrar may, on an application by the company, allow such registration to be made
   a) In case of charges created before commencement of the Companies Amendment Act, 2019 within a period of 300 days of such creation; or
   b) In case of charges created on or after the commencement of the Companies Amendment Act, 2019 within a period of 60 days of such creation, on payment of such additional fees as may be prescribed.
5) Further provides that nothing shall prejudice any contract or obligation for repayment of the money secured by a charge. This means that obligation of a company to repay debt is not affected by the non-registration of the charge.

Section 78 – Registration of Charge by Charge Holder

1) Provided further that if registration is not made within period specified then
   a) In clause (a) the registration of the charge shall be made within 6 months from the date of commencement of the Companies Amendment Act, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
   b) In clause (b) the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed.
2) The register may within 14 days allow such registration on payment of prescribed fees and additional fees. However before registering such charge the register shall give notice to company.
3) If the company shows the sufficient cause as to why the charge should not be registered, the register may not allow such registration.
4) If the charge is registered on the application of such person, s/he be entitled to such reimbursement from the company as s/he may incur for the purpose of such registration e.g. fees or additional fees.

Section 79 – Section.77 to Apply in Certain Matter

1) The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
2) Section 79 of the Companies Act, 2013 provides that whenever terms or conditions or extent or operation of any charge registered under section 77 of the Act are modified; it shall be duty of the company to send to the Registrar the particulars of such modifications and get such modification registered.
3) Provisions applicable to registration of a charge under section 77 shall apply to modification of the charge." Some examples of modification are as under:
   a) where the charge is modified by varying any terms and conditions of the existing charge by agreement;
   b) where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
   c) where the modification is by ceding a pari passu charge;
   d) change in rate of interest (other than bank rate);
   e) change in repayment schedule of loan; (this is not applicable in working loans which are repayable on demand) and
   f) partial release of the charge on a particular asset or property.

Section 82 - Satisfaction of charge by Company

1) The term satisfaction of charge means that the company has either paid off the debt against which the charge was created or the assets charged have been disposed off and the debt paid off. In either case, the full payment of the debt results in the satisfaction of charge and when this happens the charge must be got vacated.
2) Under section 82 (1) a company shall give intimation to Registrar in prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of 30 days from date of such payment or satisfaction.
3) Section 82 (2) provides that the Registrar shall, on receipt of intimation under sub-section (1), send a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar.
4) If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges and shall inform the company that he has done so.

5) Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

Section 83 - Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company

1) Section 83 (1) states that 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 or in part; or
   b) that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.
2) Section 82 (2) further requires the Registrar to inform the affected parties within 30 days of making the entry in the register of charges kept under sub-section (1) of section 81. Part payment or satisfaction of charge need not be intimated to the Registrar; only satisfaction in full has to be reported within 30 days from the date of such payment of satisfaction.

M.19: State, with reasons, whether the following statements are True or False? The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

Provision: [Section 82 of the Companies Act, 2013]

According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

Answer:

Hence, the given statement is true.

N22: Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Provision: [Section 82 of the Companies Act, 2013]

1) According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and
2) if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.
3) Intimation regarding Satisfaction of Charge Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form.
4) The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.
5) Proviso to Section 82 extends period of intimation from 30 days to 300 days.
6) Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

Explanation & Answer:

In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The above steps shall be applicable to register the charge in the given circumstances.

Section 83: Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company

Answer Writing Points For Sec 83:

1) Section 83 of the Act of 2013 empowers Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
2) Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:
   a) debt has been satisfied in whole or in part; or
   b) part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
3) This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
4) The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
5) In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

Suggestion:

E-Forms to be filled by company under this section:

CHG-5: Satisfaction of charge

N.19 RTP & N.20 RTP: What are the powers of Registrar to make entries of satisfaction and release of charges in absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Or

MTP N.18: What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013. [LDR IMP]

Provision: [Section 83 of the Companies Act, 2013]

1) Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
2) Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:
   a) the debt has been satisfied in whole or in part; or
   b) the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
3) This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
4) The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
5) In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

MTP(Oct.2020): Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.[LDR IMP]

Provision: [Section 83 of the Companies Act, 2013]

1) Section 83 of the Companies Act, 2013 empowers Registrar to make entries with respect to satisfaction and release of charges even if no intimation has been received by him from the company.

2) Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:
   a) debt has been satisfied in whole or in part; or
   b) part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
3) This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
4) The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
5) As per Rule 8 (2), in case Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Explanation & Answer:

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

MTPN22: Mr. Raj acquired a property from XYZ Limited which was mortgaged to ABC Bank. He settled the dues to ABC Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor ABC Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Raj approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

Provision: [Section 83 of the Companies Act, 2013]

1) Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
2) Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge
   a) has been paid or satisfied in whole or
   b) in part or that the part of the property or undertaking charged has been released from the charge or
   c) has ceased to form part of the company's property or undertaking, then
3) He may enter in the register of charges a memorandum of satisfaction that:
   a) the debt has been satisfied in whole or in part; or
   b) the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
   c) This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
4) Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
5) Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Explanation & Answer:

Therefore, Mr. Raj can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

Section 84: Intimation of Appointment of receiver or manager

Answer Writing Points For Sec 84:

1) The registrar shall register particulars of the receiver, person or instrument in the register of charge, when-
   a) any person obtains an order to appoint a receiver or manager or
   b) any person appoints a receiver or manager by virtue of any power contained in any instrument; and
   c) such person gives a notice to the company and to the ROC within 30 days from the date of order or appointment as the case may be, and
   d) notice is accompanied by the order to appoint or instrument of power, and

e) prescribed amount of fees is paid by such person.

2) If a person appointed as receiver or manager ceases to hold his office, he shall give a notice of such fact to company & ROC and ROC shall register the same.

Suggestion:

E-Forms to be filled by company under this section:

CHG-6: Intimation of appointment of receiver or manager.

Section 86: Punishment for Contravention

Answer Writing Points For Sec 86:

1) Penalty for contravention of any provision of this chapter:
   a) For company- ₹50000
   b) For every officer in default-₹50000
2) If any person wilfully furnishes any false or incorrect information or knowingly suppressed any material information then he shall be liable u/s 447.

Section 87: Rectification by CG in Register of Charges

Answer Writing Points For Sec 87:

1) If the satisfaction of charge u/s 82, 83 is not intimated to ROC within sufficient time then CG may:
   a) Condone such delay i.e CG may allow the extension of time for such filing or giving of intimation,
   b) Make an order for rectification of register of charges.
2) CG shall exercise its powers if an application is made in this behalf to CG by the company or any other interested person.

MTP(Oct.2020): ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ₹ 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.[LDR IMP]

Provision: [Section 87 of the Companies Act, 2013]

1) The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013.
2) Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:
   a) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
   b) when there was omission or misstatement of any particulars in any filing previously made to the Registrar.
   c) Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).
3) Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or misstatement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.
4) Application in Form CHG-8 shall be filed by company or any interested person.

Explanation & Answer:

Therefore Z Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Chapter 7
Management & Administration of Companies

Section 88: Register of Members

Answer Writing Points For Sec 88:

1) Company shall maintain following Registers in a manner or format as may be prescribed:
   a) Register of members
   b) Register of debenture holders.
   c) Register of any other security holder.
2) Every company shall maintain such register of members in MGT-1 and register of debenture holder or any other security holder in MGT-2.
3) The company shall within 30 days from the date of the opening of any foreign register, file with the registrar notice of the situation of office in Form MGT-3. And a company can maintain the register of foreign security holders at the foreign office, if so authorized by it articles.
4) The following companies shall maintain the register in respective manner:
   a) In case of listed company in electronic form as given by depository.
   b) Other companies in physical form.
5) Penalty for non-compliance with the provisions of the section for company and every officer in default:
   a) For Company-₹3lakh
   b) For every officer in default-₹50000

Section 89: Declaration respect of beneficial interest in shares

Answer Writing Points For Sec 89:

1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
2) If any change occurs in the beneficial interest in any shares in respect of which a declaration had been filed u/s 89, then, within 30 days of such change, a declaration in such form and containing such particulars shall be filed with the company by-
   a) The person in whose name the shares have been registered, and
   b) The person holding beneficial interest in such shares.
3) If any person fails, to make a declaration as required, without any reasonable cause, he shall be punishable with fine, which may extend to Rs. 50,000 and where the failure is a continuing one, with a further fine, which may extend to Rs. 1000 for every day after the first during which the failure continues.
4) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.
5) Where any declaration is filed u/s 89, the company shall-
   a) Make a note of such declaration in the relevant register, and
   b) Within 30 days, file a return in the prescribed form with the ROC.

Suggestion:

1) Where a company fails to file a return as above within prescribed time (270 days)-
   Penalty for company & every officer in default - penalty of Rs.1000 for each day during which such failure continues, subject to a maximum of Rs 5 lakhs in the case of a company & Rs.2 lakh in case of an officer who is in default
2) E-Forms to be filled by company under this section:
   MGT-4 to 6: Declaration in respect of beneficial interest in shares.

N06,PM: X had applied for the allotment of 1,000 shares in a company. No allotment of shares was made to him by the company. Later on, without any further application from X, the company transferred 1,000 partly-paid shares to him and placed his name in the Register of Members. X, knowing that his name was placed in the Register of Members, took no steps to get his name removed from the Register of members. The company later on made final call. X refuses to pay for this call. Referring to the provisions of the Companies Act, 2013,

examine whether his (X's) refusal to pay for the call is tenable and whether he can escape himself from the liability as a member of the company. [V.IMP]

Provisions [Section 89 of the Company Act, 2013]

1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
2) If any person fails, to make a declaration as required, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to two hundred rupees for every day after the first during which the failure continues subject to maximum of Rs. 5, 00,000.
3) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

Explanation & Answer:

In the given case, (X's) refusal to pay for the call is not tenable and he cannot escape himself from the liability as a member of the company as he did not give a valid declaration.

Section 90: Investigation of beneficial ownership of shares in certain cases

Answer Writing points for Sec 90:

1) Every individual who alone or together with one or more persons holds beneficial interest for not less than 25% of significance influence shall give a declaration to company about his interest.
2) Every company shall maintain the register of above individuals containing their details and holdings.
3) Every company shall file a return of significant beneficial owner and changes there in Form no. MGT-6 with ROC.
4) Above registers and returns shall be available for inspection to the members on payment of prescribed fees.
5) Company shall give notice to any person who they believe:
   a) have significant influence
   b) have knowledge of beneficial owner
   c) who had significant beneficial ownership during last 3 years.
6) The company shall given above information to the person who demands it within 30 days and if company fails to do so then person can make a application to NCLT.
7) The NCLT after investigation shall pass a order within 60 days.
8) If any person fails to make a declaration as required under sub-sec (1), he shall be liable to a penalty of Rs. 50000, with a further penalty of Rs. 1000per day, maximum of Rs.2 lakh
9) If a company, required to maintain register under sub-section (2) and file information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, a) Company shall be liable to a penalty of Rs. 1 lakh, with a further penalty of Rs.500 per day, maximum of Rs. 5 lakhs and b) Every officer of the company who is in default shall be liable to a penalty of Rs. 25000, with a further penalty of Rs. 200 for each day, maximum of Rs. 1 lakh.

Section 91: Power to close the Register of members or debenture holder or other security holders

Answer Writing Points For Sec 91:

1) In such a case of Consistent change in shareholders of company has to decide closure of register at the time of distributing dividend, issuing bonus shares and at the time of AGM for also how to decide shareholders so, company closes the register of members.
2) Maximum period of closure shall be:
   a) 30 days at a time.
   b) 45 days in a year in total.
3) Notice shall given by company for such a closure:
   a) Previous notice shall be given by company.

b) Notice shall be given in prescribed manner.
c) Notice shall be given before 7 days of closure.
d) Or, such a prescribed period given by SEBI.

4) In case of contravention penalty for every day during the register is kept closed- For company and every officer in default:
a) ₹5000 per day of default; or
b) ₹100000; whichever is lower

Section 92: Filing of Annual return with ROC

Answer Writing Points For Sec 92:

1) Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

2) The particulars contained in an annual return, to be filed by every company are as follows:
a) Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
b) Its shares, debentures and other securities and shareholding pattern
c) Its members and debenture-holders along with the changes therein since the close of the previous financial year;
d) Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
e) Meetings of members or a class thereof, Board and its various committees along with attendance details;
f) Remuneration of directors and key managerial personnel;
g) 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;
h) Matters relating to certification of compliances, disclosures;
i) 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;
j) Such other matters as may be prescribed.

3) In case of OPC & Small Company Annual Return shall be signed by Company Secretary or director (when CS is not appointed)

4) Annual Return shall be certified by CS in practice, for given below companies:
a) A listed Company
b) A company having such paid up capital of Rs. 10 crores or turnover of Rs. 50 crores or more.

5) Such certificate shall be in prescribed form i.e. in Form MGT-8

6) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report

7) Annual return shall be filled with ROC. Time limit to file AR with ROC is:
a) In case AGM is held within due date then AR shall be filled within 60 days from the date of AGM.
b) In case AGM is not held within due date then AR shall be filled within 60 days from the date on which AGM should have been held together with a statement specifying reason of not holding AGM.

Suggestion:

1) Where company fails to file even within 270days from the expiry of 60days time limit (i.e., fails to file within 330 days of date of holding AGM/date on which AGM should have been held), penalty shall be as under-
such company and its every officer who is in default shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum of 2 lakh rupees in case of company and Rs.50,000 in case of every officer in default.

2) When a CS certifies an AR, which is not in conformity with the requirements of this section or the applicable rules, he shall be punishable. Fine Rs. 50,000 ≤ Fine ≤ Rs.500000.

3) E-Forms to be filled by company under this section:
MGT-7 & 8: Annual Returns
MGT-9: Extract of annual return

N07: The financial year of AVD Company Ltd. ended on 31st March, 2018. The Annual General Meeting of the company was held on 10th October, 2018. As per requirements of the Companies Act, 2013, the Annual Return of the company should be filed with the Registrar of Companies within

a) 60 days from 10th October, 2018
b) 60 days from 30th September, 2018
c) 90 days from 30th September, 2018
d) 90 days from 10th October, 2018

Provisions [Section 92 of the Companies Act, 2013]
Every company shall file with Registrar a copy of the annual return, within 60 days from the date on which the AGM is held or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM, with such fees or additional fees as may be prescribed.

Answer:
b) 60 days from 30th September, 2018.

M.18: 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. [LDR IMP]

Provisions: [Section 92 of the Companies Act, 2013 Read with Rule 11 of the Companies (Management & Administration) Rules, 2014.]

1) Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A"; as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.
2) The particulars contained in an annual return, to be filed by every company are as follows:
   a) Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
   b) Its shares, debentures and other securities and shareholding pattern
   c) Its members and debenture-holders along with the changes therein since the close of the previous financial year;
   d) Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
   e) Meetings of members or a class thereof, Board and its various committees along with attendance details;
   f) Remuneration of directors and key managerial personnel;
   g) 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;
   h) Matters relating to certification of compliances, disclosures;
   i) 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;
   j) Such other matters as may be prescribed.

Answer:
Above points shall be contained in the Annual Return of the Company Under The Companies Act,2013.

MTP N.19: Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

Or

N21 RTP: Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors- first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders' approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

Provisions [Section 92 of the Companies Act, 2013]

1) According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the AGM is held or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying reasons for not holding the AGM, within time specified under section 403.
2) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of Rs.10000 and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of Rs. 2 lakhs in case of a company and Rs.50000 in case of an officer who is in default.
3) If a CS in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of Rs. 2 lakhs punishable.

Explanation & Answer:

a) In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.
b) In the above case, the AGM of Bazaar Limited/Nutty Buddy Limited should have been held within a period of 6 months, from the date of closing of the financial year but it did not take place.
c) Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

N.18: Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct.

Provisions [Section 92 of the Companies Act, 2013]

1) According to section 92(4) of the Companies Act, 2013, every company shall file with Registrar a copy of the annual return, within 60 days from the date on which the AGM is held or where no AGM is held in any year within 60 days from date on which the AGM should have been held together with statement specifying reasons for not holding AGM, within the time specified under section 403.
2) If any company fails to file its annual return under sub-section (4), before the expiry of period specified therein, such company and its every officer who is in default shall be liable to a penalty of Rs.10000 and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.2 lakh in case of a company and Rs.50000 in case of an officer who is in default.
3) If a CS in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of Rs.2 lakhs punishable.

Explanation:

In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held.

Answer:

Hence, the contention of directors is not correct.

Section 94: Place of keeping and Inspection of Registers, Returns, etc.

Answer Writing Points For Sec 94:

1) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:
2) Provided that such registers or copies of return may also be kept at any other

place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

3) Such registers, returns and record shall be kept for such period as may be prescribed by Central Government.

4) As per section 94(2) of the Companies Act, the inspection of the records, members, debenture-holders, other security holders or beneficial owners of the company can do i.e. registers and indices, and annual return.

Suggestion:

E-Forms to be filled by company under this section:

MGT-14: Preservation of register of members & annual returns.

M.18: M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

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

Provisions [Section 94 of the Companies Act, 2013]

1) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

2) Provided that such registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

3) The ROC has been given in advance a copy of the proposed Special Resolution.

4) Such registers, returns and record shall be kept for such period as may be prescribed by Central Government.

5) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company.

Explanation & Answer:

(i) So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than 1/10th of the total number of members entered in the register of members reside in Kolkata.

(ii) Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

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

Section 95: Registers etc. to be evidence

Answer Writing Points For Sec 95:

The registers, their indexes and copies of annual returns maintain u/s 88 and 94 shall be prima facie evidence of any matter directed or authorized to be inserted there in.

Section 96: Annual General Meeting

Answer Writing Points For Sec 96:

1) Every company, other than a OPC, shall in each year hold in addition to any other meetings, an AGM and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual AGM of a company and that of the next.

2) A company may hold its first AGM within a period of 9 months from the date of closing of its first financial year and subsequent AGM within a period of 6 months from the date of closing of the financial year;

3) Further, if a company holds its first AGM as previously mentioned, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

4) However, the Registrar may, for any special reason, extend the time within which any AGM (not being the first AGM) shall be held, by a period not exceeding 3 months.

5) Every AGM shall be called during business hours, i.e. between 9 am and 6 pm on any day that is not a National holiday, and shall be held either at the

registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

6) Provided that AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance
7) The CG may however; exempt any company from the provisions of this sub-section subject to such conditions as it may impose.
8) Further, The Companies Act, 2013 provides for the power of the Company Law Board to call annual general meeting under certain circumstances:
   a) If default is made in holding an AGM in accordance with Section 96 of the Companies Act, 2013, the CLB may, notwithstanding anything in the Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the CLB thinks expedient in relation to the calling, holding and conducting of the meeting.
   b) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the CLB, be deemed to be an AGM of the company.

Suggestion:

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.1 lakh and in the case of a continuing default, with a further fine which may extend to Rs.5000 for every day during which such default continues.

PM: What are the requirements for the conduct of valid general meetings?

Provision: [Section 96 of the Companies Act, 2013]

1) The business at a meeting of members of a company is said to have been "validly transacted" if the members, whether present personally or through proxies, have voted on the resolutions with the required majority.
2) Once the resolutions have been validly passed all members are bound by them. However, they cannot be so bound unless the meeting is validly held.
3) The essentials of a valid meeting are that the meeting should be:
   a) Properly convened:, i.e. a proper notice must be sent by the proper authority to every person entitled to attend.
   b) Properly constituted, i.e. the proper person must be in the chair, the rules as to quorum must be observed, and the regulations governing the meeting must be complied with.
   c) Properly conducted, i.e. the chairman must conduct the proceeding in accordance with the law relating to general meetings under the various provisions of the Companies Act 2013.
   d) Quorum Properly presented i.e. minimum number required to constitute a quorum has been presented within the prescribed as given in the act.

PM: Can an annual general meeting be held on a national holiday? [V.IMP]

Provision [section 96 of the Companies Act, 2013]

1) An AGM cannot be held on a national holiday. Under section 96(2) of the Companies Act, 2013 every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
2) A national holiday has been defined in the explanation to section 96 as a day declared as National Holiday by the Central Government.
3) A day may be declared to be a national holiday after the notices calling the meeting for the day have already been issued. To avoid the difficulties that may be caused from such a situation, no day declared by the Central Government to be a national holiday shall be deemed to be such a holiday in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.

Answer:

Therefore, annual general meeting cannot be held on a national holiday.

N.19RTP: Neemrana Infotech Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting [LDR IMP]

Provision [Section 96 of the Companies Act, 2013]

1) According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first AGM within a period of 9 months from the closing of its first financial year.

2) Also, if a company holds its first AGM as aforesaid, it shall not be necessary for the company to hold any AGM in the year of its incorporation
3) It also provides that the Registrar may, for any special reason, extend the time within which any AGM, other than the first AGM, shall be held, by a period not exceeding 3 months.
4) According to section 99, if any default is made in holding a meeting of company in accordance with section 96, company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 1 lakh and in case of a continuing default, with a further fine which may extend to Rs.5000 for every day during which such default continues.

Explanation & Answer:

a) In the given case, taking the first financial year of Neemrana Infotech Ltd is for the period 1st April 2017 to 31st March 2018, the first annual general meeting of the company should be held on or before 31st December, 2018.
b) Even though ROC is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meetings, such power does not apply in the case of the first annual general meeting.
c) Thus, the company and its directors will be liable under section 99 of the Companies Act, 2013 for the default if the annual general meeting was held after 31st December, 2018.

N.19 RTP: Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard.
Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ.

Provision [section 96 of the Companies Act, 2013]

1) According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first AGM within a period of 9 months from the closing of its first financial year.
2) It also provide that the Registrar may, for any special reason, extend the time within which any AGM, other than the first AGM, shall be held, by a period not exceeding 3 months.
3) According to section 96(2) of the Companies Act, 2013, every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
4) Provided that AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Explanation & Answer:

a) Thus, in the first case, the company is rightful in calling the AGM at Ansal Plaza.
b) In the second scenario, in case of an unlisted company, AGM may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

M.20 RTP: EFG Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held till 30.4.2019. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Provision [section 96 of the Companies Act, 2013]

1) According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first AGM within a period of 9 months from the date of closing of its first financial year.
2) Section further provides that Registrar may, for any special reason, extend time within which any AGM, other than the first AGM, shall be held, by a period not exceeding 3 months.

Explanation:

The first financial year of EFG Ltd is for the period 1st April 2017 to 31st March 2018, the first AGM of the company should be held on or before 31st December, 2018.

Answer:

Thus, the first AGM of EFG Ltd. should have been held on or before 31st December, 2018. Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

July21: Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

(i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.

(ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

(iii) Subsequent (second onwards) AGMs should be held within 6 months from closing of the financial year.

(iv) There shall be a maximum interval of 15 months between two AGMs.

Provision: [Section 96 of the Companies Act, 2013]

(i) According to section 96 of the Companies Act, 2013, first AGM of the company should be held within 9 months from the closing of the first financial year. Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is **incorrect**.

(ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any AGM, other than the first AGM, shall be held, by a period not exceeding 3 months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is **incorrect.**

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year. Hence, the given statement is **correct.**

(iv) According to section 96, the gap between two AGMs should not exceed 15 months. Hence, the given statement is **correct,** that there shall be a maximum interval of 15 months between two AGMs.

Section 97: Power of tribunal to call AGM

Answer Writing Points For Sec 97:

1) Tribunal has power to call or direct calling of meeting if:
   a) Any default is made in holding the AGM u/s 96.
   b) Application is made to the tribunal by any member.
2) If such default or application is made to tribunal then;
   a) Tribunal may call or direct calling of an AGM.
   b) Such order may have overriding effect on any other provision of the act or AOA of the company.
   c) Tribunal may give such ancillary or consequential directions as the tribunal thinks expedient.
3) The directions given by Tribunal may include direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
4) General meeting ordered by tribunal shall be deemed to be an AGM of the company.

Section 98: Power of tribunal to call meetings of members etc.

Answer Writing Points For Sec 98:

1) Tribunal has power to call meeting of members if;
   a) For any reason it is impractical to call a meeting (other than AGM) of company.
   b) Application is made by any director or member who would be entitled to vote at such meeting.
   c) Tribunal may, suo moto be if opinion to order such meeting of members.
2) If tribunal call such meeting then tribunal may:
   a) Order a meeting of company to be called, held and conducted in such a manner as the tribunal thinks fit.
   b) Give such an ancillary or consequential directions as the tribunal thinks expedient.
   c) Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
3) Such meeting held under this section shall deemed to be a meeting of the company duly called, held and conducted.

Section 99 : Punishment for default in complying with provisions of section 96 to 98

Answer Writing Points For Sec 99:

1) If any default is made in:

a) Holding a meeting of company as per sec 96, 97, 98 or;
b) Complying with any directions of tribunal.

2) Penalty for the company and every officer in default shall be:
a) For one time default – Fine up to ₹1lakh
b) For continuing default – further fine up to ₹ 5000 per day for the defaulting period.

PM, N02: In what way does the Companies Act, 2013 regulate the holding of an Annual General Meeting by a public limited company? Explain. [LDR IMP]

Provision [Section 96, 97 & 99 of the Company Act, 2013]

1) Every company, other than a one-person company, shall in each year hold in addition to any other meetings, an AGM and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual AGM of a company and that of the next.
2) A company may hold its first AGM within a period of 9 months from the date of closing of its first financial year and in every other case within a period of 6 months from the date of closing of the financial year;
3) Further, if a company holds its first AGM as aforesaid, it shall not be necessary for the company to hold any AGM in the year of its incorporation.
4) However, the Registrar may, for any special reason, extend the time within which any AGM (not being the first AGM) shall be held, by a period not exceeding 3 months.
5) Every AGM shall be called during business hours, i.e. between 9 am and 6 pm on any day that is not a National holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
6) Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance
7) The Central Government may however; exempt any company from the provisions of this sub-section subject to such conditions as it may impose.
8) Further, The Companies Act, 2013 provides for the power of the Company Law Board to call annual general meeting under certain circumstances:
a) If default is made in holding an AGM in accordance with Section 96 of the Companies Act, 2013, the CLB may, notwithstanding anything in the Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the CLB thinks expedient in relation to the calling, holding and conducting of the meeting.
b) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the CLB, be deemed to be an AGM of the company.
9) If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs 1 lakh and in the case of a continuing default, with a further fine which may extend to Rs.5000 for every day during which such default continues.

Answer:

In above given way a public limited company can hold annual general meeting under The Companies Act,2013.

N04, PM: M/s Low esteem Infotech Ltd. was incorporated on 1.4.2013. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Provision [Section 96 & 99 of the Company Act, 2013]

1) Every company shall be required to hold its first AGM within a period of 9 months from the closing of its first financial year.
2) Even though the ROC is empowered to grant extension of time for a period not exceeding 3 months for holding the AGM, such power does not apply in the case of the first AGM.

Explanation:

Presuming that the first financial year of Low Esteem Infotech Ltd is for the period 1st April 2013 to 31st March 2014, the first AGM of the company should be held on or before 31st December, 2014.

Answer:

Thus, the company and its directors will be liable for the default if the annual general meeting was held after 31st December, 2014.

M22: ABC Limited is an unlisted company, having its registered office at Kolkata. The Annual General Meeting was held at Goa on 1 st July 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa were received by 24th June 2021 by Email.

(i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.

(ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

Provision [Section 96 & 99 of the Company Act, 2013]

1) Section 96(2) of the Companies Act, 2013, states that every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
2) Provided that AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
3) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any.
4) As per section 102(4), if as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.
5) If any default is made in complying with the provisions of this section, every such director who is in default, shall be liable for such contravention with penalty [Section 102(5)].

Explanation & Answer:

(i) In the given question, ABC Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (24th June, 2021). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

(ii) Consequences will be as mentioned above under section 102 if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

Section 100 : Calling of Extra Ordinary meeting

Answer Writing Points For Sec 100:

1) Under Section 100 (2) of the Companies Act, 2013 makes it obligatory on the Board of Directors to convene an extra ordinary meeting of members if requisitioned by the stipulated number of members.
2) A valid requisition can be made by:
   a) In case of a company having share capital, such number of members who hold, on the date of requisition, not less than $1/10^{th}$ of such of the paid-up share capital of the company as on that date carries the right of voting is the stipulation.
   b) In case of a company not having share capital, such number of members who hold, on the date of requisition not less than $1/10^{th}$ of voting power of all the members as at the date of deposits of the requisition.
3) A valid requisition can be said to given if following provisions are complied with such as:
   a) The requisition shall set out the matters for the consideration for which the meeting is to be called.
   b) The requisitionists shall sign the requisition.
   c) The requisition shall be sent to the registered office of the company.
4) However, section 100 (4) of the Companies Act, 2013 provides that if Board fail to proceed to call a meeting within 21 days from the date of receipt of a valid requisition and to convene meeting within 45 days of the receipt of the requisition, the requisitionists may themselves call a meeting within 3 months of the date of the requisition.
5) The company shall reimburse any reasonable expenses incurred by the

requisitionists in calling a meeting to the requisitionists. The sums so paid to requisitionists shall be deducted from any fee or other remuneration payable to such of the directors who were in default in calling the meeting.

6) Moreover, where the requisitionists call a meeting and the registered office is not made available to them, it was decided in R. Chettiar v. M. Chettiar that the meeting might be held anywhere else.
7) Further, resolutions properly passed at such a meeting, are binding on the company

M06,PM: To remove the Managing Director, 40% members of Global Ltd. submitted requisition for holding extra–ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.
Examine the validity of the said meeting and resolution passed therein in the light of the Companies Act, 2013.

Provision [Section 100 of the Company Act, 2013]

1) The Companies Act, 2013 makes it obligatory on the Board of Directors to convene an extra ordinary meeting of members if requisitioned by the stipulated number of members.
2) However, if directors fail to proceed to call a meeting within 21 days from the date of receipt of a valid requisition for a date within 45 days of the receipt of the requisition, the requisitionists may themselves call a meeting within 3 months of the date of the requisition.

Case Law:

Moreover, where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in **R. Chettiar v. M. Chettiar** that the meeting may be held anywhere else.

Explanation:

40% of members constitute the required number and the board of directors has violated the provisions of law by not calling the meeting. Further, resolutions properly passed at such a meeting, are binding on the company.

Answer:

Thus, in the given case, since all the above mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.

PM,N07: Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolution proposed to be passed at the meeting.
(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
(iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present at the meeting.

Provision: [Section 100 of the Companies Act, 2013]

1) The Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.
2) Further, the requisition, made for convening an extra ordinary general meeting of members, shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.
3) The requisitioning members are not required to give reasons for the resolutions proposed so long as the matters are to be dealt with at the meeting are disclosed and the statement in terms of section 102(1), setting out all material facts relating to each item of business to be transacted is attached to the requisition.
4) This is essential as each such business transacted will be a special business and will require such statement to be sent along with the notice for the meeting.

Explanation & Answer:

Based on the above provisions of the Companies Act, 2013 the validity of the cases presented in the question would be as under:

(i) In view of the above law, the board of directors cannot refuse to convene the meeting if the reasons for the resolution are not given. What is required to be stated is the objects of the meeting, i.e., the matters for the consideration of which the meeting and resolutions to be passed. It is also

reasonable to assume that the statement of all material facts on the proposed resolution should also be given by the requisitionist as the Board may not be able to prepare such statement as it is not proposing the resolution in the first place. The material information regarding the resolution basically means the justification for the resolution which need not be given.

In given problem(i) the Board of Directors cannot refuse to convene the meeting because reasons for the resolution is not given.

(ii) Where two or more persons hold any shares or interest in a company jointly, a requisition, or notice calling a meeting, signed by one or some of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them. On the basis of above section the Board of Directors has no right to refuse to convene the meeting in the given problem (ii).

(iii) As per Section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled.so adjournment does not arise as same is cancelled.

M05: State the provisions of the Companies Act, 2013 regarding calling and holding an extraordinary general meeting with respect to:
(i) Number of members entitled to requisition a meeting.
(ii) Power of the tribunal to order meeting to be called under Section 186 of the Companies Act, 1956. [V.IMP]

Provision [Section 100 of the Companies Act, 2013 & 186 of the Company Act, 1956 is as follows]

1) According to the Companies Act, 2013 any meeting of members, other than an Annual General Meeting, shall be deemed to be an extraordinary meeting of the members. The Board is required to call a general meeting of the members if a requisition is made by the required number of members, which is as under:
- **a)** In the case of a company having a share capital, such number of members who hold at the date of requisition, not less than 1/10th of such of the paid up capital of the company as on that date carries the right of voting;
- **b)** In the case of a company not having a share capital, such number of members who have at the date of deposit of requisition not less than 1/10th of the total voting power of all the members having on the said date a right to vote

2) Power of Tribunal to order meeting to be called under Section 186:
If for any reason it is impractical to call a meeting, other than an annual general meeting, in any manner in which meetings of the company may be called, or hold or conduct the meeting of the company in the manner prescribed by the Act or the articles, the Tribunal may, either on its own motion or on the requisition of:
- **a)** Any director of the company or any member of the company who would be entitled to vote at the meeting:
- **b)** Order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- **c)** Give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying, or supplementing in relation to the calling holding and conducting of the meeting, the operations of the provisions of the Companies Act, 1956 and of the company's articles.

3) The Company Law Board may give direction that one-member present in person or by proxy shall be deemed to constitute a meeting with such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Answer:

(i) Therefore, Number of members required for calling the meeting is as given in point.1 above

(ii) Power of the tribunal to order meeting to be called under Section 186 of the Companies Act, 1956 are given in point.2.

M.19 RTP: Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:
(i) EGM be held in India
(ii) EGM be held in Netherlands

Provision: [Section 100 of the Companies Act, 2013]

1) According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.
2) Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

Explanation & Answer:

In the light of the above provisions:

(i) The Board of Directors can call the EGM in India.

(ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

N.17 OLD: To remove the Managing Director, 40% members of Tiger Farms Limited submitted requisition for holding an extra-ordinary general meeting. The Company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of the meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.
Examine the validity of the said meeting and the resolution passed therein under the provisions of the Companies Act, 2013.[LDR IMP]

Provision: [Section 100 of the Companies Act, 2013]

1) Section 100 (2) of the Companies Act, 2013 makes it obligatory on the Board of Directors to convene an extra ordinary meeting of members if requisitioned by the stipulated number of members.
2) In case of a company having share capital, such number of members who hold, on the date of requisition, not less than $1/10^{th}$ of such of the paid-up share capital of the company as on that date carries the right of voting is the stipulation.
3) However, section 100 (4) of the Companies Act, 2013 provides that if Board fail to proceed to call a meeting within 21 days from the date of receipt of a valid requisition and to convene meeting within 45 days of the receipt of the requisition, the requisitionists may themselves call a meeting within 3 months of the date of the requisition.
4) Moreover, where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in R. Chettiar v. M. Chettiar that the meeting may be held anywhere else.
5) Further, resolutions properly passed at such a meeting, are binding on the company.

Explanation:

1) Since 40% of members (presumed to have 40% voting right) submitted the requisition for the meeting, the board of directors has violated the provisions of law by not calling the meeting.
2) Thus, in the given case, since all the above desired provisions are duly complied with, the meeting held by the requisitionists.

Answer:

The resolution passed for removing the Managing Director of Tiger Farms Limited shall be valid.

N22: TST Limited has Equity Share Capital of 10000 shares @ `10 each. The Company has received a requisition from Mr. A & Mr. B each holding 1500 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.

Provision: [Section 100 of the Companies Act, 2013]

Validity of Resolution passed in the EGM called by the Requisitionists

1) Section 100 (2) of the Companies Act, 2013 makes it obligatory on the Board of Directors to convene an extra ordinary meeting of members if requisitioned by the stipulated number of members.
2) In case of a company having share capital, such number of members who hold, on the date of requisition, not less than $1/10^{th}$ of such of the paid-up share capital of the company as on that date carries the right of voting is the stipulation.
3) The requisition made under sub- section 2 shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

4) The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.
5) If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of 3 months from the date of the requisition. [Sub-Section 4].
6) Sub-section 5 of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by the Board and such meeting shall comply with all the requirements of the Act.
7) Sub-section 6 of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company.

Explanation & Answer:

In the given case, meeting called by requisitionist to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. A and Mr. B holding ` 30,000 (each holding ` 15,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

Section 101: Notice of Meeting

Answer Writing Points For Sec 101:

1) Any GM can be called by giving at least 21 clear days' notice.
2) Such notice may be either given in writing or through electronic mode.
3) a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto:
   a) in the case of an annual general meeting, by not less than 95 % of the members entitled to vote thereat; and
   b) in the case of any other general meeting, by members of the company—
      i) Holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than95 %. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
      ii) Having, if the company has no share capital, not less than 95 % of the total voting power exercisable at that meeting:
4) Every notice under this section shall specify:
   a) Date, day, place and hour of the GM;
   b) Business to be transacted at the GM.
5) Notice of every meeting of the company shall be given –
   a) to every member of the company,
   b) legal representative of any deceased member,
   c) the assignee of an insolvent member;
   d) to every director of the company;
   e) To auditor or auditors.
6) Any accidental omission or the non-receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting.

N08: STD Ltd. convened its Board of Directors meeting on 1st August, 2018. During the course of the meeting the date for calling annual general meeting was discussed but no decision could be taken on it in the meeting. However, the Secretary of the company issued the notice for calling the annual general meeting of the shareholders without taking any authorization from the Board of Directors.

State who is the proper authority to issue the notice for calling the annual general meeting and to whom such notice is to be given.[V.IMP]

Provision [Section 96 & 101 of the Company Act, 2013]

1) The Annual General Meeting or Extra-ordinary General Meeting can be called only with authority of Board of Directors i.e. by passing necessary resolution in the Board Meeting or by Circular resolution.
2) An Annual General Meeting or Extra-ordinary General Meeting cannot be called by an individual director or some of the directors or by secretary.
3) Notice of every meeting of the company shall be given –
   a) to every member of the company,
   b) legal representative of any deceased member,

c) the assignee of an insolvent member;
d) to every director of the company;
e) to auditor or auditors.

4) The private company, which is not, a subsidiary of a public company, may prescribe, by its Articles, persons to whom the notice should be given.
5) Any accidental omission or the non-receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting.

Case Laws:

1) The Secretary of the company does not have the power to call the meeting by himself by issuing notices. Unless the Secretary is specifically authorized either by the board of directors or by the articles, any meeting called by him and the business done there at it would be null and void.**(Al Amin Seatrans Ltd. Vs. Owners and Party Interested in Vessel M V "Loyal Bird").**
2) The notice of the meeting may be ratified by the Board of Directors of the company before the meeting is held to make it good **(Hooper Vs. Kerr. Stuart & Co.)**

Explanation & Answer:

In the given case, the Secretary of STD Ltd. convened the AGM without taking any authorization from the Board of Directors. However, the Board may ratify the said notice to make it valid.

N06,PM: Who are entitled to get notice for the general meeting called by a Public Limited Company registered under the Companies Act, 2013? Does the non-receipt of a notice of the meeting by any one entitled to such notice invalidate the meeting and the resolution passed thereat? What would be your answer in case the omission to give notice to a member is only accidental omission?

Or

M07: Who are the persons entitled to receive notice of a general meeting of a company, registered under the Companies Act, 2013? Shall the non–receipt of notice of the general meeting by any member invalidate the proceedings of the meeting? Explain.

Provisions [Section 101 of the Company Act, 2013 is as follows]

1) "Notice" of every meeting of the company shall be given -
   a) to every member of the company,
   b) legal representative of any deceased member,
   c) the assignee of an insolvent member;
   d) to every director of the company;
   e) to auditor or auditors and,
2) The private company, which is not, a subsidiary of a public company may prescribe, by its articles, persons to whom the notice should be given.
3) Any accidental omission or the non-receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting. However, omission to serve notice of meeting on a member on the mistaken ground that he is not a shareholder cannot be said to be an accidental omission.

Case Law:

Accidental omission means that the omission must be not only designed but also not deliberate. **[Maharaja Export Vs. Apparels Exports Promotion Council (1986)].**

Answer:

Therefore, accidental omission or the non-receipt of a notice of the meeting by any one entitled to such notice does not invalidate the meeting but omission as to mistaken ground that one is not a shareholder cannot be said as accidental omission.

N07: XYZ Limited called its Annual General meeting on 28th September, 2018. The notice of the meeting was posted on 6th September, 2018. With reference to the provisions of the Companies Act, 2013 examine whether the notice given by the company was valid.

Provision: [Section 101 of the Companies Act, 2013]

1) Any GM can be called by giving at least 21 Days clear notice of an AGM must be given.
2) The notice may be either in writing or through electronic mode.
3) However, a shorter notice shall be sufficient if consent for such shorter notice is given by 95% of the members entitled to vote at such meeting.
4) In case of notice by post, the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting.
5) Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded.

Explanation:

In the given case, 21 clear days' notice has not been served (only 19 clear days' notice is served). According to proviso to Section 101 (1), an AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Answer:

Accordingly, 21 clear days' notice has not been served (only 19 clear days' notice is served) and the meeting is, therefore, not validly convened.

MTP Oct21: XYZ Limited called its Annual General meeting on 28th September, 2018. The notice of the meeting was posted on 9th September, 2018. With reference to the provisions of the Companies Act, 2013 examine whether the notice given by the company was valid.

Provision: [Section 101 of the Companies Act, 2013]

1) Any GM can be called by giving at least 21 Days clear notice of an AGM must be given.
2) The notice may be either in writing or through electronic mode.
3) However, a shorter notice shall be sufficient if consent for such shorter notice is given by 95% of the members entitled to vote at such meeting.
4) In case of notice by post, the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting.
5) Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded.

Explanation:

In the given case, 21 clear days' notice has not been served (only 16 clear days' notice is served). According to proviso to Section 101 (1), an AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Answer:

Accordingly, 21 clear days' notice has not been served (only 16 clear days' notice is served) and the meeting is, therefore, not validly convened.

PM,N05: Dev Limited issued a notice for holding of its Annual General Meeting on 7th November, 2015. The notice was posted to the members on 16.10.2015. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:

(i) Whether the meeting has been validly called?

(ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the short fall, if any, be condoned?

Provision [Section 101 of the Company Act, 2013 & is as follows]

1) Any GM can be called by giving at least 21 Days clear notice of an AGM must be given.
2) The notice may be either in writing or through electronic mode.
3) However, a shorter notice shall be sufficient if consent for such shorter notice is given by 95% of the members entitled to vote at such meeting.
4) In case of notice by post, the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting.
5) Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded.

Explanation & Answer:

(i) Accordingly, 21 clear days' notice has not been served (only 19 clear days' notice is served) and the meeting is, therefore, not validly convened.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) An AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Dec21: New Pharma Ltd. issued a notice for holding its annual general meeting on 7th September 2020. The notice was posted to the members on 16th August 2020. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide:

(i) Whether meeting has been validly called?

(ii) If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?

(iii) Whether the length of serving of notices be curtailed by Article of Association?

Provision: [Section 101 of the Company Act, 2013]

1) According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed.
2) Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting, are excluded for sending the notice.
3) Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected-in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Explanation & Answer:

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

N03,PM: Dinesh, a director in a company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, under certificate of posting. Dinesh did not receive the said notices and could not attend the meetings wherein some important decisions were taken. Dinesh challenges the legality of the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013:

a) Whether the condition of Dinesh is valid?

b) Would you answer be still the same in case Dinesh remained outside India for two months (when such notices were given and meetings held).

Provision [Section 101 of the Company Act, 2013]

1) The notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him.
2) Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice.
3) If, however, a member wants to notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Explanation & Answer:

In the given case, the questions may be answered as under:

a) The contention of Dinesh shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.

b) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Dinesh at the address outside India. Therefore, answer in the second case shall differ from the first one.

PM: ABC Ltd. called its annual general meeting on 7th April, 2015. The notice of AGM was posted on 16th March, 2015. One member holding 20 shares wishes to challenge the resolutions passed at the AGM on the ground that the notice was not valid. What advice would you give to him?

Provision: [Section 101(1) of the Companies Act, 2013]

1) Any GM can be called by giving at least 21 Days clear notice of an AGM must be given.
2) The notice may be either in writing or through electronic mode.
3) However, a shorter notice shall be sufficient if consent for such shorter notice is given by 95% of the members entitled to vote at such meeting.
4) In case of notice by post, the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting.
5) Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded.

Case Law:

In **Saliesh Harilal Shah vs. Matushree Textiles Ltd. (1994) 2CLJ, 291**, the Bombay High Court [in contrast to the Madras High Court decision in **N. Chettair .vs the Madras Race Club (1951)** held that the requirement of the section as length of notice is directly only and not mandatory.

A couple of shareholders cannot be permitted to defeat the interest of the large body of shareholders by saying that the duration of the notice was not sufficient even if the short notice does not indicate any prejudice to the complaining shareholders.

Explanation:

1) In the instant case, the notice was short of two days as per the section:
   16th March to 7th April - 23 days
   Less date of service and date of meeting -2 days
   Clear number of days of notice -21 days
   Less 48 hours of posting - 2 days
   Total 19 days
2) Therefore, the meeting was invalid and the resolutions passed were invalid. However in case AGM, where at least 95% of the members entitled to vote consent to a shorter notice in writing or by electronic mode, have so consented the meeting may be held on shorter notice.

Answer:

Therefore, the member may be advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.

PM: The annual general meeting for 2012-2013 and 2013-14 were convened on 7-10-2015 belatedly and with great difficulty. The notice of the meeting was published in a newspaper of Calcutta on 12-9-2015. The shareholders received the notice 22-9-2015 which was shown to have been posted on 16-9-2015. The notice was dated 9-9-2015. D sought an injunction that the resolutions passed at the meetings are not given effect to, on the ground that the notice was received by him on 22-9-2015. D held only seven shares of ₹10 in the company and was a resident of Kolkata where the meeting was to be held.
State whether the shortness of the notice invalidated the meeting?

Provision: [Section 101 of the Companies Act, 2013]

1) Notice" of every meeting of the company shall be given -
   a) to every member of the company,
   b) legal representative of any deceased member,
   c) the assignee of an insolvent member;
   d) to every director of the company;
   e) to auditor or auditors and,
2) The private company, which is not, a subsidiary of a public company may prescribe, by its articles, persons to whom the notice should be given.
3) It is not a condition precedent to the holding of the annual general meeting of a company that a clear 21 days' notice must be given to each and every member of the company. The accidental omission to give notice to any member or non-receipt of notice by any member shall not invalidate the proceedings at the meeting.

Explanation & Answer:

In the present case therefore, the contention of D cannot be upheld. He cannot hijack the proceedings of the entire meeting for an accidental delay in receipt of notice by him.

PM: Mr. DP, Secretary, of City Handicrafts Ltd. called an extraordinary general meeting of the company on the requisition of some members. Mr. DP, Secretary of the Company, issued notice of the meeting without the authority of the Board of Directors. Discuss on the validity of the notice issued by Mr. DP, Secretary of the City Handicrafts Ltd.[LDR IMP]

Provision [Section 101 & 115 of the Companies Act, 2013]

1) The AGM or EGM can be called only with authority of BOD i.e. by passing necessary resolution in the Board Meeting or by Circular resolution.
2) An Annual General Meeting or Extra-Ordinary General Meeting cannot be called by an individual director or some of the directors or by secretary.
3) Notice of every meeting of the company shall be given –
   a) to every member of the company,
   b) legal representative of any deceased member,
   c) the assignee of an insolvent member;
   d) to every director of the company;
   e) to auditor or auditors.
4) The private company, which is not, a subsidiary of a public company, may prescribe, by its Articles, persons to whom the notice should be given.

5) Any accidental omission or the non-receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting.

Explanation & Answer:

1) Now, in the instant case, Mr. DP, Secretary of City Handicrafts Ltd., called an extraordinary general meeting on requisition of some members. He issued notice of the meeting without the authority of the Board of Directors.
2) The Secretary of the company does not have the power to call the meeting by himself by issuing notices. Unless the Secretary is specifically authorized either by the board of directors or by the articles, any meeting called by him and the business done there at it would be null and void **(Al Amin Seatrans Ltd. Vs. Owners and Party Interested in Vessel M V "Loyal Bird")**
3) However, the notice of the meeting may be ratified by the Board of Directors of the company before the meeting is held to make it good (Hooper Vs. Kerr. Stuart & Co.). Thus, the notice issued by Mr. DP may be ratified by the Board of Directors of City Handicrafts Ltd., to make it valid.

MTP N.18: Miraj Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. S and Mr. P as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

Or

M.18: Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.

Provision [section 101 & 162 of the Companies Act, 2013]

1) For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the Annual General Meeting.
2) However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.
3) Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.
4) One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Explanation & Answer:

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

M.19: Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2018. The notice was posted to the members on 16th October 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned?

Provision: [Section 101 of the Companies Act, 2013]

1) According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed.
2) Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.
3) Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of 48 hours after the letter containing the same is posted.

Explanation & Answer:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Section 102: Explanatory Statement to be annexed to notice

Answer Writing Points For Sec 102:

1) Explanatory Statement must be annexed to the notice for transacting every item of special business.
2) Explanatory statement shall include the following content:
   a) the nature of concern or interest, financial or otherwise, in respect of each item of-
      i) Every director and manager; if any
      ii) Every other key managerial personnel; and
      iii) Relatives of the persons mentioned in sub-clauses (i) and (ii);
   b) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.
3) In accordance with the provision of Companies Act, 2013 as contained in Section 102 (2), the only ordinary business can be transacted at an AGM and comprises of the following business:
   a) Consideration of financial statements and the reports of the Board of Directors and auditors.
   b) Declaration of dividend.
   c) Appointment of Directors in place of those retiring; and
   d) Appointment of auditors and fixation of their remuneration.
4) Any other business transacted at the annual general meeting or at any other meeting of the members shall be deemed to be a special business.
5) Where any promoter, director, manager, if any, or other key managerial personnel fail to disclose the required details in the statement.
   a) Then any benefit accruing to such person, either directly or indirectly shall be 'held in trust' (means any benefit arising shall belong to the company even if it is possessed by any such person) for the company. and
   b) S/he shall be liable to compensate the company to the extent of the benefit received by her/him.
   c) Such liability shall be in addition to any other action against such person under this law or any other law.
6) Ordinary business can be passed by an ordinary resolution. However, special business may be transacted by either passing ordinary resolution or special resolution, depending upon the requirements of Companies Act, 2013.

Suggestion:

1) If any contravention is executed in this section, then following Persons Are Liable for penalty:
   a) Every promoter
   b) Every Director
   c) Every Manager
   d) Any Key Managerial Person Who is in default.
2) Persons in above point shall be liable to penalty Higher of
   a) Fine up to Rs. 50,000; or
   b) 5 x Amount of benefit to person liable.

PM,N03: Explain the provisions of the Companies Act, 2013 relating to holding of Annual General Meeting of the company with regard to the following:

a) Period within which the first and the subsequent Annual General Meetings must be held.

b) Business which may be transacted at an Annual General Meeting. [LDR IMP]

Provision [Section 96,97,99 & 102 of the Companies Act, 2013]

a) Period Within which first and the subsequent AGM must be held:

1) A company may hold its first AGM within a period of 9 months from the date of closing of its first financial year;
2) Every subsequent AGM must be held within a period of 6 months from the date of closing of the financial year.
3) However, the third proviso to section 96 (1) empowers the Registrar, for any special reason, to extend the time within which any AGM (other than the first AGM) shall be held, by a period not exceeding 3 months.

Hence, the Registrar is not empowered by the Act to extend the time for holding the first AGM of a company even under special circumstances.

4) If default is made in holding a meeting of the company in accordance with Section 96, or in complying with any directions of the CLB, the company, and every officer of the company who is in default, shall be punishable with fine.

b) Business to be transacted at an Annual General Meeting:

1) All business to be transacted at AGM shall be deemed special, Except
   - **(i)** The consideration of the financial statements and the report of the Board of Directors and the Auditors;
   - **(ii)** The declaration of any dividend;
   - **(iii)** The appointment of directors in place of those retiring; and
   - **(iv)** The appointment of and the fixing of the remuneration of the auditors.
2) Any business other than the above mentioned four shall be deemed to be a special business, which may be transacted at any AGM.

M12,PM: State the ordinary business which may be transacted at an Annual General Meeting of a public limited company incorporated under the Companies Act, 2013.

Or

Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. What kinds of resolutions need to be passed to transact the 'Ordinary Business' and the 'Special Business' at the Annual General Meeting of the Company? Explain.

Provision [Section 102 of the Company Act, 2013 is as follows]

1) In accordance with the provision of Companies Act, 2013 as contained in Section 102 (2), the only ordinary business can be transacted at an AGM and comprises of the following business:
   - **a)** Consideration of financial statements and the reports of the Board of Directors and auditors.
   - **b)** Declaration of dividend.
   - **c)** Appointment of Directors in place of those retiring; and
   - **d)** appointment of auditors and fixation of their remuneration.
2) Any other business transacted at the annual general meeting or at any other meeting of the members shall be deemed to be special business.
3) Ordinary business can be passed by an ordinary resolution. However, special business may be transacted either by passing ordinary resolution or special resolution, depending upon the requirements of Companies Act, 2013.
4) Explanatory Statement must be annexed to the notice for transacting every item of special business.

M06,M07: A Company served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?

Provisions [Section 102 of the Company Act, 2013 is as follows]

1) In the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.
2) Further, a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:
   - **a)** the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
     - **i)** every director and the manager, if any;
     - **ii)** every other key managerial personnel; and
     - **iii)** relatives of the persons mentioned in sub-clauses (i) and (ii);
   - **b)** any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Explanation:

In the given case, thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital.

Answer:

The notice is, therefore, not a valid notice under the Companies Act, 2013.

PM: Board of Directors of ABC Limited wants to transact the following matters at the forthcoming Annual General Meeting of the Company:

a) **Approval of Financial Statement – Balance Sheet and Profit and Loss Account.**
b) **Declaration of Dividend.**
c) **Election of Directors**
d) **Appointment of Auditors**
e) **Fixation of Auditors' Remuneration**
f) **Sale of an undertaking of the company to XYZ limited for a consideration of Rs.100 crores.**
g) **Setting up a subsidiary company in U.K. in collaboration with a company incorporated there at.**

You being the senior officer of the company are directed by the Board of Directors to classify the above matters into 'ordinary' and 'special' business to be transacted at the above meeting and state the types of resolutions required to be passed for transacting the above matters.

Provision [Section 102 of the Company Act, 2013]

1) **Ordinary Resolution:**

A resolution is said to be an ordinary resolution when the votes cast in favour of the resolution are greater than the votes cast against it. In other words, when a resolution is passed with simple majority, it is an ordinary resolution.

2) **Special Resolution:**

A resolution shall be a special resolution when the votes cast in favour of the resolution by members (whether on a show of hands, or on a poll, or by proxy), are not less than three times the number of votes, if any, cast against the resolution.

Answer:

In the given question, points a. to e. require ordinary resolution & point f. & g. require special resolution.

PM,N09: M. H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail

Provision [Section 102 of the Companies Act, 2013]

1) In the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.
2) Further, a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:
   a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
      i) every director and the manager, if any;
      ii) every other key managerial personnel; and
      iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
   b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Explanation & Answer:

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

MTP N.18: Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

Provision [Section 102 of the Companies Act, 2013]

1) Under section 102 in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.
2) Further, a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:
   a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

i) every director and the manager, if any;
ii) every other key managerial personnel; and
iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Explanation & Answer:

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Dec21: Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

(i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.

(iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.

Provision [Section 102 & 103 of the Companies Act, 2013 with Rule 17 of the Companies (Management and Administration) Rules, 2014]

(i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requistionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

Hence, it is imperative for joint holders (or by requistionist duly authorised in writing by joint holder) also to sign the notice to call the meeting. Thus, Board of directors are correct in refusing to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder of shares.

(iii) According to section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting, if called by requisitionists under section 100, shall stand cancelled.

Thus, if quorum is not present for the meeting called by requisitionists, it shall stand cancelled and cannot be adjourned.

Section 103: Quorum for Meetings

Answer Writing Points For Sec 103:

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
- **a)** 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
- **b)** 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
- **c)** 30 members personally present if the number of members as on the date of the meeting > 5000;

2) In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

3) For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

4) Only members present in person and not by proxy are to be counted.

5) 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.

6) Where two or more companies, which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
7) Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.
8) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—
   a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or
   b) to such other date and such other time and place as the Board may determine; or
   c) the meeting, if called by requisitionists (under section 100), shall stand cancelled.
9) The company shall give a notice of not less than 3 days where-
   a) A meeting is adjourned as above; or
   b) A change is made w.r.t. day, time or place of meeting under clause (a).
   c) Such notice to members shall be given either individually or by publishing in two newspapers; one in English and one in vernacular language
10) Further, if at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

PM: A general meeting of a public company was adjourned by the chairman for want of quorum. Fresh notice was not served for the adjourned meeting. Do you feel that notice is required for the adjourned meeting? Referring to the provisions of the Companies Act, 2013 state the minimum number of members required to be present in the adjourned meeting.

Provision: [Section 103 of the Companies Act, 2013]

1) If the quorum is not present within half an hour from the time appointed for holding a meeting, the meeting, shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise.
2) Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (*a*), the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
3) Further, under section 103 (3) of the Companies Act, 2013, if at the adjourned meeting also, a quorum is not present within half-an-hour from time appointed for holding meeting, members present shall be the quorum.

Answer:

Therefore, there is no necessity for a minimum number of members to be present in the adjourned meeting.

PM: The articles of X & Co. Ltd provide that in the event of the quorum being not present within half-an- hour- from the time scheduled for the annual general meeting, the meeting shall stand dissolved. At the AGM of X &Co. Ltd the quorum is not formed within half-an-hour from the time fixed therefor.
Give the answers of the following-
a) In the above circumstance, what further steps are necessary to hold the annual general meeting?
b) If it is to be convened afresh, will a fresh resolution of the Board be needed?
c) What will be the position of retiring directors-will they cease to be directors from the date on which the general meeting could not be held for want of quorum and consequently stood dissolved as per the articles as aforesaid or will they remain directors till the date of the fresh annual general meeting which was convened subsequent to the first one?

Provision: [Section 103 of the Companies Act, 2013]

1) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

2) The meeting automatically gets adjourned to the same time and place on the same day next week. The Board, as per the facts in the question, has not exercised their option of holding the meeting at a different place and time.
3) In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Explanation & Answer:

a) The law does not give any flexibility to the Articles in deciding the date of an adjourned meeting. The right exists with the Board of Directors. In the present case therefore, the act of dissolution of the AGM for want of quorum is invalid.
b) Hence, no board resolution will be required but a notice from the company as mentioned will have to be sent. However, it may be noted that the decision to change the date, time and venue by the Board will have to be taken by a resolution of the Board, it will be in practicality be passed.
c) The provision in the Article dissolving a meeting for want of quorum is not legally valid. The meeting will be adjourned and hence the retiring directors will continue to hold office till the adjourned meeting is held and the required decision taken.

PM: Whether the following persons can be counted for the purposes of quorum in a general meeting of a public company-
a) a person representing three member companies;
b) both the joint owners of shares present at the meeting;
c) a single member present at the meeting.

Provision: [Section 103 of the Companies Act, 2013]

1) In case of a Public Company-
   a) 5 members personally present- if members > 1000
   b) 15 members personally present- if 1000<members<5000
   c) 30 members personally present- if members>5000
2) In case of a Private Company 2 members personally present. If articles provide for larger quorum than that given in the above table, such larger quorum shall be the quorum.

Explanation & Answer:

a) A person representing three member companies will be counted as 3 in the computation of the quorum. There is no restriction on a member company in appointing a person as a representative who has already been nominated to represent another company member. Each company will be treated as personally present even if the representative is the same person.
b) For the purpose of quorum, joint shareholders will be collectively regarded as one shareholder.
c) The single member present at the meeting will be counted as one in the computation of the quorum.

PM: The Annual General Meeting of KMP Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision.

Provision: [Section 103 of the Companies Act, 2013]

1) Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations.
2) Section 103 of the Companies Act, 2013 provides the law with respect to the quorum for the meetings. The said section provides that where the Articles of the company do not provide for a larger number, there the quorum shall depend on number of members as on date of a meeting.
3) In case of a Public Company-
   a) 5 members personally present- if members > 1000
   b) 15 members personally present- if 1000<members<5000
   c) 30 members personally present- if members>5000
4) In case of a Private Company 2 members personally present. If articles provide for larger quorum than that given in the above table, such larger quorum shall be the quorum.

5) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company –
   a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or
   b) to such other date and such other time and place as the Board may determine; or
   c) the meeting, if called by requisitions (under section 100), shall stand cancelled.

Explanation and Answer:

1) In the instant case, KMP Limited is a public company with total number of 2750 members, hence at least 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting.
2) Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, if the quorum is not present within half –an-hour from the time appointed for holding a meeting of the company. Further, the Board of Directors may decide for such other date and such other time and place, which they may deem fit.
3) Section 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman obviating to take a decision on the matter of the meeting. The question of validity of Chairman's decision does not arise.

PM,M05: State what is meant by "Quorum" and when does quorum be considered immaterial under the provisions of the Companies Act, 2013.

Provision [Section 103 of the Companies Act, 2013]

1) Quorum means the minimum number of members that must be present in person in order to constitute a meeting and transact business thereat. Thus quorum represents the minimum number of members on whose presence the meeting of a company can commence its business.
2) In case the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or the meeting, if called by requisitionists under section 100, shall stand cancelled.

Explanation & Answer:

a) Under the Companies Act, 2013 quorum is never considered immaterial in the holding of a valid meeting.
b) However, under only one situation a meeting will be validly held even if the quorum is not present.
c) If all the members are present, it is immaterial that the quorum required by the Articles is more than the total number of members and in such a case the meeting will be validly held even if the quorum as laid out in the Articles is not present.

J09: The Board of Directors of ABC Limited called an Extra-ordinary General Meeting of the company to transact certain urgent matters. The meeting could not be held for want of requisite quorum. As a result, the meeting was adjourned to next week. Again, at the adjourned meeting also the requisite quorum was not present. Members at this meeting held the meeting and passed certain resolutions.
With reference to provisions of the Companies Act, 2013 examine the validity of the meeting and stage whether resolutions passed at such meeting shall be binding upon the company and its members.

Provision [Section 103 of the Companies Act, 2013]

1) If the quorum is not present within half an hour from the time appointed for holding a meeting, the meeting, shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise. No fresh notice is, therefore, required to hold the adjourned meeting.
2) Further, if at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum. Therefore, there is no necessity for a minimum number of members to be present in the adjourned meeting.

Explanation & Answer:

a) In the given case, The Board of Directors of ABC Limited called an Extra–ordinary General Meeting of the company to transact certain urgent matters.
b) The meeting could not be held for want of requisite quorum. As a result, the meeting was adjourned to next week. Again, at the adjourned meeting also

the requisite quorum was not present. Members at this meeting held the meeting and passed certain resolutions.

c) With reference to the above provisions, the meeting is valid and resolutions passed at such meeting shall be binding upon the company and its members.

N08,PM: State the legal position in the following circumstances with reference to the provisions in the Companies Act, 2013.
At an adjourned extraordinary general meeting of a Public Ltd. Company adjourned for want of quorum, only 3 members are personally present.

Provision [Section 103 of the Companies Act, 2013]

1) In case of a Public Company-
   a) 5 members personally present- if members > 1000
   b) 15 members personally present- if 1000<members<5000
   c) 30 members personally present- if members>5000
2) Such a meeting stands adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.
3) Further, if at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Explanation & Answer:

In the given case the quorum is not present even at the adjourned meeting as under, hence, the 3 members personally present at the adjourned meeting shall constitute a valid quorum to conduct the meeting.

N07,PM: The quorum for a General meeting of a public company is 15 members personally present according to the provisions of the articles of association of the company. Examine with reference to the provisions of the companies Act, 2013 whether there is proper quorum at a General meeting of the company which was attended by the following persons:
a. 13 members personally present
b. 2 members represented by proxies who are not members of the company
c. One person representing two member companies

Provisions: [Section 103 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

Explanation:

a) In the given case, the Articles of the company provide for 15 members personally present to form the quorum of a general meeting.
b) In determining the quorum, members personally present or deemed to be personally present shall be counted only.
c) In the present case therefore, the present members counted will be 13 + 2 (the person representing two member companies will be counted as 2 and not as 1) = 15.

Answer:

Hence, the quorum is present and the meeting can be validly held.

PM,M06: The Articles of Association of X Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The following persons were present in the extra–ordinary general meeting to consider the appointment of Managing Director:
(i) A, the representative of Governor of Madhya Pradesh.
(ii) B and C, shareholders of preference shares.
(iii) D, representing Y Ltd. and Z Ltd.
(iv) E, F, G and H as proxies of shareholders.
Can it be said that the quorum was present in the meeting? [LDR IMP]

Provisions: [Section 103 of the Companies Act, 2013]

1) For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.
2) Only members present in person and not by proxy are to be counted.

3) 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.
4) Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
5) Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

Explanation:

(i) In this case the quorum for holding a general meeting is 7 members to be personally present. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.
(ii) In view of the above there are only three members personally present.
(iii) 'A' will be included for the purpose of quorum.
(iv) B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.
(v) D will have two votes for the purpose of quorum as he represents two companies ' Y Ltd.' and 'Z Ltd.'
(vi) E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Answer:

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

PM,N06: DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 2013, examine the validity of the meeting and the resolution passed thereat.

Provisions: [Section 103 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

Case Laws:

1) The case given in the question corresponds to the decision. This question was decided in Sharp Vs., Dawes wherein it was held that "The word meeting prima facie means coming together of more than one person." In this given case, only one shareholder was present and it was held that the meeting was not validly held.
2) Further in East Vs. Bennet Brothers Ltd. (1911) it has been held that in case of a meeting of a particular class of members if all the shares of that particular class are held by one person, then that one person shall form the quorum.

Explanation:

In the given case therefore, the applicable quorum will be 5 members and since all the shares are not held by one person but there are 50 members, no quorum is therefore present.

Answer:

The meeting and the resolution passed there shall not be valid.

N.18: KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.
(1) P1, P2 & P3 shareholders
(2) P4 representing ABC Ltd.
(3) P5 representing DEF Ltd.
(4) P6 & P7 as proxies of the shareholders

(i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
(ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
(iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
(iv) What happens if there is no Quorum in the Adjourned meeting?[LDR IMP]

Or

MTP N21: Kavita Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.
(1) P1, P2 & P3 shareholders
(2) P4 representing ABC Ltd.
(3) P5 representing DEF Ltd.
(4) P6 & P7 as proxies of the shareholders
(i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
(ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?

Provisions: [Section 103 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.
3) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum.
4) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Explanation:

(1) P1, P2 and P3 will be counted as three members.
(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.
(4) In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

Answer:

(i) Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.
(ii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.
(iii) In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.
(iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

M.19: Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of

India.
Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

Provisions: [Section 103,112 & 113 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.
3) As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.
4) As per section 113 of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

Explanation & Answer:

a) In the instant case, the quorum for the public company will be 5 members personally present. In the said company, two members are bodies corporate and one member is the President of India.
b) As per given provision above representatives appointed by body corporate and President of India can participate in general meeting and shall be counted for quorum and such representatives can cast vote at that general meeting.

M.20 RTP: The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:
(i) A, the representative of Governor of Uttar Pradesh.
(ii) B and C, shareholders of preference shares,
(iii) D, representing Y Ltd. and Z Ltd.
(iv) E, F, G and H as proxies of shareholders.
Can it be said that the quorum was present in the meeting?

Provisions [Section 103 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum.
3) Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
4) Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.
5) For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.
6) Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

Explanation & Answer:

i) In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7).

ii) In view of the above there are only three members personally present.

iii) 'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.

iv) D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members

Answer:

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

N22 MTP: The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

(i) A, the representative of Governor of Karnataka.

(ii) B and C, shareholders of preference shares,

(iii) D, representing Green Limited and Blue Limited

(iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Provisions [Section 103 of the Companies Act, 2013]

1) If the articles of the company do not provide for a larger number then in case of a public company, quorum shall be
   a) 5 members personally present if the number of members as on the date of meeting is ≤ 1000;
   b) 15 members personally present if the number of members as on the date of meeting is > 1000 ≤ 5000;
   c) 30 members personally present if the number of members as on the date of the meeting > 5000;
2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum.
3) Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.
4) Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.
5) For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.
6) Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

Explanation & Answer:

(i) In view of the above there are only three members personally present. 'A' will be included for the purpose of quorum.

(ii) B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.

(iii) D will have two votes for the purpose of quorum as he represents two companies Green Limited and Blue Limited.

(iv) E, F, G and H are not to be included as they are not members but representing as proxies for the members. Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Section 104: Chairman of Meetings

Answer Writing Points For Sec 104:

1) The members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands unless the article provides otherwise.
2) If a poll is demanded on the election of the chairman, it shall be taken forthwith. The chairman elected on a show of hands shall continue to be the chairman of meeting and if some other person is elected as chairman as a result of poll then he shall be the chairman for the rest of the meeting.
3) The chairman has prima facie authority to decide all the questions which arise at a meeting and which require decision at that time. He must observe strict impartiality, even though he must be personally strongly opposed to any matter in order to fulfil his duty properly.
4) A chairman has a casting vote in board meetings and general meetings, if specifically empowered by articles of company.

Section 105: Proxies

Answer Writing Points For Sec 105:

1) A proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.
2) The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:
   a) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
   b) A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
   c) The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy
   d) If the AOA of a company requires for a longer period than 48 hours before meeting. For depositing any instrument appointing a proxy or any other document showing validity of a proxy. Such a requirement by AOA shall be treated as 48 hours to deposit proxy forms.
   e) When, for the purpose of meeting, invitations to appoint as proxy are sent at the company's expense to any member entitled to have a notice of the meeting, then every officer of the company who knowingly issues the invitations or permits such issue shall be punishable with fine up to Rs.50,000.
   f) The instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
   g) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

Suggestion:

E-Forms to be filled by company under this section:

MGT-11: Proxies form

PM & M.18 OLD: What do you mean by Proxy? Explain the provisions relating appointment of Proxy under the Companies Act, 2013[LDR IMP]

Provision: [Section 105 of the Companies Act, 2013]

1) A proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.
2) The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:
   a) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
   b) A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
   c) The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy
   d) If the AOA of a company requires for a longer period than 48 hours before meeting. For depositing any instrument appointing a proxy or any other document showing validity of a proxy. Such a requirement by AOA shall be treated as 48 hours to deposit proxy forms.
   e) When, for purpose of meeting, invitations to appoint as proxy are sent at company's expense to any member entitled to have a notice of meeting,

Then every officer of the company who knowingly issues invitations or permits such issue shall be punishable with fine up to Rs.50,000.

f) The instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

g) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

PM: C, a shareholder, after appointing B as his proxy at meeting of the Company, himself attended the meeting and voted on a particular resolution. B thereafter claimed to exercise his vote. Examine his claim in the light of the provisions of the Companies Act,2013.

Provision: [Section 105 of the Companies Act, 2013]

1) A proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.
2) Where a shareholder who having appointed a proxy personally attends and votes at the meeting the proxy is revoked thereby.

Answer:

B's claim is invalid. Where a shareholder who having appointed a proxy, personally attends and votes at the meeting, proxy is revoked thereby. Thus in the instant case, B's authority is revoked and he cannot exercise his vote.

PM: A General Meeting to be held on 15th April, 2015 at 4.00 P.M. As per the notice the members who are unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent so as to reach at least 48 hours before the meeting. Mr. A, a member of the company appoints Mr. P as his proxy and the proxy form dated 10.4.2015 was deposited by Mr. P with the company at its Registered Office on 11.04.2015. However, Mr. A changes his mind and on 12.04.2015 gives another proxy to Mr. Q and it was deposited on the same day with the company. Similarly another member Mr. B also gives to separate proxies to two individuals named Mr. R and Mr. S. In the case of Mr. R, the proxy dated 12.04.2015 was deposited with the company on the same day and the proxy form in favour of Mr. S was deposited on 14.04.2015. All the proxies viz., P, Q, R and S were present before the meeting. In the light of the relevant provisions of the Companies Act, who would be the persons allowed to represent at proxies for members A and B respectively?

Provision: [Section 105 (1) of the Companies Act, 2013]

1) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per, the provisions of Section 105 (1) of the Companies Act, 2013 every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy and the proxy need not be a member of the company.
2) Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein.
3) The members has a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.
4) Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxies, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Answer:

Thus in case of Member A, the proxy Q (and not Proxy P) will be permitted to vote on his behalf. However, in the case of Member B, the proxy R (and not Proxy S) will be permitted to vote as the proxy authorizing S to vote was deposited in less than 48 hours before the meeting.

PM: The Articles of Association of a public company require the instrument appointing a proxy to be received by the company 75 hours before the meeting. Is it a valid requirement? If not, what are its effect?

Provision: [Section 105 of the Companies Act, 2013]

According to Section 105 (4) of the Companies Act, 2013, any provision in the Articles of a company which requires a longer period than 48 hours before a meeting of the company for depositing a proxy, shall have effect as if a period of 48 hours had been specified for such deposit.

Answer:

Therefore in the given case, the answer is a 'no'.

PM: S, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions?

Provision: [Section 105 of the Companies Act, 2013]

Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than 3 days' notice in writing of the intention so to inspect is given to the company.

Answer:

In the given case, S has given proper notice. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So S can undertake the inspection only during the above mentioned period and not two days prior to the meeting

PM: Annual General Meeting of a Public Company was scheduled to be held on 15.12.2013. Mr. A, a shareholder, issued two Proxies in respect of the shares held by him in favour of Mr. ₹X' and Mr. ₹Y'. The proxy in favour of Y was lodged on 12.12.2013 and the one in favour of Mr. X was lodged on 15.12.2013. The company rejected the proxy in favour of Mr. Y as the proxy in favour of Mr. Y was of dated 12.12.2013 and thus in favour of Mr. X was of dated 15.12.2013. Is the rejection by the company in order.

Provision [Section 105 of the Companies Act, 2013]

1) A proxy should be deposited 48 hours before the time of the meeting.
2) In case more than one proxies have been appointed by a member in respect of the same meeting, one which is later time shall prevail and the earlier one shall be deemed to have been revoked

Explanation:

In the normal course, the proxy in favour of Mr. X, being later in time, should have been upheld as valid, but The proxies should have, therefore, been deposited on or before 13.12.2013 (the date of the meeting being 15.12.2013). X deposited the proxy on 15.12.2003.

Answer:

Therefore, proxy in favour of Mr. X has become invalid. Proxy in favour of Y is valid since it is deposited in time. Hence company's decision of rejecting Y is not within the provision

N05,PM: What is the concept of proxy in relation to the meetings of a Company? Decide the appointment and rights of a proxy, under the Companies Act, 2013, in the following cases:
(i) When a body corporate is a member in the company.
(ii) When a foreign company is a member in the company.

Provision [Section 105 of the Company Act, 2013]

1) A proxy is a person, who is appointed by a member of a company to attend a meeting of the company and vote thereat on his behalf.
2) The objective of allowing a proxy to attend a meeting on behalf of a member is to enable a member to exercise his right to vote on a resolution placed before the meeting.
3) However, A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
4) The members has a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.
5) Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxies, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Explanation & Answer:

(i) In the present case as the member is a body corporate, the instrument appointing a proxy shall be duly authorized in writing and should be under its seal or be signed by an officer or an attorney duly authorized by it. The proxy so appointed shall have the right to attend the meeting of the company on behalf of the body corporate "member" and vote on its behalf at the meeting. However, the proxy shall have no right to speak at the meeting and cannot vote thereat except in a "Poll"

(ii) The Companies Act, 2013 does not distinguish between the appointment and rights of proxies by domestic or foreign companies. The applicable law applies uniformly to both.

J09,PM: Annual General Meeting of MGR Limited is convened on 28th December, 2018. Mr. J, who is a member of the company, approaches the company on 28th December, 2018 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 2013 in this regard.

Provision [Section 105 of the Company Act, 2013]

1) Every member entitled to vote at a meeting of the company or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at anytime during the business hours of the company.
2) Provided not less than 3 days' notice in writing of the intention to inspect is given to the company.

Explanation & Answer:

In the given case, Mr. J who is a member approaches the company on 28th December and demands inspection of proxies lodged with the company. Based on the above provisions since prior notice of 3 days had not been given by Mr. J to the company for inspecting the proxies, the company may refuse inspection of proxy forms.

M10,PM: K, a member of MNO Limited, appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. Both K (the member) and L (the proxy) voted on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 2013 whether K's objection shall be tenable?

Provision [Section 105 of the Company Act, 2013]

1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2) The objective of allowing a proxy to attend a meeting on behalf of a member is to enable a member to exercise his right to vote on a resolution placed before the meeting.
3) However, A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
4) The members has a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Case Law:

In the case of Cousins *Vs.* International Brick Company Limited, the court held that a proxy is appointed to attend a meeting on an implied condition that he will attend if the person appointing the proxy is himself unable to attend the meeting. But if the person appointing also attends the meeting and casts the vote the proxy's stand will be cancelled.

Explanation & Answer:

Hence, in the given problem, the decision of chairman is invalid. Here K's vote was valid, L's vote was invalid. Therefore K's objection is legitimate.

M08,PM: The Chairman of the meeting of a company received a Proxy 48 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, 2013 whether the Proxy holder can compel the Chairman to admit the Proxy.

Provision [Section 105 of the Company Act, 2013]

Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.

Explanation & Answer:

In given case, The Chairman of the meeting received a Proxy 48 hours before the time fixed for the start of the meeting, he refused to accept the Proxy on the

ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Hence, the holder of proxy can compel the chairman as per the Section 105(4) of the Companies Act, 2013.

J09: Golden Private Limited in its Article of Association provides a format of 'proxy form' different from the one prescribed by the Companies Act, 2013, S, a shareholder submits an instrument appointing proxy to the company in the form as prescribed in the Act. The company rejects the proxy on the ground that it is not in the form as prescribed in Articles of Association of the company. Is the rejection valid under the provisions of the Companies Act, 2013? Decide giving reasons.

Provision [Section 105 of the Companies Act, 2013]

1) The instrument appointing a proxy shall—
   a) be in writing; and
   b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
2) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company

Explanation & Answer:

In the given case as S has given his proxy form in compliance with the Act, the rejection of Golden Private Limited is not valid as per the above stated provisions.

MTP N.18 & M21 RTP: A General Meeting was scheduled to be held on 15th April, 2017 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2017 was deposited by Mr. Y with the company at its registered Office on 11-04-2017. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2017 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2017. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?[LDR IMP]

Provision [Section 105 of the Companies Act, 2013]

1) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence.
2) As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company.
3) Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein.
4) The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.
5) Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Explanation & Answer:

1) Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.
2) However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

MTPM23: Happy Limited received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under

the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

Provision [Section 105 of the Companies Act, 2013]

1) Section 105(1) of the Companies Act, 2013, provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2) Further, section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

Explanation & Answer:

a) In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting.
b) Happy Limited refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting.
c) In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. Accordingly, the proxy holder can compel the company to admit the proxy.

Section 106: Restriction on voting rights

Answer Writing Points For Sec 106:

1) The AOA of company may override the whole Act as to rights of a member to vote in respect of any share on which
   a) Any calls or other sums presently payable by him have not been paid; or
   b) The company has exercised any right of lien.
2) No company shall bar the right to vote of a member on any grounds except on the grounds specified in point (1) given above.

PM & M.10: J held 100 partly paid up shares of LKM Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of J is valid.[V.IMP]

Provision: [Section 106 (1) of the Companies Act, 2013]

1) The AOA of company may override the whole Act as to rights of a member to vote in respect of any share on which
   a) Any calls or other sums presently payable by him have not been paid; or
   b) The company has exercised any right of lien.
2) No company shall bar the right to vote of a member on any grounds except on the grounds specified in point (1) given above.

Explanation and Answer:

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and J's contention is not valid.

N05,PM: C, a member of LS & Co. Ltd., holding some shares in his own name on which Final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him. With reference to the provisions of the Companies Act, 2013, examine the validity of company's denial to C of his voting right.

Provision [Section 106 of the Companies Act, 2013]

1) The AOA of company may override the whole Act as to rights of a member to vote in respect of any share on which
   a) Any calls or other sums presently payable by him have not been paid; or
   b) The company has exercised any right of lien.
2) No company shall bar the right to vote of a member on any grounds except on the grounds specified in point (1) given above.

Explanation:

In the given case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the company at the meeting is well within its right to refuse C the right to vote at the meeting.

Answer:

The company's restriction on C against his voting right is valid, as per the Companies Act, 2013.

N.19 Rtp: Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

Or

N.18: 'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.

Provision [Section 106 of the Companies Act, 2013]

1) The AOA of company may override the whole Act as to rights of a member to vote in respect of any share on which
   a) Any calls or other sums presently payable by him have not been paid; or
   b) The company has exercised any right of lien.
2) No company shall bar the right to vote of a member on any grounds except on the grounds specified in point (1) given above.

Explanation & Answer:

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid. OR

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

Section 107:Voting by Show of hands

Answer Writing Points For Sec 107:

1) A resolution at any meeting shall be decided on a show of hands except;
   a) A poll is demanded u/s 109
   b) Voting is carried out electronically.
2) Each member shall be entitled to give one vote only irrespective of No. of shares held by them.
3) Unless and until other method of voting is specified voting by show of hands is assumed method.

Section 108: Voting through Electronic Means

Answer Writing Points For Sec 108:

1) The CG may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. According to the rules provided on voting through electronic means:
   a) Every listed company or a company having not less than 1000 shareholders shall provide to its member's facility to exercise their right to vote at general meeting by electronic means.
   b) A member may exercise his right to vote at a general meeting by electronic means and the company may pass any resolution by electronic voting system in accordance with the provisions of this rule.
2) The expression "voting by electronic means" or "electronic voting system" means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.
3) The expression "secured system" is computer hardware, software and procedure that:
   a) are reasonably secure from unauthorized access and misuse;
   b) provide a reasonable level of reliability and correct operation;
   c) are reasonably suited to performing the intended functions; and
   d) Adhere to generally accepted security procedures.

4) Cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosures, disruption, modification or destruction.

PM: Explain the concept of 'electronic voting system' as provided by the Companies Act,2013. [V.IMP]

Provision: [Section 108 of the Companies Act, 2013]

1) The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. According to the rules provided on voting through electronic means:
   a) Every listed company or a company having not less than one thousand shareholders, shall provide to its member's facility to exercise their right to vote at general meeting by electronic means.
   b) A member may exercise his right to vote at a general meeting by electronic means and the company may pass any resolution by electronic voting system in accordance with the provisions of this rule.
2) The expression "voting by electronic means" or "electronic voting system" means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.
3) The expression "secured system" is computer hardware, software and procedure that:
   a) are reasonably secure from unauthorized access and misuse;
   b) provide a reasonable level of reliability and correct operation;
   c) are reasonably suited to performing the intended functions; and
   d) adhere to generally accepted security procedures.
4) Cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

M.19: If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

Provision: [Section 108 of the Companies Act, 2013]

According to Rule – 20(4)(iii)(C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

Explanation & Answer:

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Dec21: Explain the provisions of e-voting in an annual general meeting in the following cases as per the Companies Act, 2013:
(i) 'A' and his wife 'B' has joint Demat Account in Alfa Investment Ltd. in such a case, who will cast the vote in e-voting system?
(ii) AGM is going to be held on 07-09-2020. Then what will be the e- voting period and the time of closing?

Provision: [Rule 21 of the Companies (Management and Administration) Rules, 2014]

1) **Joint shareholders must concur in voting unless articles provide to contrary.**
   The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.
2) As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

3) **Time period for e-voting:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Answer:

(i) Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

(ii) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Thus, if the AGM is going to be held on 7.9.2020, the facility for remote e-voting shall open on 4.9.2020 and close at 5.00 p.m. on 6.9.2020.

RTPN22: 'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

Provision: [Rule 21 of the Companies (Management and Administration) Rules, 2014]

1) The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

2) As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Answer:

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

RTPN22: 'Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e-voting period and the time of closing of remote e-voting.

Provision: [Rule 20 of the Companies (Management and Administration) Rules, 2014]

1) Every company which has listed its equity shares on a recognised stock exchange and company having not less than 1000 members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

2) The facility for remote e-voting shall remain open for not less than 3 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

Explanation:

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means .

Answer:

Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

Section 109: Demand for Poll

Answer Writing Points For Sec 109:

1) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands.

2) Accordingly, law says that Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken

by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf: -

a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than 1/10thof the total voting power or holding shares on which an aggregate sum of not less than 5 lakh rupees or such higher amount as may be prescribed has been paid-up; and

b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.

3) The chairperson may appoint any number of persons as he thinks necessary,to scrutinize the poll process and votes. Such scrutinizers shall report to the chairperson in the prescribed manner.

4) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

5) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Suggestion:

E-Forms to be filled by company under this section:

MGT-12 & 13: Manner in which chairperson shall process, scrutinize and report the poll voting.

N.18 RTP: Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.[IMP]

Provision: [Section 109 of the Companies Act, 2013]

1) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands.

2) Accordingly law says that Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than 1/10thof the total voting power or holding shares on which an aggregate sum of not less than 5 lakh rupees or such higher amount as may be prescribed has been paid-up; and

b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.

Explanation and Answer:

The demand for a poll may be withdrawn at any time by the persons who made the demand. Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Section 110: Postal Ballot

Answer Writing Points For Sec 110:

1) A company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

2) A company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such

manner as may be prescribed, instead of transacting such business at a general meeting.

3) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

4) The procedure for postal ballot is as follow:

a) Where a company is required to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;

b) The notice shall be sent by registered post or speed post or through electronic means like registered e-mail address or through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days;

c) The board of directors shall appoint one scrutinizer, who is not in employment of the company, and who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner.

d) The scrutinizer shall be willing to be appointed and be available for ascertaining the requisite majority.

e) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.

f) If the requisite majority of the shareholders by means of postal ballot passes a resolution, it shall be deemed to have been passed at a general meeting convened in that behalf.

g) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defenses or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or both;

h) The scrutinizer shall maintain a register either manually or electronically, to record the assent or dissent received, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form and forms which are invalid.

i) The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer until the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers.

PM: State the procedure for passing a resolution by Postal Ballot.

OR

Explain the provisions of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting of members of a company through postal ballot. [LDR IMP]

Provision [Section 110 of the Company Act, 2013 & Rule 22 of The Companies (Management & Administration) Rules, 2014 is as follows]

1) A company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

2) A company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.

3) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

4) The procedure for postal ballot is as follow:

a) Where a company is required to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;

b) The notice shall be sent by registered post or speed post or through electronic means like registered e-mail address or through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days;

c) The board of directors shall appoint one scrutinizer, who is not in employment of the company, and who, in the opinion of the board can

conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

d) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.

e) If a resolution is passed by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

f) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defenses or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or both;

g) The scrutinizer shall maintain a register either manually or electronically, to record the assent or dissent received, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form and forms which are invalid.

h) The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers.

Answer:

Above procedure shall be followed by the company to pass a resolution by Postal Ballot under The Companies Act,2013.

N.18 OLD: XYZ Energy Ltd., set up with the object of setting up a windmill project, raised money from public through prospectus and still has unutilised amount out of the money raised. XYZ Energy Ltd. proposes to change its objects and for this purpose consent of shareholders has to be obtained by passing a special resolution by Postal ballot. Explain the procedure to be followed for transacting the business of the general meeting of members of a company through postal ballot for passing special resolution

Provision [Section 110 of the Company Act, 2013 & Rule 22 of The Companies (Management & Administration) Rules, 2014 is as follows]

1) A company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

2) A company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.

3) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

4) The procedure for postal ballot is as follow:

a) Where a company is required to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;

b) The notice shall be sent by registered post or speed post or through electronic means like registered e-mail address or through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days;

c) The board of directors shall appoint one scrutinizer, who is not in employment of the company, and who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

d) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.

e) If a resolution is passed by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

f) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defenses or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable

with imprisonment for a term which may extend to six months or with fine or both;

g) The scrutinizer shall maintain a register either manually or electronically, to record the assent or dissent received, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form and forms which are invalid.

h) The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers.

Answer:

Above procedure shall be followed by the XYZ Energy Ltd company to pass a resolution to change its objects by Postal Ballot under The Companies Act,2013.

Section 111: Circulation of members Resolution

Answer Writing Points For Sec 111:

1) When requisition in writing is made by:
   a) In case of a company having share capital- member $\geq 1/10^{th}$ of paid up equity.
   b) In case of a company having no share capital- member $\geq 1/10^{th}$ of total voting power
2) Then company shall:
   a) Give a notice to members of any resolution which may be moved or intended to be moved at a meeting.
   b) And circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.
3) Penalty for company and every officer in default shall be ₹25000.

Section 112: Representation of president and Governors in Meetings

Answer Writing Points For Sec 112:

1) If president of India or the governor of any state is a member of a company then he may authorized such person as he may think fit to act as his representative at any GM or class meeting of the company.
2) Such person appointed shall be:
   a) Deemed as member of the company and counted as quorum.
   b) Entitled to exercise the same rights and powers as the governor or president could exercise as a member.
   c) Entitled to right to vote by proxy and postal ballot.

Section 113: Representation of Corporations at meeting of Companies

Answer Writing Points For Sec 113:

1) A body corporate being member of the company may appoint a representative who is considered as member.
2) Such representative shall be entitled to exercise the same rights and powers as the body corporate could exercise as a member and entitled to vote by proxy and postal ballot.
3) He is counted in quorum.

Section 114: Ordinary and Special Resolutions

Answer Writing Points For Sec 114:

1) A resolution is said to be an ordinary resolution when the votes cast in favour of the resolution are greater than the votes cast against it. In other words, when a resolution is passed with simple majority, it is an ordinary resolution.
2) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
3) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
4) The notice required under the Companies Act must have been duly given of the general meeting;
5) Abstentions or invalid votes, if any, are not to be taken into account.
6) Casting vote of chairperson is not applicable here and will not count.

7) Under various provisions of the Companies Act, 2013, an ordinary resolution is sufficient, for conducting any of the following businesses:
   a) Change in name of the company at the direction of the Registrar in case of reservation of wrong or incorrect name;
   b) Rectification of the name of the company under section 16 (1) after being directed by the Central Government to do so.
   c) To appoint auditors in an annual general meeting
   d) To appoint directors in an annual general meeting;
   e) Consideration and adoption of the financial statements and the report of the directors and the auditors in an annual general meeting;
   f) To declare dividends at an annual general meeting;
   g) To appoint any person as an auditor other than the retiring auditor under section 140 (4);
   h) Under section 142 (1) the remuneration of an auditor shall be fixed in general meeting by an ordinary resolution;
   i) Appointment of any person as director in case of vacancy created due to removal [section 169 (2)]
   j) Remuneration of cost accountant under section 148 (3) shall be fixed by an ordinary resolution
8) The Act requires that the following matters, inter alia, have to be resolved by the company, by a special resolution:
   a) To alter any provision contained in the memorandum, [Section 13(1)];
   b) To alter the articles of association [Section 14 (1)];
   c) Variation in the terms of contract or objects in the prospectus [section 27 (1)];
   d) Issue of Sweat Equity [Section 54 (1) (a)]
   e) To purchase its own shares or specified securities [Section 68 (2)];
   f) To reduce the share capital as per Section66 (1) of the Companies Act,2013.
   g) To move the registered office of an existing company outside the local limits of any city, town or village where such office is situated at the commencement of this Act [Section 12 (5)(a)]
   h) To move the registered office of any other company outside the local limits of any city, town or village where such office is first situated [Section 12 (5)(b)]
   i) Giving of any loan or guarantee or providing any security in excess of specified limit [Section 186 (3)];
   j) To issue debentures with an option of conversion into shares [Section 71 (1)].

PM: Outline some eight matters for which an ordinary resolution would suffice.[V.IMP]

Provision: [Section 114 of the Companies Act, 2013]

1) A resolution is said to be an ordinary resolution when the votes cast in favour of the resolution are greater than the votes cast against it. In other words, when a resolution is passed with simple majority, it is an ordinary resolution.
2) Under various provisions of the Companies Act, 2013, an ordinary resolution is sufficient, for conducting any of the following businesses:
   a) Change in name of the company at the direction of the Registrar in case of reservation of wrong or incorrect name;
   b) Rectification of the name of the company under section 16 (1) after being directed by the Central Government to do so.;
   c) To appoint auditors in an annual general meeting
   d) To appoint directors in an annual general meeting;
   e) Consideration and adoption of the financial statements and the report of the directors and the auditors in an annual general meeting;
   f) To declare dividends at an annual general meeting;
   g) To appoint any person as an auditor other than the retiring auditor under section 140 (4);
   h) Under section 142 (1) the remuneration of an auditor shall be fixed in general meeting by an ordinary resolution;
   i) Appointment of any person as director in case of vacancy created due to removal [section 169 (2)]
   j) Remuneration of cost accountant under section 148 (3) shall be fixed by an ordinary resolution

PM: Mention any ten acts for which a special resolution is required. [V.IMP]

Provision: [Section 114(2) of the Companies Act, 2013]

1) Some matters may be so important and outside the ordinary course of the company's business, such as any important constitutional changes, that

safeguards should be imposed to ensure that a larger majority than a simple majority of the members approve of them before they are given effect to.

2) The vote casted in favour of resolution shall be three times or more then votes casted against the resolution shall be called as Special Resolution.

3) The Act requires that the following matters, inter alia, have to be resolved by the company, by a special resolution:

a) To alter any provision contained in the memorandum, [Section 13(1)];
b) To alter the articles of association [Section 14 (1)];
c) Variation in the terms of contract or objects in the prospectus [section 27 (1)];
d) Issue of Sweat Equity [Section 54 (1) (a)]
e) To purchase its own shares or specified securities [Section 68 (2)];
f) To reduce the share capital as per Section66 (1)of the Companies Act,2013.
g) To move the registered office of an existing company outside the local limits of any city, town or village where such office is situated at the commencement of this Act [Section 12 (5)(a)]
h) To move the registered office of any other company outside the local limits of any city, town or village where such office is first situated [Section 12 (5)(b)]
i) Giving of any loan or guarantee or providing any security in excess of specified limit [Section 186 (3)];
j) To issue debentures with an option of conversion into shares [Section 71 (1)].

N07,PM: For a special resolution in a Company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. It is a valid resolution as per the provisions of the Companies Act, 2013?

Provision [Section 114 of the Company Act, 2013 is as follows]

1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
2) The notice required under the Companies Act must have been duly given of the general meeting;
3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
4) Abstentions or invalid votes, if any, are not to be taken into account.

Explanation & Answer:

In the given case, the votes cast in favour (10) being more than 3 times of the votes cast against (2), and presuming other conditions of Section 114 are satisfied, the decision of the Chairman is in order & the resolution is a valid resolution under Companies Act, 2013.

N05,PM: At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.

Provision [Section 114 of the Company Act, 2013]

1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
2) The notice required under the Companies Act must have been duly given of the general meeting;
3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
4) Abstentions or invalid votes, if any, are not to be taken into account.

Explanation & Answer:

In the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions are satisfied, the decision of the Chairman is in order.

N08,PM: Developers Ltd. hold a General Meeting of shareholders for passing a special resolution regarding alteration of Articles of Association. Out of the members present in the meeting 20 voted in favour, 4 against and 8 members did not vote and remained absent from voting. The Chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Indian Companies Act, 2013? [IMP]

Provision [Section 114 of the Companies Act, 2013]

1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
2) The notice required under the Companies Act must have been duly given of the general meeting;
3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
4) Abstentions or invalid votes, if any, are not to be taken into account.
5) Casting vote of chairman is not applicable here and will not count.

Explanation & Answer:

In the given case, the votes cast in favour (20) being more than 3 times of the votes cast against (4), and presuming other conditions of Section 114 are satisfied, the decision of the Chairman is in order & the resolution is a valid resolution under Company Act, 2013.

MTP N.19: At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

Provision [Section 114 of the Companies Act, 2013]

1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
2) The notice required under the Companies Act must have been duly given of the general meeting;
3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.
4) Abstentions or invalid votes, if any, are not to be taken into account.
5) Casting vote of chairman is not applicable here and will not count.

Explanation & Answer:

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

M.19: Give the points of distinction between ordinary resolution and special resolution.

Provision [Section 114 of the Companies Act, 2013]

Difference between ordinary resolution and Special resolution are as follow:

a) Ordinary Resolution:

i) Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman.

ii) if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

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

b) Special Resolution:

i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;

ii) The notice required under the Companies Act must have been duly given of the general meeting;

iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

iv) Abstentions or invalid votes, if any, are not to be taken into account.

v) Casting vote of chairman is not applicable here and will not count

Section 115: Resolutions requiring Special Notice

Answer Writing Points For Sec 115:

1) Under the Companies Act, 2013 where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such number of members holding not less than 1% shall give such resolution to the company. of total voting power or holding shares on which such aggregate sum not exceeding 5 lakh rupees, as may be prescribed, has been paid-up.
2) The company shall give its members notice of the resolution in such manner as may be prescribed.
3) Special notice is required to move, the following resolutions and any such further resolutions as may be prescribed by the Articles:
   a) Section 140: a resolution appointing an auditor other than retiring one.
   b) Section 140: a resolution providing expressly that the retiring auditor shall not be reappointed.
   c) Section 169: a resolution purporting to remove a director before the expiry of his period of office.
   d) Section 169: a resolution to appoint another director in place of the removed director.

N08,PM: Explain the provisions of the Companies Act, 2013 relating to 'Resolutions requiring Special Notice'. State the resolutions that require 'Special Notice' under the Act.[V.IMP]

Provisions [Section 115 of the Companies Act, 2013]

1) Under the Companies Act, 2013 where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1%. of total voting power or holding shares on which such aggregate sum not exceeding 5 lakh rupees, as may be prescribed, has been paid-up.
2) The company shall give its members notice of the resolution in such manner as may be prescribed.
3) Special notice is required to move, the following resolutions and any such further resolutions as may be prescribed by the Articles:
   a) **Section 140:** a resolution appointing an auditor other than retiring one.
   b) **Section 140:** a resolution providing expressly that the retiring auditor shall not be reappointed.
   c) **Section 169:** a resolution purporting to remove a director before the expiry of his period of office.
   d) **Section 169:** a resolution to appoint another director in place of the removed director.

N.18: Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.

Provisions [Section 115 of the Companies Act, 2013 Read with Rule 22 of the Companies (Management & Administration) Rules, 2014]

1) Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding ₹ 5,00,000/- has been paid-up.
2) In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014.
3) Further, Section 115 of the Act specifies that Special notice is required to move, the following resolutions and any such further resolutions as may be prescribed by the Articles:
   a) **Section 140:** a resolution appointing an auditor other than retiring one.
   b) **Section 140:** a resolution providing expressly that the retiring auditor shall not be reappointed.
   c) **Section 169:** a resolution purporting to remove a director before the expiry of his period of office.
   d) **Section 169:** a resolution to appoint another director in place of the removed director.

Explanation & Answer:
According to given facts in question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Section 116: Resolutions passed at adjourned meeting

Answer Writing Points For Sec 116:

A resolution shall be treated as passes on date on which it was actually passed and not on any earlier date, which is passed at an adjourned meeting of-

a) A general meeting; or
b) Any class meeting ; or
c) Any BOD meeting.

Section 117: Report on Annual General Meeting

Answer Writing Points For Sec 117:

1) Every company shall file with ROC following documents:
  a) A copy of every resolution passed in meeting.
  b) All agreements made in meeting.
  c) All the explanatory statements.
2) Such filing shall be done in the form prescribed in MGT-14.
3) Such filing shall be made within 30 days of passing such resolution or making of such agreement.
4) In case of amendment or alteration in Articles, copy of such amended Articles shall also be filed.
5) If filing is after 30 days but within 300 days, additional filing fee as prescribed shall be payable & if filing is beyond 300 days then penalty will be:
  a) For the company- ₹10000 and in case of continuing failure further penalty of ₹100 per day maximum upto ₹2 Lakh.
  b) For every officer in default -₹10000 and in case of continuing failure further penalty of ₹100 per day maximum upto ₹50000.

Section 118: Minutes of proceedings of general meeting, meeting of board directors and other meeting and resolutions passed by postal ballot.

Answer Writing Points For Sec 118:

1) Following shall be filed by company with the ROC -
  a) A copy of every resolution, or
  b) Agreement, AND
  c) Explanatory statement if any
2) Such filing shall be made within 30 days of
  a) Passing of such resolution,
  b) Making of such agreement
3) Such filing shall be done in such manner and with such fees as may be prescribed. The Form prescribed is MGT-14
4) However, if a resolution has the effect of altering the AOA and every agreement which is required to be filed u/s 117(3) shall be-
  a) Embodied in the AOA; or
  b) Annexed to the AOA

Suggestion:
Penalty for Failure to file the resolution with the ROC
a) If filed after 30 days but within 300 days, additional filing fee as prescribed shall be payable as per sec 403.
b) Penalty for filing beyond 300 days –
  i) For the Company: penalty of Rs. 10,000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of 2 lakh rupees.
  ii) For every officer in default (including liquidator if any): penalty of Rs. 10,000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 50,000.

M05,PM: The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the Chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a Director of the company. The Chairman declines to do so. State how the matter can be resolved.

Provision [Section 118 of the Company Act, 2013]

1) Under the Companies Act, 2013 there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
   a) is or could reasonably be regarded as defamatory of any person;
   b) is irrelevant or immaterial to the proceeding; or
   c) is detrimental to the interests of the company;
2) Further, the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified above.

Explanation & Answer:

Hence, in view of the above, the contention of M, a shareholder of PQR Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

PM,M07: XYZ Limited held its Annual General Meeting on September 15, 2016. The meeting was presided over by Mr. V, the Chairman of the company's Board of Directors. On September 17, 2016, Mr. V, 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. V and by whom?

Or

PM: The last General Meeting was conducted by the Chairman on 12th August, 2015. Thereafter, on 19th August, 2015, the Chairman died, before the minutes of the said meeting could be signed. In such an eventuality, how are the minutes book to be dated and signed? Discuss in the terms of provision of the companies Act 2013

Or

MTP N.18: M Limited held its Annual General Meeting on September 15, 2017. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2017, Mr. Venkat, 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, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.[LDR IMP]

Provision [Section 118 of the Companies Act, 2013 Read with Rule 25 of the Companies (Management and Administration) Rules 2014]

1) Every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within 30 days of the conclusion of every such meeting concerned.
2) Minutes kept shall be evidence of the proceedings recorded in a meeting.
3) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 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.
4) The minutes of the BM shall be signed by Chairman of the same board meeting or Chairman of the succeeding board meeting.

Explanation & Answer:

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr V or Mr. Venkat / on death of the chairman (Mr. M), by any director who is authorized by the Board.

N10,PM: In a General Meeting of PQR Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain certain matters which are regarded as defamatory of a Director of the company. Decide, whether the contention of M is maintainable under the provisions of the Companies Act, 2013?

Provision [Section 118 of the Company Act, 2013]

1) The minutes of the meeting shall be prepared within 30 days of the conclusion of the meeting.
2) There is no time limit on signing of the minutes; however it shall be signed within reasonable time.
3) The minutes shall be prepared as per chairman of the meeting. The chairman has the power to include or the exclude the items from the minutes.

4) Nothing is to be included in minutes if the chairman is of the opinion that-
   a) It is defamatory of any person;
   b) It is irrelevant or immaterial;
   c) It is detrimental to the interest of the company.

Explanation & Answer:

In the light of above provisions, the contention of M is not maintainable and Chairman of PQR Ltd. can exclude certain matters detrimental to the interest of the company from the minutes.

M.08,M.18.Rtp&PM: In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?

Or

MTP N.19: In a General meeting of Alpha Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

Provision [Section 118 of the Company Act, 2013]

1) Every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within 30 days of the conclusion of every such meeting concerned.
2) Minutes kept shall be evidence of the proceedings recorded in a meeting.
3) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 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.
4) The minutes of the BM shall be signed by Chairman of the same board meeting or Chairman of the succeeding board meeting.

Explanation & Answer:

Hence, in view of the above, the contention of Manoj/ Mukesh, a shareholder of Amit Limited/ Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

MTPM23: Moon Light Ltd. held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Shreeram, the Chairman of the Company's Board of Directors. On September 17, 2022, Mr. Shreeram, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in USA. 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. Shreeram and by whom?

Provision [Section 118 of the Company Act, 2013]

1) Every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within 30 days of the conclusion of every such meeting concerned.
2) Minutes kept shall be evidence of the proceedings recorded in a meeting.
3) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 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.

Answer:

Therefore, the minutes of the meeting referred to in the case of Moon Light Ltd. can be signed in the absence of Mr. Shreeram, by any director, authorized by the Board in this respect.

Section 119: Inspection of Minutes books of General Meeting

Answer Writing Points For Sec 119:

1) The minute's books and copies of the resolutions passed by postal ballot, shall be-
   a) kept at the registered office of the co.
   b) open for inspection during the business hours for any member without any fee.
2) Any member shall be entitled to be furnished, within seven working days after he has made a requisition in that behalf to the company and on payment of such fee as may be prescribed, with a copy of any minutes referred to above.
3) If any inspection required is refused, or if any copy required is not furnished within the time specified therein, the company shall be punishable with fine of Rs.25000 and every officer of the company who is in default, shall be punishable with fine which may extend to Rs.5000 in respect of each offence.
4) In the case of any such refusal or default, the Tribunal may, by order, direct an immediate inspection of the Minute books or directs that the copy required shall forthwith be sent to the person requiring it.
5) Order of the Tribunal shall be without prejudice to any action of this section.

N05,PM: State the procedure for inspection of Minutes Book of General Meetings of a company, by the members. [V.IMP]

Provision [Section 119 of the Company Act, 2013]

1) The minutes books and copies of the resolutions passed by postal ballot, shall be-
   a) kept at the registered office of the co.
   b) open for inspection during the business hours for any member without any fee.
2) Any member shall be entitled to be furnished, within seven working days after he has made a requisition in that behalf to the company and on payment of such fee as may be prescribed, with a copy of any minutes referred to above.
3) If any inspection required is refused, or if any copy required is not furnished within the time specified therein, the company shall be punishable with fine of Rs.25000 and every officer of the company who is in default, shall be punishable with fine which may extend to Rs.5000 in respect of each offence.
4) In the case of any such refusal or default, the Tribunal may, by order, direct an immediate inspection of the Minute books or directs that the copy required shall forthwith be sent to the person requiring it.
5) The order of the Tribunal shall be without prejudice to any action of this section.

PM: The Board of Directors of Alltronix Ltd, have passed resolution to the effect that no member who is indulging in activities detrimental to the interest of the company be permitted to examine the records or obtain certified copies thereof. A member of the Company, considered by the Company to be acting against the interests of the Company, demands inspection of the register of members and minutes of General Meeting and certified true copies thereof. The Company refuses the inspection etc. on the strength of the resolution referred to above.

Examine the correctness of the refusal by the Company referring to the provisions of the Companies Act, 2013.

Provision: [Section 119 of the Companies Act, 2013]

1) Minutes books and copies of resolutions passed by postal ballot, shall be-
   a) kept at the registered office of the co.
   b) open for inspection during the business hours for any member without any fee.
2) Any member shall be entitled to be furnished, within seven working days after he has made a requisition in that behalf to the company and on payment of such fee as may be prescribed, with a copy of any minutes referred to above.
3) Every member of the Company can Register of Members w thout payment of any fee subject to reasonable restrictions imposed by the company by its Articles. There is no qualification to this right granted to every member of the company and any resolution passed by the Board to the contrary cannot override the provisions of the Act and will therefore be null and void.

Answer:

Therefore, the refusal of the company in present case is illegal.

PM: Mr. Laurel, a shareholder in Hardly Limited, a listed company, desires to inspect the minutes book of General Meetings and to have copy of some resolutions. In the light of the provisions of the Companies Act, 2013 answer the following:

(i) Whether he can inspect the minutes book and to have copies of the minutes at free of cost?

(ii) Whether he can authorize his friend to inspect the minutes book on behalf of him by signing a power of authority?

Provision: [Section 119 of the Companies Act, 2013]

1) As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.
2) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes.

Explanation & Answer:

Accordingly, following are the answers:

(i) As in given case, Mr. Laurel, in requirement with law, he can inspect the minutes book and so to have soft copies of the same up to last three years.

(ii) As provision does not specify anything on authorizing anyone else to inspect the minutes book. Therefore, Mr. Laurel cannot authorize his friend to inspect the minutes book on behalf of him.

M22: Mr. Ram, a shareholder of PQR Ltd., has made a request to the company for providing a copy of minutes book of general meeting. Whether, the shareholder of a company is entitled to receive a copy of minutes book ? Explain, provisions of the Companies Act, 2013.

Or

MTPM23: Mr. Krish, a shareholder of ABC Ltd., has made a request to the company for providing a copy of minutes book of general meeting. His name is already entered in the register of members of the company. Whether the Mr. Krish is entitled to receive a copy of minutes book? Explain, provisions of the Companies Act, 2013.

Provision: [Section 119 of the Companies Act, 2013 with Rule 26 of the Companies (Management and Administration) Rules, 2014,]

1) Any member of a company shall be entitled to be furnished within 7 working days after he made the request on that behalf to the company and on payment of such fees as may be prescribed with a copy of any minutes.
2) The sum payable for the copy of the minutes shall be specified in the articles of the company but not exceeding ₹10 for each page or part of any page.

Explanation & Answer:

a) Mr Ram/Mr. Krish, a shareholder of PQR Ltd.,/ABC Ltd., has made a request to the company to provide a copy of the minutes book of the general meeting.

b) In the present case, Mr Ram/ Mr. Krish is a member of PQR Ltd.,/ ABC Ltd., and he is entitled to make a request to the company for a copy of the minutes book of the general meeting.

Section 120: Maintenance and inspection of documents in E-form

Answer Writing Points For Sec 120:

1) Any document, record, register, minutes, etc. required to be kept by a company or allowed to be inspected or copies to be given to any person by a company under this act may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.
2) Every listed company or a company having at least 1000 shareholders, debenture holders and other security holder, may maintain its records in electronic form.
3) Managing director, Company secretary or any other director or officer of the company as the board may decide shall be responsible for the maintenance and security of electronic records.
4) The records maintained in electronic form shall be made available for inspection by the company in electronic form. Copies of the records maintained in e-form , containing a clear reproduction of the whole or part thereof , should be provided on payment of not exceeding ₹10/page.

5) If any default is made in compliance with any of the provisions, the company and every officers or such other person who is in default shall be punishable with fine which may extend to ₹5000 and ₹500 for every day after the first during which such contravention continues.

Section 121: Report on Annual General Meeting

Answer Writing Points For Sec 121:

1) Every listed public company on each AGM shall prepare:
   a) A report on each AGM which includes all details of meeting.
   b) The confirmation to the effect that the meeting was convened , held and conducted properly.
2) Such copy of report shall filed with Registrar in Form No. MGT-15 within 30 days from the conclusion of the AGM along with additional fees if any;(Additional fees in case of report is filed after 30 days but before 300 days).
3) If company fails to file the report penalty shall be:
   a) For Company-₹ 1lakh and ₹500 per day in case of failure continues maximum upto ₹5Lakh.
   b) For every officer in default- ₹25000 and ₹ 100 per day in case of failure continues maximum upto ₹ 1lakh.

M21 RTP: Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

Or

MTPM23: Ganges Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2022. However, 10 days have passed since 31st August, 2022, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Ganges Limited is required to file report on Annual General Meeting?

Provision: [Section 121 of the Companies Act, 2013]

1) According to Section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder.
2) A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within 30 days of the conclusion of AGM along with the prescribed fee.
3) If the company does not file such report on Annual General Meeting within 30 days of the conclusion of the Annual General Meeting then the company and defaulting officers are liable for prescribed penalties.

Answer:

Since, Pristine Ltd./ Ganges Ltd is a listed company, hence it has to file a copy of 1 annual Report with the Registrar within 30 days from 31st August, 2020.

Section 122: Applicability of Chapter to OPC

Answer Writing Points For Sec 122:

1) Following sections shall not apply to OPC:
   a) Sec 98: Powers of tribunal to call meeting of members.
   b) Sec 100-111: Provisions relating to meetings.
2) Any business which is required to be transacted by means of ordinary or special resolution shall be transacted by the OPC as under:
   a) The sole member shall communicate the resolution to the company.
   b) Such resolution shall be entered in the minute book.
   c) The minute book shall be signed by the sole member of the company.
   d) Such date shall be deemed to be the date of the meeting.
3) Any business which is required to be transacted at the meeting of the board of directors of a company, it shall be sufficient if;
   a) Resolution is entered in the minutes-book; and
   b) Minutes book is signed and dated by such director.
   c) Date of signing the minutes book shall be deemed to be the date of meeting.

E Filing

PM: What is E filing? List at least five advantages of E filing under MCA 21.

Answer:

The term E-filing indicates the process of getting services electronically with a comprehensive on-line portal.

Some of the advantages of MCA 21 are:

1) Expeditious incorporation of companies;
2) Simplified and ease of convenience in filing of Forms/ Returns ;
3) Better compliance management
4) Total transparency through e-Governance
5) Customer centric approach
6) Increased usage of professional certificate for ensuring authenticity and reliability of the Forms / Returns
7) Building up a centralized database repository of corporate operating
8) Enhanced service level fulfilment
9) Inspection of public documents of companies anytime from anywhere
10) Registration as well as verification of charges anytime from anywhere
11) Timely redressal of investor grievances
12) Availability of more time for MCA employees for monitoring and supervision

PM: What are the steps for e-Filing?

Answer:

1) Select a category to download an E-Form from the MCA portal (with or without the instruction kit).
2) At any time, read the related instruction kit to familiarise with procedures (download the instruction kit with E-form or view it under **Help** menu).
3) Fill the downloaded e-Form.
4) Attach the necessary documents as attachments.
5) Use the **Prefill** button in E-Form to populate the greyed out portion by connecting to the Internet.
6) The applicant or a representative of the applicant needs to sign the document using a digital signature.
7) Click the **Check Form** button available in the E-Form. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).
8) Upload the E-Form for pre-scrutiny. The pre-scrutiny service is available under the **Services** tab or under the **E-Forms** tab by clicking the **Upload E-Form** button. The system will verify (pre-scrutinise) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).
9) The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.
10) Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter through challan).
    a) Electronic payments can be made at the Virtual Front Office (VFO)or at PFO
    b) If the user selects the traditional payment option, the system will generate 3 copies
    c) of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorised for accepting challan payments.
11) The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
12) Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
13) MCA 21 will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.
14) Filing will be complete only when the necessary payments are made.
15) In case of a rejection, helpful remedial tips will be provided to the applicant.
16) The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.

Chapter 8: Declaration and Payment of Dividend;

Declaration of dividend at the rate higher than notified by BOD

PM: The shareholders at an annual general meeting passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution under the Companies Act, 2013.

Provision: [Section 102, 123 of the Companies Act, 2013 as follows]

1) Under section 102 (2) of the Companies Act, 2013 one of the businesses transacted thereat isthe declaration of dividend.
2) The initiation of the dividend is the power of the BOD of the company by OR. The BOD may initiate any percentage of the dividend. But the same is subject to finalisation by the GM by way of OR.
3) But the rule is GM cannot declare the dividend at the rate higher than notified by BOD. For example Dividend Proposed by: BOD-OR is 25 % then dividend finalised by : GM-OR shall be $\leq$ 25%.

Explanation:

In the given case the BOD initiated the rate of the dividend and the GM want to declare the dividend at the rate higher than rate initiated by BOD. The GM will not be successful in this case as the GM do not have power to declare dividend at the higher rate than notified by BOD.

Answer:

Thus GM cannot declare dividend at the rate higher than initiated by BOD.

N08: Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher than that recommended by the board of directors. Is it possible for the board of directors of the company to revoke the dividend declared at the Annual General Meeting?[V.IMP]

Provision: [Section 102, 123 & 127 of the Companies Act, 2013]

1) Under section 102 (2) of the Companies Act, 2013 one of the businesses transacted thereat is the declaration of dividend.
2) The initiation of the dividend is the power of the BOD of the company by OR. The BOD may initiate any percentage of the dividend. But the same is subject to finalisation by the GM by way of OR.
3) But the rule is GM cannot declare the dividend at the rate higher than notified by BOD. For example Dividend Proposed by: BOD-OR is 25 % then dividend finalised by : GM-OR shall be $\leq$ 25%.
4) Dividend declared by GM above the rate specified by BOD shall be void in law i.e. ultra-virus and need not be paid.

Explanation:

1) In the given case the BOD initiated the rate of the dividend and the GM want to declare the dividend at the rate higher than rate initiated by BOD. The GM will not be successful in this case as the GM do not have power to declare dividend at the higher rate than notified by BOD.
2) Section 127 of the Companies Act, 2013 requires that dividend once declared must be paid within 30 days of declaration & it also contains certain grounds on which non-payment of dividend does not result in a penalty. However, revocation of dividend is not a ground for non -payment of dividend. Only in following cases, declared dividend may be revoked:
   a) Where declaration of dividend is ultra-virus.
   b) Where the company ceases to be a going concern.

Answer:

Thus GM cannot declare dividend at the rate higher than initiated by BOD. The BOD do not have right to revoke the dividend declared by GM as per law. However, dividend declared by GM at rate more than the rate specified by BOD is ultra-virus thus there is no need to revoke the same.

Section 123: Declaration of Dividend

Answer Writing Points For Sec 123:

1) The company can declare the dividend out of:
   a) Current year profit (i.e. profit of last FY audited) derived after providing depreciation; or / and
   b) Previous year's profits (i.e. Accumulated profit) derived after providing

depreciation of respective years; or / and

c) Money provided by CG or SG for payment of dividend in accordance with the guarantee given by respective Government.

2) In addition to this (even though not mentioned in bare text) the BOD of the company can declare the dividend out of ongoing years' profit suo-moto based on the financial position of the company. The dividend can be called as interim dividend. For such dividend the BOD-OR is sufficient.

3) For declaration of the dividend the 2 elements are essential as follows:
   a) Deduction of depreciation (as discussed above); &
   b) Transfer to reserves of the company for the safe future.

4) In the old Companies Act 1956 there was requirement to mandatorily transfer the minimum amount to reserve in case of declaration of dividend. But in new Companies Act 2013 there is no any such requirement.

5) If company wish to transfer the profit to the reserve the amount will be decide by BOD-OR and such amount will be transferred. And if BOD does not wish to transfer to the reserve they can resolve the same.

6) If company wishes to declare the dividend out of accumulated profit, then company do the same out of following things:
   a) Profit and loss credit balance (not mentioned in bare text). It is a profit of the past year but company did not transfer the same to the reserve. The profit is freely available for distribution by GM-OR.
   b) Out of General Reserve. This is the profit which is accumulated and transferred from the profits of the company for every year. Now if the company wants to declare the dividend out of the General Reserve the company need to comply with the following rules for such declaration.

7) The company shall not declare the dividend out of any other reserve than the free reserve.

8) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declare any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declare the dividend in the last 3 FY this condition will not be applicable in such case.
   b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$
   c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.
   d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. $FR - W^2 \geq 15\%$ of PC / i.e. $W^2 \leq FR - 15\%$ of PC
   e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year. This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now. The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

9) For the purposes of declaration of dividend, depreciation shall be provided in accordance with the provisions of Schedule II.

PM: Advise on the following situations as per the Companies Act, 2013:

(i) A company wants to transfer more percentage of profits to reserves.

(ii) A company wants to declare dividends out of past reserves instead of current year profits.

(iii) A company wants to provide depreciation higher than the rates provided in Schedule II of the Companies Act, 2013.[LDR IMP]

Provision: [Section 123 of the Companies Act, 2013]

1) The company can declare the dividend out of:
   a) Current year profit (i.e. profit of last FY audited) derived after providing depreciation; or / and
   b) Previous year's profits (i.e. Accumulated profit) derived after providing depreciation of respective years; or / and
   c) Money provided by CG or SG for payment of dividend in accordance with the guarantee given by respective Government.

2) In addition to this (even though not mentioned in bare text) the BOD of the company can declare the dividend out of ongoing years profit suo-moto based on the financial position of the company. The dividend can be called as interim dividend. For such dividend the BOD-OR is sufficient.

3) For declaration of the dividend the 2 elements are essential as follows:
   a) Deduction of depreciation (as discussed above); &
   b) Transfer to reserves of the company for the safe future.
4) In the old Companies Act 1956 there was requirement to mandatorily transfer the minimum amount to reserve in case of declaration of dividend. But in new Companies Act 2013 there is no any such requirement.
5) If company wish to transfer the profit to the reserve the amount will be decide by BOD-OR and such amount will be transferred. And if BOD does not wish to transfer to the reserve they can resolve the same.
6) If company wishes to declare the dividend out of accumulated profit then company do the same out of following things:
   a) Profit and loss credit balance (not mentioned in bare text). It is a profit of the past year but company did not transferred the same to the reserve. The profit is freely available for distribution by GM-OR.
   b) Out of General Reserve. This is the profit which is accumulated and transferred from the profits of the company for every year. Now if the company wants to declare the dividend out of the General Reserve the company need to comply with the following rules for such declaration.
7) The company shall not declare the dividend out of any other reserve than the free reserve.
8) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.
   b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$
   c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.
   d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. $FR - W^2 \geq 15\%$ of PC / i.e. $W^2 \leq FR - 15\%$ of PC
   e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year. This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now. The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.
9) For the purposes of declaration of dividend, depreciation shall be provided in accordance with the provisions of Schedule II.

Explanation:

1) The rates contained in Schedule II to the Companies Act, 2013 are the minimum rates below which companies are not permitted to charge for depreciation and therefore there is no bar in providing a higher rate of depreciation.
2) However, it is advisable to give a statement to the effect that the management has estimated life of the asset which requires higher rate of depreciation to be provided than rates prescribed under schedule II to the Companies Act, 2013.

Answer:

(i) Thus company can transfer the more percentage of the profit to reserve by BM-OR.
(ii) Company can declare dividend out of past reserve after complying conditions as stated above.
(iii) The company can provide for higher rate of depreciation than provided in Sch II but not lower than same.

PM,N12: The Board of Directors of Nimbahera Chemicals Limited proposes to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company mentioning the relevant provisions of the Companies Act, 2013.

Provision: [Section 123 of the Companies Act, 2013]

1) For declaration of the dividend the 2 elements are essential as follows:
   a) Deduction of depreciation; &
   b) Transfer to reserves of the company for the safe future.
2) In the old Companies Act 1956 there was requirement to mandatorily transfer

the minimum amount to reserve in case of declaration of dividend. But in new Companies Act 2013 there is no any such requirement.

3) If company wish to transfer the profit to the reserve the amount will be decide by BOD-OR and such amount will be transferred. And if BOD does not wish to transfer to the reserve they can resolve the same. The BOD can transfer any amount to reserve as they may thinks fit.

Answer:

Thus Board of Directors of Nimbahera Chemicals Limited can transfer more than 10% of the profits of the company to the reserves for the current year.

PM: A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15 as per the provisions of the Companies Act, 2013.[V.IMP]

Provision: [Section 123 of the Companies Act, 2013]

1) The company shall not declare the dividend out of any other reserve than the free reserve.
2) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.
   b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$
   c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.
   d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. FR – $W^2 \geq$ 15% of PC / i.e. $W^2 \leq$ FR – 15% of PC
   e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.
   f) This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now.
   g) The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

Explanation:

In the given case the average rate of dividend of last 3 years is 20%. Thus company can declare the dividend at the rate of 20%. The only requirement is the withdrawal for the dividend shall not be more than 1/10 of (PC+FR) and the reserve shall remain the 15% of PC.

Answer:

Thus the company can declare the dividend of 20% assuming that the required amount is available for withdrawal for declaration of dividend.

PM,N11: The agenda for the meeting of the Board of directors of M/s Brilliant Enterprises Ltd. held on 20-6-2014 for adopting the annual accounts for the year ended 31-3-2014 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-3-2014 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares.

Provision: [Section 123 of the Companies Act, 2013 & Companies(Declaration and Payment of Dividend) Rules), 2014]

1) The company shall not declare the dividend out of any other reserve than the free reserve.
2) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend

only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.

b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$

c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.

d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. FR – $W^2 \geq$ 15% of PC / i.e. $W^2 \leq$ FR – 15% of PC

e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.

f) This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now.

g) The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

Answer:

In the given case therefore, if the company complies with the above conditions, it should have the dividend recommended by the Board and put up for the approval of the members at the AGM as the authority to declare lies with the members of the company.

N09: A Public Company has been declaring dividend at the rate of 20% on equity shares during last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-2015. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2014-2015.

Provision: [Section 123 of the Companies Act, 2013]

1) The company shall not declare the dividend out of any other reserve than the free reserve.

2) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.

a) Rate of Dividend ≤ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.

b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$

c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.

d) Reserve after such withdrawal (assume W2) shall be at least 15% of Paid up capital. i.e. FR – $W^2 \geq$ 15% of PC / i.e. $W^2 \leq$ FR – 15% of PC

e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.

f) This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now.

g) The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

Explanation:

a) In the given case the average rate of dividend of last 3 years is 20%. Thus company can declare the dividend at the rate of 20%. The only requirement is the withdrawal for the dividend shall not be more than 1/10 of (PC+FR) and the reserve shall remain the 15% of PC.

b) Profits lying in the credit of Profit & Loss account can be utilised for payment of dividend without any restrictions. Such utilisation does not amount to declaration of dividend out of reserves.

Answer:

Thus the company can declare the dividend of 20% assuming that the required amount is available for withdrawal for declaration of dividend.Thus, the company may declare dividend @ 20% for the year 2014-2015 out of accumulated profits

retained in the P & L Account without any restriction.

M10: X & Co. Ltd. made a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2015 and as a result the company was not in a position' to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2015 are Rs. Two crores and Ten crores respectively. The average dividend declared by the Company in the last five years is 25%. Examine the validity of declaration of dividend.

Provision: [Section 123 of the Companies Act, 2013 & Companies (Declaration and Payment of Dividend) Rules), 2014]

1) The company shall not declare the dividend out of any other reserve than the free reserve.
2) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.
   b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$
   c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.
   d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. $FR - W^2 \geq 15\%$ of PC / i.e. $W^2 \leq FR - 15\%$ of PC
   e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.
   f) This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now.
   g) The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

Explanation:

The given case is as follows :

a) Average rate of dividend during the preceding 3 FY is 25%
b) $W^1 \leq (2 + 10)/10 = 1.2$ crores.
c) The amount withdrawn shall be utilized to set off the current year losses of Rs. 20 lakhs first. Thus maximum amount that can be utilized for dividend is 1 crore (1.2cr - 0.20 cr)
d) $W^2 \leq FR - 15\%$ of PC i.e. $W^2 \leq 10 - 0.30 = 9.7$ crore
e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.

Answer:

Thus, the company may distribute dividend at the rate of 25% (i.e. 50 lakhs in total)

M.20 RTP: MNP Ltd. has a paid up share capital of ₹ 10 crore and free reserves of ₹ 50 crore, as on 31st March, 2019. The company made a loss of ₹ 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

Provision: [Section 123 of the Companies Act, 2013]

1) The company shall not declare the dividend out of any other reserve than the free reserve.
2) In case of absence of the profit the company can declare the dividend out of free reserve. But for the same the company needs to comply the following conditions.
   a) Rate of Dividend $\leq$ Average rate of dividend of last 3 years. In case if the company did not declared any dividend in any of the last 3 FY then such FY shall not be counted for average. For e.g. if the company declared dividend only for last 2 years the average rate only of 2 years shall be derived. If company did not declared the dividend in the last 3 FY this condition will not be applicable in such case.

b) The maximum withdrawal i.e. W^1 from the reserve can be $1/10^{th}$ of Paid up capital and Free Reserves. i.e. $W^1 \leq (PC + FR)/10$

c) The amount withdrawn shall be utilized to set off the current year losses first. As the dividend is need to be declared from the accumulated profit then there might be chances that the company have incurred the losses in the current year.

d) Reserve after such withdrawal (assume W^2) shall be at least 15% of Paid up capital. i.e. $FR - W^2 \geq 15\%$ of PC / i.e. $W^2 \leq FR - 15\%$ of PC

e) The company cannot declare the dividend until all losses or depreciation of the previous years is set off with the profits of current year.

f) This is nothing but the waiting condition for the company. Which means that the company shall not declare the dividend out of accumulate profit if the previous losses are not set off till now.

g) The company shall set off all previous years losses and then it shall think about declaration of the dividend out of accumulate reserve.

Explanation:

1) As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.
2) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
   a) Amount of dividend proposed: ₹ 2 Crores (20% of ₹ 10 Crore i.e on paid up capital)
   b) 10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ₹ 6 Crore.

   This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.
3) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.
   a) Balance of reserves after payment of dividend: ₹ 48 crore (50 crore – 2 crore)
   b) 15% of paid up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Answer:

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

M.18: PET Ltd., incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

Provision: [Section 123 of the Companies Act, 2013]

1) According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year 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.
2) 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.

Explanation:

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 [i.e. (12+15+18)/3 = 45/3 =15%].

Answer:

Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

N.18: YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of ₹910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment. [V.IMP]

Or

MTPOct22: G Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2021-2022 out of the profits of current year. The company has earned a profit of ` 910 crores during 2021-2022. The

company does not intend to transfer any amount to the general reserves out of the profits. Is G Medical Instruments Limited allowed to do so, as per the provisions of the Companies Act, 2013?

Provision: [Section 123 of the Companies Act, 2013]

1) For declaration of the dividend the 2 elements are essential as follows:
   a) Deduction of depreciation; &
   b) Transfer to reserves of the company for the safe future.
2) In the old Companies Act 1956 there was requirement to mandatorily transfer the minimum amount to reserve in case of declaration of dividend. But in new Companies Act 2013 there is no any such requirement.
3) If company wish to transfer the profit to the reserve the amount will be decide by BOD-OR and such amount will be transferred. And if BOD does not wish to transfer to the reserve they can resolve the same. The BOD can transfer any amount to reserve as they may thinks fit.

Explanation:

As per the given facts, YZ Limited/ G Medical Instruments Limited has earned a profit of ₹910 crores for the financial year 2017-18./2021-2022 It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

Answer:

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd./ G Medical Instruments Limited acting vide its Board of Directors.

Therefore, at its discretion, if YZ Ltd /G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

M.19: Alex limited is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid?

Provision: [Section 123 of the Companies Act, 2013]

1) As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
2) Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Explanation:

1) According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively.
2) Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Answer:

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

M.19: The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends.
Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend ?

Provision: [Section 123 of the Companies Act, 2013]

The company shall always pay the dividend to:

a) Registered shareholder
b) To any person on order of registered shareholder
c) To banker of registered shareholder.

Explanation:

As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members.

Answer:

Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

N22: A company has accumulated Free Reserves of `75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of ` 12 lakhs. The Board proposes a payment of dividend of `30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid? [LDRIMP]

Provision: [Section 123 of the Companies Act, 2013]

1) In the given question, the company is intending to declare dividend out of current year profits and past year's profits.
2) As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.
3) **Conditions of Rule 3:**
   a) Condition 1: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
   b) Condition 2: The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
   c) Condition 3: The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Explanation:

Calculations For Each Condition

a) **Condition 1:** This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year. Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.
b) **Condition 2:** As per the facts, the Board proposes a payment of dividend of ` 30 lakhs i.e., 30% on the paid up capital. So, the Paid up Share Capital of the company = ` 100 Lakh Paid-up Capital + Free Reserves = 100+ 75 = ` 175 Lakh 10% thereof = ` 17.5 Lakh Hence the dividend to be declared is to be restricted to ` 17.5 Lakh.
c) **Condition 3:** Here, Free Reserves = ` 75 Lakh Proposed withdrawal for declaration of dividend ` 17.5 Lakh Balance of Reserves = `75 Lakh- 17.5 Lakh = ` 57.5 Lakh This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of ` 100 Lakh) i.e. ` 15 Lakh.

Answer:

Thus, the company can declare a dividend of ` 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of ` 100 lakh. Hence, the proposal of company for payment of dividend of ` 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of ` 12 lakh, is invalid.

N22: Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

Provision: [Section 123 of the Companies Act, 2013]

1) As per second proviso to Section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down
2) However, such declaration shall be subject to the following conditions:
   a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
   b) The total amount to be drawn from such accumulated profits shall not

exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

c) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

d) The balance of reserves after such withdrawal shall not fall below 15% of its paid -up share capital as appearing in the latest audited financial statement.

Answer:

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

Section 124: Unpaid Dividend Account

Answer Writing Points For Sec 124:

1) If the company declares the dividend it shall be paid in 30 days' u/s 127. If the dividend remains unpaid or unclaimed after 30 days, then in next 7 days the company shall transfer the same to unpaid / Unclaimed dividend account.
2) The company shall publish following details regarding unpaid dividend on website of the company and the website approved by CG.
   a) Names of the shareholder whose dividend is unpaid.
   b) Their address. (in case of change in address then last known address.)
   c) The amount of unpaid dividend.
   The statement for the above particular shall be made in the manner prescribed and the same shall be published.
   d) The details have to be posted in 90 days after the transfer has been made to account.
3) The company needs to transfer the unclaimed / unpaid dividend to unpaid dividend account in the time limit specified above. If the company fails to transfer the same to unpaid account within the time specified above, then the company shall transfer the interest on the delayed transfer at the rate of 12% per annum.
4) The person who is eligible shareholder for the purpose of receiving the dividend can receive the same by applying to the company. The shareholder can also receive the dividend from even unpaid account by making the application to the company.
5) After transferring the unclaimed / unpaid dividend to the Unpaid Dividend account, it shall remain in the same account for 7 years.
6) After expiry of 7 years from the transfer to unpaid account, dividend together with the interest as per section 124(3) above (12%) shall be transferred to Investor Education Protection Fund (IEPF) maintained in sec 125.
7) If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

M.19 RTP: RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?[IMP]

Provision: [Section 124 of the Companies Act, 2013]

1) As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.
2) The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved

by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Explanation& Answer:

1) Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013.
2) Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.
3) Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than 5 lakh rupees but which may extend to 25 lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

N21 RTP: The Board of Directors of GEN X Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.[V.IMP]

Or

MTP N21: The Board of Directors of Dew Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

Or

Dec21: The Board of Directors of ABC Limited at its board meeting declared dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors.

Provision: [Section 124 & 127 of the Companies Act, 2013]

1) According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2) Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

Explanation & Answer:

In the present case, the Board of Directors of GEN X Fashions Limited/Dew Fashion limited/ABC Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the

name of the company. As a result, dividend was paid to shareholders after 45 days.

1) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2) The Board of Directors of GEN X Fashions Limited/ Dew Fashion limited/ABC Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.
3) The following are the consequences for violation of the above provisions:
   a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of 2 years and shall also be liable for a minimum fine Rs.1000 for every day during which such default continues.
   b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

MTPM23: Mr. R, holder of 1000 equity shares of ` 10 each of Vimal Ltd. approached the company in the last week of September, 2022 with a claim for the payment of dividend of ` 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013-14. Company refused to accept request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund. Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company & suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

Provision: [Section 124 & 125 of the Companies Act, 2013]

1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
2) Transfer of Unclaimed Amount to Investor Education and Protection Fund - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of 7 years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the IEPF.
3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by company in name of IEPF along with a statement containing the prescribed details.
4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from IEPF in accordance with the prescribed procedure and on submission of prescribed documents.
5) As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

Explanation:

a) In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (` 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account.
b) Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ` 2,000 (declared in Annual General Meeting on 31.8.2014).

Answer:

In terms of the above stated provisions, Mr. R should be advised as under:

(i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.

(ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

Section 125: Investor Education and Protection Fund.

Answer Writing Points For Sec 125:

The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund). There shall be credited to the Fund:

1) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
2) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
3) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
4) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;
5) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956 (1 of 1956);
6) the interest or other income received out of investments made from the Fund;
7) the amount received under sub-section (4) of section 38; [Surrender of securities acquired with fraud]
8) the application money received by companies for allotment of any securities and due for refund;
9) matured deposits with companies other than banking companies;
10) matured debentures with companies;
11) interest accrued on the amounts referred to in clauses (*h*) to (*j*);
12) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
13) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
14) Such other amount as may be prescribed.

N11:M/s. USA Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, 1956 but so far no amounts have been deposited into the said account. Explain with reference to the above said enactment, the amounts payable to the credit, of the said account and the period within which the amounts shall be paid.[LDR IMP]

Provision: [Section 125 of the Companies Act, 2013]

The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund). There shall be credited to the Fund:

1) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
2) donations given to the Fund by the Central Government, State Governments, companiesor any other institution for the purposes of the Fund;
3) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
4) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;
5) the amount lying in the Investor Education and Protection Fund under section 205Cof the Companies Act, 1956 (1 of 1956);
6) interest or other income received out of investments made from the Fund;
7) the amount received under sub-section (4) of section 38; [Surrender of securities acquired with fraud]
8) the application money received by companies for allotment of any securities

and due for refund;

9) matured deposits with companies other than banking companies;
10) matured debentures with companies;
11) interest accrued on the amounts referred to in clauses (h) to (j);
12) sale proceeds of fractional shares arising out of issuance of bonus shares, merger, and amalgamation for seven or more years;
13) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
14) such other amount as may be prescribed.
15) The unclaimed application money or matured deposit or matured debentures will be transferred to IEPF only after expiry of 7 years from the date it is due for payment.
16) The Fund shall be utilised for:
    a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
    b) promotion of investors' education, awareness and protection;
    c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
    d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and any other purpose incidental thereto, in accordance with such rules as may be prescribed.

Section 126: Right to Dividend, Rights Shares and Bonus Shares to be Held in Abeyance Pending Registration of Transfer of Shares

Answer Writing Points For Sec 126:

1) A Company cannot have lien on shares unless provided in the Articles of Association. Therefore, provision to this effect should be in the articles.
2) The company has first and paramount lien on every share (which has not been fully paid up for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share and on all shares which are not fully paid up standing registered in the name of a single person, for all moneys presently payable by him or his estate to the Company.
3) However, companies are free to frame their own Articles of Association and need not follow the Table F. The key point is that lien is permissible only on partly paid shares and only if provided in the Articles of the company.
4) The Board of Directors may, however, at any time declare any share to be wholly or in part exempt from the said lien.
5) Further, the Company's lien is extended to all dividends payable on such shares if provided for in the Articles or if the company adopts Table F.

PM,N04,N09: SKD an employee of Moreh Ltd. met with an accident and died. The accident occurred when SKD was on Company's duty. He held one hundred shares partly paid. Normally the Company has a first and paramount lien on the shares. The Board of Directors, however, relaxed the said provision with regard to the hundred shares held by SKD as a goodwill gesture on the part of the Company. Is the action of the Company valid? State the reasons. Also state whether the Company's lien can be extended to dividend payable on such shares.[V.IMP]

Provision: [Relevant provision of Regulation 9 of Table F of the First Schedule of the Companies Act, 2013 as follows]

1) A Company cannot have lien on shares unless provided in the Articles of Association. Therefore, provision to this effect should be in the articles.
2) The company has first and paramount lien on every share (which has not been fully paid up for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share and on all shares which are not fully paid up standing registered in the name of a single person, for all moneys presently payable by him or his estate to the Company.
3) However, companies are free to frame their own Articles of Association and need not follow the Table F. The key point is that lien is permissible only on partly paid shares and only if provided in the Articles of the company.
4) The Board of Directors may, however, at any time declare any share to be

wholly or in part exempt from the said lien.

5) Further, the Company's lien is extended to all dividends payable on such shares if provided for in the Articles or if Table F is adopted by the company.

Explanation:

In the given case SKD an employee of Moreh Ltd. met with an accident and died. The accident occurred when SKD was on Company's duty. He held one hundred shares partly paid. The lean on his shares is relaxed by BOD. The BOD can do the same as they have right for the same.

Answer:

a) Hence the decision of the Board of Directors of M/s Moreh Ltd to relax the provisions of lien in respect of shares held by SKD is in order and valid.

b) The lien on the shares also extends to the dividend as stated above.

Section 127: Punishment for Failure to Distribute Dividends.

Answer Writing Points For Sec 127:

1) The company shall pay the dividend in 30 days from declaration in the following manner.
   a) Payment of dividend to shareholders' bank account.
   b) Dispatch of dividend warrant in 30 days.
2) In such situation if the company fails to pay the dividend to any shareholder in the above manner then the consequences will be as follows.
   a) Every Director of the company who is knowingly party to default will be punishable with:
      i) Fine of Rs. 1000 per day.
      ii) Jail up to 2 years.
   b) Company will be liable to pay the simple interest of 18% per annum to the shareholder for delayed payment. [E.g. If the number of days of delay are 15 days then the interest will be (Dividend X 18%) X 15/365]
3) In addition to this if, the default in payment of the dividend is subsisting for continuous 1 year after end of 30 days all the directors holding the position of the director will be disqualified u/s 164(2) and need to vacate the office u/s 167 immediately after end of such 1 year.
4) The company and the director will not be liable for the above consequences if company fails to pay dividend in 30 days because of following reasons.
   a) Where dividend cannot be paid by operation of law. [E.g., revision of the financial statement resulted in reduction of profit, which lead to cancelation of dividend.]
   b) Shareholder requires the payment of the dividend in specific manner, company is unable to comply with such requirements, and company to shareholder communicates such inability in 30 days.
   c) There is no clarity that to whom the dividend shall be paid or there is dispute between the rights to receive the dividend. [e.g. title of the shares is in dispute]
   d) The company set off the dividend against the dues from shareholders. [E.g. Company set off dividend against calls in arrears].
   e) Where delay is not due to fault of the company. [E.g. natural calamity, bank strike, fault of post, etc.].

PM: The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2014. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2014. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act.

Or

MTP N.19: The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2019. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2019. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.[LDR IMP]

Or

MTP M23: The Annual General Meeting of Angels Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company

was unable to post the dividend warrant to Mr. A, an equity shareholder, up to 25th July, 2022. Mr. A filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. A would succeed? Also, state the directors' liability in this regard under the Act.

Or

MTP N22: The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.

Provision: [Section 127 of the Companies Act, 2013]

1) The company shall pay the dividend in 30 days from declaration in the following manner.
   a) Payment of dividend to shareholders bank account.
   b) Dispatch of dividend warrant in 30 days.
2) In such situation if the company fails to pay the dividend to any shareholder in the above manner then the consequences will be as follows.
   a) Every Director of the company who is knowingly party to default will be punishable with:
      i) Fine of Rs. 1000 per day.
      ii) Jail upto 2 years.
   b) Company will be liable to pay the simple interest of 18% per annum to the shareholder for delayed payment. [e.g. If the number of days of delay are 15 days then the interest will be (Dividend X 18%) X 15/365]
3) In addition to this if the default in payment of the dividend is subsisting for continuous 1 year after end of 30 days all the directors holding the position of the director will be disqualified u/s 164(2) and need to vacate the office u/s 167 immediately after end of such 1 year.

Explanation:

1) The Annual General Meeting of ABC Limited/Angels Limted/ABC Bakers Limited declared a dividend at the rate of 30% payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2014./30th May, 2022 But the Company was unable to post the dividend warrant to Mr. Ranjan,/Mr.A an equity shareholder of the Company, up to 30th June, 2014./25th July 2022.
2) Thus, the company will be liable to pay the interest Mr. Ranjan @ 18% pa for the number of days of delay. And the BOD will be liable to pay penalty as stated above.

Answer:

Thus the Mr. Ranjan/Mr. A will succeed in the suit but for interest of only 18% pa and not for interest of 20%.

J09,M12: Board of Directors of M/s. RPP Ltd. in its meeting held on 29th May, 2015 declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting scheduled for 10th June, 2015, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 1956 whether the Board of Directors can do so.

Provision: [Section 2(35), 127 of the Companies Act, 2013]

1) All the provisions applicable to final dividend shall apply mutatis mutandis to interim dividend.
2) Section 127 of the Companies Act, 2013 requires that dividend once declared must be paid within 30 days of declaration & it also contains certain grounds on which non-payment of dividend does not result in a penalty. However, revocation of dividend is not a ground for non -payment of dividend. Only in following cases, declared dividend may be revoked:
   a) Where declaration of dividend is ultra-virus.
   b) Where the company ceases to be a going concern.

Explanation:

In the given case, on declaration of interim dividend by M/s. RPP Ltd. in a BM held

on 29, May, 2015, the liability of the company to pay the interim dividend has become certain, and the payment of interim dividend must be made within next 30 days, i.e. on or before 28th of June, 2015.

Answer:

Thus, revocation of interim dividend in the BM held on 10th June, 2015 is not possible.

M.18 RTP: The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of ₹ 10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

Or

MTP N.18: The Director of Rom Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. They seek your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?[V.IMP]

Provision: [Section 127& 123 of the Companies Act, 2013]

1) The company shall pay the dividend in 30 days from declaration in the following manner.
   a) Payment of dividend to shareholders bank account.
   b) Dispatch of dividend warrant in 30 days.
2) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.
3) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker.

Explanation:

1) As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.
2) Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Answer:

(i) According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

(ii) According to the above mentioned provision Mr. Raj will be entitled to dividend as he became registered shareholder before declaration of the same.

MTP N.19: Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016-17, except in the following two cases:

(i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground

that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.

(ii) Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.[V.IMP]

Provision: [Section 127 of the Companies Act, 2013]

1) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time.
2) The company and the director will not be liable for the above consequences if company fails to pay dividend in 30 days because of following reasons.
   a) Where dividend cannot be paid by operation of law. [e.g. revision of the financial statement resulted in reduction of profit which lead to cancelation of dividend.]
   b) Shareholder requires the payment of the dividend in specific manner and company is unable to comply with such requirements and such inability is communicated by company to shareholder in 30 days.
   c) There is no clarity that to whom the dividend shall be paid or there is dispute between the right to receive the dividend. [e.g. title of the shares is in dispute]
   d) The company set off the dividend against the dues from shareholders. [e.g. Company set off dividend against calls in arrears].
   e) Where delay is not due to fault of the company. [e.g. natural calamity, bank strike, fault of post, etc].

Explanation:

1) In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.
2) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where dividend could not be paid by reason of operation of law.

Answer:

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

N.18: Karan was holding 5000 equity shares of ₹ 100 each of M/s. Future Ltd. A final call of ₹ 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

Provision: [Section 127 of the Companies Act, 2013]

1) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time.
2) The company and the director will not be liable for the above consequences if company fails to pay dividend in 30 days because of following reasons.
   a) Where dividend cannot be paid by operation of law. [e.g. revision of the financial statement resulted in reduction of profit which lead to cancelation of dividend.]
   b) Shareholder requires the payment of the dividend in specific manner and company is unable to comply with such requirements and such inability is communicated by company to shareholder in 30 days.
   c) There is no clarity that to whom the dividend shall be paid or there is dispute between the right to receive the dividend. [e.g. title of the shares is in dispute]
   d) The company set off the dividend against the dues from shareholders. [e.g. Company set off dividend against calls in arrears].
   e) Where delay is not due to fault of the company. [e.g. natural calamity, bank strike, fault of post, etc].
3) As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Explanation & Answer:

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of ₹ 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (₹ 50,000) can be adjusted fully from the entitled dividend amount of ₹ 50,000/-.

M.19: PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Or

MTPOct22: A Limited declared and paid 10% dividend to all its shareholders except Mr. B, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. B doesn't tally with the records of the bank. The company, however, did not inform Mr. B about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Provision: [Section 127 of the Companies Act, 2013]

1) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time.
2) The company and the director will not be liable for the above consequences if company fails to pay dividend in 30 days because of following reasons.
   a) Where dividend cannot be paid by operation of law. [e.g. revision of the financial statement resulted in reduction of profit which lead to cancelation of dividend.]
   b) Shareholder requires the payment of the dividend in specific manner and company is unable to comply with such requirements and such inability is communicated by company to shareholder in 30 days.
   c) There is no clarity that to whom the dividend shall be paid or there is dispute between the right to receive the dividend. [e.g. title of the shares is in dispute]
   d) The company set off the dividend against the dues from shareholders. [e.g. Company set off dividend against calls in arrears].

Explanation & Answer:

Where delay is not due to fault of the company. [e.g. natural calamity, bank strike, fault of post, etc. In the instant case, PQ Ltd./A Ltd has failed to communicate to the shareholder Mr. Kumar/Mr B about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

July21: ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

Provision: [Section 127 of the Companies Act, 2013]

1) Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend.
2) In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

Explanation & Answer:

1) In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January, 2021).

2) It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020).
3) Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

MTP Oct21: The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of ₹10 lakhs has not paid an amount of ₹1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

Provision: [Section 127 of the Companies Act, 2013]

The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

Explanation:

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

Answer:

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

M22: ABC Ltd. has declared dividend of ` 2/- per equity share in the general meeting. Mr. Suresh is holding 5000 equity shares of ` 10 face value each, on which ` 10,000 towards call money is due. Whether the dividend amount payable to him be adjusted against such dues as per the provisions of the Companies Act, 2013? Give reasons for your answer.

Provision: [Section 127 of the Companies Act, 2013]

As per clause (d) of proviso to section 127 of the Companies Act, 2013, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Answer:

Thus, ABC Ltd. can adjust the call money dues from Mr. Suresh of ` 10,000 against the dividend amount payable to him of ` 10,000 (5000 shares x ` 2 /- per share).

Chapter 9: Accounts of Companies;

Section 128: Books of Account, etc., to be kept by Company

Answer Writing Points For Sec 128:

1) Every company shall maintain the following books:
   a) Books of accounts (ledgers & Journals)
   b) Other Books and papers (supporting vouchers & documents)
   c) Financial statements (Balance sheet and Profit & Loss account)
2) The above books shall be maintained at registered office for every financial year in true and fair manner.
3) The books shall be maintained for head office as well as for branch office. The books of the branch can be kept at the branch office.
4) The books shall be maintained of accrual basis in double entry system of accounting.
5) If company wants to keep its books at any other place in India, then company can do the same by complying following process.
   a) Pass BOD-OR for removal of such books from the registered office and to keep the same at some other place in India.
   b) The company shall intimate the full address of the new place where books are to be maintained to ROC in 7 days of passing BOD-OR.
6) According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the inspection of the books of accounts of the company.
   a) Directors of the Company [Section 128(3)]
   b) Registrar of Companies [Section 206]
   c) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206).
   d) Such officers of SFIO (Serious Fraud Investigation Office) [Section 212].
7) The following companies shall maintain the books of account as per their respective period:
   a) Company in existence for 8 years or more: maintain the books for 8 FYs.
   b) Company in existence for less than 8 years: maintain the books for all years of existence.
8) Provided that, in case if the investigation is initiated by CG then, CG can demand the maintenance for the books for longer period i.e. more than 8 years in case of company existing for more than 8 years.

Suggestion:

1) Normally the duty of maintenance of books of accounts is of the MD / WTD / BOD. But if they feel so they can transfer the duty to CFO / any other qualified person.
   In case of contravention, the officer in default will be as follows:
   a) MD, WTD in charge of finance/ BOD (if qualified person or CFO is not appointed).
   b) CFO / Qualified person appointed. (In case if the CFO / Qualified Person is appointed for maintenance of books.)
2) The officer in default in above case will be liable to the Fine of Rs. 50,000 – Rs. 5,00,000.

PM,N08: The Board of directors of Bharat Ltd. has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advise.[V.IMP]

Provision:[Section 128 of the Companies Act, 2013]

1) Every company shall maintain the following books:
   a) Books of accounts (ledgers & Journals)
   b) Other Books and papers (supporting vouchers & documents)
   c) Financial statements (Balance sheet and Profit & Loss account)
2) The above books shall be maintained at registered office for every financial year in true and fair manner.
3) The books shall be maintained for head office as well as for branch office. The books of the branch can be kept at the branch office.
4) The books shall be maintained of accrual basis in double entry system of accounting.
5) If company wants to keep its books at any other place in India then company can do the same by complying following process.
   a) Pass BOD-OR for removal of such books from the registered office and to

keep the same at some other place in India.

b) The company shall intimate the full address of the new place where books are to be maintained to ROC in 7 days of passing BOD-OR.

Explanation:

1) In the given case the registered office of the company Bharat Ltd is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai.

2) For such purpose the BOD need to pass the BM-OR to shift the books to the place in Mumbai. And in addition to this company shall inform to ROC within 7 days of passing BM-OR.

Answer:

Thus the company shall comply with the above requirements to keep the books at the Mumbai office.

Suggestion:

The company can also keep the books of account and papers in electronic form with back up at registered office.

PM,N03,J09,N11: Mr. White is working as Chief Accountant in White Metal Limited. The Board of Directors of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that books of account can be properly maintained and Balance Sheet and Profit and Loss Account can be prepared as per the provisions of law. Draft a "Board Resolution" for the said purpose. Also point out the consequences in case of default; when such a resolution is passed.

Resolution:

Board Resolution for charging Mr. White, Chief Accountant, with duty of Compliance with requirements of Sections 129 & 134 of Companies Act, 2013.

"**Resolved that** Mr. White, Chief Accountant of the company be and is hereby charged with the duty of seeing that the requirements of Sections 129 and 134 of the Companies Act, 2013 are duly and fully complied with.

Resolved further that the said Mr. White is hereby entrusted with the authority to do such Acts or deeds as may be necessary or expedient for the purpose of discharging his above referred duties."

Provision: [Section 128 of the Companies Act, 2013]

1) Normally the duty of maintenance of books of accounts is of the MD / WTD / BOD. But if they feels so they can transfer the duty to CFO / any other qualified person.

2) In case of contravention the officer in default will be as follows:
- **a)** MD / WTD / BOD (if qualified person or CFO is not appointed).
- **b)** CFO / Qualified person appointed. (in case if the CFO / Qualified Person is appointed for maintenance of books.)

3) The officer in default in above case will be liable to the following penalty.
- **a)** Jail upto 1 year; or
- **b)** Fine of Rs. 50,000 – Rs. 5,00,000; or
- **c)** Both of above.

Maintenance of books on cash system

PM:XYZ Ltd. wants to maintain its books of account on cash basis.[IMP]

Provision:[Section 128(1) of the Companies Act, 2013]

1) Every company shall maintain the following books:
- **a)** Books of accounts (ledgers & Journals)
- **b)** Other Books and papers (supporting vouchers & documents)
- **c)** Financial statements (Balance sheet and Profit & Loss account)

2) The above books shall be maintained at registered office for every financial year in true and fair manner.

3) The books shall be maintained for head office as well as for branch office. The books of the branch can be kept at the branch office.

4) The books shall be maintained of accrual basis in double entry system of accounting.

Explanation:

The second part of the section clearly states that the books of accounts must be maintained on accrual basis and according to the double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement.

Answer:

Hence, it is clear that XYZ Ltd. cannot maintain its books of accounts on cash basis.

Inspection of books by 3rd party professional hired by member – whether allowed?

PM:Mr. Ramanujam, one of the Directors in Debari Food Processing Limited was not satisfied with the performance of the company in financial matters. He requested Mr. Anandaraja, a Chartered Accountant, to inspect the books of

accounts of the company on his behalf. Decide, under the provisions of the Companies Act, 2013 whether the said company can refuse to allow Mr. Anandaraja to inspect the books of accounts?

Provision: [Section 128 of the Companies Act, 2013]

1) The company shall make books available for inspection at registered office in India or at any other place in India as per BOD-OR.
2) The books shall be open for inspection during the business hours.
3) If the books are maintained at any other place outside India the copies of the same shall be made available for inspection. The BOD may require the compliance of few conditions in such case.
4) The books of the subsidiary company shall be made available for inspection only after the approval of BOD by OR.

Explanation:

1) However, in case the director wishes to get the inspection done by an agent or a representative he must seek the approval of the Board of Directors without which he will not be allowed to do so.
2) As the right of inspection is a statutory right given under this section, a director who is prevented or refused from inspection may enforce his right through court. As such, Mr. Ramanujam being the director in Debari Food Processing Limited may appoint Mr. Anandaraja to inspect the books of accounts of the company only with the approval of the Board of Directors.

Case Law:

In **Vakharia Vs Supreme General Film Exchange CO. Ltd** it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the information obtained by him for any purpose other than the purpose of his principal.

Answer:

Hence, the Debari Food Processing Limited cannot refuse to allow Mr. Anandaraja to inspect the books of accounts if such right of inspection has been approved by the Board of Directors.

Right to inspect the books of accounts

PM, M11: XYZ Ltd. was registered in the year 2013 under Companies Act, 2013. There are allegations that the three directors who manage the affairs of the company are siphoning the funds of the company. The company has not declared any dividends on the ground that company is incurring losses. Mr. A, who controls 51% of the share capital of the company sends a notice to the management that he will inspect the books of account to verify the allegations. Examine the right of Mr. A to carry out the inspection. State the persons who have the right to carry out the inspection under the Companies Act, 2013.[V.IMP]

Provision: [Section 128 & 206 of the Companies Act, 2013]

According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the inspection of the books of accounts of the company.

a) Directors of the Company [Section 128(3)]
b) Registrar of Companies [Section 206]
c) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206).
d) Such officers of SFIO (Serious Fraud Investigation Office) [Section 212].

Explanation:

In the given case the members are not allowed to inspect the books of the company. Since Mr. A is not a director, he is not eligible to carry out the inspection. The books can be inspected by only above persons.

Answer:

Thus Mr. A do not have any right to inspect the books of the company.

Suggestion:

According to Regulation 89, of Table F, Companies Act, 2013, a member has right to inspect the books of accounts if he is so authorized by a resolution of the Board of Director or a resolution passed by the company in general meeting.

MTP Oct21 & RTPN22: State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. Support with the help of relevant provisions of the Companies Act, 2013.

Provision:[Section 128 of the Companies Act, 2013]

Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure

compliance by the company with the requirement of maintenance of books of account etc. shall be:

a) Managing Director,
b) Whole-Time Director, in charge of finance
c) Chief Financial Officer
d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Inspection of Books by Proxy of CA- Whether allowed?

M07:An allegation was leveled against PQR Ltd. that the funds of the company are misused. Mr. Z, one of the Directors of the company wants to inspect the books of account of the company in order to ascertain whether the allegation was true. But since Mr. Z does not have the knowledge of accounting, he appoints Mr. A, his friend and a practicing Chartered Accountant to go through the books of account of the company on his behalf. The company seeks your advice as to whether Mr. A many be allowed to inspect the books of account of the company on behalf of Mr. Z. You are required to give your advice to the company keeping in view the provisions of the Companies Act, 1956.
What would be your advice if Mr. Z would have been a shareholder only and not a Director of the company?

Provision:[Relevant section 128 & 206 of the Companies Act, 2013 as follows]

1) The company shall make books available for inspection at registered office in India or at any other place in India as per BOD-OR.
2) The books shall be open for inspection during the business hours.
3) If the books are maintained at any other place outside India the copies of the same shall be made available for inspection. The BOD may require the compliance of few conditions in such case.
4) The books of the subsidiary company shall be made available for inspection only after the approval of BOD by OR.
5) According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the inspection of the books of accounts of the company.
   a) Directors of the Company [Section 128(3)]
   b) Registrar of Companies [Section 206]
   c) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206).
   d) Such officers of SFIO (Serious Fraud Investigation Office) [Section 212].

Explanation:

1) However, in case the director wishes to get the inspection done by an agent or a representative he must seek the approval of the Board of Directors without which he will not be allowed to do so.
2) As the right of inspection is a statutory right given under this section, a director who is prevented or refused from inspection may enforce his right through court. As such, Mr. Z being the director in PQR Limited may appoint Mr. A to inspect the books of accounts of the company only with the approval of the Board of Directors.

Case Law:

In **Vakharia Vs Supreme General Film Exchange CO. Ltd** it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the
information obtained by him for any purpose other than the purpose of his principal.

Answer:

Hence, the PQR Limited cannot refuse to allow Mr. A to inspect the books of accounts if such right of inspection has been approved by the Board of Directors. However, if Mr. Z is member then he cannot appoint a representative but can inspect the books himself if authorised by the Board in this behalf.

Suggestion:

According to Regulation 89, of Table F, Companies Act, 2013, a member has right to inspect the books of accounts if he is so authorized by a resolution of the Board of Director or a resolution passed by the company in general meeting

Inspection of books by members – whether allowed?

M10:Mr. Ramesh and his supporters hold more than 50% of the equity share capital of Progressive Realtors Ltd. Dissatisfied with the performance of the company, Mr. Ramesh sends a notice to the Board of Directors about his intention to inspect the account books of the company. Explain the provisions of the Companies Act, 2013 regarding the persons who can inspect the books of account and the right of Mr. Ramesh in this matter.

Provision:[Section 128 & 206 of the Companies Act, 2013]

According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the inspection of the books of accounts of the company.

a) Directors of the Company [Section 128(3)]
b) Registrar of Companies [Section 206]
c) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206).
d) Such officers of SFIO (Serious Fraud Investigation Office) [Section 212].

Explanation:

In the given case the members are not allowed to inspect the books of the company. Since Mr. Ramesh is not a director, he is not eligible to carry out the inspection. The books can be inspected by only above persons.

Answer:

Thus Mr. Ramesh and his supporters do not have any right to inspect the books of the company.

Suggestion:

According to Regulation 89, of Table F, Companies Act, 2013, a member has right to inspect the books of accounts if he is so authorized by a resolution of the Board of Director or a resolution passed by the company in general meeting.

Section 129: Financial Statement

Answer Writing Points For Sec 129[Financial Statement]:

1) Sec 129(1) says that the financial statement of the company shall comply with following requirement.
   a) The FS shall be true and fair.
   b) The FS shall comply with accounting standards as mentioned in sec 133.
   c) The FS shall be formed in format specified in schedule III to Companies Act, 2013.
2) IF the FS of the company does not comply with the AS then such company shall disclose following facts.
   a) Applicable AS and Deviation from any of the AS so applicable.
   b) Reasons for such deviation.
   c) The financial effect of such deviation.
3) In case of contravention of the section, any of the following persons will be considered as officer in default for the section.
   a) MD / WTD / Manager / CFO / Eligible person appointed by BOD; or
   b) In absence of the all of the above the BOD of the company.
4) The officer in default as stated above will be liable for the following penalty:
   a) Jail up to 1 year; or
   b) Fine of Rs. 50,000 to Rs. 5 lakhs; or
   c) Both.
5) Moreover, the Board of directors is also required under section 134 of the Companies Act, 2013 to include a Directors Responsibility Statement indicating therein that in the preparation of the financial statements the applicable accounting standards had been followed along with proper explanation relating to material departures, if any.
6) If such person (as above referred) fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to 1 year, or with fine not less than Rs. 50,000 but which may extend to Rs. 5,00,000 or with both.
7) Responsibilities of auditors: As per section 143(3) (e) of the Companies Act, 2013, the statutory auditor's responsibility is to state in his report, whether in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in section 143 of the Companies Act, 2013.

Suggestion:

1) In case of contravention of the section,consider any of the following persons as officer in default for the section.
   a) MD / WTD / Manager / CFO / Eligible person appointed by BOD; or
   b) In absence of the all of the above, the BOD of the company.
2) The officer in default as stated above will be liable for the following penalty:
   a) Jail up to 1 year; or
   b) Fine of Rs. 50,000 to Rs. 5 lakhs; or
   c) Both.
3) E-Forms to be filled by company under this section:
   AOC-1: Statement containing silent features of subsidiaries / associates / JV

Answer Writing Points For Sec 129[Non-disclosure of foreign subsidiary details-Consequences]:

1) The Holding company shall prepare following two financial statements.
   a) Standalone financial statement of holding company.

b) Consolidated financial statement of Holding Company with its Subsidiary Companies.

2) Both of the above statement shall be laid before the AGM of the company as mentioned in sec 129(2) above.

3) The silent features or details of the FS of the subsidiary company / companies shall be attached with the FS of the holding company.

4) Such silent features of the subsidiary or subsidiaries of the company shall be attached to FS of the Holding company in the form No AOC-1.

5) The CG have power to state the manner in which the FS of the Holding and Subsidiaries shall be consolidated.

6) The BOD of the company shall present the financial statements of the company before the AGM of the company held for such financial year.

Suggestion:

In case of contravention of the section any of the following persons will be considered as officer in default for the section.

a) MD / WTD / Manager / CFO / Eligible person appointed by BOD; or

b) In absence of the all of the above the BOD of the company.

Section 129A: Periodical Financial Statement

Answer Writing Points For Sec 129A:

1) The CG may, require such class or classes of unlisted companies:

a) To prepare the financial results of the company on such periodical basis or in a form as may prescribed.

b) To obtain approval of the BOD and complete audit or limited review of such periodical financial results in such manner as may be prescribed

c) File a copy with the Registrar within a period of 30 days of completion of the relevant period with such fees as may be prescribed.

PM,M03,M05,M07,N10: Define the expression "Accounting Standards" within the meaning of Companies Act,2013. XYZ Limited did not prepare its Balance Sheet as at 31st March, 2015 and the Profit and Loss Account for the year ended on that date in conformity with some of the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India. You are required to state with reference to the provisions of the Companies Act, 2013, the responsibilities of directors and statutory auditor of the company in this regard. [LDR IMP]

Provision: [Section 2(2) & 129 & 133 of the Companies Act, 2013]

1) As per sub-section (2) of Section 2 of the Companies Act, 2013, the expression "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133. As per Section 133, the standards of accounting recommended by the Institute of Chartered Accounts of India constituted under the Chartered Accountants Act, 1949 as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority established under section 132 of the said Act.

2) Rule 7 of *the Companies (Accounts) Rules, 2014*, further states that the standards of accounting specified under the Companies Act, 1956 shall be deemed to be the accounting standards until the according standards are prescribed by the Central Government under section 133.

3) Sec 129(1) says that the financial statement of the company shall comply with following requirement.

a) The FS shall be true and fair.

b) The FS shall comply with Accounting standards as mentioned in sec 133.

c) The FS shall be formed in format specified in schedule III to Companies Act, 2013.

4) IF the FS of the company does not comply with the AS then such company shall disclose following facts.

a) Applicable AS and Deviation from any of the AS so applicable.

b) Reasons for such deviation.

c) The financial effect of such deviation.

5) In case of contravention of the section any of the following persons will be considered as officer in default for the section.

a) MD / WTD / Manager / CFO / Eligible person appointed by BOD; or

b) And in absence of the all of the above the BOD of the company.

6) The officer in default as stated above will be liable for the following penalty:

a) Jail upto 1 year; or

b) Fine of Rs. 50,000 to Rs. 5 lakhs; or

c) Both.

7) Moreover, the Board of directors is also required under section 134 of the Companies Act, 2013 to include a Directors Responsibility Statement indicating therein that in the preparation of the financial statements the applicable accounting standards had been followed along with proper explanation

relating to material departures, if any.

8) If such person (as above referred) fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to 1 year, or with fine not less than Rs. 50,000 but which may extend to Rs. 5,00,000 or with both.
9) Responsibilities of auditors:
   As per section 143(3) (e) of the Companies Act, 2013, the statutory auditor's responsibility is to state in his report, whether in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in section 143 of the Companies Act, 2013.

Non-disclosure of foreign subsidiary details - Consequences

PM,N10:Gujarat Textiles Limited is having a foreign subsidiary company. The said Indian holding company failed to furnish particulars of its foreign subsidiary company in its Balance Sheet. Decide the liability of Gujarat Textiles Limited under the Companies Act, 2013.[V.IMP]

Provision: [Section 129(3) of the Companies Act, 2013]

1) The Holding company shall prepare following two financial statements.
   a) Standalone financial statement of holding company.
   b) Consolidated financial statement of Holding Company with its Subsidiary Companies.
2) Both of the above statement shall be laid before the AGM of the company as mentioned in sec 129(2) above.
3) The silent features or details of the FS of the subsidiary company / companies shall be attached with the FS of the holding company.
4) Such silent features of the subsidiary or subsidiaries of the company shall be attached to FS of the Holding company in the form No AOC-1.
5) The CG have power to state the manner in which the FS of the Holding and Subsidiaries shall be consolidated.
6) The BOD of the company shall present the financial statements of the company before the AGM of the company held for such financial year.
7) In case of contravention of the section any of the following persons will be considered as officer in default for the section.
   a) MD / WTD / Manager / CFO / Eligible person appointed by BOD; or
   b) And in absence of the all of the above the BOD of the company.

Explanation:

The above provisions do not make any distinction between a domestic subsidiary company and a foreign subsidiary. Therefore, Gujarat Textiles Ltd. has contravened the provisions of Section 129 of the Companies Act, 2013 by not furnishing the consolidated financial statements on the one hand and not attaching with its financial statements a separate statement of the foreign subsidiary giving the salient features thereof.

Answer:

The officer in default as stated above of Gujarat Textiles Ltd. will be liable for the following penalty:

a) Jail upto 1 year; or
b) Fine of Rs. 50,000 to Rs. 5 lakhs; or
c) Both.

Circulation of Unaudited accounts

PM: State giving reasons whether the following are true or false under the provisions of the Companies Act, 2013? The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company.

Provision: [Section 129(2) of the Companies Act, 2013]

Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:

a) any notes annexed to or forming part of such financial statement;
b) the auditor's report; and
c) the Board's report.

Explanation:

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies.

Answer:

The statement is False.

Dec21: Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries– Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss?

Provision: [Section 129 of the Companies Act, 2013]

1) According to section 129(3) of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).
2) The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.
3) Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

Explanation & Answer:

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit and Loss Account normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

M22: XYZ Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

Or

RTPM23: Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.

Provision: [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

a) to prepare the financial results of the company on periodical basis and in prescribed form
b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Answer:

Therefore, the objection of the Board of Directors on the ground that as XYZ Ltd./ Yellow Ltd is an unlisted company, periodical financial results need not be prepared, is not correct.

Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

Section 130: Re-opening of Accounts on Court's or Tribunal's Orders

Answer Writing Points For Sec 130:

1) According to section 130 of the Companies Act, 2013, A company shall not re-open its books of account and not recast its financial statements, unless application regarding the same is filled by
   a) Central Government,
   b) the Income-tax authorities,
   c) the Securities and Exchange Board,
   d) any other statutory regulatory body or authority or
   e) Any person concerned.
2) Reason for such application for reopening can be as follow:
   a) the relevant earlier accounts were prepared in a fraudulent manner; or

b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements

3) Before passing any order under this section the Tribunal will give intimation to the applicant authority that order for re-opening is, being passed based on the application made by the authority.

4) The accounts so revised or re-cast above shall be considered as final.

5) Re-opening of accounts is allowed for maximum 8 financial years immediately preceding the current financial year.

6) Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

MTP N.18: The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re- opening of accounts on court's or Tribunal's order.[V.IMP]

Provision: [Section 130 of the Companies Act, 2013]

1) According to section 130 of the Companies Act, 2013, A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the

a) Central Government,

b) the Income-tax authorities,

c) the Securities and Exchange Board,

d) any other statutory regulatory body or authority or any person concerned and

2) an order is made by a court of competent jurisdiction or the Tribunal to the effect that:

a) the relevant earlier accounts were prepared in a fraudulent manner; or

b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements

3) Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

4) The accounts so revised or re-cast shall be final.

5) No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year.

6) Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

Answer:

For re-opening of accounts of MIT ltd. Directors shall follow the procedure given above.

M.19: The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT

Or

M21 RTP: The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Qurie Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Qurie Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Or

MTP N21: The Income Tax Authorities in the current financial year 2020-21 observed, during the assessment proceedings, a need to re-open the accounts of Shrey Ltd. for the financial year 2009-10 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Shrey Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2009-10. Examine the validity of the application filed by the

Income Tax Authorities to NCLT.

Or

MTPM23The Income Tax Authorities in the current financial year 2022-23 observed, during the assessment proceedings, a need to re-open the accounts of Sun Ltd. for the financial year 2011-12 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Sun Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2011-12. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Provision: [Section 130 of the Companies Act, 2013]

1) According to section 130 of the Companies Act, 2013, A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the
   a) Central Government,
   b) the Income-tax authorities,
   c) the Securities and Exchange Board,
   d) any other statutory regulatory body or authority or any person concerned and
2) an order is made by a court of competent jurisdiction or the Tribunal to the effect that:
   a) the relevant earlier accounts were prepared in a fraudulent manner; or
   b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
3) However, no order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year.

Explanation& Answer:

1) In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd./Qurie Ltd./Shrey Ltd./ Sun Ltd for the financial year 2008-2009.
2) Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than 8 financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

Section 131: Voluntary Revision of Financial Statements or Board's Report

Answer Writing Points For Sec 131:

1) If it appears to the directors of a company that:
   a) the financial statement of the company; or
   b) the report of the Board,
   Do not comply with the provisions of section 129 or section 134; they may prepare revised financial statement or a revised report in respect of any of the 3 preceding financial years.
2) For this, company should take approval of the Tribunal by an application made in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall file with the Registrar.
3) Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:
4) Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:
5) Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
6) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to:
   a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
   b) The making of any necessary consequential alternation.
7) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular:
   a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
   b) make provisions with respect to the functions of the company's auditor in

relation to the revised financial statement or report;
c) Require the directors to take such steps as may be prescribed.

N.18 Rtp:The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.[LDR IMP]

Provision: [Section 131 of the Companies Act, 2013]

1) If it appears to the directors of a company that:
   a) the financial statement of the company; or
   b) the report of the Board,
   do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the 3 preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.
2) Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.
3) Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year.
4) Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
5) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to:
   a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
   b) the making of any necessary consequential alternation.
6) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular:
   a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
   b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
   c) require the directors to take such steps as may be prescribed.

Answer:

Above are the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

Section 132: Constitution of National Financial Reporting Authority

Answer Writing Points For Sec 132:

1) The CG by notification in the Official Gazette of India constitute NFRA for handling the matters regarding AS.
2) The NFRA shall conduct the following duties.
   a) Make the opinion and the recommendation to the CG on formation of:
      i) Accounting standards.
      ii) Auditing standards.
   b) Make recommendation and opinion on adoption of the above standards by various companies or their auditors.
   c) Supervise the implementation of the AS and enforce the compliance of the same.
   d) Verify the quality of service given by CA professionals regarding implementation of the AS
   e) Suggest any measures regarding increasing the quality of service by CA professionals for the implementation of the AS.
   f) Performs the required tasks, which are supplementary to execute the above functions.
3) The NFRA constitutes:
   a) A chairperson who shall be expert in the accounts, finance, Law. He shall be appointed by CG.
   b) Other 15 member's combination of full time and part time members.
4) Terms and manners of the appointment shall be prescribed by CG for chairman and all members.
5) Any members or chairman of The NFRA shall not work with any other audit firm in any manner during his tenure.

6) In addition to above chairman or members of The NFRA shall not work with any audit firm for period of 2 years after vacation of office.
7) The NFRA will have following powers
   a) The NFRA will have power of investigation suo moto or on reference made by CG
   b) The NFRA will have following power of the civil court
      i) Discovery and the production of the books of accounts as per NFRA.
      ii) Summoning any witness / any person related and enforce his attendance and examine him on oath
      iii) Inspection of books, register and documents of any person referred in above clause.
      iv) Issuing commission for examination of witness or documents.
8) In case if the professional misconduct is proved against the person then NFRA have power to make following orders –
   a) Penalty from Rs. 1 lacs to 5 times of audit fees for individual CA.
   b) Penalty of Rs. 5 lacs to 10 times of audit fees for firm of CA.
   c) debarring the member or the firm from—
      i) being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
      ii) performing any valuation as provided under section 247,
      For a minimum period of 6 months or such higher period not exceeding 10 years as may be determined by the NFRA.

Section 133: Recommendation and selection of AS

Answer Writing Points For Sec 133:

1) The CG may consult with the NFRA For recommendation of Accounting Standards.
2) CG have declared on consultation with NFRA that the Accounting Standard made by ICAI will be considered as Accounting Standards for all India.
3) If CG thinks Fit CG can recommend standards recommended or formed by any other authority as AS.

Section 134: Financial Statement, Board's Report, etc.

Answer Writing Points for Sec 134:

Signing of financial statements.

Provision:

1) The BOD shall approve the financial statement or consolidated financial statement before the same is signed by following persons.
   a) By Chairman (if authorised) or by 2 directors (1 shall be MD); &
   b) By CEO (if he is director), CFO & CS (if appointed).
2) In case of one-person company, the FS shall be signed by only by 1 director.
3) After signing of the above FS by respective person, it shall be submitted to auditor for his audit report.

Suggestion:

If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Contents of Board Report

Provision:

1) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include Directors' Responsibility Statement;
2) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that:
   a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
   b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
   c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
   d) directors had prepared the annual accounts on a going concern basis; and
   e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

f) the directors had devised proper systems to ensure compliance with the provision of all applicable laws and that such systems were adequate and operating effectively.

Suggestion:

E-Forms to be filled by company under this section:

AOC-2: Form of disclosure of the particulars of contract or arrangement entered into by company with related parties' u/s 188

PM,N11: The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.
The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

Provision: [Section 134 of the Companies Act, 2013]

1) The BOD shall approve the financial statement or consolidated financial statement before the same is signed by following persons.
   a) By Chairman (if authorised) or by 2 directors (1 shall be MD); &
   b) By CEO (if he is director), CFO & CS (if appointed).
2) In case of one person company the FS shall be signed by only by 1 director.
3) After signing of the above FS by respective person same shall be submitted to auditor for his audit report.

Explanation & Answer:

1) In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors.
2) In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

PM,N10: The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement.[V.IMP]

Or

MTPOct22: The Companies Act, 2013 has prescribed an additional duty on Board of directors to include in the Board's Report a "Directors' Responsibility Statement". Briefly enumerate any four matters to be furnished in said statement.

Provision: [Section 134 of the Companies Act, 2013 as follows]

1) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include Directors' Responsibility Statement;
2) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that:
   a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
   b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
   c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
   d) the directors had prepared the annual accounts on a going concern basis; and
   e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
   f) the directors had devised proper systems to ensure compliance with the provision of all applicable laws and that such systems were adequate and operating effectively.

Answer:

Above are the details to be furnished in the said statement.

Signing of financial statements.

J09: Examine the validity of the following with reference to the provisions of the Companies Act, 2013 :

The Balance Sheet and Profit and Loss Account of TXN Ltd. for the year ended 31st March, 2015 was signed by one of its Directors and the Secretary.

Provision: [Section 134 of the Companies Act, 2013]

1) The BOD shall approve the Financial statement or consolidated financial statement before the same is signed by following persons.
   a) By Chairman (if authorised) or by 2 directors (1 shall be MD); &
   b) By CEO (if he is director), CFO & CS (if appointed).
2) In case of one person company the FS shall be signed by only by 1 director. After signing of the above FS by respective person same shall be submitted to auditor for his audit report.

Explanation & Answer:

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by one of the Directors and the Secretary. In view of Section 134(1) of the Companies Act, 2013, at least two Directors should sign and the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

M06: Examine the validity of the following:

(a) The Board of Directors of a company decides to revise the accounts which have been submitted to the Auditors, but the auditors have not yet given their report.

(b) The Board of Directors of a company decides to revise the Audited accounts before adoption by the shareholders in the Annual General Meeting.

(c) The Board of Directors of a company decides to revise the accounts which have already been adopted by the shareholder in the Annual General Meeting.[LDR IMP]

Provision: [Section 134 of the Companies Act, 2013]

(a) Where the auditors have not yet given their report, the Board may revise the accounts. The revised accounts shall be approved by the Board and thereafter signed on behalf of the Board in accordance with the provisions of Sec 134 of the Companies Act, 2013. Then, the revised accounts shall be submitted to the auditors. The auditor's report shall be based on the revised accounts submitted by the Board.

(b) The given problem is dealt with under the Guidance Note on Auditor's Report on Revised Accounts of Companies before Circulation to Shareholders. As per the said Guidance Note, in case the auditors have submitted their report, the Board may revise the accounts and resubmit them to the auditor, provided that -
   i) The accounts already approved by the Board have not been circulated to, and placed before the shareholders at the annual general meeting;
   ii) the auditor's report on the revised accounts is given in substitution of his earlier audit report;
   iii) adequate disclosure regarding revision of accounts is made by the Board in the revised accounts; and
   iv) adequate disclosure regarding revised audit report is made by the auditor in his audit report.

(c) There is no provision in the Companies Act, expressly permitting or prohibiting revision or reopening of accounts after adoption.
   Generally, reopening or rectification of accounts is not permitted if the accounts have already been adopted at the AGM. The ICAI is also of this opinion. Accordingly, accounts once adopted by the members cannot be reopened, revised or rectified under any circumstances.

However, the MCA has permitted revision/rectification of accounts provided that

i) the revision is made for meeting the technical requirements of taxation laws or of any other law;
ii) such revision will result in true and fair view of state of affairs of company.
iii) the revised annual accounts shall be adopted in the subsequent AGM or EGM;
iv) the revised annual accounts shall be filed with the registrar as per section 137 of the Companies Act, 2013.

M.18 Rtp: Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures.
Referring to the provisions of the Companies Act, 2013:
(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.
(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?[LDR IMP]

Provision: [Section 134 of the Companies Act, 2013]

1) In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:
   a) The Chairperson of the company where he is authorized by the Board; or
   b) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
   c) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.
2) In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.
3) The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

Explanation & Answer:

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

N.19 RTP: Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Prateek has approached you advise him regarding his responsibility for signing the financial statement. Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.
Mr. Prateek has also provided to you the following more informations:
1. The Board as a policy does not authorise the chairperson of the company to sign the financial statements
2. The company has appointed Ms. Sunanina as its Company Secretary

Provision: [Section 134 of the Companies Act, 2013]

1) In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:
   a) The Chairperson of the company where he is authorized by the Board; or
   b) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
   c) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.
2) In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

Explanation & Answer:

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

M.20 RTP: The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.
The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

Provision: [Section 134 of the Companies Act, 2013]

1) In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:
   a) The Chairperson of the company where he is authorized by the Board; or
   b) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
   c) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.
2) In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

Explanation & Answer:

1) In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors.
2) In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors.
3) Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

M.18: State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013. [V.IMP]

Or

Dec21: The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly explain any three matters to be furnished in the said statement.

Provision: [Section 134 of the Companies Act, 2013]

The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

1) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4) the directors had prepared the annual accounts on a going concern basis;
5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
   [Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;] and
6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

MTPM23: Explain the following as per the provisions of the Companies Act, 2013: (i) Who shall sign Board's Report
(ii) Filing of financial statements with the Registrar when AGM is not held

Answer: [Section 134 of the Companies Act, 2013]

(i) Signing of Board's Report [Section 134(6)]: The Board's report and any annexures thereto under section 134(3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so

authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(ii) Annual General meeting not held [Section 137(2)]: Where the AGM of a company for any year has not been held, financial statements along with the documents required to be attached, duly signed along with statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

Section 135: Corporate Social Responsibility

Answer Writing Points For Sec 135:

1) The provisions of the CSR are applicable if in the immediately preceding financial year a company having:
- **a)** Net Worth ≥ Rs. 500 cr. Or
- **b)** Turnover ≥ Rs. 1000 cr. Or
- **c)** Net Profit ≥ Rs. 5 cr.

2) The above companies to whom the provision of the CSR are applicable shall take following steps:
- **a)** Such companies shall form CSR committee.
- **b)** Such CSR committee shall contain at least 3 directors out of which min 1 shall be Independent director.

3) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

4) The CSR committee shall comply with the following duties:
- **a)** Formulate CSR policies.
- **b)** Such CSR policies shall indicate the activities, which shall be undertaken for the purpose for doing CSR.
- **c)** The CSR policies formed by committee shall be recommended to BOD of the company for implementation.
- **d)** The CSR committee shall recommend the amount of SR to be incurred as per the policies state above.
- **e)** The committee shall monitor the policies and amend the same practically from time to time.

5) The BOD shall take the following steps for the CSR:
- **a)** BOD of the company shall consider the steps recommended by the CSR committee and approve the CSR policy regarding making the expenses on CSR.
- **b)** The BOD shall disclose the details of the CSR policy approved by BOD in its BOD's report.
- **c)** The BOD shall publish the CSR policy accepted by them for making CSR expenses.
- **d)** The BOD shall ensure that the expenses of the CCSR shall be made in the manner stated by policy, which is accepted by BOD. In addition to this, the company shall take all steps and do such all activities as required by accepted policy of CSR by BOD.

6) The company satisfying any condition of sec 135(1) for any FY shall make CSR expenditure of 2% of average net profit of last 3 financial years. or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

7) Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Suggestion:

If the company fails to make the CSR the BOD shall disclose the same in BOD's Report with the reasons of the failure and unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

M.18 RTP: Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (₹ In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

(i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.

(ii) State the composition of the CSR committee unlisted company and a private company[IMP]

Provision: [Section 135 of the Companies Act, 2013]

1) According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least 2 % of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.
2) The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director
3) Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors

Explanation & Answer:

(i) Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

(ii) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(iii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

N.18 RTP: Mary Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.

Provision: [Section 135 of the Companies Act, 2013]

1) In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 % of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy.
2) There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'.

Explanation & Answer:

Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense can be set off against subsequent financial years as a part of CSR expenditure.

M.18: Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2016-17. The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.

Provision: [Section 135 of the Companies Act, 2013]

1) According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -
   a) net worth of rupees 500 crore or more, or
   b) turnover of rupees 1000 crore or more or

c) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

2) "Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Explanation:

In the present case,

1) turnover of Rera Ltd. is ₹ 100 crore,

2) net profit of ₹ 3 crore and

3) net worth of ₹ 253 crore (Net profit + securities premium -accumulated loss= 3 + 300 – 50=253 crore).

Answer:

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

[**Note 1**: - It can also by presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[**Note 2**: Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

July21: The balances extracted from the financial statement of ABC Limited are as below:

Particulars	Balances as on 31-03-2020 as per Audited Financial Statement (₹ in crore)	Balances as on 30-09-2020 (Provisional ₹ in crore)
Net worth	100.00	100.00
Turnover	500.00	1000.00
Net profit	1.00	5.00

Explaining the provisions of the Companies Act, 2013, you are requested to examine whether ABC Limited is required to constitute 'Corporate Social Responsibility Committee' (CSR Committee) during the second half of the financial year 2020-21.

Provision: [Section 135 of the Companies Act, 2013]

1) According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -

a) net worth of rupees 500 crore or more, or

b) turnover of rupees 1000 crore or more or

c) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Answer:

In the given question, the company does not fulfill any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21.

May22: SKIP Limited (the Company) was incorporated on 01.04.2019. The balances extracted from its audited financial statement are as given below :

Financial Year	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2019-20	5 crore	3.75 crore
2020-21	7 crore	5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Or

RTPM23: Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	5 crore	3.75 crore
2021-22	7 crore	5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Provision: [Section 135 of the Companies Act, 2013]

1) According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -
   a) net worth of rupees 500 crore or more, or
   b) turnover of rupees 1000 crore or more or
   c) a net profit of rupees 5 crore or more

   during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.
2) As per the provisions of the Companies Act, 2013, the Board of every company shall ensure that the company spends at least 2% of the average profits the company made during the three immediately preceding financial years on the CSR.
3) Provided that where a company has not completed the period of three financial years since its incorporation, then at least 2% of the average net profits of the company made during such immediately financial years.

Explanation:

SKIP Limited (the company) was incorporated on 01.04.2019. the balances extracted from its audited financial statement are as given below:

Financial Year	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2019-20	5 crore	3.75 crore
2020-21	7 crore	5.25 crore

The company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22 if it is mandatory.

Answer:

a) In the present case, the company is required to contribute toward the CSR activities as its net profit was more than ₹5 crores in the immediately preceding financial year
b) Minimum amount to be contributed towards the CSR obligation: (5 cr +7 cr)/2] × 2% = ₹12 Lakhs. So, SKIP Limited needs to contribute towards the CSR the minimum amount of ₹12 Lakhs.

Section 136: Right of member to copies of audited financial statement

Answer Writing Points for Sec 136:

1) The company shall make available copies of financial statement, Auditor's report and Every other document as may be required for inspection at least 21 days before the GM at registered office of the company.
2) Such copies shall be sent to every member, every trustee, to debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled.
3) The above document s be available for inspection and it shall also be circulated by company to following persons.
   a) Shareholders of the company; &
   b) Debenture holders of the company; &
   c) Debenture trustee; &
   d) Any person eligible to attend the GM of the company.
4) The CG will state the manner to circulate the financial statements for the following companies as per rules.
   a) Listed Companies; or
   b) Public Companies having net worth > Rs. 1 Cr
   c) Public Companies having turnover > Rs. 10 Cr
5) The CG state in the rules that the above companies shall circulate FS as follows.
   a) By electronic mode to members who hold shares in electronic forms and have registered e-mails at depository.

b) By electronic form to the members whose shares are not in d-mat form but who consented to send the FS through electronic mode.

c) By dispatch of physical copies through any mode of delivery under sec 20 in any other case other than above.

6) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

7) Provided that, every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

Suggestion:

1) In case of contravention of this section by not circulating or publishing the accounts or audit report or by not making it available for the inspection the consequences will be as follows:

a) Company will be penalized with Rs. 25000; and

b) Every officer will be penalized with Rs. 5000.

2) E-Forms to be filled by company under this section:

AOC-3: Statement containing silent features of balance sheet and profit and loss account

RTPM23: Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:-

Sr. No.	Particulars
1	A member individually holding shares with face value of ` 800 which amounted to 0.16% of the total paid-up share capital
2	Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ` 600 which amounted to holding 0.12% of the total paid-up share capital for each such member
4	All the remaining members holding individually more than 1.2% of the total paidup share capital of the company.

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

Provision: [Section 134 of the Companies Act, 2013]

In case of Nidhi company –

1) Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than Rs.1000 in face value or more than 1 %, of the total paid-up share capital, whichever is less,

2) it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Explanation:

a) Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ` 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less.

b) Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

(i) Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital

(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.

c) For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Section 137: Copy of Financial Statement to be Filed with Registrar

Answer Writing Points For Sec 137:

1) The company shall file the following documents with ROC within the 30 days from the date of AGM of the company.
   a) Financial Statement (Balance Sheet & Profit and loss account) including the consolidated financial statement.
   b) Any other supporting document, which is required to be attached to the financial statement.
   c) The company shall pay the fees for the filing as stated in sec 403.
2) If the Financial statement are not adopted in the AGM, then such FS shall be files with ROC in 30 days of AGM as not adopted FS.
3) The same not adopted FS shall form part of ROC filing as provisional FS.
4) Then after adoption of the FS in any next GM or adjourn meeting shall be filed with ROC in 30 date form date of such GM or adjourn meeting in which it is adopted.
5) Once the adopted FS are filed it will replace the provisional FS filed with ROC.
6) The financial statement which are adopted in adjourn GM shall be filed with ROC within 30 days of date of such adjourn GM in which it is adopted. The additional fees for the same shall be paid by company as per sec 403.
7) The OPC shall file the FS and the supporting documents within the 180 days of closure of the FY.
8) The company shall file the following documents if any along with the FS.
   a) Accounts of subsidiary company which is incorporate outside India and having no place of business in India.
   b) Such supporting documents for the details of subsidiary outside India not having place of business in India.
9) If the AGM of the company is not held then company shall file, the following documents with the ROC.
   a) Financial statement including the consolidated financial statement.
   b) Supporting documents as per sec 137(1).
   c) Statement of the facts of not holding the AGM.
   d) Reason of not holding the AGM.
10) The above document shall be filed with the ROC within 30 days from the date on which the AGM should have been held with such additional fees as decided by sec 403.

Suggestion:

1) If company fails to file the financial statement or other required documents as required by section 137(1) or 137(2) as the case may be, before the expiry of the period specified therein then consequences will be as follows.
   The company shall be liable to penalty of Rs. 10,000 and for a continuing failure with a further penalty of Rs.100 for each day during which such failures continue subject to maximum of Rs.2,00,000
   The officer in default (CFO or CEO or any other director appointed or BOD) shall be liable to:
   a penalty of Rs.10000 and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of Rs. 50,000
2) E-Forms to be filled by company under this section:
   AOC-4: Form of filing financial statement and other documents with ROC

PM,M05: The Annual General Meeting of Robertson Ltd., for laying the Annual Accounts thereat for the year ended 31st March, 2014 was not held, as the accounts were not ready. In this context:

(i) Advise the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies.

(ii) Will it make any difference in case the Annual Accounts were duly laid before the Annual General Meeting held on 27th September, 2014 but the same were not adopted by the shareholders? [LDR IMP]

Provision: [Section 137(1) of the Companies Act, 2013]

1) The company shall file the following documents with ROC within the 30 days from the date of AGM of the company.

a) Financial Statement (Balance Sheet & Profit and loss account) including the consolidated financial statement.
b) Any other supporting document which is required to be attached to the financial statement.
c) The company shall pay the fees for the filing as stated in sec 403.

2) If the Financial statement are not adopted in the AGM then the such FS shall be files with ROC in 30 days of AGM as not adopted FS.
3) The same not adopted FS shall form part of ROC filing as provisional FS.
4) Then after adoption of the FS in any next GM or adjourn meeting shall be filed with ROC in 30 date form date of such GM or adjourn meeting in which it is adopted.
5) Once the adopted FS are filed it will replace the provisional FS filed with ROC.
6) The financial statement which are adopted in adjourn GM shall be filed with ROC within 30 days of date of such adjourn GM in which it is adopted. The additional fees for the same shall be paid by company as per sec 403.
7) The OPC shall file the FS and the supporting documents within the 180 days of closure of the FY.
8) The company shall file the following documents if any along with the FS.
   a) Accounts of subsidiary company which is incorporate outside India and having no place of business in India.
   b) Such supporting documents for the details of subsidiary outside India not having place of business in India.
9) If the AGM of the company is not held then company shall file the following documents with the ROC.
   a) Financial statement including the consolidated Financial statement.
   b) Supporting documents as per sec 137(1).
   c) Statement of the facts of not holding the AGM.
   d) Reason of not holding the AGM.
10) The above document shall be filed with the ROC within 30 days from the date on which the AGM should have been held with such additional fees as decided by sec 403.

Explanation:

1) In the present case though Annual General Meeting was not held, it ought to be held by 30th September, 2014 under sections 96 of the Companies Act, 2013. Therefore, under the provisions of section 137(2) the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held i.e. by 30th October 2014 along with such fees or additional fees as may be prescribed.
2) Since the Annual General Meeting has been held in time on 27th September 2014, the unadopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within 30 days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

Answer:

(i) The company shall comply with above provisions for the purpose of filing of annual accounts with the company u/s 137.
(ii) Even if the company did not adopted the annual accounts even then the company can file the provisional accounts with ROC within 30 days of AGM. And then company can file final accounts within 30 days from adoption.

Suggestion:

If company fails to file annual accounts for continuous 3 years then all the BOD of the company disqualified u/s 164(2) and need to vacate office u/s 167.

M11: Evershine Ltd., whose financial year ended on 31st March, 2010 held its annual general meeting on 30th September, 2010. The meeting transacted all other business except the accounts as they were not ready and adjourned the meeting to 20th December, 2010 for consideration of accounts. The Registrar of Companies issued show cause notice for violation of section 137 of the Companies Act, 2013. Advise.

Provisions: [Section 137 of the Companies Act, 2013]

1) The company shall file the following documents with ROC within the 30 days from the date of AGM of the company.

a) Financial Statement (Balance Sheet & Profit and loss account) including the consolidated financial statement.
b) Any other supporting document which is required to be attached to the financial statement.
c) The company shall pay the fees for the filing as stated in sec 403.

2) If the Financial statement are not adopted in the AGM then the such FS shall be files with ROC in 30 days of AGM as not adopted FS.
3) The same not adopted FS shall form part of ROC filing as provisional FS.
4) Then after adoption of the FS in any next GM or adjourn meeting shall be filed with ROC in 30 date form date of such GM or adjourn meeting in which it is adopted.
5) Once the adopted FS are filed it will replace the provisional FS filed with ROC.
6) The financial statement which are adopted in adjourn GM shall be filed with ROC within 30 days of date of such adjourn GM in which it is adopted. The additional fees for the same shall be paid by company as per sec 403.
7) The OPC shall file the FS and the supporting documents within the 180 days of closure of the FY.
8) The company shall file the following documents if any along with the FS.
   a) Accounts of subsidiary company which is incorporate outside India and having no place of business in India.
   b) Such supporting documents for the details of subsidiary outside India not having place of business in India.
9) If the AGM of the company is not held then company shall file the following documents with the ROC.
   a) Financial statement including the consolidated Financial statement.
   b) Supporting documents as per sec 137(1).
   c) Statement of the facts of not holding the AGM.
   d) Reason of not holding the AGM.
10) The above document shall be filed with the ROC within 30 days from the date on which the AGM should have been held with such additional fees as decided by sec 403.

Explanation:

1) In the given case Evershine Ltd., whose financial year ended on 31st March, 2010 held its annual general meeting on 30th September, 2010.
2) The meeting transacted all other business except the accounts as they were not ready and adjourned the meeting to 20th December, 2010 for consideration of accounts.
3) In such case the company shall file the provisional annual accounts within 30 days from the date of original AGM to ROC stating the fact that it is not accepted.
4) Then after acceptance of the same the company shall file the accepted annual accounts with the ROC within 30 days of acceptance. Thus the notice issued by ROC is valid in such case.

Answer:

Thus it is advised that the company shall file the annual accounts with the ROC within 30 days of holding the AGM stating the fact of non-acceptance of same and then file final accounts within 30 days from the date of acceptance.

N.19: A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of ₹ 11 crores and a turnover of ₹ 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode[LDR IMP]

Provision: [Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015,]

1) The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule: -
   a) companies listed with stock exchanges in India and their Indian subsidiaries;
   b) companies having paid up capital of five crore rupees or above;
   c) companies having turnover of one hundred crore rupees or above;
   d) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.
2) Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Answer:

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of *the Companies* (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

M.19: The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

Provisions: [Section 137 of the Companies Act, 2013]

1) The company shall file the following documents with ROC within the 30 days from the date of AGM of the company.
   a) Financial Statement (Balance Sheet & Profit and loss account) including the consolidated financial statement.
   b) Any other supporting document which is required to be attached to the financial statement.
   c) The company shall pay the fees for the filing as stated in sec 403.
2) If the Financial statement are not adopted in the AGM then the such FS shall be files with ROC in 30 days of AGM as not adopted FS.
3) The same not adopted FS shall form part of ROC filing as provisional FS
4) According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.
5) Once the adopted FS are filed it will replace the provisional FS filed with ROC

Explanation:

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM.

Answer:

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

M22: The Government of Rajasthan and Haryana are jointly holding 58% of the paid-up Equity Share Capital of Moon Ltd. The Audited financial statements of Moon Ltd. for the financial year 2021-22 were placed at its Annual General Meeting held on 31st August, 2022. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not filed its financial statements to the Registrar, Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 5th October, 2022 whereat the accounts were adopted. Thereafter, Moon Ltd. filed its financial statements relevant to the financial year 2021-22 with the Registrar of Companies on 25th October, 2022. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Moon Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar

Provisions: [Section 137 of the Companies Act, 2013]

1) According to first provision to Section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at Annual General Meeting (AGM) or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of Annual General Meeting and
2) the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.
3) According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

Explanation:

In the instant case, the accounts of Moon Ltd. were adopted at the adjourned AGM held on 5th October, 2022 and filing of financial statements with Registrar

was done on 25th October, 2022 i.e. within 30 days of the date of adjourned AGM.

However, Moon Ltd. has not filed its unadopted financial statements within 30 days of the date of the Annual General Meeting held on 31st August 2022.

Answer:

Hence, Moon Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

RTPN22: Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws. Advise, how would Dhiman Limited deal with the consolidation of such financial statements

Provisions: [Section 137 of the Companies Act, 2013]

1) According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.
2) Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.
3) It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable.
4) These, however, would need to be translated in English, if the original accounts are not in English.
5) Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013.
6) In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Explanation & Answer:

a) Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.
b) Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.
c) Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013.
d) In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Section 138: Internal Audit

Answer Writing Points For Sec 138:

1) The following companies shall conduct the internal audit.
   a) Every listed company;
   b) Every unlisted public company having Paid Up Capital ≥ Rs. 50 Cr during the previous FY.
   c) Every unlisted public company having Turnover ≥ Rs. 100 Cr during the previous FY.
   d) Every unlisted public company having outstanding loans or borrowings from the banks or the PFI ≥ Rs. 100 Cr at any time during the previous FY.
   e) Every unlisted public company having outstanding Deposits ≥ Rs. 25 Cr at any time during the previous FY.
   f) Every private company having Turnover ≥ Rs. 200 Cr during the previous FY.
   g) Every private company having outstanding loans or borrowings from the banks or PFI > Rs. 100 Cr at any time during the previous FY.
2) The internal auditor can be an employee of the company. The CA in this section means the CA or "Cost Accountant" in practice or not doing the practice
3) The following persons shall decide the scope, functions, frequency, time period and methodology of the internal audit.
   a) Audit committee u/s 177 (where ever applicable) or BOD (in absence of the audit committee; and
   b) Internal auditor.

N12: The paid up capital of Western Zone Insurance Limited is 7 crore. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 20115-16 by using the XBRL taxonomy under the Companies Act, 2013 ?

Provisions: [Section 138 of the Companies Act, 2013 &Rule 12 Filing of financial statements and fees to be paid thereon, Companies (Accounts) Rules, 2014]
CG have notified following companies shall file their accounts with ROC in XBRL form.
a) Listed Companies & their subsidiaries; or
b) Every company having paid up capital > Rs. 5 cr; or
c) Every Company having Turnover > Rs. 100 cr.

Explanation& Answer:
In the given case, the paid up capital of Western Zone Insurance Limited is 7 crore & thus as per above CG notification, Western Zone Insurance Limited is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2015-16 by using the XBRL taxonomy under the Companies Act, 2013.

July21: KSR Limited, an unlisted company furnishes the following data :
a) Paid-up share capital as on 31-3-2021 ₹ 45 Crore.
b) Turnover for the year ended 31-3-2021 ₹ 175 Crore
c) Outstanding loan from bank as on 3-3-2021 ₹ 105 crore (₹ 110 Crore loan obtained from bank) and the outstanding balance as on 31-3-2021 ₹ 90 crore after repayment.
Whether as per provision of the Companies Act, 2013 the company is required to appoint Internal Auditor during the year 2021-2022?

Provisions: [Section 138 of the Companies Act, 2013 &Rule 12 Filing of financial statements and fees to be paid thereon, Companies (Accounts) Rules, 2014]
According to the Companies (Accounts) Rules, 2014, every unlisted public company having-
a) paid up share capital of 50 crore rupees or more during the preceding financial year; or
b) turnover of 200 crore rupees or more during the preceding financial year; or
c) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
d) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Answer
In given question, KSR Limited has outstanding loan from bank exceeding 100 crores rupees i.e., ₹ 105 crore on 3.3.2021 during preceding financial year 2020-21. Hence, it is required to appoint Internal Auditor during the year 2021-22.

N21 RTP: Kim Private Limited was incorporated on 30th September 2016. It has a paid up share capital of ₹ 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020-21. The management of the company have approached you to advise them about the appointment of internal auditor. Advise them as per the provisions of the Companies Act, 2013.

Provisions: [Section 138 of the Companies Act, 2013 &Rule 12 Filing of financial statements and fees to be paid thereon, Companies (Accounts) Rules, 2014]

According to section 138 read along with Rules of the Companies Act, 2013, every private company having—

a) turnover of 200 crore rupees or more during the preceding financial year; or
b) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

Answer:

In the given question, the company has a paid up capital of ₹ 45 crore and turnover of ₹ 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than ₹ 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020-21.

N.19:A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of ₹11 crores and a turnover of ₹145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode [V.IMP]

Provision: [Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015,]

1) The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-
   a) companies listed with stock exchanges in India and their Indian subsidiaries;
   b) companies having paid up capital of five crore rupees or above;
   c) companies having turnover of one hundred crore rupees or above;
   d) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.
2) Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Answer:

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

MTPN22: The Companies Act, 2013, prescribes certain classes of unlisted public companies to appoint internal auditor. Enumerate such unlisted public companies that are required to appoint internal auditor.

Provisions: [Section 138 of the Companies Act, 2013]

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

1) every listed company;
2) every unlisted public company having-
   a) paid up share capital of Rs. 50 crore or more during the preceding financial year; or
   b) turnover of Rs. 200 crore or more during the preceding financial year; or
   c) 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
   d) outstanding deposits of Rs. 25 crore or more at any point of time during the preceding financial year; and

Chapter 10: Audit and Auditors;

Section 139: Appointment of Auditors

Answer Writing Points For Sec 139(1)-(4): Appointment Of Regular Auditors For Other than Government Company:

1) Every company shall appoint regular auditor at its 1st AGM. The auditor as appointed shall hold the office till the conclusion of 6th AGM.
2) The procedure for the selection of the auditors will be as stated in rules. (Rule 3 & 4 of Companies Audit & Auditors Rules, 2014 discussed at starting of chapter).
3) Provided also that, the company after appointment of the auditor shall comply with the following duties.
   a) Inform the auditor about his appointment / reappointment; and
   b) File the notice with the ROC in form no ADT-1 within 15 days of appointment.
4) The specified companies shall appoint following auditor for following specified terms.
   a) Individual auditor can be appointed for maximum one term of 5 years.
   b) The firm of auditors can be appointed for maximum 2 terms of 5 years. i.e. at max for 10 years.
5) The specified companies in the above case means:**(As per Rule 5 of Companies (Audit or Auditors) Rules, 2014)**
   a) Listed Company;
   b) Unlisted Public company having Paid Up Capital ≥ Rs. 10 Cr.
   c) Private company having Paid Up Capital ≥ Rs. 50 Cr.
   d) Any company other than above having Public Borrowings from Financial Institution, Banks or Public Deposit ≥ Rs. 50 Cr
6) The same auditing partner & same management over the period of time creates the informal relation which may lead to exploitation of the loop holes in the company and then ultimately to fraud. So in case of the firm as auditor the right is given to the members of the company to rotate the auditing partner of the firm periodically. In addition to this member can also resolve to rotate the auditors periodically.
7) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).
   Explanation. —For the purposes of this Chapter, the word "firm" shall include a limited liability partner-ship incorporated under the Limited Liability Partnership Act, 2008

Suggestion:
E-Forms to be filled : ADT-1: Notice of appointment of auditor by company.

Answer Writing Points For Sec 139(5):Appointment of Regular Auditor In case Of Government Company:

1) In case of government controlled company the regular auditor will be appointed by CAG.
2) Such regular auditor shall be appointed by GCC within the period of 180 days from the start of FY for which the auditor is appointed.
3) Such regular auditor appointed by CAG shall hold the office till conclusion of next AGM i.e. till conclusion of AGM for such FY for which he was appointed as auditor.

Suggestion:
E-Forms to be filled: ADT-1: Notice of appointment of auditor by company.

Answer Writing Points For Sec 139(6): Appointment of 1st Auditors in case Co. of other then Government Co.

The steps for the appointment of the first auditor in case of company other than government company are as follows.
1) The BOD shall appoint 1st auditor within 30 days of incorporation of the company; (if not complied then next step.)
2) If the BOD fails to appoint the 1st auditor within 30 days of incorporation, then 1st auditor shall be appointing by company in the EGM within 90 days.
3) The 1st auditor shall hold the office till the conclusion of 1st AGM.

Suggestion:
E-Forms to be filled: ADT-1: Notice of appointment of auditor by company.

Answer Writing Points For Sec 139(7): Appointment of 1st Auditors in case of Government Co.

Steps for appointment of first auditor in case of government company are as follows.

1) The first auditor shall be appointed by CAG within 60 days from the date of registration of the company. (if not complied then next step.)
2) If the CAG fails to appoint the 1st auditor, then the auditor shall be appointed by BOD of the company within next 30 days. (if not complied then next step.)
3) If the BOD also fails to appoint 1st auditor, then the 1st auditor shall be appointed within next 60 days at EGM.
4) Such 1st auditor appointed by any of the above persons i.e. CAG / BOD / EGM shall hold the office till conclusion of 1st AGM.

Suggestion:

E-Forms to be filled : ADT-1: Notice of appointment of auditor by company.

Answer Writing Points For Sec 139(8): Casual vacancy Auditor in Normal co.

In case of casual vacancy in normal company i.e. other than Government controlled company shall be filled as follows.

1) The CV shall be filled by BM-OR within 30 days of casual vacancy in all cases.
2) But in the case of the resignation the appointment made by BM in place of the CV shall be approved by GM within 3 months of appointment made by BM.
3) If the GM does not approve the appointment made by the BM, then the GM shall appoint their own new CVA.
4) In case of reasons other than the resignation the appointment made by the BM is itself the complete and sufficient appointment.
5) The tenure of all such casual vacancy auditor will be upto conclusion of next AGM.

Suggestion:

E-Forms to be filled : ADT-1: Notice of appointment of auditor by company.

Answer Writing Points For Sec 139(8): Casual vacancy Auditor in Govt. co.

1) In case of Government controlled company the CVA shall be appointed by CAG within 30 days of the CV.
2) If the CAG fails to fill the CV within such 30 days, the BOD shall fill such CV within next 30 days after completion of the first 30 days available for CAG for appointment.
3) The reason for the resignation does not make any difference in the manner of filling of the CV in case of the Government Controlled Company.

Suggestion:

E-Forms to be filled : ADT-1: Notice of appointment of auditor by company.

N02: On the basis of the information given below, advise M/s XYZ Ltd. about the provisions applicable for the appointment of Auditors.

Date of Incorporation	**03.10.2002**
Date of Receipt of Certificate of Commencement of Business	**18.10.2002**
Nominal value of Equity shares held(Rs. in Lakhs)	
Uttar Pradesh Government	**11,600**
Central Government	**8,000**
Bharat Heavy Electricals Ltd. (A Corporation controlled by the Central Government)	**8,000**
Private Sector Companies	**8,800**
Indian Mutual Funds	**4,000**
Foreign Financial Institutions	**4,000**
Individual Members	**3,600**
Total	**48,000**

Provision: [Relevant section 2(45) & 139 of the Companies Act, 2013 as follows]

1) **Meaning of Government Company: 2(45)**

"Government company" means a company in which not less than 51% of the paid-up share capital is held by:

- **a)** The Central Government, or
- **b)** Any State Government or Governments, or
- **c)** Partly by the Central Government and partly by one or more of State Governments.
- **d)** The term also includes a company which is a subsidiary of a Government company as defined above. A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments.

Appointment of First Auditor in Case of Government Company: 139(7)

The steps for the appointment of the first auditor in case of government company are as follows:

1) The first auditor shall be appointed by CAG within 60 days from the date of registration of the company. (if not complied then next step.)
2) If the CAG fails to appoint the 1st auditor then the auditor shall be appointed by BOD of the company within next 30 days. (if not complied then next step.)
3) If the BOD also fails to appoint 1st auditor then the 1st auditor shall be appoint within next 60 days at EGM.
4) Such 1st auditor appointed by any of the above persons i.e. CAG / BOD / EGM shall hold the office till conclusion of 1st AGM.

Appointment of Regular Auditor in case of Government Company: 139(5)

1) In case of government controlled company the regular auditor will be appointed by CAG.
2) Such regular auditor shall be appointed by GCC within the period of 180 days from the start of FY for which the auditor is appointed.
3) Such regular auditor appointed by CAG shall hold the office till conclusion of next AGM i.e. till conclusion of AGM for such FY for which he was appointed as auditor.

Appointment of Casual Vacancy Auditor: 139(8)

1) In case of Government controlled company the CVA shall be appointed by CAG within 30 days of the CV.
2) If the CAG fails to fill the CV within such 30 days the BOD shall fill such CV within next 30 days after completion of the first 30 days available for CAG for appointment.
3) The reason for the resignation does not make any difference in the manner of filling of the CV in case of the Government Controlled Company.

Explanation & Answer:

1) In the given case M/s. XYZ is a Government Company as 57.5%[27600/48000 x100] is held by partly by Central Government and partly by State Government and corporation controlled by Central Government.
2) The appointment of normal auditor in case of Government Company will be made as per above stated process.

Appointment of auditor in case of Government Company.

N03:How would you deal with the following situations in the matter of appointment of Auditors :The shareholding of L.I.C. and U.T.I. increased from 23 per cent to 27 per cent of the subscribed share capital of the company after issue of notice of the Annual General Meeting, but before the date of the Annual General Meeting.

Provision: Relevant section 2(45) & 139 of the Companies Act, 2013]

1) **Meaning of Government Company: 2(45)**
   Government company means a company in which not less than 51% of the paid-up share capital is held by:
   a) The Central Government, or
   b) Any State Government or Governments, or
   c) Partly by the Central Government and partly by one or more of State Governments.
   d) The term also includes a company which is a subsidiary of a Government company as defined above. A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments.
2) **Procedure for appointment of Auditor: 139**
   a) Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors.
   b) The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Explanation & Answer:

1) Under the Companies Act, 2013, the holding of 27% shares by L.I.C & U.T.I does not make it a Government Company.
2) Hence, it will be treated as a non-government company and the appointment of the auditor will be made as per normal process as stated above.

July21: State the provisions of the Companies Act, 2013 relating to appointment of First Auditor of a Government Company.

Provision: Relevant section 139 of the Companies Act, 2013]
According to section 139(7) of the Companies Act, 2013-

1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.
2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.
3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an Extra ordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

Failure to appoint auditor – Consequences & death of auditor

N05:State the provisions of the Companies Act, 2013 regarding the appointment of auditors in the following cases:

(a) A Company, whose Annual General Meeting was held on 30th September, 2015, but it failed to appoint the auditor.
(b) A Company, whose financial year shall end on 31st December, 2015 and whose auditor (appointed in last Annual General Meeting held on 30th March, 2015) had died on 15th October, 2015.[V.IMP]

Provision:[Section 139 of the Companies Act, 2013]

1) **Automatic Reappointment of Auditor: 139(10)**
   The retiring auditor will be automatically reappointed if:
   a) No auditor is appointed in his place at such meeting; &
   b) Retiring auditor is not being reappointed as auditor at such AGM.
2) **Filling of Casual Vacancy of Auditor in case of Resignation: 139(8)**
   In case of casual vacancy in normal company i.e. other than Government controlled company shall be filled as follows.
   a) The CV shall be filled by BM-OR within 30 days of casual vacancy in all cases.
   b) But in the case of the resignation the appointment made by BM in place of the CV shall be approved by GM within 3 months of appointment made by BM.
   c) If the GM does not approve the appointment made by the BM then the GM shall appoint their own new CVA.
   d) In case of reasons other than the resignation the appointment made by the BM is itself the complete and sufficient appointment.
   e) The tenure of all such casual vacancy auditor will be upto conclusion of next AGM.

Explanation & Answer:

In given case:

(a) A company whose AGM is held on 30th Sept 2015 failed to appoint auditor, in such case the existing auditor will be automatically get reappointed.
(b) The company shall appoint casual vacancy auditor in such case as per the process stated above.

N08:A Government company holds 49% of the subscribed share capital in Smart & Co. Ltd. Mr. R has been appointed as the auditor at the Annual General Meeting of Smart & Co. Ltd through an ordinary resolution. Certain members of the company object to this appointment on the ground that the appointment of auditors is violation of the provisions of the Companies Act, 2013. Examine the legal position with reference to the relevant provisions of the Companies Act, 2013.

Provision:[Relevant section 2(45) & 139 of the Companies Act, 2013 as follows]

1) **Meaning of Government Company: 2(45)**
   "Government company" means a company in which not less than 51% of the paid-up share capital is held by:
   a) The Central Government, or
   b) Any State Government or Governments, or
   c) Partly by the Central Government and partly by one or more of State Governments.
   d) The term also includes a company which is a subsidiary of a Government company as defined above. A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments.

2) **Procedure for appointment of Auditor: 139**
   a) Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors.
   b) The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Explanation & Answer:

1) Under the Companies Act, 2013, the holding of 49% shares by Government Company will not make Smart & Co. Ltd. a Government Company.
2) Hence, it will be treated as a non-government company and the appointment of the auditor will be made as per normal process as stated above.
3) Hence, objection by certain members to this appointment on the ground that the appointment of auditors is in violation of the provisions of the Companies Act, 2013 is not valid in law.

M.18 RTP: Explain how the auditor will be appointed in the following cases:
(i) A Government Company within the meaning of section 394 of the Companies Act, 2013.
(ii) The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017.

Provision:[Section 139 of the Companies Act, 2013]

1) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:
   a) The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and
   b) 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,
   c) it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.
   d) In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.
2) 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.
3) Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Answer:

The auditor will be appointed in the above given cases as per the provision given in above points under The Companies Act,2013.

N.18 Rtp: Lemon & Company, Chartered Accountants a LLP firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.
CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013
(i) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?
(ii) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
(iii) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
(iv) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?[LDR IMP]

Provision:[Section 139 of the Companies Act, 2013]

1) According to Section 139 (2) of the Companies Act, 2013, Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor

for more than two terms of 5 consecutive years.

2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
3) Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
4) For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Explanation & Answer:

Applying the above provisions,

(i) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.

(ii) The cooling- off period shall be of 5 years.

(iii) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.
However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (listed subsidiary of M/s Big Limited), during cooling off period.

(iv) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.
Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors

MTP Oct21: Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013. Explain?

Or

RTPN22: Mr. Govind Ram is a partner and in- charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

Provision:[Section 139 of the Companies Act, 2013]

1) According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint:
   a) an individual as auditor for more than one term of five consecutive years; and
   b) an audit firm as auditor for more than two terms of five consecutive years.
2) Provided that:
   a) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
   b) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.
3) Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.
4) Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. if a partner, who is in charge of an audit firm and also certifies the financial

statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Explanation & Answer:

1) Here Mr. Yash/ Mr. Govind Ram has retired from PQR Firm/ P & Associates and joined Gupta & Gupta Firm. Mr. Yash/ Mr. Govind Ram was a partner in PQR firm/ P & Associates, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm.
2) Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

M.18:Rupa Limited, a listed company appointed M/s. VG &ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

Provision:[Section 139 of the Companies Act, 2013]

1) Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint:
   a) an individual as auditor for more than one term of five consecutive years; and
   b) an audit firm as auditor for more than two terms of five consecutive years.
2) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
3) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

Explanation & Answer:

1) In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022.
2) Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

M.18: PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

Provision:[Section 139 of the Companies Act, 2013]

1) As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.
2) The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –
   a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
   b) the proposed appointment is as per the term provided under the Act;
   c) the proposed appointment is within the limits laid down by or under the authority of the Act;
   d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
3) The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Answer:

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

N.18: CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(i) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(ii) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company?

Provision:[Section 139 of the Companies Act, 2013]

1) As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.
2) Section 139(2) states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Explanation & Answer:

(i) As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

(ii) Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. up to year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors

N21 RTP: The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) Appointment of Mr. Teja by the Board of Directors.

(ii) Re-appointment of Mr. Teja at the first AGM in the above situation.

Or

M23 MTP: The Board of Directors of Stamp Limited, a listed company appointed Mr. Chatterjee, Chartered Accountant as its first auditor within 30 days of the date of registration of the company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Chatterjee was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6 th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) Appointment of Mr. Chatterjee by the Board of Directors.

(ii) Re-appointment of Mr. Chatterjee at the first AGM in the above situation.

Provision: [Section 139 of the Companies Act, 2013]

1) As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.
2) Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.
3) As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

Explanation & Answer:

As per the given provisions following are the answers:

(i) Appointment of Mr. Teja/ Mr. Chatterjee by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Teja/ Mr. Chatterjee at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such

appointment is not to be considered, while Mr. Teja/ Mr. Chatterjee is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the 6th Annual General Meeting.

Dec21: Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard?

Provision: [Section 139(6) of the Companies Act, 2013]

The appointment of the first auditor in case of company other than government company shall be done as follows:

1) The BOD shall appoint 1st auditor within 30 days of incorporation of the company; (if not complied then next step.)
2) If the BOD fails to appoint the 1st auditor within 30 days of incorporation, then 1st auditor shall be appointing by company in the EGM within 90 days.
3) The 1st auditor shall hold the office till the conclusion of 1st AGM.

Explanation:

In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in violation of section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

Answer:

In view of the above, the Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself.

Dec21: Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.

(ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

Provision: [Section 139(7) and 139(8) of the Companies Act, 2013]

(i) Appointment of First auditor :

1) According to section 139(7) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.
2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.
3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

Answer:

XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy:

1) According to section 139(8) of the Companies Act, 2013;
   a) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.
   b) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.
   c) XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.
2) In case, XYZ Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy:
   a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the

Board.

b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Section 140: Removal, Resignation of Auditor and Giving of Special Notice

Answer Writing Points For Sec 140[Removal of Auditor]:

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
- **a)** Pass GM-SR for removal of auditor.
- **b)** Take prior CG approval for such premature termination of office.
- **c)** The auditor shall be given Opportunity of being heard before such removal.

2) The special notice for the appointment of the new auditor shall be given for conducting the GM.

3) The notice is required even in case the individual auditor completed 5 years or firm completed 10 years and the new auditor is required in their place during such cooling period in case of specified companies.

4) The notice shall also be sent to the retiring auditor about appointment of the new auditor in his place.

5) If on receipt of the notice the retiring auditor makes representation in writing to the company, the company shall;
- **a)** Circulate the representation within the members with the notice; or
- **b)** Allow to read out the same in the GM. This right of reading out the representation is in addition to the opportunity of being heard.

6) If the representation is not circulated with the notice the copy of the representation shall be filed with the ROC.

7) In case if the retiring auditor abuses the right of representation then such right of the representation will be revoked. In such case the representation will not be circulated or read out in GM.

Answer Writing Points For Sec 140[Resignation by Auditor]:

1) Auditor after resignation from the company shall:
- **a)** File a statement for resignation in Form ADT-3 with the company and the ROC within 30 days of resignation.
- **b)** In case if the auditor resigned from the GCC he shall file the statement of resignation in Form ADT-3 with company, CAG and ROC in 30 days of resignation.

2) The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.

3) If the auditor fails to file form ADT-3 statement of resignation as stated above the auditor will be liable for the penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor, whichever is less. and in case of continuing failure, with further penalty of Rs.500 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 lakh.

N10:A is the Auditor of B and Co. Ltd. Board of Directors decided to remove A on certain grounds. Please indicate what procedure is to be followed to remove A? Advise the Board.[LDR IMP]

Provision:[Section 140 of the Companies Act, 2013]

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
- **a)** Pass GM-SR for removal of auditor.
- **b)** Take prior CG approval for such premature termination of office.
- **c)** The auditor shall be given Opportunity of being heard before such removal.

2) The special notice for the appointment of the new auditor shall be given for conducting the GM.

3) The notice is not required even in case the individual auditor completed 5 years or firm completed 10 years and the new auditor is required in their place during such cooling period in case of specified companies.

4) The notice shall also be sent to the retiring auditor about appointment of the new auditor in his place.

5) If on receipt of the notice the retiring auditor makes representation in writing to the company the company shall.
- **a)** Circulate the representation within the members with the notice; or
- **b)** Allow to read out the same in the GM. This right of reading out the representation is in addition to the opportunity of being heard.

6) If the representation is not circulated with the notice the copy of the representation shall be filed with the ROC.

7) In case if the retiring auditor abuses the right of representation then such right of the representation will be revoked. In such case the representation will not be circulated or red out in GM.

Explanation & Answer:

For the purpose of the removal of the auditor the above stated procedures shall be followed.

Suggestion:

Companies (Audit & Auditors) Rules, 2014

Rule 7 : Removal of the auditor before expiry of his term.

1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
3) The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

July21: AB & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2019. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2020. Subsequently, having given consideration to the Board recommendation, AB & Associates were removed at the general meeting held on 25-05-2020 by passing a special resolution subject to approval of the Central Government. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of AB & Associates by X Ltd. under the provisions of the Companies Act, 2013.

Or

MTPOct22: XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013.

Provision: [Section 140 of the Companies Act, 2013 as follows]

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
   a) Pass GM-SR for removal of auditor.
   b) Take prior CG approval for such premature termination of office.
   c) The auditor shall be given Opportunity of being heard before such removal.
2) Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:
   a) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
   b) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
   c) The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

Explanation & Answer:

Hence, in the instant case, the decision of X Ltd./ ABC Ltd. to remove AB & Associates,/ XYZ & Associates auditors of the company at the general meeting held on 25-5-2020/25-05-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

RTPM22: Abhiyogic Ltd. having 1,000 members with paid-up capital of ` 1 crore, decided to hold its Annual General Meeting (AGM) on 21st August, 2022, and it received a notice on 2nd July, 2022, from its 60 members holding paid-up capital of ` 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term. Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company In the context of aforesaid facts, please answer to the following question(s):-

a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?
b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company?

Provision: [Section 140 of the Companies Act, 2013 as follows]

1) As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice.
2) As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:- Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding Rs 5 lakhs, as may be prescribed, has been paid-up.
3) The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
4) As per Section 140(4) of the Companies Act, 2013: Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
   a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
   b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.
5) Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Explanation & Answer:

a) Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ` 1 crore, and it received a notice from its 60 members holding paid-up capital of ` 7 lakhs, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than ` 5 lakhs in the paid-up capital of the company, they were eligible to give such notice. Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2nd July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

b) However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Accordingly, Abhiyogic Ltd., apart from giving to right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

Section 141: Eligibility, Qualifications and Disqualifications of Auditors

Answer Writing Points Sec 141:

The following persons shall not be eligible for appointment as an auditor of a company, namely:

1) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
2) an officer or employee of the company;
3) a person who is a partner, or who is in the employment, of an officer or employee of the company;
4) a person who, or his relative or partner—
   a) is holding any security of or interest in the company or its subsidiary, or of its

holding or associate company or a subsidiary of such holding company.
Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed;

b) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

c) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

5) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

6) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

7) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

8) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

9) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

M06: One of the members of ADB Ltd. has proposed the name of Mr. Fame for appointment as a Director of the Company in the Annual General Meeting and given a notice under Section 257 of the Companies Act, 1956. Mr. Fame is one of the partners of the Fame & Fame, Chartered Accountants, who are the retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Fame & Fame can be reappointed as auditors, if Mr. Fame is appointed as Director.[LDR IMP]

Provision:[Section 141(3) of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company, namely:

1) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

2) an officer or employee of the company;

3) a person who is a partner, or who is in the employment, of an officer or employee of the company;

4) a person who, or his relative or partner—

a) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed;

b) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

c) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

5) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

6) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

7) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

8) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

9) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

Explanation & Answer:

In the given case, Fame & Fame cannot be reappointed as auditors, if Mr. Fame is appointed as Director because as per above stated provisions Fame & Fame has attracted disqualification and it is irrelevant if one of the partners looks after the

audit of the company & not Mr. Fame, it would still attract disqualification for Fame & Fame to be appointed as auditors.

N12: Examine the validity of the following appointments with reference to the provisions of the Companies Act, 1956 :

(a) Yashodharman Granites Limited reappointed Suresh & Company, a firm of Chartered Accountants, as auditors of the company at the Annual General Meeting held on 30thSeptember, 2014.

(b) The wife of one of the partners of Suresh & Company acquired lar number of equity shares in Yashodharman Granites Limited on 5th October, 2014. But Suresh & Company continue to function as statutory auditors of the company.

Provision: [Section 141 of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company:

A person who, or his relative or partner—

1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
   Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lakhs is prescribed);
2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lakhs is prescribed); or
3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed (Rs. 1 lakhs is prescribed).

Explanation & Answer:

1) In the given case Suresh & Co., chartered accountants, did not hold any such security. But wife of one of the partners held equity shares of Yashodharman Granites Limited.
2) However, the face value of the shares is not mentioned in given question & hence whether Suresh & Company can continue to function as auditors of the Company even after 5th October 2014 i.e. after the investment made by wife of one of the partners in the equity shares of Yashodharman Granites Limited is not clear.
3) However, if the shares are of face value 1 lakh rupees or less then Suresh & Co. can continue to function as auditors of Yashodharman Granites Limited as no disqualification would be attracted in such case.

N.18 RTP: Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 150000/- (market value ₹ 95000/-)?[LDR IMP]

Provision: [Section 141 of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company:

a person who, or his relative or partner—

1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
   Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lakhs is prescribed);
2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lakhs is prescribed); or
3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed (Rs. 1 lakhs is prescribed).

Explanation & Answer:

1) In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a transaction is valid.
2) Yes, the answer will be different in case where the face value of acquired shares is ₹1,50,000. Then in that case:
   a) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or
   b) Auditor has to vacate his office.

M.19 RTP: Examine the following situations in the light of the Companies Act, 2013

(i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

(ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of ₹1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd."?

Provision:[Section 141 of the Companies Act, 2013]

1) Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company.
2) Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.
3) As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company

Explanation & Answer:

(i) In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

(ii) In the present case, Mr. Abhi. is holding security of ₹1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd.

MTP N21: Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for ₹ 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita spouse of Mr. Kumar, a Chartered Accountant, is the store-keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

Provision: [Section 141 of the Companies Act, 2013]

1) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lakhs.
2) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

Answer:

(i) In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lakhs.

(ii) In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., Hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

M.20 RTP: New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of ₹1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013. [LDR IMP]

Provision:[Section 141 of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company:

a person who, or his relative or partner—

1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lakh is prescribed);

2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lakhs is prescribed); or
3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed (Rs. 1 lakh is prescribed).
4) Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor.

Explanation & Answer:

1) In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Reena, his wife held equity shares of New Limited of face value ₹1 lakh, which is within the specified limit.
2) Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of New Limited.

MTP N.18: Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

(i) "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of Rs. 900/-. Whether Mr. A is qualified for appointment as an Auditor of "XYZ Ltd."?

(ii) "Mr. P" is a practicing Chartered Accountant and "Mr. Q", relative of "Mr. P", is holding securities of "ABC Ltd." having face value of Rs. 90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."?

Provision:[Section 141 of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company:

a person who, or his relative or partner—

1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
   Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lac is prescribed);
2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lacs is prescribed); or
3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed (Rs. 1 lac is prescribed).

Explanation & Answer:

(i) In the present case, Mr. A. is holding security of Rs. 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

(ii) In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs. 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

N.18: Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of ₹ 1,20,000 (face value ₹ 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd.

Or

MTP Oct21: Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of ₹1,20,000 (face value ₹ 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd.

Provision:[Section 141 of the Companies Act, 2013]

The following persons shall not be eligible for appointment as an auditor of a company:

a person who, or his relative or partner—

1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
   Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lac is prescribed);
2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lacs is prescribed); or
3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such

amount as may be prescribed (Rs. 1 lac is prescribed).

Explanation & Answer:

In the given instance, CA. Shyam/CA Sana is not disqualified to be appointed as a statutory auditor in M/s Cool/Hot Ltd. Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹95,000 in the said company, which is within the prescribed limit.

Dec21: Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor.

Provision: [Section 141 of the Companies Act, 2013]

1) Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company.
2) Sub-section (4) of section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of section 141, he shall be deemed to have vacated his office as an auditor.

Explanation & Answer:

1) In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Surya Distributors Ltd.
2) Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Surya Distributors Ltd.

N22: P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

(i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of `1 lakh.
(ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ` 1,50,000.
(iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for `10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

Provision: [Section 141 of the Companies Act, 2013]

1) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company.
2) However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014.
3) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 1 Lakh. such person cannot be appointed as auditor of the company.
4) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5 Lakh, shall not be appointed as an auditor.

Explanation & Answer:

(i) Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ` 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.

(ii) In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ` 1 Lakh i.e. of an amount worth ` 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P

Limited.

(iii) Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ` 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ` 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited

MTPN22: Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021- 22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.

2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh.

Provision: [Section 141 of the Companies Act, 2013]

1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company. Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.
2) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Section 142: Remuneration of Auditor

Answer Writing Points For Sec 142:

1) Remuneration of Auditor shall be decide as under:
- **a)** If the auditor is appointed in GM then the GM shall decide the remuneration.
- **b)** If the 1st Auditor is appointed by BOD then his remuneration shall be decided by BOD.
- **c)** If appointed by CAG then remuneration will be decided by CAG only.

2) Remuneration does not include any remuneration paid to him for any other service rendered by him at the request of company.

3) If Auditor executes any expenses in connection with audit then he shall be refunded for the same from the company.

M22: HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalised. Directors of the company seeks your advice for provisions related to remuneration of directors as per the provisions of the Companies Act, 2013.

Provision: [Section 142 of the Companies Act, 2013]

1) The remuneration of the auditors of a company shall be fixed by the company in the general meeting. In the case of a first auditor, the remuneration may be fixed by the Board.

2) The remuneration of an auditor, in addition to the fees payable, shall include the expenses incurred by the auditor in connection with the audit of the company and any facility extended to him.

3) But, the remuneration does not include any remuneration paid to him for any other services rendered by him at the request of the company.

Explanation & Answer:

1) HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors.

2) The engagement letter was signed with a clause that the fee was to be mutually decided. However, the remuneration was not finalized.

3) In the present case, the remuneration of the auditor shall be fixed by the company at its general meeting.

Section 143: Powers and Duties of Auditors and Auditing Standards

Answer Writing Points for Sec 143(1)-(4):

Powers of Auditors:

1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place.

2) He shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.
3) The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies insofar as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

Duties of Auditor

1) Matters of inquiry:
The auditor shall inquire into the following matters, namely
- **a)** whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- **b)** whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- **c)** where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- **d)** whether loans and advances made by the company have been shown as deposits;
- **e)** whether personal expenses have been charged to revenue account;
- **f)** where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and

3) The auditor while making the report shall take into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made there under or under any order made under sub-section (11)

4) The auditor shall express his opinion on the accounts & financial statement examined by him. He shall express an opinion according to him, to the best of his information and knowledge, whether the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

5) The auditor's report shall also state—
- **a)** whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- **b)** whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- **c)** whether the report on the accounts of any branch office of the company audited under subsection (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- **d)** whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- **e)** whether, in his opinion, the financial statements comply with the accounting standards;
- **f)** the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- **g)** whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other

Answer Writing Points Sec 143(5):

1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139.

2) and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India.

3) The Audit Report among other things, include;

a) directions, if any, issued by the Comptroller and Auditor-General of India,

b) the action taken thereon and

c) its impact on the accounts and financial statement of the company.

Answer Writing Points Sec 143(6) & (7):

The Comptroller and Auditor-General of India shall within 60 days from the date of receipt of the audit report under sub-section (5) have a right to,—

a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

b) comment upon or supplement such audit report.

c) Test Audit: For Government Company or Company controlled by State Government or Central Government, the CAG may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors. The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

Answer Writing Points Sec 143(8):

1) Branch office in India: Where a company has a branch office, the accounts of that office shall be audited either by:

(A) the company's auditor appointed under section 139, or

(B) by any other person qualified for appointment as an auditor of the company under section 139.

2) Branch office outside India: If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:

(A) the company's auditor or

(B) by an accountant or

(C) by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

3) The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

4) The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

5) The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

Answer Writing Points Sec 143(9)-(11):

Compliance with auditing standards [Section 143(9) and 143(10)]:

1) Every auditor shall comply with the auditing standards.

2) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, in consultation with and after

examination of the recommendations made by the National Financial Reporting Authority (NFRA).

3) It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

4) **Additional matters to be reported in case of specified companies [Section 143(11)]:** In respect of such class or description of companies, as may be specified in the general or special order by the Central Government, may in consultation with the NFRA direct, the auditor's report shall also include a statement on such matters as may be specified therein. CARO 2020 issued by MCA should be complied by the statutory auditor of every company on which it applies.

Answer Writing Points Sec 143(12):

1) If an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the CG within such time and I such manner as may be prescribed:
   a) Provided, in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted u/s 1777 or to the board in other cases within such time and in such manner as may be prescribed.
   b) Provided further that, the companies whose auditors have reported frauds under this sub section to the audit committee or the board but not reported to the CG, shall disclose the details about such frauds in the boards report.
2) Auditor during investigation observe a fraud in a company;
   a) If amount is more than 1 crore;
      i) Auditor shall give a notice of same to Audit committee/ BOD.
      ii) Audit committee/ BOD shall reply to auditor with comments within 45 days.
      iii) and same shall be filed in AOC-4 within 15 days to secretary of MCA.
   b) If amount is less than 1 crore;
      i) Auditor shall give a notice of same to Audit committee/ BOD.
      ii) Audit committee/ BOD shall reply to auditor with comments within 45 days.
      iii) The disclosure of the same shall be given in Board report u/s 134.
3) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of Sec 143(12), he shall:
   a) In case of a listed company, be liable to a penalty of ₹ 5Lakh; and
   b) In case of any other company, be liable to a penalty of ₹ 1 Lakh.

N09:The Comptroller and Auditor General of India has appointed KOL & Co. to conduct a supplementary audit of XYZ Ltd., a subsidiary of a Government Company. XYZ Ltd, however, is of the opinion that the Comptroller and Auditor General has no power to authorize such audit, it being merely a subsidiary of the Government Company. Is the argument correct ? Discuss .

CRE Ltd., a Government Company wants to appoint Parasnath & Co. as its auditors for the period 2015-16. State with reference to the provisions applicable to Government Companies, the procedure to appoint the auditors.[IMP]

Provision:[Section 143, 2(45) & 139 of the Companies Act, 2013]

[Section 143(5)]:

1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139.
2) and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India.
3) The Audit Report among other things, include;
   a) directions, if any, issued by the Comptroller and Auditor-General of India,
   b) the action taken thereon and

c) its impact on the accounts and financial statement of the company.

[Section 143(6)]:

The Comptroller and Auditor-General of India shall within 60 days from the date of receipt of the audit report under sub-section (5) have a right to,—

a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

b) comment upon or supplement such audit report.

Meaning of Government Company: 2(45)

"Government company" means a company in which not less than 51% of the paid-up share capital is held by:

a) The Central Government, or

b) Any State Government or Governments, or

c) Partly by the Central Government and partly by one or more of State Governments.

d) The term also includes a company which is a subsidiary of a Government company as defined above. A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments.

Appointment of First Auditor in Case of Government Company: 139(7)

The steps for the appointment of the first auditor in case of government company are as follows:

1) The first auditor shall be appointed by CAG within 60 days from the date of registration of the company. (if not complied then next step.)
2) If the CAG fails to appoint the 1st auditor then the auditor shall be appointed by BOD of the company within next 30 days. (if not complied then next step.)
3) If the BOD also fails to appoint 1st auditor then the 1st auditor shall be appoint within next 60 days at EGM.
4) Such 1st auditor appointed by any of the above persons i.e. CAG / BOD / EGM shall hold the office till conclusion of 1st AGM.

Appointment of Regular Auditor in case of Government Company: 139(5)

1) In case of government controlled company the regular auditor will be appointed by CAG.
2) Such regular auditor shall be appointed by GCC within the period of 180 days from the start of FY for which the auditor is appointed.
3) Such regular auditor appointed by CAG shall hold the office till conclusion of next AGM i.e. till conclusion of AGM for such FY for which he was appointed as auditor.

Explanation & Answer:

1) Hence, citing the explanation given in sec 143(5), it can be clearly inferred that provisions of sec 143(6) will be applicable to XYZ Ltd. and the contention of XYZ ltd. that the Comptroller and Auditor General has no power to authorize such audit, it being merely a subsidiary of the Government Company is not correct.
2) In the given case CRE Ltd. is a Government Company and hence the above process shall be followed for appointment of its auditors.

M10: Mewar Instrumentations Limited is a subsidiary of a Government Company. The Comptroller and Auditor General of India appointed Sobman & Company to conduct a supplementary audit of Mewar Instrumentations Limited. Discuss, under the provisions of the Companies Act, 2013 whether the Comptroller and Auditor General's power to authorise such audit for the said subsidiary company is in order?

Provision:[Section 143 of the Companies Act, 2013]

[Section 143(5)]

1) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of

section 139.

2) and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India.
3) The Audit Report among other things, include;
   a) directions, if any, issued by the Comptroller and Auditor-General of India,
   b) the action taken thereon and
   c) its impact on the accounts and financial statement of the company.

[Section 143(6)]

The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,:

a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and
b) comment upon or supplement such audit report.

Explanation & Answer:

Hence, citing the explanation given in sec 143(5), it can be clearly inferred that provisions of sec 143(6) will be applicable to Mewar Instrumentations Limited and hence the Comptroller and Auditor General has power to authorize such audit.

Section 144: Auditor not to Render Certain Services

Answer Writing Points For Sec 144:

1) According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to company only such other services as are approved by the Board of Directors or audit committee, as the case may be.
2) But such services shall not Include any of the following services (whether such services are rendered directly or indirectly to the company or its holding or subsidiary company), namely:
   a) Accounting and Book keeping services;
   b) Internal Audit;
   c) Design and implementation of any financial information;
   d) Actuarial services;
   e) Investment advisory services;
   f) Investment banking services;
   g) Rendering of outsourced financial services;
   h) Management services; and
   i) Any other kind of services as may be prescribed

M.19 & M21 RTP: The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?[LDR IMP]

Or

M23 RTP: The Board of Directors of Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as Statutory Auditor of Prism Ltd., taking into account the consequences, if any, of accepting this proposal?

Provision:[Section 144 of the Companies Act, 2013]

1) According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be.
2) But such services shall not Include any f the following services (whether such services are rendered directly or indirectly to the company or its holding or subsidiary company), namely:
   a) Accounting and Book keeping services;
   b) Internal Audit;
   c) Design and implementation of any financial information;
   d) Actuarial services;
   e) Investment advisory services;

f) Investment banking services;
g) Rendering of outsourced financial services;
h) Management services; and
i) Any other kind of services as may be prescribed.

Explanation:

1) In the said instance, the Board of directors of A Ltd./ Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.
2) In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

Answer:

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Section 145:Auditor to sign audit reports,etc.

Answer Writing Points For Sec 145:

The Auditor shall comply with the following duties regarding audit report:

1) Auditor shall sign audit report.
2) Auditor shall also sign and certify the documents in relation to company.
3) Auditor shall read out any qualifications, observations and comments on financial transaction or matters which have adverse effect on the functioning of the company in General meeting.
4) Auditor shall have to make such report , document and qualifications available for inspection by members.

Section 146:Auditors to Attend General Meeting

Answer Writing Points For Sec 146:

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

1) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.
2) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting.
3) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

MTP N.18:What are the rights of the auditor of a company in respect of attending the General Meeting.

Provision:[Section 146 of the Companies Act, 2013]

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

1) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.
2) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting.
3) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Section 147: Punishment for contravention.

Answer Writing Points For Sec 147:

1) If any provision of section 139 – 146 is contravened the consequences will be as follows.
   a) **The company** will be punishable for the fine of Rs.25000 to Rs.5 lakhs; and
   b) **Every officer in default** will be liable for fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1 lakh.
2) If auditor of company contravenes any provision of sec 139, 143, 144, 145 then the auditor is liable for following consequences.
   a) In case of unintentional default Auditor shall be punishable with: -
      i) Minimum fine: - Rs. 25000
      ii) Maximum fine: - lower of the following
         - Rs 5 lakhs or
         - 4 * Remuneration of the auditor.
   b) In case default made with an intention to deceive the company or its shareholders or creditors or tax authorities he shall be punishable with-
      i) Jail up to 1 year; and
      ii) Fine;

- Minimum fine: - Rs. 50,000
- Maximum fine: - lower of the following
  Rs.25 lakh or 8 * Remuneration of the auditor

3) Where an auditor has been convicted under sub-section (2) he shall be liable to:
   a) refund the remuneration received by him to the company; and
   b) pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.
4) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.
5) Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Section 148: Central Government to specify audit of items of cost in respect of certain companies.

Answer Writing Points For Sec 148:

1) CG shall prescribe to whom the cost audit will be applicable. Normally CG specifies the companies who are involved in production of specified goods or providing specified services as may be prescribed shall do the cost audit.
2) The cost audit shall be conducted by cost accountant.
3) The BOD shall appoint the cost auditor of the company.The BOD shall decide the remuneration of the cost auditor of the company.
4) The statutory auditor u/s 139 shall not conduct the cost audit.The cost audit shall be conducted on compliance of cost accounting standards
5) All provisions of this chapter regarding the qualification and disqualification, powers and duties of statutory auditor will be applicable to cost auditor. The company is bound to give all assistance to the cost auditor as required.
6) The cost audit report shall be submitted to BOD by cost auditor first.
7) The company shall give to CG the report on the cost audit within 30 days from the date of receipt of copy of cost audit report.
   The report shall be supplemented by full information and explanation of BOD on every reservation or qualification made in the report.
8) If the section is contravened the consequences are as follows.
   The company and every officer in default shall carry the same liability as specified in sec 147(1) as follows.
   a) The company will be punishable for the fine of Rs. 25000 to Rs 5 lakhs; and
   b) **Every officer in default** will be liable for fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1 lakh.
9) The cost auditor in default will be liable to penalty u/s 147(2) to (4) as follows:
   a) Fine of Rs. 25000 to Rs 5 lakhs in case of unintentional default.
   b) In case of intentional default auditor will be punishable with:
      (i) Jail up to 1 year; and
      (ii) Fine of Rs. 1 lakh to Rs. 25 lakhs.
10) Where an auditor has been convicted under sub-section (2), he shall be liable to: refund the remuneration received by him to the company; and pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Common Questions for All.

Appointment of 1st auditor and Removal of auditor.

PM,N04:State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:

(i) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.

(ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

What difference it would make, if the Auditor was First Auditor appointed by the Board of Directors?[LDR IMP]

Provision:[Relevant section 139(6) & 140 of the Companies Act, 2013 as follows]

First Auditor: Sec 139(6).

The steps for the appointment of the first auditor in case of company other than government company are as follows.

1) The BOD shall appoint 1st auditor within 30 days of incorporation of the company; (if not complied then next step.)
2) If the BOD fails to appoint the 1st auditor within 30 days of incorporation then 1st auditor shall be appoint by company in the EGM within 90 days.
3) The 1st auditor shall hold the office till the conclusion of 1st AGM.

Removal of Auditor: Sec 140

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
   a) Pass GM-SR for removal of auditor.
   b) Take prior CG approval for such premature termination of office.
   c) The auditor shall be given Opportunity of being heard before such removal.
2) Procedure for removal will be as follows.
   a) The special notice for the appointment of the new auditor shall be given for conducting the GM.
   b) The notice is required even in case the individual auditor completed 5 years or firm completed 10 years and the new auditor is required in their place during such cooling period in case of specified companies.
   c) The notice shall also be sent to the retiring auditor about appointment of the new auditor in his place.
   d) If on receipt of the notice the retiring auditor makes representation in writing to the company the company shall.
      i) Circulate the representation within the members with the notice; or
      ii) Allow to read out the same in the GM. This right of reading out the representation is in addition to the opportunity of being heard.
   e) If the representation is not circulated with the notice the copy of the representation shall be filed with the ROC.
   f) In case if the retiring auditor abuses the right of representation then such right of the representation will be revoked. In such case the representation will not be circulated or read out in GM.

Rule 7: Removal of the auditor before expiry of his term.

1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution

Appointment of Auditor for Govt. Co and in CV.

PM,M04,M07,N11:Explain how auditor will be appointed in following cases:

(i) A Government Company within the meaning of section 2(45) of the Companies Act, 2013.

(ii) The Auditor of the company has resigned on 31st December, 2013, while the Financial year of the company ends on 31st March, 2014.

(iii) A company, whose shareholders include the following:

(a) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(b) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(c) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Or

MTP N.19:

(i) The Auditor of the company (other than government company) has resigned on 31st December, 2018, while the Financial year of the company ends on

31st March, 2019. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

(ii) A company includes the following shareholders also:

(I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.[LDR IMP]

Provision:[Relevant section 139, 140 of the Companies Act, 2013 as follows]

Appointment of First Auditor in Case of Government Company: 139(7)

The steps for the appointment of the first auditor in case of government company are as follows.

1) The first auditor shall be appointed by CAG within 60 days from the date of registration of the company. (if not complied then next step.)
2) If the CAG fails to appoint the 1st auditor then the auditor shall be appointed by BOD of the company within next 30 days. (if not complied then next step.)
3) If the BOD also fails to appoint 1st auditor then the 1st auditor shall be appoint within next 60 days at EGM.
4) Such 1st auditor appointed by any of the above persons i.e. CAG / BOD / EGM shall hold the office till conclusion of 1st AGM.

Appointment of Regular Auditor in case of Government Company: 139(5)

1) In case of government controlled company the regular auditor will be appointed by CAG.
2) Such regular auditor shall be appointed by GCC within the period of 180 days from the start of FY for which the auditor is appointed.
3) Such regular auditor appointed by CAG shall hold the office till conclusion of next AGM i.e. till conclusion of AGM for such FY for which he was appointed as auditor.

Filling of Casual Vacancy of Auditor in case of Resignation: 139(8)

In case of casual vacancy in normal company i.e. other than Government controlled company shall be filled as follows.

1) The CV shall be filled by BM-OR within 30 days of casual vacancy in all cases.
2) But in the case of the resignation the appointment made by BM in place of the CV shall be approved by GM within 3 months of appointment made by BM.
3) If the GM does not approve the appointment made by the BM then the GM shall appoint their own new CVA.
4) In case of reasons other than the resignation the appointment made by the BM is itself the complete and sufficient appointment.
5) The tenure of all such casual vacancy auditor will be upto conclusion of next AGM.

Explanation & Answer:

In the given cases:

(i) The appointment of normal auditor in case of Government Company will be made as per above stated process.

(ii) In case of the resignation of the auditor such casual vacancy shall be filled as per the process stated above.

(iii) The shares of the company is held by different undertakings who are government controlled companies or corporation or banks which total amounts to 30%. The same does not qualify under the meaning of Government Company or Deemed Government company. Thus the treatment for appointment of auditor in such company will be the same as made for non-government companies.

PM,N09:Parkash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2009. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2009 for personal reasons. The Board of directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advise as per the provisions of the Companies Act, 2013.

Also suggest the procedure to be adopted in case Mr. Albert is proposed to be removed from his office before the expiry of his term.[V.IMP]

Provision:[Relevant section 139(8) & 140 of the Companies Act, 2013 as follows]

Filling of Casual Vacancy of Auditor in case of Resignation: 139(8)

In case of casual vacancy in normal company i.e. other than Government controlled company shall be filled as follows.

1) The CV shall be filled by BM-OR within 30 days of casual vacancy in all cases.
2) But in the case of the resignation the appointment made by BM in place of the CV shall be approved by GM within 3 months of appointment made by BM.
3) If the GM does not approve the appointment made by the BM then the GM shall appoint their own new CVA.
4) In case of reasons other than the resignation the appointment made by the BM is itself the complete and sufficient appointment.
5) The tenure of all such casual vacancy auditor will be upto conclusion of next AGM.

Removal of Auditor: 140

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
   a) Pass GM-SR for removal of auditor.
   b) Take prior CG approval for such premature termination of office.
   c) The auditor shall be given Opportunity of being heard before such removal.
2) The special notice for the appointment of the new auditor shall be given for conducting the GM.
3) The notice is required even in case the individual auditor completed 5 years or firm completed 10 years and the new auditor is required in their place during such cooling period in case of specified companies.
4) The notice shall also be sent to the retiring auditor about appointment of the new auditor in his place.
5) If on receipt of the notice the retiring auditor makes representation in writing to the company the company shall.
   a) Circulate the representation within the members with the notice; or
   b) Allow to read out the same in the GM. This right of reading out the representation is in addition to the opportunity of being heard.
6) If the representation is not circulated with the notice the copy of the representation shall be filed with the ROC.
7) In case if the retiring auditor abuses the right of representation then such right of the representation will be revoked. In such case the representation will not be circulated or read out in GM.

Explanation:

1) In the given case the company can appoint the casual vacancy auditor in place of resigning auditor i.e. Mr. Raman within 30 days from the date of the resignation at the BM by OR i.e. up to 30 Nov 2009. But the same appointment shall be approved by company in GM by way of OR within 3 months i.e. upto 28 Feb 2010.
2) If the GM disapproves the appointment the new appointment shall be made by the GM itself. Thus if Mr. Albert is appointed as the CVA he will hold the office till the conclusion of next AGM.

Answer:

For the purpose of the removal of the auditor i.e. Mr Albert follow the above stated procedures.

Suggestion:

Companies (Audit & Auditors) Rules, 2014

Rule 7: Removal of the auditor before expiry of his term.

1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

PM: One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2014 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 2013. Decide, whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

Provision:[Relevant section 2(45) & 139 of the Companies Act, 2013 as follows]

Meaning of Government Company: 2(45)

"Government company" means a company in which not less than 51% of the paid-up share capital is held by:

a) The Central Government, or
b) Any State Government or Governments, or
c) Partly by the Central Government and partly by one or more of State Governments.

d) The term also includes a company which is a subsidiary of a Government company as defined above. A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments.

Procedure for appointment of Auditor: 139

1) Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors.
2) The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Explanation:

1) Under the Companies Act, 2013, the holding of 25% shares of AMC Ltd by Rajasthan State Government does not make it a Government Company.
2) Hence, it will be treated as a non-government company. And the appointment of the auditor will be made as per normal process as stated above. Thus the appointment of Mr. Neeraj as the auditor of the company is well in line.

Answer:

Thus the contention of Mr Sanjay for appointment of Mr Neeraj as auditor in GM is wrong is not tenable. As consequence the appointment will be considered as valid in law.

Investment by Relative of Auditor in Company / Removal of Director

PM,N10:Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

(i) EF Limited appointed a individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2014. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2014. But Naresh & Company continues to function as statutory auditors of the company.

(ii) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place.

Provision: [Relevant section 140 & 141 of the Companies Act, 2013 as follows]

Removal of Auditor: 140(1)

1) The company can remove the auditor of the company before the maturation of his term after complying with following conditions:
   a) Pass GM-SR for removal of auditor.
   b) Take prior CG approval for such premature termination of office.
   c) The auditor shall be given Opportunity of being heard before such removal.
2) Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

Disqualification of Auditor: 141

The following persons shall not be eligible for appointment as an auditor of a company:

a person who, or his relative or partner:

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed (Rs. 1 lac is prescribed);

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed (Rs. 5 lacs is prescribed); or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed (Rs. 1 lac is prescribed).

Explanation:

(i) In the given case Mr. Naresh, chartered accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face

value Rs. 1 lakh, which is within the specified limit. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2014 i.e. after the investment made by his wife in the equity shares of EF Limited.

(ii) Mr. Suresh who is appointed as first auditors by Board of Directors can be removed in accordance with the provision of Section 140(1) with GM-SR and prior CG approval. And there is no restriction on the same. Hence the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Answer:

(i) Thus Naresh and Company can continue as the auditor of the EF Ltd as it is not disqualified from being appointed as auditor.

(ii) The removal of Mr Suresh who is the first auditor of the company is invalid as no prior CG approval is taken.

Maximum number of audit

PM:Mr. Independent who is an individual auditor wants to compute the specified number of audits under the Companies Act, 2013 and for this purpose, he has drawn out a list of which identify, the company which shall be/not be taken into account for the purpose of calculating specified number of audits:

(i) Audit of Private Company
(ii) Guarantee companies not having share capital
(iii) Audit of non-profit companies
(iv) Audits of Foreign Companies

Further, he wants to know that as a member of the ICAI, whether there are any other restrictions on him as a member in the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments. Advise.[LDR IMP]

Provision:[Relevant section 141(3) of the Companies Act, 2013 as follows]

1) As per clause (g) of section 141(3) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company if such person or partner is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies. Here, Private companies have also been included under the provisions with respect to ceiling on number of audits.

2) Therefore, according to this section, audit of all companies (whether Public or Private) would be taken into consideration while computing the ceiling limit of number of audits.

3) It should be noted that the Institute of Chartered Accountants of India (ICAI) did not issue any Notification in respect to the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments till yet.

4) Students may note that the law included all companies within the specified limits and ICAI has still not issued any notification in this regard.

5) In computing the specified number of audits for the purpose of section 141 (3)(g), all the following Audit shall be taken into consideration for calculating specified limit-

a) Audit of private company.
b) Audit of Guarantee Companies not having share capital.
c) Audit of non-profit companies
d) Audit of Foreign Companies.

Maximum Number of Audit

PM: An audit firm, comprising of two partners, holds office as auditor of 41 private companies out of which paid-up capital of 20 companies exceeds 50 Lakhs. Such audit firm wants to appoint as an auditor in XYZ Pvt. Ltd. Decide whether this is in consonance with the applicable law.

Provision:[Relevant section 141(3) of the Companies Act, 2013 as follows]

1) As per section 141(3)(g) of the Companies Act, 2013, private companies shall also been included in the provisions with respect to ceiling on number of audits.

2) As per the provision, a person shall not be eligible for appointment as an auditor of a company if such person or partner is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies.

3) Therefore, such firm cannot be appointed as an auditor of XYZ Ltd. Thus, in above case such appointment shall not be in order. There is no relevance of paid up share capital in the above case.

Suggestion:

It should be noted that the Institute of Chartered Accountants of India (ICAI) did not issue any Notification in respect to the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments till yet.

Wrong done identified in audited accounts – Liability of Auditor?

PM,N07:The auditors of PQR Ltd. accepted the Certificate of the Manager, a person of knowledge, competence and high reputation, as to the value of the stock in trade. The stock was grossly overstated for several years in the balance sheets of the company. As a result of this over valuation dividends were paid out of capital. The Auditors did not examine the books of account very minutely. If they had done so and compared the amount of stock at the beginning of the year, with the purchases and sales during the year, they would have noticed the over valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends relying on the balance sheets figures. Based on the above facts, you are required to decide, with reference to the provisions of the Companies Act, 2013 and the decided case laws, the following issues:

a. Whether auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors.

b. What are statutory duties of the Auditors in this regard?

Provision:[Relevant section 143 of the Companies Act, 2013 as follows]

1) The answer of the problem given in question is mainly relates to the duties of the auditors. Section 143 of the Companies Act, 2013 provides that the main duty of the auditor is to make a report to the members of the company on the accounts examined by him and the balance sheet and the profit and loss account of the company and on every document which is annexed to the balance sheet or profit and loss account laid before the company in general meeting.
2) The auditor owes a duty to the members to state whether the accounts give a true and fair view of the affairs of the company at the end of the financial year and of the profit and loss account of the year.

Case Laws:

1) The above problem is related to case of **Kingston Mill Co. Re (No 2) (1896) 2 ch 279.** In this case it was held that, the auditors were not liable. It is not auditor's duty to take stock. There are many matters in which he may rely on the honesty and accuracy of others. Further they (auditors) do not guarantee the discovery of all frauds.
2) The duty of an auditor is to give information in direct and express terms **(Crichton's Oil Co. Re (1902) 2ch 86)** and not merely to arouse inquiry. If he discovers that any illegal or improper payments or any other papers have been made, his duty will be to make it public by reporting. The auditor occupies a fiduciary position in relation to the shareholders and in auditing the accounts maintained by the directors, he must act in the best interest of the shareholders who are in the position of beneficiaries.

Explanation:

1) But there is a limitation relating the duties to be performed by the auditors. An auditor is not bound to be a detective, as loss laid to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watchdog but not a bloodhound.
2) He is justified in believing tried servants of the company in whom confidence is placed by the company.
3) He is entitled to assume that they are honest and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.

Answer:

(i) The auditor will not be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors.
(ii) The statutory duties of the auditor are as stated above.

Who shall sign the auditor's report first?

PM: The auditors of a company refuses to make their report on the annual accounts of a company before it is signed on behalf of the Board of directors. Advise the company.[V.IMP]

Provision:

1) The auditor is right. Theoretically, accounts are presented to auditors only after they are approved by the Board and signed by authorized persons.
2) The auditor is only expected to submit his report on the accounts presented to

him for audit after conducting an examination of the necessary documents, analyzing relevant information and test checking accounting records in order to be able to form an opinion of the financial statements presented to him.

3) In practice, the checking of accounts is already completed before accounts are approved by the Board. Auditor informally approves the draft account with notes etc., before the accounts are approved by the Board.

4) However, auditor signs the accounts only after these are approved by Board and signed by persons authorized by Board of the company.

M22: ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the 'partner of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

Provision:

1) Where, in the case of an audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

2) Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Explanation & Answer:

ABC & Co. Chartered Accountants are statutory auditors of Moon Exports Limited.

In an inquiry, it is proved that 'A', one of the partners of the firm, has acted in a fraudulent manner and colluded in fraud with its partners.

In the present case, the above-mentioned punishment shall be applicable to ABC & Co. and partner 'A'.

Chapter 11: Foreign Company

Sec 2(42) – Definition of Foreign Company

Answer Writing Points For Sec 2(42):

Provisions:

1) According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which, -
   i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   ii) conducts any business activity in India in any other manner.
2) As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
   i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
   ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
   iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
   iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
   v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

N08: Indian citizens incorporated a company in U.K. for the purpose of carrying on business there. Examine with reference to the relevant provisions of the Companies Act, 2013 whether it is a "Foreign Company". What would be your answer in case the U.K. Company was incorporated by a company registered in India?

Provision: [Section 2(42) of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) Conducts any business activity in India in any other manner.
2) The **essential conditions of the foreign company are as follows:**
   a) It must be a company or body corporate.
   b) The company shall be incorporated outside India.
   c) The company shall have the place of business in India by agent or physically or electronically.
   d) Conducts business activity in India in any manner.

Explanation & Answer:

The given cases are discussed as follows:

a) In case of a company incorporated in U.K. for the purpose of carrying on business in U.K. will not fall within definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

b) Even in case the U.K. Company was incorporated by a company registered in India, the answer would remain the same as above.

MTPOct20: Radix Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. State legal position as to the nature of the Radix Ltd. as a foreign company in the light of the Companies Act, 2013

Provision: [Section 2(42) of the Companies Act, 2013 as follows]

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

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

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

c) According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

d) business to business and business to consumer transactions, data interchange and other digital supply transactions;

e) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;

f) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;

g) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

h) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Answer:

In view of the above provisions, Radix Ltd., will be treated as foreign company for being involved in business activity through telemedicine

N15, RTP-M18: Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. [IMP]

Provision: [Section 2(42) of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

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

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

2) The **essential conditions of the foreign company are as follows:**

a) It must be a company or body corporate.

b) The company shall be incorporated outside India.

c) The company shall have the place of business in India by agent or physically or electronically.

d) Conducts business activity in India in any manner.

3) Rule 2(1)(c) of Companies (Registration of Foreign Companies) Rules, 2014, defines the term electronic mode and electronically based online services such as telemarketing, telecommuting, telemedicine, education and information research are covered within the meaning of electronic mode.

Explanation & Answer:

The given case is discussed as follows:

a) In the given case, Robertson Ltd. is carrying on online business through telemarketing in India. As per Rule 2(1) (c), Robert Ltd. has a place of business in India.

b) Since Robertson Ltd. is a company incorporated outside India and also it has a place of business in India, it is a foreign company.

N18: In the light of the provisions of the Companies Act, 2013 explain whether the following companies can be considered as a 'foreign companies':

a) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.

b) A company which is incorporated outside India employs agents in India but has no place of business in India.

c) A company incorporated outside India having shareholders who are all Indian citizens.

Provision: [Section 2(42) and section 390 of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) conducts any business activity in India in any other manner.
2) **The essential conditions of the foreign company are as follows:**
   a) It must be a company or body corporate.
   b) The company shall be incorporated outside India.
   c) The company shall have the place of business in India by agent or physically or electronically.
   d) Conducts business activity in India in any manner.
3) Rule 2(1)(c) of Companies (Registration of Foreign Companies) Rules, 2014, defines the term electronic mode and electronically based online services such as telemarketing, telecommuting, telemedicine, education and information research are covered within the meaning of electronic mode.

Explanation & Answer:

a) A company is doing online business through telemarketing in India, though it has not established any physical place of business in India. As per Rule 2(1) (c), such company has a place of business in India. Therefore, the company is a foreign company.

b) A company incorporated outside India employs agents it India, but it has not established any place of business in India. As per section 2(42), where a company incorporated outside India does not have any place of business in India such a company is not a foreign company. Therefore, in the given problem, the company incorporated outside India employing agents in India but not have place of business in India will not be considered as a foreign company.

c) A company incorporated outside India has shareholders who are all Indian citizens. The company has neither established any place of business in India nor does it conduct any business activity in India in any manner. So, the company cannot be said to be a foreign company. The fact that all the shareholders of the company are Indian citizens is immaterial in deciding whether the company is a foreign company or not.

SM, N19: In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company':

a) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.

b) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the Company.

c) M/s. Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automition software by Cloud Computing for its client in India.

Provision: [Section 2(42) of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014,]

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

2) According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-
   a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
   b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
   c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
   d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
   e) all related data communication services,

   whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Explanation & Answer:

In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner.

Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

a) In the given situation, M/s Blue Star is registered in Thailand. It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.

b) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

c) Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.

PM,M03: Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

a) A company incorporated outside India having a share registration office at Mumbai.

b) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

Provision: [Section 2(42) of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) conducts any business activity in India in any other manner.
2) The **essential conditions of the foreign company are as follows:**
   a) It must be a company or body corporate.
   b) The company shall be incorporated outside India.
   c) The company shall have the place of business in India by agent or physically or electronically.
   d) Conducts business activity in India in any manner.

Explanation & Answer:

a) A share Transfer office or share registration office constitutes a place of business (Section 386 of the Companies Act, 2013). Thus, a company incorporated outside India having a share registration office at Mumbai shall be a foreign company **provided** it conducts any business activity in India.

b) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore will not fall within the definition of a foreign company.

Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

Mock Test Oct 19: Determine the legal positions in the given situations:
As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai?

Provision: [Relevant section 2(42), 386 of the Companies Act, 2013]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) Conducts any business activity in India in any other manner
2) According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

Explanation & Answer:

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India

Sec 380: Documents to be delivered to Registrar by Foreign Company

Answer Writing Points for Sec 380

1) Every foreign company shall, within 30 days of the establishment of its place of business (POB) in India, deliver to the Registrar having jurisdiction over new Delhi for registration:
   a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified English translation;
   b) the full address of the registered or principal office of the company;
   c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
   d) the name and address person/s resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
   e) the full address of the office of the company in India deemed to be its principal POB in India;
   f) particulars of opening and closing of a place of business in India on earlier occasion/s;
   g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
   h) any other information as may be prescribed.
2) Existing Foreign Company who has not filed the documents and particulars u/s 592(1) of the Companies Act, 1956 shall file u/s 380 of the Companies Act, 2013.
3) If any alteration is made in the documents delivered to the Registrar, same shall be filed within 30 days of such alteration with the ROC in the prescribed form.

S.M: ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013.
You are required to state, where the said company should deliver such documents.

Provision: [Section 380 of the Companies Act, 2013 & Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014 are as follows]

1) Section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein.
2) According to the Rule 8 of Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New

Delhi.

Explanation & Answer:

As per above provisions, ABC Ltd. should deliver documents as specified in section 380 to the Registrar having jurisdiction over New Delhi.

SM: DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013,answer the following:

a) Whether branch office will be considered as a company incorporated outside India.

b) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

Provision: [Relevant section 2(42), 380 of the Companies Act, 2013]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

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

b) Conducts any business activity in India in any other manner.

2) Further, branch offices are generally considered as reflection of the Parent Company' office.

3) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

b) the full address of the registered or principal office of the company;

c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(i) personal name and surname in full;

(ii) any former name or names and surname or surnames in full;

(iii) father's name or mother's name or spouse's name;

(iv) date of birth;

(v) residential address;

(vi) nationality;

(vii) if the present nationality is not the nationality of origin, his nationality of origin;

(viii) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(ix) income-tax permanent account number (PAN), if applicable;

(x) occupation, if any;

(xi) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);

(xii) other directorship or directorships held by him;

(xiii) Membership Number (for Secretary only); and

(xiv) e-mail ID.

d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

h) any other information as may be prescribed.

4) According to the Rule 8 of Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi

Explanation & Answer:

a) According to above provisions, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter & such other provisions as may be specified elsewhere under Companies Act, 2013.

b) Documents as referred above are required to furnish on behalf of the company, to the Registrar having jurisdiction over New Delhi.

MTP-April 18: ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.

Provision: [Section 380 of the Companies Act, 2013 & Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014 are as follows]

1) Section 380 requires a foreign company to deliver such documents to the Registrar as are specified in that section.

2) As per Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Explanation & Answer:

In the given case, the principal place of the foreign company (viz. ABC Ltd.) is situated at Kolkata, in the State of West Bengal.

a) As per Rule 8, the documents required to be delivered to the registrar shall be delivered to the Registrar, New Delhi.

b) There is no requirement of delivering the document with the Registrar, West Bengal.

N17: Mr. Ziyan an Indian citizen holds 25% of the paid up capital of Laurel Steven Limited, a company which was incorporated in Singapore with a paid up capital of 10 million Singapore Dollars. Swaraj Limited a company registered in India holds 30% of the paid up capital of Laurel Steven Limited. Laurel Steven Limited has recently established a share transfer office at New Delhi. The Company seeks your advice as to what formalities it should observe as a foreign company under the Companies Act, 2013.

Provision: [Relevant Section 2(42) & 379 & Section 380 of the Companies Act, 2013 is as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

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

   b) Conducts any business activity in India in any other manner.

2) According to Section 386 of the Companies Act, 2013, "Place of business" includes a share transfer or registration office.

3) Further, Section 379 states that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

4) Under Section 380 of the Act, a foreign company is required to file for registration within 30 days of the establishment of a place of business in India the following documents with the Registrar:
   a) A certified copy of the instrument constituting or defining the constitution of the company.
   b) The full address of the registered or principal office of the company;
   c) A list of the directors and secretary of the company containing such particulars as prescribed under Companies (Registration of Foreign Companies) Rules, 2014;
   d) The name and address or the names and addresses of one or more-person resident in India who is authorized for correspondence on behalf of the company.;
   e) The full address of the office of the company in India which is deemed to be its principal place of business in India;
   f) Particulars of opening and closing of a place of business in India on earlier occasion or occasions;
   g) Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
   h) Any other information as may be prescribed.

Explanation:

The given case is discussed as follows:

In the case given in the question, the following facts are given:

a) Laurel Steven Ltd. was incorporated in Singapore and has a place of business (share transfer office) in New Delhi, hence, it is a foreign company.
b) Its shareholding comprises of 25% held by Mr. Ziyan who is a citizen of India and 30% by Swaraj Limited which is a company registered in India. Together two Indian shareholders hold 55% of the share capital of Laurel Steven Ltd.

Answer:

a) Hence Laurel Steven Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a deemed Indian company.
b) However, it may be noted that under section 379, the application of the Companies Act, 2013 on Laurel Steven Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.
c) The company shall comply with the above requirements of the filing of the documents with the ROC

PM,07: M/s Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. M/s. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. M/s. Joel Ltd. has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business.

Provision: [Relevant section 2(42) & 379 & 380 of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) Conducts any business activity in India in any other manner.
2) According to Section 386 of the Companies Act, 2013, "Place of business" includes a share transfer or registration office.
3) Further, Section 379 states that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the

provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

4) Under Section 380 of the Act, a foreign company is required to file for registration within 30 days of the establishment of a place of business in India the following documents with the Registrar:
   a) A certified copy of the instrument constituting or defining the constitution of the company.
   b) The full address of the registered or principal office of the company;
   c) A list of the directors and secretary of the company containing such particulars as prescribed under Companies (Registration of Foreign Companies) Rules, 2014;
   d) Name and address or the names and addresses of one or more-person resident in India who is authorized for correspondence on behalf of the company.;
   e) The full address of the office of the company in India which is deemed to be its principal place of business in India;
   f) Particulars of opening and closing of a place of business in India on earlier occasion or occasions;
   g) Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
   h) Any other information as may be prescribed.

Explanation & Answer:

The given cases are discussed as follows:

In the case given in the question, the following facts are given:

a) Joel Ltd. was incorporated in London and has a place of business (share transfer office), hence, it is a foreign company.
b) Its shareholding comprises of 25% held by Y who is a citizen of India and 30% by X Ltd. which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Joel Ltd.
c) Therefore, although Joel Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a deemed Indian Company.
d) However, it may be noted that under section 379, the application of the Companies Act, 2013 on Joel Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.
e) The company shall comply with the above requirements of the filing of the documents with the ROC.

M18: Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter/Documents constituting the company is in Mandarian Chinese (Chinese local language). It is required inter alia to file a certified translation of above Documents with the Registrar of companies in India. Who can authenticate the translated charter/documents as per the provisions of the Companies Act, 2013 and rules made there under governing foreign companies in case such translation is made at Mumbai?

Provision: [Section 380 of the Companies Act, 2013 & Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014 are as follows]

1) Section 380 requires a foreign company to deliver such documents to the Registrar as are specified in that section.
2) Section 380 further requires that where such documents are in a language other than English, a certified English translation of such documents shall be filed with the Registrar.
3) As per Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014, where the translation is made at a place in India, such translation shall be authenticated by -
   a) an advocate, attorney or pleader entitled to appear before any High Court; or
   b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

Explanation & Answer:

The given case is discussed as follows:

a) Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter/Documents constituting the company is in Mandarian Chinese (Chinese local language).

b) In the given case, the English translation of the documents required to be filed with the Registrar under section 380 shall be authenticated as per the above stated provisions.

S.M: Jackson & Jackson LLC, incorporated in Germany, is proposing to establish a business in Mumbai, India. Its official documents are in German language. Whether Jackson & Jackson LLC can file the required documents with Registrar in the same language.

Provision: [Relevant section 380 of the Companies Act, 2013]

1) As per Section 380 of the Companies Act, 2013, every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar.
2) Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to Registrar.

Explanation & Answer:

The given case is discussed as follows:

In the given case, the English translation of the documents required to be filed with the Registrar under section 380 shall be authenticated as per the above stated provisions.

SM : Swift Pharmaceuticals, a Company registered in Singapore, has started its business in India during the financial year 2016. The Company has submitted all the required documents with registrar within the due date. On March 1,2023, Swift Pharmaceuticals has shifted its principal office in Singapore. Does the Company required to undertake any steps due to change in address of principal office.

Provision: [Section 380 of the Companies Act, 2013]

1) Section 380 (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.
2) The Companies (Registration of Foreign Companies) Rules,2014, has prescribed that the return containing the particulars of the alteration shall be filed in form FC-2 along with prescribed fees.

Explanation & Answer:

The given case is discussed as follows:

Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

Sec 381: Accounts of Foreign Company

Answer Point for Sec.381:

1) Every foreign company shall, in every calendar year, —
   a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
   b) deliver a copy of those documents to the Registrar.
2) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:
   a) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
   b) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
3) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.
4) If any of the specified documents are not in the English language, a certified

translation thereof in the English language shall be annexed. [Section 381 (2)]

5) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made

S.M /M16: Galilio Ltd. is a foreign company in Germany and it established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.

OR

State briefly the requirements relating to filing of financial statements with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business.

Provision: [Section 381 of the Companies Act, 2013 & Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, are as follows]

According to section 381 of the Companies Act, 2013:

1) Every foreign company shall, in every calendar year, —
   a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
   b) deliver a copy of those documents to the Registrar.
2) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:
   a) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
   b) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
3) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.
4) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
5) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.
6) According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.
7) According to the Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.
8) According to the Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014,
   a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -
      (i) Statement of related party transaction
      (ii) Statement of repatriation of profits
      (iii) Statement of transfer of funds (including dividends, if any)

   The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Answer:

Galilio Ltd, needs to comply the above provisions of Section 381 under Companies Act 2013.

Sec 382: Display of names of Foreign Company

Answer Point for Sec.382:

As per Section 382 of the Companies Act 2013 which provides that every foreign company shall—

1) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

2) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill- heads and letter paper, and in all notices, and other official publications of the company; and

3) If the liability of the members of the company is limited, cause notice of that fact—

- **a)** to be stated in every such prospectus issued and in all business letters, billheads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
- **b)** to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

N16: The liability of members of Style Limited, a company incorporated in Singapore, is limited. The company plans to start a place of business in Mumbai from 1st Dec., 2016. It has taken an office space in Andheri (West), Mumbai for that purpose. The person who is to take charge of Mumbai Office seeks your advice regarding the provisions of the Companies Act, 2013, in respect of displaying of the company's name etc., at its Mumbai office as well as in its business letters and other documents. Advise him with reference to the provisions of the Companies Act, 2013 governing foreign companies.

Provision: [Relevant section 382 of the Companies Act, 2013 is as follows]

As per Section 382 of the Companies Act 2013 which provides that every foreign company shall—

1) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

2) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill- heads and letter paper, and in all notices, and other official publications of the company; and

3) If the liability of the members of the company is limited, cause notice of that fact—

- **a)** to be stated in every such prospectus issued and in all business letters, billheads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
- **b)** to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Explanation & Answer:

The given case is discussed as follows:

Here, the person who is to take charge of Mumbai Office of Style Limited may follow the above provisions in respect of displaying of the company's name etc. at its Mumbai office as well as in its business letters and other documents.

Sec 383: Service on Foreign Company

Answer Point for Sec.383:

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

N14: X Inc. is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the State VAT Officer having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the VAT Officer on valid service of notice.

Provision: [Relevant section 383 of the Companies Act, 2013 is as follows]

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Explanation & Answer:

The given case is discussed as follows:

Hence, the VAT Officer may serve the show cause notice at principle place of business.

Assumption:

It is assumed that X Inc. is a foreign company within the meaning of section 379 of the Companies Act, 2013.

Sec 384: Debentures, annual return, registration of charges, books of account and their inspection

Answer Point for Sec.384:

1) The provisions of this Act relating to debentures section 71 shall apply mutatis mutandis to a foreign company.
2) The provisions relating to annual return [section 92] & CSR (Sec 135) shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.
3) The provisions relating to books of account section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
4) The provisions relating to registration of charges Sections 77 to 87 shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
5) The provisions relating to inspection, inquiry and investigation Sections 206 to 240 shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

Sec 387: Dating of prospectus and particulars to be contained therein

Answer Point for Sec.387:

1) The following companies can issue a prospectus in India:
   a) Company incorporated outside India or to be incorporated outside India
   b) Foreign incorporated company having a POB in India or have not

established a POB in India or who will establish POB in India.

2) Prospectus shall mandatorily have following contents:
   a) Constitutional documents of company
   b) Law under which incorporated
   c) Place in India where draft copy of such law is kept in English language
   d) Date on which and the country in which company is incorporated or to be incorporated
   e) List of POBs in India and Principle place from them.

   And shall mandatorily have matters specified u/s 26 in addition to matters stated above. If the company issues the prospectus after 2 years from the eligibility to commence the business the prospectus need not contain matters specified in (a), (b) & (c).
3) Following conditions shall be void: a. Requiring or binding an applicant for securities to waive compliance with any requirements as above. b. Falsely presenting the applicant with notice of any contract, documents or matter not specifically referred to in the prospectus.
4) Form of application shall be issued for securities in India only if: a. Company complies with the provisions of this chapter b. Such issue does not contravene the provision of sec 388. However, even without compliance of above requirements, a company can issue form of application to underwriter for entering into underwriting agreement in a bona-fide manner.
5) Above provisions shall not be applicable for issue of prospectus:
   a) To existing shareholders or debenture holders irrespective of whether they renounce the shares or not.
   b) For securities of the same nature which are already issued by company and are listed on recognized stock exchange. However, the provisions shall be applicable to issue of prospectus or form of application of securities issued for formation of company or future formation of company.
6) Any liability of any person under any law for the time being in force shall remain unaffected.

PM,N08: Ashes Ltd, is a company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital is held by companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the country in which it is incorporated. Examine
a) Is the prospectus of the company valid?
b) What other disclosures in the prospectus are required to be made by a foreign company?

Provision: [Section 2(42) & 379 & 387 of the Companies Act, 2013 as follows]

1) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:
   a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
   b) conducts any business activity in India in any other manner.
2) According to Section 386 of the Companies Act, 2013, "Place of business" includes a share transfer or registration office.
3) Further, Section 379 states that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held
   a) by one or more citizens of India or
   b) by one or more companies or bodies corporate incorporated in India, or
   c) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,
   d) whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.
4) Every foreign incorporated or to be incorporated company can issue prospectus in India with following compulsory contents.
   a) Constitutional documents of company.
   b) The law under which the foreign company is incorporate.

c) The place in India where draft copy of such law is kept in English language.
d) The date on which and the country in which the company is incorporate or to be incorporated.
e) The list of places of business in India and principal place from them.

5) In addition to this the company shall also state the matters in section 26. Section 26 is about the matters stated in prospectus by any company.

Explanation & Answer:

The given cases are discussed as follows:

a) From the above provisions, it is clear that Ashes Ltd. will fall within the purview of section 379 as more than 50% (50% preference share capital + 20% equity share capital = 70%) is held by companies incorporated in India.

b) In view of the above provisions, the prospectus issued by Ashes Ltd. is not in compliance of provisions of section 387. Thus, according to Section 387 the prospectus is not valid.

PM: Under Section 387 of the Companies Act, 2013, what are particulars required for incorporating a prospectus to be issued by an existing foreign company?

Provision: [Relevant section 387 of the Companies Act, 2013 as follows]

1) Every foreign incorporated or to be incorporated company can issue prospectus in India with following compulsory contents.
   a) Constitutional documents of company.
   b) The law under which the foreign company is incorporate.
   c) The place in India where draft copy of such law is kept in English language.
   d) The date on which and the country in which the company is incorporate or to be incorporated.
   e) The list of places of business in India and principal place from them.
2) In addition to this the company shall also state the matters in section 26. Section 26 is about the matters stated in prospectus by any company.
3) If the company issues the prospectus after 2 years from the date of eligibility to commence the business the prospectus need not contain matter stated in point no 1, 2 & 3 above.

388. Provisions as to expert's consent and allotment.

Answer Point for Sec.388:

1) Any foreign incorporated company shall not issue prospectus in India if the such prospectus:
   a) contains such opinion in the name of the expert:
      (i) which such expert have not given; or
      (ii) which is withdrawn by such expert before delivery of the prospectus
   b) does not have effect of binding all applicants as per provisions of sec 33 & sec 40 Section 33 is issue of application for subscription of securities and sec 40 is dealing of securities on the stock exchange.
2) If any statement is contained in the MOA or Report which is included in prospectus then such

Sec 389: Registration of Prospectus

Answer Point for Sec.389:

1) According to Section 389 of the Companies Act, 2013,
   a) no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India,
   b) whether the company has or has not established, or
   c) when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India,
   d) a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and
   e) the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by Section 388 and such documents as may be prescribed.
2) According to the Rule 11 of the Companies (Registration of Foreign

Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

a) Any consent to issue of prospectus required from any person as an expert;

b) A copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

c) A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

d) A copy of underwriting agreement; and

e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

M18: Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The Company has no established place of business in India.
The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.

Provision: [Section 389 of the Companies Act, 2013 & Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014 are as follows]

1) According to Section 389 of the Companies Act, 2013,

a) no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India,

b) whether the company has or has not established, or

c) when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India,

d) a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and

e) the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by Section 388 and such documents as may be prescribed.

2) According to the Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

a) Any consent to issue of prospectus required from any person as an expert;

b) A copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

c) A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

d) A copy of underwriting agreement; and

e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

SM: Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.

Provision: [Section 389 of the Companies Act, 2013 & Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014 are as follows]

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India,

a) a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the

managing body has been delivered for registration to the Registrar and

b) the prospectus states on the face of it that a copy has been so delivered, and

c) there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Explanation & Answer:

The given cases are discussed as follows:

Accordingly, Abroad Ltd. a foreign company shall proceed with tissue of prospectus in compliance with the above stated provisions of section 379 of the Act.

390. Offer of Indian Depository Receipts (IDR's)

Answer Point for Sec.390:

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

a) the offer of Indian Depository Receipts;

b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

d) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Sec 390: Offer of Indian Depository Receipts (IDR's)

M13: Examine in the light of the provisions of the Companies Act, 2013 whether the following companies can be considered as "Foreign Companies": -

a) A company incorporated outside India having a share registration office at New Delhi

b) A company incorporated outside India having shareholders who are all Indian citizens;

c) A company incorporated in India but all the shares are held by foreigners.

d) Also examine whether the above companies can issue Indian Depository Receipts under the provisions of the Companies Act, 2013?

Provision: [Section 2(42), 386, 390 of the Companies Act, 2013 are as follows]

1) As per the provision of Section 2(42), defines foreign company as a company incorporated outside India but having a place of business in India.

2) Accordingly, to qualify as 'foreign company' a company must have both the following features:

   a) It should be a company incorporated outside India; and

   b) It should have a place of business in India.

3) Also that, where not less than 50% of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and

4) having an established place of business in India, is held by one or more citizens of Indian or by one or more bodies corporate incorporated in India, or by one or more citizens of Indian and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

Explanation & Answer:

The given cases are discussed as follows:

a) A company incorporated outside India having a share registration office at New Delhi

The meaning of 'place of business in India', is explained in section 386 which provides that the expression 'place of business' includes a share transfer or share registration office.

Thus, a company incorporated outside India having a share registration office at New- Delhi is a foreign company.

b) A company incorporated outside India having shareholders who are all Indian citizens

Assumption I: Having place of business in India:

A company incorporated outside India does not become foreign company within the meaning of Section 2(42) of the Companies Act, 2013 unless it has established a place of business in India.

Here in the given case all the shares are held by Indian citizens. The status of the company continues to be a foreign company but such a company shall comply with certain conditions/provisions of the Companies Act, 2013, as may be prescribed with reference to the business carried on by it in India as if it was a company incorporated in India. Therefore, the company in this case is a foreign company.

Assumption II: Not having place of business in India:

Since in the given case, the company is incorporated outside India and not having an established place of business in India, the company is not a foreign company. Its incorporation by Indian citizens is immaterial. In order to be a foreign company it has to have a place of business in India.

c) **A company incorporated in India is a company within the meaning of Section 2(20) of the 2013**

It cannot become a foreign company by the mere fact that all the shares of the company are held by foreigners.

d) **Offer of Indian Depository Receipts**

Central Government is empowered to give new rules for Indian Depository Receipts.

Sec 392: Punishment for Contravention

1) If a foreign company fails to deliver documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, the foreign company shall be punishable with a fine which shall be not less than Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50,000 for every day after the first during which the contravention continues.
2) Also, every officer of the foreign company who is in default shall be punishable with a fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000.

S.M : In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied

Provision: [Relevant section 392 of the Companies Act, 2013 is as follows]

1) If a foreign company fails to deliver documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, the foreign company shall be punishable with a fine which shall be not less than Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50,000 for every day after the first during which the contravention continues.
2) Also, every officer of the foreign company who is in default shall be punishable with a fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000.

Answer:

The penalty is provided in section 392 and thus ABC Ltd. is liable for the contravention of section 380 of the Act.

Chapter 12:
Limited Liability Partnership,2008

SM: "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Provision: [The LLP Act,2008]

1) LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership
2) **Limited Liability:**
   a) Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008).
   b) The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
3) **Flexibility of a partnership:**
   a) The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.
   b) The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.
   c) Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

SM: Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

Provision: [Section 5 of The LLP Act,2008]

1) Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if:
   a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
   b) he is an undischarged insolvent; or
   c) he has applied to be adjudicated as an insolvent and his application is pending.
2) Further, Section (2)(1)(e) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—
   a) an LLP registered under this Act;
   b) an LLP incorporated outside India; and
   c) a company incorporated outside India,
3) but does not include—
   a) a corporation sole;
   b) a co-operative society registered under any law for the time being in force; and
   c) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Answer:

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

SM: There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

Provision: [Section 7 of The LLP Act,2008]

1) According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a

resident in India.

2) Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year.

Answer:

Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners

SM: Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of `10,00,000 against the LLP but the worth of the assets of LLP are only `7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of `3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

Provision: [Section 7 of The LLP Act,2008]

1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
2) The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited.
3) Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

Explanation & Answer:

a) Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only.
b) Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ` 3,00,000 from the partners of Devi Ram Food Circle LLP.

SM: M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

Provision: [Section 7 of The LLP Act,2008]

1) Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is:
   a) undesirable; or
   b) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.
2) Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-
   a) that of any other LLP or a company; or
   b) a registered trade mark of a proprietor under the Trade Marks Act, 1999 then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.
3) Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm.
4) These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Answer:

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

SM: Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

Provision: [Section 7 of The LLP Act,2008]

According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

a) the person has notice that the former partner has ceased to be a partner of the LLP; or

b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Answer:

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

FDN SM: Examine the concept of LLP.

Provision: [The LLP Act,2008]

1) Meaning –

A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

2) Concept of "limited liability partnership"

a) The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.

b) The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

c) Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.

d) Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.

e) LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

3) Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Explain the Meaning of LLP. State its Characteristics? of LLP.

Or

FDN SM: Enumerate the various characteristics of the LLP.

Provision: [The LLP Act,2008]

Meaning of LLP

1) A LLP is a new form of legal business entity with limited liability.

2) It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the exibility of organising their internal structure as a traditional partnership.

3) The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

4) Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Essentials of LLP

1) LLP is a body corporate: LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

2) Perpetual Succession: LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3) Separate Legal Entity: LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

4) **Mutual Agency:** Further, no partner is liable on account of the independent or un-authorized actions of other partners. All partners will be the agents of the LLP alone. No one partner can bindthe other partner by his acts.

5) **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides exibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6) **Artificial Legal Person:** A LLP is an artificial legal person because it is created by a legal processand is clothed with all rights of an individual. It can do everything which any natural person cando, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine.

7) **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one. Thus, it is not mandatory for a LLP to have a common seal.

8) **Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP

9) **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10) **Minimum and Maximum number of Partners:** Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.

State the essentials required for incorporation of the LLP.

Or

FDN SM: Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

Provision: [The LLP Act,2008]

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

1. To complete and submit incorporation document in the form prescribed with the Registrar electronically
2. To have at least two partners for incorporation of LLP [Individual or body corporate]
3. To have registered office in India to which all communications will be made and received
4. To appoint minimum two individuals as designated partners who will be responsible for numberof duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India
5. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA
6. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied
7. LLP Name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company
8. To create a LLP proper formation documents must be led with the registrar along with the necessary filing fees.
9. Steps to Incorporate LLP

a) **Name Reservation**

- The first step to incorporate Limited Liability Partnership is reservation of name of LLP.
- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLPbusiness.

b) **Incorporate LLP**

- After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership
- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners

c) **LLP Agreement**

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP

Explain the process of Registration of LLP

Provision: [The LLP Act,2008]

a) Deciding Partners and Designated partners
b) Obtain Designated Partners Identification Number (DPIN) & Digital Signature Certificates (DSC)
c) Apply for reservation of Name by checking the availability of Name (up to 6 Names)
d) Drafting of LLP Agreement*
e) Electronic Filing of some Documents along with requisite fees
f) Issuing Certificate of Incorporation along with LLPIN (LLP Identification Number)

State the Contents of LLP Agreement ?

Provision: [The LLP Act,2008]

Following are the contents of LLP Agreement

1. Name of LLP
2. Name & address of Partners & Designated Partners
3. Form of contribution & interest on contribution
4. Profit sharing ratio
5. Remuneration of Partners
6. Rights & Duties of Partners
7. Proposed Business
8. Rules for governing LLP.

Dec21: State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008

Provision: [Section 17 of the LLP Act,2008]

1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
4) If any default is made in complying with the requirements of this section, the LLP and its every partner shall be liable to a penalty of Rs.500 for each day during which the default continues, subject to a maximum of Rs. 50000 for the limited liability partnership and its every partner.

RTPM20: What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Provision: [Section 17 of the LLP Act,2008]

Change of name of LLP (Section 17 of LLP Act, 2008):

1. Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —
   a) is a name referred to in sub-section (2) of section 15; or
   b) is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,
2. The Central Government may direct such LLP to change its name, and the LLP shall comply with thesaid direction within 3 months after the date of the direction or such longer period as the Central Government may allow.
3. Punishment for not complying with above provisions will be as follow :
   a) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.
   b) The designated partner of such LLP shall be punishable with fine which

shall not be less than ` 10,000 but which may extend to ` 1 Lakh.

RTPN19: Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

Provision: [Section 5 of the LLP Act,2008]

Any individual or body corporate may be a partner in a LLP. However, an individual shall not becapable of becoming a partner of a LLP, if—

a) he has been found to be of unsound mind by a Court of competent jurisdiction and the findingis in force;
b) he is an undischarged insolvent; or
c) he has applied to be adjudicated as an insolvent and his application is pending

RTPN19 & FDN SM: What are the effects of registration of LLP?

Provision: [Section 14 of the LLP Act,2008]

On registration, a LLP shall, by its name, be capable of—

a) suing and being sued;
b) acquiring, owning, holding and developing or disposing of property, whether movable orimmovable, tangible or intangible;
c) having a common seal, if it decides to have one; and
d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

RTPN20 & RTPM21 & FDN SM: What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

Provision: [Section 2(j) of the LLP Act,2008]

Designated Partner [Section 2(j) of the LLP Act, 2008]: "Designated partner" means any partner designated as such pursuant to section 7. According to section 7 of the LLP Act, 2008:

a) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
b) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
c) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

MTP M21: Differentiate between the Limited Liability Partnership (LLP) and Limited Liability Company.

Provision: [Section 14 of the LLP Act,2008]

Basis	LLP	LLC
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	**Private company:** Minimum – 2 members Maximum 200 members **Public company:** Minimum – 7 members Maximum – No such limit on the members.

		Members can be organizations, trusts, another business form or individuals.
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

July21: Limited Liability Partnership (LLP) gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other. Discuss.

Provision: [Section 27 of the LLP Act,2008]

1) **Limited Liability**: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
2) **Flexibility of a partnership**: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital

N19: Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.

Provision: [Section 27 of the LLP Act,2008]

1) **Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]**
   The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.
2) **Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]**
   A LLP is not bound by anything done by a partner in dealing with a person if—
   a) the partner in fact has no authority to act for the LLP in doing a particular act; and
   b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

M19 & FDN SM: "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Provision: [The LLP Act,2008]

1) **LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership**
2) **Limited Liability:**
   a) Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008).
   b) The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
3) **Flexibility of a partnership**:
   a) The LLP allows its members the flexibility of organizing their internal structure as a partnership

based on a mutually arrived agreement.

b) The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

c) Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Jan21: State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Provision: [Section 30 of the LLP Act,2008]

1. As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -
   a) with intent to defraud creditors of the LLP,
   b) or any other person, or
   c) for any fraudulent purpose.
2. The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
3. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.
4. Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

RtpM20 & N20: Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008.

Or

MTPMar21 & SM: Enumerate the circumstances in which LLP may be wound up by Tribunal.

Provision: [Section 64 of the LLP Act,2008]

A LLP may be wound up by the Tribunal:

1. if the LLP decides that LLP be wound up by the Tribunal ;
2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
3. if the LLP is unable to pay its debts;
4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security ofthe State or public order;
5. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency orannual return for any five consecutive financial years; or
6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Chapter 13:
Interpretation of Statute

Rules of Construction Of literal Construction

Answer Writing Points For Literal Construction:

1) It is the primary rule of interpretation. It can be also called as entry gate of interpretation because without this rule no further interpretation can be derived.
2) Every reader of law knowingly or unknowingly / intentionally or unintentionally uses this rule as the first time reader of law.
3) In this rule words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect up to maximum of its width.
4) Also it has to be borne in mind that words and phrases of technical nature are *'prima facie'* used in their technical meaning, if they have any, and otherwise in their ordinary popular meaning.
5) Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.
6) It is the general rule that omissions are not likely to be inferred. From this springs another rule that nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that the legislature intended something which it omitted to express.
7) "It is a wrong thing to add into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do." If a case has not been provided for in a statute. It is not to be dealt with merely because there seems to be no good reason why it should have been omitted, and the omission appears to be consequentially unintentional.
8) Here it is assumed that the draftsman is perfect

M12: Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard.[V.IMP]

Provision: [Rules of Interpretation of literal construction]

1) It is the primary rule of interpretation. It can be also called as entry gate of interpretation because without this rule no further interpretation can be derived.
2) Every reader of law knowingly or unknowingly / intentionally or unintentionally uses this rule as the first time reader of law.
3) In this rule words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect up to maximum of its width.
4) Also it has to be borne in mind that words and phrases of technical nature are *'prima facie'* used in their technical meaning, if they have any, and otherwise in their ordinary popular meaning.
5) Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.
   For example, when we talk of disclosure of **the nature of the concern or interest'** of a director or the manager of a company in the subject-matter of a proposed motion we cannot confine the words to **Pecuniary Concern or Interest** alone but we have to include any concern or interest whatever. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.
6) It is the general rule that **omissions** are not likely to be inferred. From this springs another rule that nothing is to be added to or taken away from a statute unless there are some adequate grounds to justify the inference that

the legislature intended something which it omitted to express. "It is a wrong thing to add into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do." If a case has not been provided for in a statute. It is not to be dealt with merely because there seems to be no good reason why it should have been omitted, and the omission appears to be consequentially unintentional.

7) Here it is assumed that the draftsman is perfect.

M.18 & MTP Oct21: Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

Provision: [Rule of Literal Construction / Grammatical Construction / Construction as it is / Word to Word Construction]

1) It is the primary rule of interpretation. It can be also called as entry gate of interpretation because without this rule no further interpretation can be derived.
2) Every reader of law knowingly or unknowingly / intentionally or unintentionally uses this rule as the first time reader of law.
3) In this rule words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect up to maximum of its width
4) Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.
5) This rule, however, is subject to some exceptions:
   a) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness.
   b) As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature.
   c) In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.
6) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

N22: Explain the "grammatical" and "logical" interpretation and state the situations where the courts adopt them while interpreting the Statutes in India.

Provision: [Rule of Literal Construction / Grammatical Construction / Construction as it is / Word to Word Construction]

1) 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.
2) 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.
3) In other words, the emphasis in grammatical interpretation is on "what the law says" and the logical interpretation seeks on the other hand, seeks to ascertain " what the law means".
4) 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.
5) 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.
6) The duty of the Court is to administer the law as it stands rather it is just or unreasonable. The Court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that is ostensibly just or reasonable. However, if there are two possible constructions of a clause, the Courts may prefer the logical construction

MTPN22: Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute

Provision: [Rule of Literal Construction / Grammatical Construction / Construction as it is / Word to Word Construction]

1) 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.
2) 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.

MTPM23: Viraj, a director of the company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He res trains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Viraj is correct?

Provision: [Rule of Literal Construction / Grammatical Construction / Construction as it is / Word to Word Construction]

1) Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction.
2) This principle is contained in the Latin maxim **"absoluta sententia expositore non indeget"** which literally means "an absolute sentence or preposition needs not an expositor".
3) In other words, plain words require no explanation. Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder.
4) In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.
5) When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.
6) What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

Explanation & Answer:

a) In the given question, Viraj (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.
b) Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.

Rules of Construction Of Reasonable Construction

Answer Writing Points For Reasonable Construction:

1) It is secondary rule of interpretation.
2) Where literal construction fails to achieve the purpose of the law or provision and fails to give it the intended meaning then this rule is used.
3) According to this Rule, the words of a statute must be construed **'ut res magis**

valeat quam pareat' meaning thereby that words of statute must be construed so as to lead to a sensible meaning. Generally, the words or phrases of a statute are to be given their ordinary meaning.

4) Here it is assumed that draftsman is faulty.

N08: Explain the 'Rule of reasonable construction' as may be applied in determining whether a particular act of a director of a company is 'ultra vires' or & lsqu; intra vires' of the objects of the company.
PM: Explain the Rule of "Reasonable construction under the interpretation of Statute, Deeds etc"

Provision: [Rules of Interpretation of Reasonable Construction]

1) It is secondary rule of interpretation.
2) Where literal construction fails to achieve the purpose of the law or provision and fails to give it the intended meaning then this rule is used.
3) According to this Rule, the words of a statute must be construed **'ut res magis valeat quam pareat'** meaning thereby that words of statute must be construed so as to lead to a sensible meaning. Generally the words or phrases of a statute are to be given their ordinary meaning.
4) Here it is assumed that draftsman is faulty.

Answer:

Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute

Rules of Construction of Beneficial Construction

Answer Writing Points For Beneficial Construction:

1) It is secondary rule of interpretation.
2) Where language used in statute have more than one interpretation and the real required meaning is to be derived then this rule will be used.
3) The rule is defined in *Heydon's case (1584) 3 Co. Rep 7a 76 ER 637.*
4) The rule which is also known as 'purposive construction' or mischief rule, enables consideration of four matters in construing an Act:
   a) what was the law before the making of the Act;
   b) what was the mischief or defect for which the law did not provide;
   c) what is the remedy that the Act has provided; and
   d) what is the reason for the remedy?
5) The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.
6) Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.
7) If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it.
8) If the object of a statute is public safety then its working must be interpreted widely to give effect to that object.
9) Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority, for it would be presumed that the statute does not intend to prevent the application of the general principle of law: **'quo facit per alium facit per se'** (he who acts though another is deemed to act in person).
10) This would be so unless there is something in either the language or the object of the statute which shows that personal act alone was intended.
11) Here it is assumed that draftsman is faulty.

J09: Explain the principles of "Rule of Beneficial Interpretation". Or
PM: Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example[V.IMP] Or
MTPN21: Explain the rule in 'Heydon's Case' while interpreting the statutes quoting an example

Provision: [Rules of Interpretation of beneficial construction]

1) It is secondary rule of interpretation.
2) Where language used in statute have more than one interpretation and the real required meaning is to be derived then this rule will be used.
3) The rule is defined in *Heydon's case (1584) 3 Co. Rep 7a 76 ER 637.*

4) The rule which is also known as 'purposive construction' or mischief rule, enables consideration of four matters in construing an Act:
   a) what was the law before the making of the Act;
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6) Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.
7) If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it.
8) If the object of a statute is public safety then its working must be interpreted widely to give effect to that object.
9) Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority, for it would be presumed that the statute does not intend to prevent the application of the general principle of law: **'quo facit per alium facit per se'** (he who acts though another is deemed to act in person).
10) This would be so unless there is something in either the language or the object of the statute which shows that personal act alone was intended.
11) Here it is assumed that draftsman is faulty.

Dec21: Explain the Mischief Rule / the rule in Heydon's case for interpretation of statute. Also give four matters it considers in construing an Act.

Provision: [Rules of Interpretation of beneficial construction]

1) Mischief Rule/ Heydon's Rule: Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.
2) This rule enables, consideration of four matters in constituting an Act:
   a) what was the law before making of the Act,
   b) what was the mischief or defect for which the law did not provide,
   c) what is the remedy that the Act has provided, and
   d) what is the reason for the remedy.
3) The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.
4) If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.
5) However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

MTP N.19: Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

Or

N.18: Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act. [V.IMP]

Provision: [Rule of Beneficial Construction / the Heydon's Rule / mischief rule / purposive construction]

1) Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed.
2) This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.
3) It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.
4) Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.

5) It enables consideration of four matters in construing an Act:
   a) what was the law before the making of the Act;
   b) what was the mischief or defect for which the law did not provide;
   c) what is the remedy that the Act has provided; and
   what is the reason for the remedy.

Rules of Construction of Exceptional Construction

Answer Writing Points For Exceptional Construction:

1) This is secondary rule of interpretation.
2) Where existing language and words of the statute are not enough to give required coverage or meaning or absoluteness to the statute then this rule shall be used.
3) This rule has several aspects, viz.:
   a) **The Common Sense Rule:** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a sensible meaning to them, if at all possible. They ought to be construed **'utres magis valeat quampereat'** meaning thereby that it is better for a thing to have effect than to be made void.
   b) **Conjunctive and Disjunctive Words 'or' 'and':** The word **'or'** is normally disjunctive and **'and'** is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result: in such a case 'and' may by read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.
   c) **'May', 'must' and 'shall':** Before discussing this aspect, it would be worth while to note the terms **'mandatory'** and **'directory'**. Practically speaking, the distinction between a provision which is **'mandatory'** and one which is **'directory'** is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form: an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
      — the nature of the thing empowered to be done,
      — the object for which it is done, and
      — the person for whose benefit the power is to be exercised
4) **'May'**: Where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to the general class of subjects, or where a remedy would be advanced and a mischief suppressed, or where giving the word a directory significance would defeat the very object of the Act then word 'may' should be interpreted to convey a mandatory force.
5) The, word 'may' is often read as 'shall' or 'must' when there is something in the nature of the thing to be done, which makes it the duty of the person on whom the power is conferred to exercise the power.
6) The use of the expression 'shall' or 'may' is not decisive. Having regard to the context, the expression 'may' has varying significance. In one context, it may be purely permissive, while in another context it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down.
7) Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.
8) Coming to the word **shall**: the use of the word **shall** would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.
9) Therefore, generally speaking when a statute uses the word 'shall' *prima facie* it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain

circumstances the expression 'shall' is construed as 'may'.

10) Yet, it has to be emphasized that the term 'shall' in its ordinary significance, is mandatory and the Court shall ordinarily give that interpretation to the term, unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to be collected from other parts of the Act.

11) For ascertaining the real intention of the legislature, the Court may consider amongst other things:
   a) the nature and design of the statute,
   b) the consequence which would flow from construing it one way or the other,
   c) the impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided,
   d) whether or not the statute provides any penalty if the provision in question is not complied with,
   e) if the provision in question is not complied with, whether the consequences would be trivial or serious, and
   f) most important of all, whether the object of the legislation will be defeated or furthered.

12) Where a specific penalty is provided in statute itself for non-compliance with the particular provision of the Act, no discretion is left to the Court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

N04: Explain briefly the distinction between "Mandatory" and "Directory" provisions in a statute. How the Court deals with them differently?

Or

M.18: Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?

Or

M.19: How will you understand whether a provision in a statute is 'mandatory' or 'directory'? [LDR IMP]

Provision: [Rule of Exceptional Construction]

1) Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with.
2) However, we have to look to the substance and not merely the form.
3) An enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory.
4) Hence, it is the substance that counts and must take precedence over mere form.
5) If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:
   a) the nature of the thing empowered to be done,
   b) the object for which it is done, and
   c) the person for whose benefit the power is to be exercised

Explanation & Answer:

Thus, no general rule can be laid down for deciding whether any particular provision on a statue is mandatory or directory. In each case the court has to consider not only the actual word used, but has to decide the legislatures intent.

J09: The word "May" doesn't mean "Shall". Yet the word 'May' under certain circumstances means "Shall". Discuss the statement in the context of interpretation of statutes and the importance of distinction between mandatory and directory provisions.[LDR.IMP]

Provision: [Rules of Interpretation of Exceptional construction]

1) This is secondary rule of interpretation.
2) Where existing language and words of the statute are not enough to give required coverage or meaning or absoluteness to the statute then this rule shall be used.
3) This rule has several aspects, viz.:
   a) **The Common Sense Rule:** Despite the general rule that full effect must be given to every word, if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. The words of a statute must be so construed as to give a sensible meaning to them, if at all possible. They ought to be construed

'utres magis valeat quampereat' meaning thereby that it is better for a thing to have effect than to be made void.

b) **Conjunctive and Disjunctive Words 'or' 'and':** The word **'or'** is normally disjunctive and **'and'** is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result: in such a case 'and' may by read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear.

c) **'May', 'must' and 'shall':** Before discussing this aspect, it would be worth while to note the terms **'mandatory'** and **'directory'**. Practically speaking, the distinction between a provision which is **'mandatory'** and one which is **'directory'** is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form: an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

i) the nature of the thing empowered to be done,

ii) the object for which it is done, and

iii) the person for whose benefit the power is to be exercised

4) **'May'**: Where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to the general class of subjects, or where a remedy would be advanced and a mischief suppressed, or where giving the word a directory significance would defeat the very object of the Act then word 'may' should be interpreted to convey a mandatory force.

5) The, word 'may' is often read as 'shall' or 'must' when there is something in the nature of the thing to be done, which makes it the duty of the person on whom the power is conferred to exercise the power.

6) The use of the expression 'shall' or 'may' is not decisive. Having regard to the context, the expression 'may' has varying significance. In one context, it may be purely permissive, while in another context it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down.

7) Therefore, while undoubtedly the word 'may' generally does not mean 'must' or 'shall' yet the same word 'may' is capable of meaning 'must' or 'shall' in the light of the context in which it occurs.

8) Coming to the word **shall**: the use of the word **shall** would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.

9) Therefore, generally speaking when a statute uses the word 'shall' *prima facie* it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'.

10) Yet, it has to be emphasized that the term 'shall' in its ordinary significance, is mandatory and the Court shall ordinarily give that interpretation to the term, unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature to be collected from other parts of the Act.

11) For ascertaining the real intention of the legislature, the Court may consider amongst other things:

a) the nature and design of the statute,

b) the consequence which would flow from construing it one way or the other,

c) the impact of other provisions by resorting to which the necessity of complying with the provision in question can be avoided,
d) whether or not the statute provides any penalty if the provision in question is not complied with,
e) if the provision in question is not complied with, whether the consequences would be trivial or serious, and
f) most important of all, whether the object of the legislation will be defeated or furthered.

12) Where a specific penalty is provided in statute itself for non-compliance with the particular provision of the Act, no discretion is left to the Court to determine whether such provision is directory or mandatory – it has to be taken as mandatory.

Rules of Construction of Harmonius Construction

N12: Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes.[V.IMP]

Provision: [Rules of Interpretation of Harmonius construction]

1) It is secondary rule of interpretation.
2) When there is dispute between two provisions or two laws then this rule is used to resolve the ambiguity which literal construction cannot solve.
3) When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained.
4) Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them.
5) The provisions can be reconciled as per following priority:
   a) **Priority 1:** Try to uphold both the provisions / Laws. E.g. Indian Contract Act, 1872 & Cyber Law, 2000 shall be red simultaneously to validate the electronic contracts.
   b) **Priority 2:** The specific will prevail over General provision. E.g. Banking Regulation Act, 1949 will prevail over Companies Act, 2013 for applicability of provisions to banking companies like HDFC Bank Ltd.; ICICI Bank Ltd; Etc...
   c) **Priority 3:** The later provision or law will prevail over earlier provision or law.
6) It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent.
7) The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.
8) When rigid adherence to the general rule would require disregard of clear indications to the contrary, this rule must be applied.
9) The sections and sub-sections must be read as parts of an integral whole and being inter-dependent. Therefore, importance should not be attached to a single clause in one section overlooking the provisions of another section.
10) If it is impossible to avoid inconsistency, the provision which was enacted or amended later in point of time must prevail.
11) Here it is assumed that draftsman is faulty.

Rules of Construction of Ejusdem Generis

Answer Writing Points For Ejusdem Generis:

The term **'Ejusdem generis'** means **'of the same kind or species'**. Simply stated, the rule means:

1) Where any Act enumerates different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended.

2) Thus the rule of **Ejusdem generis** means that where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier. For instance 'in the expression in consequence of war, disturbance or any other cause', the words 'any other cause' would take colour from the earlier words 'war, disturbance' and therefore, would be limited to causes of the same kind as the two named instances.
3) Similarly, where an Act permits keeping of dogs, cats, cows, buffaloes and **other animals**, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.
4) Where there was prohibition on importation of 'arms, ammunition, or gun power or any other goods' the words 'any other goods' were construed as referring to goods similar to 'arms, ammunition or gun powder' *(AG vs. Brown (1920), 1 KB 773)*.
5) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.
6) We must note, however, that the general principle of 'ejusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words.
7) It is also to be noted that the courts have a discretion whether to apply the 'ejusdem generis' doctrine in particular case or not. For example, the 'just and equitable' clause in the winding up powers of the Courts is held to be not restricted by the first five situations in which the Court may wind up a company

M05,N09: Explain the rule of 'ejusdem generis' with regard to interpretation of statutes.

Or

N10: Explain the rule of "Ejusdem Generis" with reference to the interpretation of statutes. State the cases in which this rule is not applicable.[LDR.IMP]

Provision: [Rules of Interpretation Of Ejusdem Generis]

The term **'ejusdem generis'** means **'of the same kind or species'**. Simply stated, the rule means:

1) Where any Act enumerates different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended.

   Thus the rule of **ejusdem generis** means that where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier. For instance 'in the expression in consequence of war, disturbance or any other cause', the words 'any other cause' would take colour from the earlier words 'war, disturbance' and therefore, would be limited to causes of the same kind as the two named instances. Similarly, where an Act permits keeping of dogs, cats, cows, buffaloes and **other animals**, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.

   Where there was prohibition on importation of 'arms, ammunition, or gun power or any other goods' the words 'any other goods' were construed as referring to goods similar to 'arms, ammunition or gun powder' **(AG vs. Brown (1920), 1 KB 773).**
2) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.
3) We must note, however, that the general principle of 'ejusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words.

   It is also to be noted that the courts have a discretion whether to apply the 'ejusdem generis' doctrine in particular case or not. For example, the 'just and equitable' clause in the winding up powers of the Courts is held to be not restricted by the first five situations in which the Court may wind up a company.

N22: Enumerate when does the rule of Ejusdem Generis apply.

Provision: [Rules of Interpretation Of Ejusdem Generis]

The rule of Ejusdem Generis applies when:

1) The statute contains an enumeration of specific words
2) The subject of enumeration constitutes a class or category
3) That class or category is not exhausted by the enumeration
4) General terms follow the enumeration; and
5) There is no indication of a different legislative intent.

N22: Explain in reference to Interpretation of Statutes, the cases where Rule of Ejusdem Generis will not apply.

Provision: [Rules of Interpretation Of Ejusdem Generis]

The Rule of Ejusdem Generis will not apply in the following situations:

1) If the preceding term is general, as well as that which follows this rule cannot be applied.
2) Where the particular words exhaust the whole genus.
3) Where the specific objects enumerated are essentially diverse in character.
4) Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms

Rules of Construction of Noscitar A-Sociis

Answer Writing Points For Noscitar A-Sociis :

1) When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one.
2) On the other hand, there is the concept of **'Noscitur A Sociis'** ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'.
3) When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality).
4) They take, as it were; their colour from each other, i.e., the more general is restricted to a sense analogous to the less general.
   For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. **(Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).**
5) The term 'entertainment' would have a different meaning when used in the expression 'houses for public refreshment, resort and entertainment' than its generally understood meaning of theatrical, musical or similar performance.
6) Similarly, the expression 'place of public resort' would have one meaning when coupled with the expression 'roads and streets' and the same express 'place of public resort' would have quite a different meaning when coupled with the word 'houses'.

M11 & MTPOct22: "Associate words should be understood in common sense manner". Explain the statement in the light of rules of interpretation of statutes[V.IMP]

Provision: [Rules of Interpretation of Noscitur A Sociis]

1) When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of **'Noscitur A Sociis'** ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'.
2) When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general.
3) For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. *(Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).*

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5) Similarly, the expression 'place of public resort' would have one meaning when coupled with the expression 'roads and streets' and the same express 'place of public resort' would have quite a different meaning when coupled with the word 'houses'.

Rules of Interpretation of Deeds and Documents

Answer Writing Points For of Deeds and Documents:

1) The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
2) It is inexpedient to construe the terms of one deed by reference to the terms of another.
3) Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
4) The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense.
5) For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words had been used have also to be taken into account.
6) Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense.
7) It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.
8) It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.

M10: Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

Or

N09: Discuss the rules of interpretation of deeds and documents.[LDR.IMP]

Provision: [Rule of Interpretation of Deeds and Documents]

1) The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
2) It is inexpedient to construe the terms of one deed by reference to the terms of another.
3) Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
4) The Golden Rule is to ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense.
5) For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words had been used have also to be taken into account.

6) Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense.
7) It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not the latter sense.
8) It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.

Internal Aids of Interpretation

Answer Writing Points For Internal Aids of Interpretation:

Every enactment has its Title, Preamble, Heading, Marginal Notes, Definitional Sections/ Clauses, Illustrations etc. They are known as 'internal aids to construction' and can be of immense help in interpreting/construing the enactment or any of its parts.

1) **Long Title:**
   a) An enactment would have what is known as a 'Short Title' and also a 'Long Tittle'.
   b) The 'Short Title' merely identifies the enactment and is chosen merely for convenience, the 'Long Title' on the other hand, describes the enactment and does not merely identify it. It is now settled that the Long Title of an Act is a part of the Act.
   c) We can, therefore, refer to it to ascertain the object, scope and purpose of the Act.
2) **Preamble:**
   a) The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title.
   b) The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.
   c) Like the Long Tile, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction.
   d) In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.
3) **Heading and Title of a Chapter:**
   a) If we glance through any Act, we would generally find that a number of its sections applicable to any particular object are grouped together, sometimes in the form of Chapters, prefixed by Heading and/or Titles.
   b) These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts. However, there is a conflict of opinion about the weightage to be given to them.
   c) While one section of opinion considers that a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it and might be treated as 'preambles to the provisions following it', the other section of opinion is emphatic that resort to the heading can only be taken when the enacting words are ambiguous. According to this view headings or titles prefixed to sections or group of sections may be referred to as to construction of doubtful expressions, but can not be used to restrict the plain terms of an enactment. We must, however, note that the heading to one group of sections cannot be used to interpret another group of sections.
4) **Marginal Notes:**
   a) Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section.
   b) In C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the

statute", and the same view has been taken in many other cases.

c) However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.

5) **Definitional Sections/Clauses:**

a) When a word or phase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. The Court cannot ignore the statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

b) The purpose of a definition clause is two-fold:

(i) to provide a key to the proper interpretation of the enactment, and

(ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

c) When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section. But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section. We may also find a word being defined as 'means and includes' such and such: here again the definition would be exhaustive.

d) if the word is defined 'to apply to and include', the definition is understood as ex-tensive. It has been a universally accepted principle that where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context.

e) A definition section may also be worded as 'is deemed to include' which again is an inclusive or extensive definition as such a words are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.

6) **Ambiguous definitions**:

a) Sometime we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such types of definition is not to be read in isolation.

b) It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

7) **Illustrations:**

a) We would find that many, though not all, sections have illustrations appended to them. These illustrations follow the text of the Sections and, therefore, do not form a part of the Sections.

b) However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

8) **Proviso:**

a) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

b) The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment: ordinarily a proviso is not inter-preted as stating a general rule.

c) It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

9) **Explanation:**

a) An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it.

b) An Explanation should normally be so read as to harmonies with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

10) **Schedules:**
   a) The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction.
   b) However, the expressions in the Schedule cannot con-trol or prevail over the expression in the enactment.
   c) If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

11) **Read the Statute as a Whole:**
   a) It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. Lord Waston, speaking with regard to deeds had stated thus:
   b) The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions
   c) if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

M.18 Rtp: Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause. [LDR IMP]

Provision: [Internal Aids of Interpretation]

1) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.
2) The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.
3) It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).
4) Distinction between Proviso, exception and saving Clause:
   There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'. Proviso Exception Saving Clause can be as follow
   a) Exception' is intended to restrain the enacting clause to particular cases
   b) 'Proviso' is used to remove special cases from general enactment and provide for them specially
   c) 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

N03: Explain the usefulness of 'Heading and Title of a chapter in an Act and marginal notes of a Section' as internal aids in interpreting the provisions of a Statute.

Provision: [Internal Aids of Interpretation]

1) **Heading and Title of a Chapter:**
   a) If we glance through any Act, we would generally find that a number of its sections applicable to any particular object are grouped together, sometimes in the form of Chapters, prefixed by Heading and/or Titles.
   b) These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.
   c) However, there is a conflict of opinion about the weightage to be given to them. While one section of opinion considers that a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it and might be treated as 'preambles to the provisions following it', the other section of opinion is emphatic that resort to the heading can only be taken when the enacting words are ambiguous.
   d) According to this view headings or titles prefixed to sections or group of sections may be referred to as to construction of doubtful expressions, but cannot be used to restrict the plain terms of an enactment.

e) We must, however, note that the heading to one group of sections cannot be used to interpret another group of sections.

2) **Marginal Notes:**

a) Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section can not be used for construing the Section.

b) In **C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J.,** had declared: Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases.

c) However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.

N.18 Rtp: The 'Statute should be read as a Whole'. Explain the statement[IMP]

Provision: [Internal Aids of Interpretation]

1) It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

2) The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

3) One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them.

4) If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Explanation & Answer:

1) As given in above provision of interpretation of statute to understand a statute/ law, such statute/law should be understood as a whole. It should be interpreted in whole and not in parts which will lead to misinterpretation of statute/law.

2) Therefore, given statement The 'Statute should be read as a Whole' is correct by considering above provision of Interpretation of Statute.

M.19 Rtp: Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision.[V.IMP]

Or

M04: Explain the effects of a proviso to a section in a statute.

Provision: [Internal Aids of Interpretation]

1) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

2) The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

3) As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

4) It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

5) It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. **(Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R,1995 SC 765)**

Answer:

Above are the Function of Proviso in the Interpretation of the Section/ Provision.

MTP N.18: How far are 'marginal notes' in an enactment helpful in interpreting any of the parts of an enactment?

Provision: [Internal Aids of Interpretation]

1) Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section.
2) In **C.I.T. vs. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J.,** had declared: "Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute", and the same view has been taken in many other cases.
3) Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. **[Deewan Singh v. Rajendra Pd. Ardevi, (2007)10 SCC , Sarabjit Rick Singh v. Union of India, (2008) 2 SCC]**
4) However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.
   Example: Article 286 of the constitution furnishing "prima facie", some clue as to the meaning and purpose of the Article [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC

N.18: Write short note on: (i) Provision , (ii) Explanation, with reference to interpretation of Statutes, Deeds and Documents. [LDR IMP]

Provision: [Internal Aids of Interpretation]

1) **Proviso:**
   The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.
2) **Explanation:**
   An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

MTP N21 & M22: Does an explanation added to a section widen the ambit of a section?

Provision: [Internal Aids of Interpretation]

1) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section.
2) If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section.
3) Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

RTPM22 & RTPM23: When can the Preamble be used as an aid to interpretation of a statute?

Provision: [Internal Aids of Interpretation]

1) While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment.
2) The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act.
3) A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.
4) The preamble merely affords help in the matter of construction if there is any

ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

5) When will courts refer to the preamble as an aid to construction?
   a) Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.
   b) Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

M.19: Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.[V.IMP]

Provision: [Internal Aids of Interpretation]

1) The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it.
2) However, the Preamble does not over-ride the plain provision of the Act.
3) But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.
4) In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.
5) **Example:**

   Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [GullipoliSowria Raj V. BandaruPavani, (2009)1 SCC714].

M.19: If it is defined as:
a) "Company means a company incorporated under the Companies Act, 2013 or under any previous company Law".
b) "Person" includes, _____ under the Consumer Protection Act,1986.
How would you interpret/construct the nature and scope of the above definitions?

Provision: [Internal Aids of Interpretation]

1) The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
2) When a word is defined to **'mean'** such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
3) But where the word is defined to **'include'** such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
4) Thus,
   a) The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall deemed to be company.
   b) The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition

July21 & MTPOct22: Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.

Provision: [Internal Aids of Interpretation]

1) Impact **of the words "Means" and "Includes" in the definitions-** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
2) When a word is defined to '**mean**' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
3) But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
4) **Example:**
   a) Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.
   b) Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

M.20 Rtp: Explain the function of 'proviso' as an internal aid to construction.[V.IMP]

Or

N09: Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso while carrying out the interpretation ?

Or

M22: What is the effect of proviso ? Does it qualify the main provisions of the enactment ? Explain it with reference to Interpretation of Statutes.

Provision: [Internal Aids of Interpretation]

1) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.
2) The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.
3) It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.
4) It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. **(Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).**

RTPN22: How will you interpret the definitions in a statute, if the following words are used in a statute?
(i) Means
(ii) Includes
Give one illustration for each of the above from statutes you are familiar with

Provision: [Internal Aids of Interpretation]

1) Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.
2) When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.
3) But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.
4) Example—
   a) Definition of Director [Section 2(34) of the Companies Act, 2013] — Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.
   b) Definition of Whole time director [Section 2(94) of the Companies Act, 2013] — Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director

RTPM23: Explain the following in context of use of definitional sections in Interpretation of Statutes:
(i) Definitions subject to a contrary context
(ii) Ambiguous definitions

Answer: [Internal Aids of Interpretation]

(i) Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the p rovision and the object intended to be served thereby.

(ii) Ambiguous definitions: Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a wor d or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

External Aids Of Interpretation

Answer Writing Points For External Aids of Interpretation:

Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time, and so on. These factors apply to any enactment as well. These factors are of great help in interpreting/construing an Act and have been given the convenient nomenclature of **'External Aids to Interpretation'**. Some of these factors are enumerated below:

1) Historical Setting:

a) The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

b) History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

c) We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

2) Consolidating Statutes & Previous Law:

a) The Preambles to many statutes contain expressions such as "An Act to consolidate" the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law.

b) They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

3) Usage:

a) Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, **usage** – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

b) It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

4) Earlier & Later Acts and Analogous Acts:

a) Exposition of One Act by Language of Another: The general principle is that where there are different statutes in *'pari materia'* (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

b) If two Acts are to be read together then every part of each Act has to construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the earlier one. However, this does not mean that every word in the later Act is to be interpreted in the same way as in the earlier Act.

c) Where the later of the two Acts provides that the earlier Act should, so far

as consistent, be construed as one with it then an enactment in the later statute that nothing therein should include debentures was held to exclude debentures from the earlier statute as well.

a) **Earlier Act Explained by the Later Act:** Not only may the later Act be construed in the light of the earlier Act but it (the later Act) sometimes furnishes a legislative interpretation of the earlier one, if it is 'pari materia' and if, **but only if**, the provisions of the earlier Act are ambiguous.

Where the earlier statute contained a negative provision but the later one merely omits that negative provision: this cannot by itself have the result of substantive affirmation. In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.

The general rules and forms framed under an Act which enacted that they should have the same force as if they had been included in it any may also be referred to for the purposes of interpretation of the Act.

b) **Reference to Repealed Act:** Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the unrepealed part. This is so because it is part of the history of the new Act.

5) **Dictionary Definitions:**

a) First, we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.

b) However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.

c) It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.

d) Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

6) **Use of Foreign Decisions:**

a) Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts.

b) However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

M21 RTP & N21 RTP: At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

Provision: [External Aids of Interpretation]

1) **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

2) In this connection, we have to bear in mind two Latin maxims:

a) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and

b) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

3) Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

4) Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes in India.

Dec21 & MTPOct22: In what way are the following terms considered as external aid in the interpretation of statutes:
(i) Historical Setting
(ii) Use of Foreign Decisions

Answer: [External Aids of Interpretation]

(i) Historical Setting:

a) The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

b) History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions:

a) Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts.

b) However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

N.19 Rtp & July21: Explain whether Foreign Decisions be used for construing Indian Acts.

Provision: [External Aids of Interpretation]

1) Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts.
2) However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.
3) When any provision of an Indian Acts leads to ambiguity whether to use it or not / whether there is ambiguity ion that used provision is right or wrong then one can use a decision passed in the same acts in foreign. That will give clarity regarding using of such provision.
4) Such decision passed in the Foreign Acts can be used as tool to clear out the doubt in construing such Indian Acts.

Explanation & Answer:

Hence Foreign decisions can be used for construing Indian Acts when there is ambiguity in the Indian Acts regarding taking the Final decision.

MTP N.19 & N.18 & MTP Oct21: Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

Or

MTP N.18: When can the 'dictionary definitions' be used as an external aid for interpretation of any of the word or expression of an enactment?[LDR IMP]

Provision: [External Aids of Interpretation]

1) First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
2) However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.
3) It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.
4) Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Explanation & Answer:

Therefore, it can be concluded that when a word is not defined in the Act itself dictionary definition can help to find out its general meaning in which that word is commonly used. Hence 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

Chapter 14:
The General Clauses Act, 1897

MTPM23: The Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Provision: [Section 3(23) The General Clauses Act, 1897]

According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government. Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.

Answer:

Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

N.19 RTP: Vyas owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Yash. Vyas wants to know whether the sale of timber tant amounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".

Or

MTP N.19 & M.18: X owned a land with fifty tamarind trees. He sold his land to (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tant amounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".[LDR IMP]

Or

RTPM23: M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.

Provision: [Section 3(26) of the General Clauses Act, 1897]

1) Immovable Property' shall include:
   a) Land,
   b) Benefits to arise out of land, and
   c) Things attached to the earth, or
   d) Permanently fastened to anything attached to the earth.
2) It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth.
3) Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

Explanation & Answer:

In the instant case, Vyas/X/M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Dec21: Give the definition of the following as per the General Clauses Act, 1897:
(i) "Rule"
(ii) "Oath"
(iii) "Person"

Answer: [Section 3(51), 3(37) & 3(42) of the General Clauses Act, 1897]

(i) Rule:

As per section 3(51) of the General Clauses Act, 1897, 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.

(ii) Oath:

As per section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

(iii) Person:

As per section 3(42) of the General Clauses Act, 1897, "Person" shall include:

a) any company, or

b) association, or

c) body of individuals, whether incorporated or not.

N22: What is the meaning of 'Official Gazette' as per the provisions of the General Clauses Act, 1897?

Answer: [Section 3(39) of the General Clauses Act, 1897]

"Official Gazette" [Section 3(39) of the General Clauses Act, 1897]:

'Official Gazette' or 'Gazette' shall mean:

(i) The Gazette of India, or

(ii) The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs.

As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press

MTP N.18 & MTP Oct21: SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations?

Provision: [Section 5 of the General Clauses Act, 1897]

According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

Explanation & Answer:

Hence, in the given question, SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

M.18: Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.[LDR IMP]

Provision: [Section 6 of the General Clauses Act, 1897]

According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

a) Revive anything not enforced or prevailed during the period at which repeal is effected or;

b) Affect the prior management of any legislation that is repealed or anything performed or undergone or;

c) Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;

d) Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or

e) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

M22: Explain the provision related to 'Effect of Repeal' as per the General Clauses Act,1897.

Provision: [Section 6 of the General Clauses Act, 1897]

As per the provisions of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made unless another purpose exists, the repeal shall not:

a) Revive anything not enforced or prevailed during the period at which repeal is effected; or

b) Affect the prior management of any legislation that is repealed or anything performed or undergone; or

c) Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed; or

d) Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation; or

e) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility, or any inquiry, litigation, or remedy may be initiated, continued or insisted.

RTPN22: Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Provision: [Section 8 The General Clauses Act, 1897]

1) According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

2) Also, in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act

Explanation & Answer:

a) As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

b) In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

MTP N.18: Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30th September, 2017. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend.

Or

M.19: The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?[V.IMP]

Or

MTP N21: The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2021, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897?

Provision: [Section 9 of the General Clauses Act, 1897]

1) As per the provisions of Section 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".
2) Section 127 of the Companies Act, 2013 uses the words, thirty days from. Thus, in the given situation Excel Ltd. is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2017 to 30/10/2017. In this series of 30 days, 30/09/2017 will be excluded and last 30th day i.e. 30/10/2017 will be included.

N.18: Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:
(i) The dates during which Komal Ltd. is required to pay the dividend?
(ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?[LDR IMP]

Provision: [Section 9 of the General Clauses Act, 1897]

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that 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".

Explanation & Answer:

(i) Payment of dividend:

In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).

(ii) Transfer of unpaid or unclaimed dividend:

As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

M.20: Ajit was supposed to submit an appeal to High Court of Kolkata on 30th March, 2020, which was the last day on which such appeal could be submitted. Unfortunately, on that day High Court was closed due to total Lockdown all over India due to Covid-19 pandemic. Examine the remedy available to Ajit under the provisions of the General Clauses Act, 1897.

Provision: [Section 10 of the General Clauses Act, 1897]

The given answer is based on section 10 which deals with "Computation of time" under the General Clauses Act, 1897. Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Answer:

In the question, Ajit was supposed to submit an appeal to High Court on 30th March 2020, which was the last day of filing the same. On that day High Court was closed due to total lockdown all over India. In line with said provision, Ajit can submit an appeal on the day on which the High Court is open.

MTPM23: Yellow and Pink had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2022, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?

Provision: [Section 10 of the General Clauses Act, 1897]

According to section 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

Answer:

In the given question, the court fixed the date of hearing of dispute between Yellow and Pink, on 29.04.2022, which was subsequently announced to be a holiday. Applying the above provisions we can conclude that the hearing date of 29.04.2022, shall be extended to the next working day.

Dec21 & MTPOct22: A confusion, regarding the meaning of 'financial year' arose among the financial executive and accountant of a company. Both were having different arguments regarding the meaning of financial year & calendar year. What is the correct meaning of financial year under the provision of the General Clauses Act, 1897? How it is different from calendar year?

Provision: [Section 10 of the General Clauses Act, 1897]

Financial Year: According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

N21 RTP: Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17th May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2021 or 21st August 2021?

Or

MTPN22: Mr. Sridhar has issued a promissory note of `1000 to Mr. Mohan on 17th May 2022 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2022 or 21st August 2022?

Provision: [Section 10 of the General Clauses Act, 1897]

Section10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Explanation & Answer:

a) A promissory note of ₹1000 was issued by Mr. Sohan/ Mr. Sridha to Mr. Mohan on 17th May 2021/17th May 2022 which was payable 3 months after date. After that, a sudden holiday was declared on 20th August 2021/20th August 2022 due to Moharram.

b) In the given case, the period of 3 months ends on 17th August 2021./ 17th August 2022. Three days of grace are to be added. It falls due on 20th August 2021/20th August 2022 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2021./ 21st August 2022

MTP Oct21: Explain the meaning of 'calculation of duty to be taken on pro rata basis' as per the provisions of the General Clauses Act, 1897. Give an example

Answer: [Section 12 of the General Clauses Act, 1897]

"Duty to be taken pro rata in enactments": According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

Example: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

N22: 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??

Provision: [The General Clauses Act, 1897]

1) 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.
2) 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.

Explanation & Answer:

a) Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.
b) In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object. Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

M.18 RTP &M.19 RTP: A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.[LDR IMP]

Provision: [Section 27 of the General Clauses Act, 1897]

1) As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
   a) properly addressing,
   b) pre-paying, and
   c) posting by registered post.
2) A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Case Law:

In similar case of **In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181**: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law

Explanation & Answer:

a) Therefore, in view of above provision, since, statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules.
b) However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

M.18 & MTP N21& MTPN22: What is the meaning of service by post as per provisions of The General Clauses Act, 1897.

Provision: [Section 27 of the General Clauses Act, 1897]

1) Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
   a) properly addressing
   b) pre-paying, and
   c) posting by registered post.
2) A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

N.18 RTP: Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.

Provision: [Section 26 of the General Clauses Act, 1897]

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Explanation & Answer:

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

MTP N.19: Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897

Or

N.18: Repeal' of provision is different from 'deletion' of provision. Explain.

Provision: [The General Clauses Act, 1897]

a) In **Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj** *75* case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision.

b) 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

MTP N.18: What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment. Explain as per the provisions of the General Clauses Act, 1897.

Provision: [Section 22 of the General Clauses Act, 1897]

Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

N.18: Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897[V.IMP]

Provision: [Section 23 of the General Clauses Act, 1897]

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

1) **Publish of proposed draft rules/ bye - laws**:
   The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

2) **To publish in the prescribed manner**:
The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
3) **Notice annexed with the published draft**:
There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
4) **Consideration on suggestions/objections received from other authorities**:
Authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
5) **Notified in the official gazette:**
Publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

M22: The Ministry of Corporate Affairs (MCA) published in the Gazette of India, the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications in the draft Rules already published. In the light of the provisions of the General Clauses Act, 1897, answer the following
(i) Is it required for MCA to publish a draft of the proposed Rules?
(ii) In case of any irregularities in the publication of the draft, can it be questioned?
(iii) Is MCA entitled to make suitable changes in the draft?
(iv) Is it necessary to re- publish the Rules in the amended firm when the changes made are ancillary to the earlier draft?

Provision: [Section 23 of the General Clauses Act, 1897]
1) The authority having the power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
2) Any irregularities in the publication of the draft cannot, therefore, be questioned.
3) It is open to the authority publishing the draft and entitled to make the rules to make suitable changes in the draft before finally publishing them.
4) It is not necessary for that authority to re-publish the rules in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof.

Explanation:
The Ministry of Corporate Affairs (MCA) published in the Gazette of India the proposed draft of Rules further to amend certain rules under the Companies Act, 2013. The MCA made some modifications to the draft Rules already published.
Answer:
(i) Yes. MCA is required to publish a draft of the proposed rules.
(ii) No. In case of any irregularities in the publication of the draft, it cannot be questioned.
(iii) Yes. MCA is entitled to make suitable changes in the draft.
(iv) No. It is not necessary for MCA re-publish the rules in the amended form when the changes made are ancillary to the earlier draft.

M.19: Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force.
Give reasons also,
(1) An Act of Parliament which has not specifically mentioned a particular date.
(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

Provision: [Section 23 of the General Clauses Act, 1897]
1) According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
2) If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

Explanation & Answer:

Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

M.20: Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal.
Decide with reference to provisions of "General Clauses Act, 1897", whether the notice was rightfully served on Mr. Vyas.

Provision: [Section 27 of the General Clauses Act, 1897]

1) As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
   a) properly addressing,
   b) pre-paying, and
   c) posting by registered post.
2) A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Explanation:
The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

Answer:
Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

N22: Mr. A (landlord) staying in Delhi, rented his flat of Bengaluru to Mr. B (tenant) for `20,000 per month to be paid annually. An agreement was made between them that during the tenancy period, if A requires his flat to be vacated, one-month prior notice is to be given to Mr. B. After eight months a notice was sent by Mr. A to Mr. B to vacate his flat by registered post which was refused to be accepted by Mrs. C (wife of Mr. B) and Mr. B denied to vacate the flat on ground of non-receipt of notice. Examine, as per the General Clauses Act, 1897, whether the notice is tenable?

Provision: [Section 27 of the General Clauses Act, 1897]
As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
a) properly addressing,
b) pre-paying, and
c) posting by registered post.

Case Laws:
a) In Smt. Vandana Gulati Vs. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69, it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved.
b) In Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604, it was held that where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. In other words, Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

Explanation:
In the given question, Mr. A has served the notice to Mr. B by registered post which was refused to be accepted by Mrs. C (wife of Mr. B).
However, Mr. B cannot deny to vacate the flat on ground of non- receipt of notice, since Mrs. C had refused to accept the notice served by Mr. A through registered post.

Answer:
Hence, the notice served by Mr. A is tenable provided one- month prior notice given to Mr. B.

M.20: Examine the validity of the following statements with reference to the General Clauses Act, 1897:
(i) Insurance Policies covering immovable property have been held to be immovable property.
(ii) The word "bullocks" could be interpreted to include "cows".

Provision: [The General Clauses Act, 1897]

(i) **Insurance Policies covering immovable property have been held to be immovable property:** This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

(ii) **The word 'bullocks' could be interpreted to include 'cows':** This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

M21 RTP:

(i) Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.

(ii) What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Provision: [Section 3(21) & 27 of the General Clauses Act, 1897]

(i) **Financial Year:** According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.
The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.
Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.

(ii) **Meaning of Service by post:** According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:
a) properly addressing
b) pre-paying, and
c) posting by registered post.
A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

MTPM23: Examine the validity of the following statements with reference to the General Clauses Act, 1897:

(i) Insurance Policies covering immovable property have been held to be immovable property.

(ii) The word "bullocks" could be interpreted to include "cows".

Provision: [The General Clauses Act, 1897]

(i) Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

(ii) (The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

Chapter 15
Foreign Exchange Management Act, 1999

Sec 2: Definitions

Answer Writing Points for Sec.2(n)

1) Foreign Exchange means foreign currency and includes-
   i) deposits, credits and balances payable in any foreign currency,
   ii) drafts, traveller's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
   iii) Drafts, traveller's cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
2) Whether the person is PRI or PROI does not affect the definition of Foreign Exchange.

2(n): Foreign Exchange

Extra: Mr Hritik PRI was dealing as follows:
a) Deposit with Miss Kangna PROI: $ 30,000
b) Took credit from Swiss bank $ 2, 00,000
c) Have travellers card balance of ₹ 2, 00,000
d) Bill of exchange accepted by Miss Susan PROI: $ 1,00,000
Advise the status of above things whether foreign exchange or not?

Provision: [Section 2(n) of FEMA, 1999)

3) Foreign Exchange means foreign currency and includes-
   iv) deposits, credits and balances payable in any foreign currency,
   v) drafts, traveller's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
   vi) Drafts, traveller's cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
4) Whether the person is PRI or PROI does not affect the definition of Foreign Exchange.

Explanation & Answer:

The given cases are discussed as follows:

a) Deposit with Miss Kangna PROI of $ 30,000 is Foreign Exchange as it is in foreign currency. (as per above definition)
b) Took credit from Swiss bank $ 2,00,000 is Foreign Exchange as it is in foreign currency. (as per above definition)
c) Have travellers card balance of ₹ 2,00,000 is Foreign Exchange as it can be converted to foreign currency. (as per above definition)
d) Bill of exchange accepted by Miss Susan PROI: $ 1,00,000 is Foreign Exchange as it is in foreign currency and payable to Mr. Hritik in Indian Currency. (As per above definition)

2(o): Foreign Security

Extra: Mr Abhi is involved in following transaction:
a) Purchase of shares of Microsoft Ltd of $ 170000
b) Purchase of Bonds issued by Russian Government worth $ 60000
c) Purchase of gold deposit bonds issue by CG worth $ 40000
d) Sale of shares of multinational company Uniliver Ltd purchased @ ₹ 20000 to PROI @ $ 50000
Tell whether above securities are foreign securities?

Provision: [Section 2(o) of FEMA, 1999]

Foreign Security means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.

Explanation & Answer:

According to the above definition, the denomination of security must be in foreign currency is necessary for the above transaction to be foreign security.

The given cases are discussed as follows:

a) Purchase of shares of Microsoft Ltd of $ 170000 is foreign security as it is denominated in foreign currency.
b) Purchase of Bonds issued by Russian Government worth $ 60000 is foreign security as it is denominated in foreign currency.
c) Purchase of gold deposit bonds issue by CG worth $ 40000 is not foreign

security as it is issued by CG of India and it is denominated in Rs but only worth is given in $.

d) Sale of shares of multinational company Uniliver Ltd purchased @ ₹ 20000 to PROI @ $ 50000 is not foreign security as it is denominated in Rs. Irrespective of sold in $.

Sec. 2(u) : Person/ 2(v): PRI / 2(w): PROI

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

- **i)** For or on taking up employment outside India, or
- **ii)** For carrying on outside India a business or vocation outside India, or
- **iii)** For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

- **i)** For or on taking up employment in India, or
- **ii)** For carrying on in India a business or vocation in India, or
- **iii)** For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Mr. A had resided in India during the financial year 2017-2018 for less than 183 days. He had come to India on April 1, 2018 for employment. What would be his residential status during the financial year 2018-2019?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

C) A person who has gone out of India or who stays outside India, in either case-

- **iv)** For or on taking up employment outside India, or
- **v)** For carrying on outside India a business or vocation outside India, or
- **vi)** For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

D) A person who has come to or stays in India, in either case, otherwise than-

- **iv)** For or on taking up employment in India, or
- **v)** For carrying on in India a business or vocation in India, or
- **vi)** For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) Mr. A had resided in India during the financial year 2017-2018 for less than 183 days. He had come to India on April 1, 2018 for employment.

b) Mr. A has not fulfilled the condition of staying in India for more than 182 days in preceding financial year, hence he cannot be considered as person resident in India during the financial year 2018-2019.

Note: Answer given by ICAI in Module (follow for exam)

Although he stayed less than 183 days in India during the financial year 2017-2018, He will be considered PRI from 1st April 2018, as he came in India for employment purpose.

S.M : Mr. X had resided in India during the financial year 2016-2017 for less than 183 days. He had come to India on April 1, 2017 for business. He intends to leave the business on April 30, 2018 and leave India on June 30, 2018. What would be his residential status during the financial year 2017-2018 and during 2018-2019 up to the date of his departure?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or
ii) For carrying on outside India a business or vocation outside India, or
iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-
i) For or on taking up employment in India, or
ii) For carrying on in India a business or vocation in India, or
iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) **Residential status for FY 2017-18**

For FY 2017-18, Mr. X cannot be considered 'person resident in India' notwithstanding the purpose or duration of his stay as he resides in India in preceding financial year (2016-17) for a period less than 183 days.

Note – Answer given by ICAI in Module

Although he stayed less than 183 days in India during the financial year 2016-2017, He will be considered PRI from 1st April 2017, as he came to India for carrying on a business.

b) **Residential status for FY 2018-19**

For financial year 2018-2019, Mr. X will be 'resident in India' as he resides in India in the preceding financial year (2017-2018) for a period exceeding 182 days.

However, he would cease to be person resident in India from the date of his departure (i.e. from 30th June, 2018,) as he is having an intention to leave the business in India and leave India which indicates his intention to stay outside India for an uncertain period.

Mr. Z had resided in India during the financial year 2016-2017. He left India on 1st August, 2017 for United States for pursuing higher studies for 3 years. What would be his residential status during financial year 2017-2018 and during 2018-2019?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-
i) For or on taking up employment outside India, or
ii) For carrying on outside India a business or vocation outside India, or
iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-
i) For or on taking up employment in India, or
ii) For carrying on in India a business or vocation in India, or
iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; . [Sec 2(v)]

2) Any person other than PRI is PROI. [Sec 2(w)]

3) However, RBI (and also ICAI) has clarified in its AP circular no. 45 dated 8th December 2003, that students going outside India for higher studies will be considered as PROI. This is because usually students start working there to take care of their stay and cost of studies.

Explanation & Answer:

The given case is discussed as follows:

a) **Residential status for FY 2017-18**

Mr. Z had resided in India during the financial year 2016-2017. He left India on 1st August, 2017 for United States for pursuing higher studies for 3 years. It means that, he has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or any other purpose, in not

circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2017-2018.

However, according to the circular of RBI (as mentioned above) ,students going outside India for higher studies will be considered as PROI therefore for FY 2017-18, Mr. Z will be "a person residing outside of India".

b) Residential status for FY 2018-19

For the financial year 2017-2018, he would not be 'person resident in India' as he does not reside in India in the preceding financial year (2017-2018) for period exceeding 182 days.

RTP M15: Examining the provisions of the Foreign Exchange Management Act, 1999, state as to when shall a person residing in India shall be treated as 'Person Resident in India'. Further state whether in the following situations, the person concerned shall be included within the meaning of 'Person Resident in India':

(i) Mr. Naveen who has gone out of India for carrying business outside India during the preceding year.

(ii) Mr. Maurya, a person resident outside India controls an Office in India of a company.

Advise him, if he can get the Foreign Exchange and under what conditions

Provision: [Section 2(v) & 2(w) of the Foreign Exchange Management Act, 1999]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

a) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

b) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Person resident in India Means (for artificial person):

a) Any person or body corporate registered or incorporated in India,

b) An office, branch or agency in India owned or controlled by a person resident outside India,

c) An office, branch or agency outside India owned or controlled by a person resident in India;

3) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) Mr. Naveen who has gone out of India for carrying business outside India during the preceding year. Mr. Naveen shall not be a 'person resident in India' as per the definition of PRI.

b) Mr. Maurya, a person resident outside India controls an Office in India of a company. Maurya shall be called a 'person resident outside India, And the office in India will be PRI.

S.M : Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated of 'base', which is normally the city where the airways are headquartered. However, for security considerations, she was based on Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Provision: [Section 2(v) & 1(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either

case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated of 'base', which is normally the city where the airways are headquartered. However, for security considerations, she was based on Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days.

b) The issue here is whether staying can be considered 'residing'. FEMA emphasises 'residing'. 'Stay' is a physical attribute, while 'residing' denotes permanency. Thus, while Miss Alia may have stayed in India for more than 182 days, it is doubtful whether she can be said to have 'resided' in India for more than 182 days.

c) Further under section 2 (v), she would become resident only if she has come to or stayed in India for employment. It would be doubtful and debatable, whether by staying at Mumbai base during the break, Miss Alia can be said to have come to stay in India for or on taking up employment.

d) Miss. Alia would continue to be non-resident as she has not come to India for or on taking up employment; she comes to India due to her employment.

Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed up to 15th July, 2018. State under the Foreign Exchange Management Act, 1999.

(i) Weather Mr. Ram can be considered 'person Resident in India' during the Financial year 2018- 2019 and

(ii) Is citizenship relevant for determining such a status?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

1) **Residential status of Mr.Ram for F.Y 2018-19**

a) Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed up to 15th July, 2018.

b) Mr. Ram cannot be considered 'Person resident in India' during the financial year 2018-2019 notwithstanding the purpose or duration of his stay in India

during 2018-2019. An individual has to be present in India for more than 182 days in the preceding financial year.

2) Citizenship is not relevant for determining the status.

Suggestion– Answer given by ICAI in Module

Although he stayed less than 183 days in India during the financial year 2016-2017, He will be considered PRI from 1st May, 2018 to 15th July, 2018 as he came to India for carrying on a business.

Mr. Ruchir resided for a period of 170 days in India during the financial year 2017-18 and thereafter went abroad. He came back to India on 1st April, 2019 as an employee of a business organization. What would be his residential status during financial year 2018-19 under the Foreign Exchange Management Act, 1999?

Provision: [Section 2(u), 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) Mr. Ruchir resided in India for less than 183 days in the financial year 2017-18 and thereafter went abroad. He came back to India on 1st April, 2019 as an employee of a business organization

b) For the financial year 2018-19 he is a person resident outside India.

N09/M11: During the financial year 2018-19 Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April, 2019 Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the financial year 2018-19 under the provisions of the Foreign Exchange management Act, 1999.

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) Mr. Bhattacharyya did not reside in India during the year 2018-2019 for more than 182 days and his residential status during the next year, i.e. 2019-2020 is non-resident even though he stayed in India from 1st April, 2019 as an employee.

b) Residential status for 2018-2019 cannot be ascertained as his stay in India during the previous year 2017-2018 is not known.

N12: Mr. Kishore resided in India during the Financial Year 2009-2010 for less than 182 days. He came to India on 1 April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Years 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999.

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given case is discussed as follows:

a) Mr. Kishore resided in India for less than 182 days during the financial year 2009-10. Hence, he cannot be considered as a "Person Resident in India" during the financial year 2010-11.

Note – Answer according to ICAI

Although he stayed less than 182 days in India during the financial year 2009-2010, He will be considered PRI from 1st April 2010, as he came to India for carrying on a business.

b) During the financial year 2010-11, Mr. Kishore resided in India for more than 182 days. Normally, he would have been resident in India during the financial year 2011-2012 but as he left India on 30th June, 2011 for the purpose of taking up employment outside India, he would cease to be resident in India from the date of his departure from India i.e. 30th June, 2011.Therefore, Kishore cannot be called a person resident in India during the entire financial year 2011-2012.

RTP N15:Mr. Sekhar resided for a period of 150 days in India during the financial year 2013 - 2014 and thereafter went abroad. He came back to India on 1st April, 2014 as an employee of a business organization. What would be his residential status during the financial year 2014-2015?

Provision [Section 2(u),2(v) & 2(w) of the Foreign Exchange Management Act,1999]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

Mr. Sekhar has resided in India for a period of only 150 days, i.e., less than 182 days, during the financial year 2013-2014. Hence he cannot be considered as a "Person Resident in India" during the financial year 2014-2015 irrespective of the purpose or duration of his stay.

S.M: Answer the following:

How will you determine whether a particular business unit like a factory or office is a 'person resident in India' under Foreign Exchange Management Act, 1999?

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Provision: [Section 2(u), 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means (for artificial person):
   - i) Any person or body corporate registered or incorporated in India,
   - ii) An office, branch or agency in India owned or controlled by a person resident outside India,
   - iii) An office, branch or agency outside India owned or controlled by a person resident in India;
2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) Printex Computer being a Singapore based company would be person resident outside India.

b) Printex unit in Pune would be a 'person resident in India'.

c) However, Dubai Branch though not owned, but is controlled by Printex unit in Pune which is a person resident in India.

Hence, the Dubai Branch is a person resident in India.

Examine whether the following branches can be considered as a 'Person resident in India' under Foreign Exchange Management Act, 1999:

i) ABC Limited, a company incorporated in India established a branch at London on 1st Jan., 2021.

ii) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2021. The branch at New Delhi controls a branch at Colombo.

Provision: [Section 2(u), 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means (for artificial person):
   - i) Any person or body corporate registered or incorporated in India,
   - ii) An office, branch or agency in India owned or controlled by a person resident outside India,
   - iii) An office, branch or agency outside India owned or controlled by a person resident in India;
2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) In case of ABC Limited, a company incorporated in India would be person resident in India. London branch being established by a company incorporated in India, would be person resident in India.

b) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2021. The branch at New Delhi controls a branch at Colombo. Only a body corporate registered or incorporated in India is a 'person resident in India'. Hence, XYZ Ltd. is a 'person resident outside India', being a foreign company.

c) However, branch of XYZ Ltd. in Delhi is a 'resident in India'. Colombo Branch though not owned, but is controlled by XYZ unit in Delhi which is a person resident in India. Hence the Colombo Branch would be person resident in India.

MTP.OCT-19/M20: Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means (for artificial person):
   - i) Any person or body corporate registered or incorporated in India,

ii) An office, branch or agency in India owned or controlled by a person resident outside India,

iii) An office, branch or agency outside India owned or controlled by a person resident in India;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) Toy Ltd. being a Japanese company would be a person resident outside India as it is incorporated outside India.

b) Robotic unit in Mumbai would be a 'person resident in India' as it is branch in India owned or controlled by PROI.

c) Singapore branch though not owned, but is controlled by Robotic unit in Mumbai, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore Branch is a person resident in India.

N07: Examine with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:

a) NNM Ltd. an Indian Company having its registered office at Mumbai, India established a branch at New York USA on 1st April, 2005.

b) DDI Ltd. a company incorporated and registered in London established a branch at Kanpur in India on 1st April 2005.

c) DDI Ltd. has a branch office at Singapore which is controlled by its Kanpur branch.

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means (for artificial person):

i) Any person or body corporate registered or incorporated in India,

ii) An office, branch or agency in India owned or controlled by a person resident outside India,

iii) An office, branch or agency outside India owned or controlled by a person resident in India;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) NNM Ltd. an Indian Company having its registered office at Mumbai, India established a branch at New York USA on 1st April, 2005.Status of NNM Ltd is Person Resident in India as it is incorporated in India. Status of its New York branch is Person Resident in India as it is branch or office or agency outside India owned or controlled by PRI.

b) DDI Ltd. a company incorporated and registered in London established a branch at Kanpur in India on 1st April 2005.Status of DDI is Person Resident outside India as it is foreign incorporated company. But the status of its Kanpur branch is Person Resident in India as it is branch in India owned or controlled by PROI.

c) DDI Ltd. has a branch office at Singapore which is controlled by its Kanpur branch. Status of DDI's Singapore branch is also Person Resident in India as it is branch outside India owned or controlled by PRI i.e. Kanpur branch.

N09: Pamtop is a London based Company having several business units all over the world. It has manufacturing unit called Laptop with headquarters in Bengaluru. It has a branch in Seoul, South Korea which is controlled by the headquarters in Bengaluru. What would be the residential status under the FEMA, 1999 of Laptop in Bengaluru and that of Seoul branch?

Provision: [Section 2(v) & 2(w) of the FEMA, 1999 as follows]

1) Person resident in India Means (for artificial person):

i) Any person or body corporate registered or incorporated in India,

ii) An office, branch or agency in India owned or controlled by a person resident outside India,

iii) An office, branch or agency outside India owned or controlled by a person resident in India;

2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

a) The residential status of the Bengaluru branch of Pamtop Ltd is that of a Person Resident in India since it is a unit established in India.

b) It has a branch in Seoul, South Korea which is controlled by the headquarters in Bengaluru. Here, the Seoul branch of Pamtop Ltd. Is controlled by its Bengaluru branch which is a PRI, therefore, the residential status of the Seoul branch of Pamtop Ltd. shall be that of a Person Resident in India.

RTPN15: State in the light of FEMA, 1999, the residential status of the following corporations whether they are Person resident in India or Person resident outside India.

i. **MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2015.**

ii. **WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2015.**

iii. **WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.**

Provision: [Section 2(v) & 2(w) of the Foreign Exchange Management Act, 1999]

1) Person resident in India Means (for artificial person):
   i) Any person or body corporate registered or incorporated in India,
   ii) An office, branch or agency in India owned or controlled by a person resident outside India,
   iii) An office, branch or agency outside India owned or controlled by a person resident in India;
2) Any person other than PRI is PROI. [Sec 2(w)]

Explanation & Answer:

The given cases are discussed as follows:

i. MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2015. The residential status of the New York branch of MKP Ltd is that of a "Person resident in India" from the date of its establishment since it is owned by a person, i.e., a company, resident in India.

ii. WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2015, it can be concluded that WIP Ltd. is a "Person resident outside India" and since it owns a branch in Chandigarh, India, the residential status of the said Chandigarh branch is that of a "Person resident in India" from the date of its establishment.

iii. The Singapore branch of WIP Ltd. Is controlled by its Chandigarh branch which is a "Person resident in India". Therefore, the residential status of the Singapore branch of WIP Ltd. shall be that of a "Person resident in India".

Sec.5 – Current Account Transaction

MTP-April.21 (Old): In the light of the Foreign Exchange Management Act, 1999, (the Act) examine whether the given situations fall under "Current Account Transactions" or not as defined in the Act?

i) Mr. S, a resident in India, imports machinery from a vendor in UK for installing in his factory.

ii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian Bank account to the NRI brother's Bank account in New York.

Provision: [Section 5 of the FEMA, 1999 & Foreign Exchange Management (Current Account Transactions) Rules, 2000]

According to Section 5 of FEMA, 1999 with Foreign Exchange Management (Current Account Transactions) Rules, 2000, set out the provisions as to permissible, prohibited and restricted transaction on current account.

Explanation & Answer:

Accordingly, the given cases are discussed as follows:

i) An Indian resident imports machinery from a vendor in UK for installing in his factory. As per FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence it is a Current Account Transaction.

ii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York.

As per FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA, the transaction is over. Hence it is a Current Account Transaction.

S.M / N10: Mr. Suresh resided in India during the Financial Year 2013–14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014–15 and 2015–16.

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Provision: [Section 2(u), 2(v), 2(w), 2(j) & 5 of the FEMA, 1999 as follows]

1) Person resident in India Means:

Person residing in India for more than 182 days during the course of the preceding financial year but does not include-

A) A person who has gone out of India or who stays outside India, in either case-

i) For or on taking up employment outside India, or

ii) For carrying on outside India a business or vocation outside India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) A person who has come to or stays in India, in either case, otherwise than-

i) For or on taking up employment in India, or

ii) For carrying on in India a business or vocation in India, or

iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

2) Any person other than PRI is PROI. [Sec 2(w)]

3) However RBI has clarified in its AP circular no. 45 dated 8th December 2003, that students going abroad for studies will be considered as non-residents from the date they go out of India. This is because usually students start working there to take care of their stay and cost of studies.

4) Foreign Exchange for studies abroad: Release of foreign exchange for studies abroad under Liberalized remittance Scheme allows ***Resident*** Individual to withdraw $ 2,50,000 without RBI's permission.

Explanation & Answer:

The given cases are discussed as follows:

For FY 2014-15:

Residential Status and approval of Foreign Exchange for FY 2014-15

a) According to above provisions, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. In FY 2014-15, he will be considered as resident from 2014-15, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2014).

b) Mr. Suresh will be PRI till the date of leaving India. In that period he can avail LRS scheme and will get foreign exchange up to USD 2,50,000 for studies abroad on self-declaration basis.

Residential Status and approval of Foreign Exchange for FY 2015-16

Mr. Suresh will not be a resident during the financial year 2015-2016 Because in the financial year 2014-15, he has stayed in India for less than 182 days, therefore he cannot get foreign exchange in FY 2015-16.

Note - Answer given by ICAI in suggested answer and Module

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in

excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

N03: Examine whether the following transactions are permissible under Foreign Exchange Management Act, 1999:

i. Payment of remuneration to foreign technician.

ii. Remittance of dividend to non–residents.

Provision: [Relevant section 5 of the FEMA, 1999 as follows]

1) According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction.
2) Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Explanation & Answer:

The given cases are discussed as follows:

A) Hiring of foreign nations as technicians is permissible without restriction. There is no ceiling on payment which can be paid as per contract. Their salary can be remitted abroad after tax deductions, contribution to provident fund and other statutory deductions at source.

B) Remittance of dividend by company to whom the condition of dividend balancing is applicable cannot pay dividend to its foreign shareholder. But if the company is not under the condition of dividend balancing then it can pay dividend to its foreign shareholder.

PM, M04: Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

i. Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

ii. US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Provision: [Section 5 of the FEMA, 1999 & Foreign Exchange Management (Current Account Transactions) Rules, 2000]

According to Section 5 of FEMA, 1999 with Foreign Exchange Management (Current Account Transactions) Rules, 2000, set out the provisions as to permissible, prohibited and restricted transaction on current account.

Explanation & Answer:

Accordingly,The given cases are discussed as follows:

(i) As per Sch. I Rule 3 of Foreign Exchange Management (Current Account Transactions) Rules, 2000 remittance out of lottery winnings is prohibited. Hence, Mr. Sane cannot withdraw Foreign Exchange for the purpose of remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Schedule II to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence, for the purpose of sending a cultural troupe on a tour of U.S.A ,Mr. Sane can withdraw the Foreign Exchange after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture).

(iii) In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the to the Foreign Exchange Management Act, 1999.

Suggestion:

The above transaction does not require the CG approval if the payment is made out of the funds held in Resident Foreign Currency (RFC) Account of the remitter or funds are drawn out of funds held in Exchange Earner' Foreign Currency (EEFC)

account of the remitter.

PM,N04,J09: Mr. Atul, an Indian National desires to obtain Foreign Exchange for the following purposes:
Remittance of US Dollar 10,000 for payment for goods purchased from a party situated in Nepal.
Advise him, if he can get the Foreign Exchange and under what conditions.

Provision: [Section 5 of the FEMA, 1999 & Foreign Exchange Management (Current Account Transactions) Rules, 2000]

According to Section 5 of FEMA, 1999 with Foreign Exchange Management (Current Account Transactions) Rules, 2000, set out the provisions as to permissible, prohibited and restricted transaction on current account.

Explanation & Answer:

Accordingly, the given cases are discussed as follows:

As per Schedule I read with Rule 3 to the Foreign Exchange Management (Current Account Transactions) Rules, 2000, withdrawal of foreign exchange by any person for a transaction with a person resident in Nepal or Bhutan is prohibited. Hence Mr. Atul cannot withdraw Foreign Exchange for the purpose of remittance for payment for goods purchased from a party situated in Nepal.

M08:Mr. Kale, an Indian National desires to obtain foreign exchange for the following purposes:
A) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
B) US Dollar 100,000 for sending a tour of a cultural group to USA.
C) US Dollar 50,000 for meeting the expenses of his business tour to Europe.
Advise him, if he can get the Foreign Exchange and under what conditions.

Provision: [Section 5 of the FEMA, 1999 & Foreign Exchange Management (Current Account Transactions) Rules, 2000]

According to Section 5 of FEMA, 1999 with Foreign Exchange Management (Current Account Transactions) Rules, 2000, set out the provisions as to permissible, prohibited and restricted transaction on current account.

Explanation & Answer:

The given cases are discussed as follows:

A) Mr. Kale, an Indian National desires to obtain foreign exchange for the purpose of remittance of US Dollar 50,000 out of winnings on a lottery ticket. Remittance out of lottery winnings, is prohibited current account transactions & hence in the given case, Mr. Kale cannot withdraw Foreign Exchange for this purpose.

B) Mr. Kale, also desires to obtain foreign exchange of US Dollar 100,000 for sending a tour of a cultural group to USA. Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from CG, Ministry of Human Resources Development, (Department of Education and culture) & hence, in the given case, Mr. Kale can withdraw the Foreign Exchange after obtaining such permission.

C) For withdrawing foreign Exchange for a business tour irrespective of period of stay under liberalized remittance upto $ 2,50,000 without RBI's permission is allowed. Hence Mr. Kale can withdraw $ 50000 without RBI's permission

SM: Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
a) M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.
b) P requires U.S. $ 2,000 for payment related to call back services of telephones.

Provision: [Section 5 of the FEMA, 1999 & Foreign Exchange Management (Current Account Transactions) Rules, 2000]

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

Explanation & Answer:

The given cases are discussed as follows:

a) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

b) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose.

N08:Mr. Basu desires to draw foreign exchange for the following purposes:

a) Payment related to "Call back services" of telephones.

b) USD 1,20,000 for studies abroad on the basis of estimates given by the foreign university.

c) USD 25,000 for sending a cultural troupe on a tour of Europe.

Advise him, whether he can get foreign exchange and, if so, under what conditions.

Provision: [Section 2(j) & 5 of the FEMA, 1999 as follows]

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Explanation & Answer:

The given cases are discussed as follows:

a) Mr. Basu desires to draw foreign exchange for the purpose of payment related to "Call back services" of telephones. Payment related to 'call back services' of telephone is prohibited current account transaction & hence, Mr. Basu cannot draw foreign exchange for the same.

b) Mr. Basu also desires to draw USD 1,20,000 for studies abroad on the basis of estimates given by the foreign university. Liberalized Remittance scheme allow Resident Individual to withdraw upto $ 2,50,000 without RBI's permission for studies abroad. In the given case, USD 1,20,000 is required by Mr. Basu on the basis of estimates of the institution abroad & hence no permission from RBI is required.

c) Mr. Basu also desires to draw USD 25,000 for sending a cultural troupe on a tour of Europe. In case of sending a cultural troupe on a tour, irrespective of the amount involved prior approval of Central Government, Ministry of Human Resource Development (Dept. of Education and Culture) is required. However no permission is required in case of remittance out of Resident Foreign Currency (RFC) Account or (Exchange Earner's Foreign Currency) EEFC Account.

N17: Mr. T. Raghava has secured admission in the reputed and recognized university of Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in reputed Germany hospital. He desires to apply to the government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad for the said financial year. Decide the following as to the facts given in the question as per the provisions of FEMA 1999:

(A) As an individual, to what extent Mr.T Raghava may avail foreign exchange facilities for higher and technical education in Germany

(B) Can Mr. T. Raghava avail the facility and additional remittance in foreign exchange, beyond the limit, for the medical treatment?

Provision: [Section 2(j) & 5 of the FEMA, 1999 as follows]

1) **Sec 2(j):Current account transaction**" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:-

(i) Payments due in connection with foreign trade, other current business, services, and short term banking and credit facilities in the ordinary course of business,

(ii) Payments due as interest on loans and as net income from investments,

(iii) Remittances for living expenses of parents, spouse and children residing

abroad, and

(iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children;

2) According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Explanation:

The given cases are discussed as follows:

Mr. T. Raghava has secured admission in the reputed and recognized university of Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in reputed Germany hospital. He desires to apply to the government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad for the said financial year.

Answer:

(A) Mr. T Raghava will not require RBI's approval if total amount required for studies abroad & medical treatment do not exceed $ 2,50,000 as per Liberalized remittance Scheme.

(B) If the amount exceed the limit of $ 2,50,000 than approval of RBI is compulsory and rule 5 read with schedule III will be applicable.

J09: State the kind of approval required for the following transaction under the Foreign Exchange Management Act, 1999:

a) L, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of USD 20,000 is required for this purpose.

b) M requires USD 5,000 to make payment related to 'call back services' of telephone.

c) N wants to pursue a course in business management in New York. He wants to draw USD 50,000 towards expenses for studying abroad.

d) R wants to draw USD 20,000 to make donation to a charitable trust situated in South Korea.

Provision: [Section 2(j) & 5 of the FEMA, 1999 as follows]

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Explanation & Answer:

The given cases are discussed as follows:

a) L, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of USD 20,000 is required for this purpose. Foreign exchange drawals for cultural tours require prior permission/approval of the Government of India, Ministry of Human Resource Development (Dept. of Education and Culture) irrespective of amount of foreign exchange required. Hence, in the given case L, the singer is required to seek permission of the Government of India.

b) M requires USD 5,000 to make payment related to 'call back services' of telephone. Payment related to 'call back services' of telephone is prohibited current account transaction & hence, in the given case, M cannot draw foreign exchange for the same.

c) N wants to pursue a course in business management in New York. He wants to draw USD 50,000 towards expenses for studying abroad. As per liberalized remittance scheme, Resident Individual can withdraw upto $ 2,50,000 without RBI's permission. Therefore N can withdraw $ 50000 without RBI's permission.

d) R wants to draw USD 20,000 to make donation to a charitable trust situated in South Korea. R can donate $ 20,000 without RBI's permission referring to liberalized remittance scheme. Under the Liberalised Remittance Scheme, Gifts / Donation are now allowed up to US $ 2,50,000 for resident individual so.

PM: Mr. G., an Indian national desires to obtain Foreign Exchange on current account transactions for the following purposes:

(i) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company.

(ii) Remittance of hiring charges of transponder by TV channels.

Advise G whether he can obtain Foreign Exchange and, if so, under what conditions?

Provision: [Section 5 of the FEMA, 1999 read with Foreign Exchange Management (Current Account Transaction) Regulation, 2000 as follows]

1) Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited under Rule 3 read with Schedule I.
2) Drawal of foreign exchange for remittance of hiring charges of transponder by TV Channels, can be made with the prior approval of the Central Government (Ministry of Information & Broadcasting, Ministry of Communication & Information Technology).

Explanation & Answer:

The given cases are discussed as follows:

(i) Mr. G., Indian national desires to obtain Foreign Exchange on current account transactions for the purpose of payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company. Thus Mr. G cannot obtain the foreign exchange for commission on export for equity investment as it is prohibited.

(ii) Mr. G., also want to obtain Foreign Exchange on current account transactions for the purpose of remittance of hiring charges of transponder by TV channels. Mr. G can obtain any amount of foreign exchange for hiring charges of transponder after approval of specific Central Government (Ministry of Information & Broadcasting, Ministry of Communication & Information Technology).

Suggestion:

In the case of (ii) above, approval of concerned authority is not required if the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter. Further foreign Exchange can be drawn only from an authorised person.

SM ,RTP M06, M16: State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

a) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.

b) R wants to get his heart surgery done at UK. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

c) L wants to pursue a course in Fashion design in Paris. The Foreign Exchange drawal is US dollars 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses for studying abroad.

Provision: [Section 2(j) & 5 of the FEMA, 1999 as follows]

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Explanation & Answer:

The given cases are discussed as follows:

a) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose. Here, Prior approval of CG i.e. Ministry of Human Resource Development (Department of Education and Culture) is required for Cultural Tours for any amount of expenditure. Hence, in the given case, X, has to take prior approval of CG.

b) R wants to get his heart surgery done at UK. R can draw foreign exchange up to the estimate of

1. hospital/doctor abroad or estimate from doctor in India in that field of treatment and
2. prior permission/approval of RBI is required.

As per liberalized remittance scheme Resident individual can withdraw upto $ 2,50,000 without RBI's permission.

c) L wants to pursue a course in Fashion design in Paris. The Foreign Exchange drawal is US dollars 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses for studying abroad. As per liberalized remittance scheme Resident individual can withdraw upto $ 2,50,000 without RBI's permission. L can draw foreign exchange of US $ 50,000 to pursue a course in fashion design in Paris.

MTP-Oct.18: State & Explain the meaning of the term "Current Account Transaction" and the right of a citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999.

Provision: [Section 2(j), 5 & 6 of the FEMA, 1999 as follows]

Current Account Transaction Sec 2(j):

Current account transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:-

(i) Payments due in connection with foreign trade, other current business, services, and short term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

Rights of a Citizen to obtain foreign exchange:

1) According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

2) As per Sec. 6 of FEMA, 1999, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction subject to the conditions.

Mr. Ramesh of Nagpur wants to travel to Nepal and for this purpose proposes to draw Foreign Exchange. Specify.

i) Can Mr. Ramesh draw any Foreign Exchange for his journey?

ii) What are the purposes for which Foreign Exchange drawal is not allowed for Current Account Transaction?

Provision: [Section 5 (Rule 3 read with Schedule I)of the FEMA, 1999 as follows]

(i) **Drawal for Visit to Nepal:** As per Rules issued by RBI, drawal of foreign exchange is not allowed for travel to Nepal or Bhutan.

(ii) **Purposes for which Foreign Exchange drawal is not allowed for Current Account Transaction:**

1) Remittance out of lottery winnings.
2) Remittance of income from racing/riding, etc., or any other hobby.
3) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
4) Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies.
5) Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6) Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7) Payment related to "Call Back Services" of telephones.
8) Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

Answer:

Mr. Ramesh Cannot draw any Foreign Exchange for his journey.

Examine under the Foreign Exchange Management Act, 1999 whether "Payment of remuneration to foreign technicians" is a permissible transaction under the provisions of the said Act.

Provision: [Section 5 of the FEMA, 1999 as follows]

(i) As per Sec. 5 of the FEMA, 1999 any person can sell or draw foreign exchange to or from authorized person if such sale or drawal is a current account transaction.

(ii) Reasonable restrictions on current account transactions can be imposed by the C.G. No restriction is being imposed by C.G. on hiring of foreign nations as technicians.

Answer:

Salary payable to a foreign technician is a current account transaction. Salary to Foreign technician can be remitted abroad after tax deductions, contribution to provident fund and other deductions at source.

Mr. F, an Indian National desire to obtain foreign exchange for the following purposes:

(i) Payment of US $10,000 as commission on exports under Rupee State Credit Route.

(ii) US $ 30,000 for a business trip to U.K.

(iii) Remittance of US $ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what condition.

Provision: [Section 5 of the FEMA, 1999 read with Foreign Exchange Management (Current Account Transactions) Rules, 2000 as follows]

Sec. 5 of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Current Account Transactions) Rules, 2000 set out the provisions as to permissible, prohibited and restricted transaction on current account. Accordingly,

1) **Payment of Commission on exports:** Payment of commission on exports under Rupee State Credit Route, is prohibited.
2) **Business Trips:** Foreign Exchange for business trip upto US$ 2,50,000 can be obtained by any individual. If a person wants to exceed this limit, then prior permission of RBI is required. As the amount required is less than US $ 2,50,000.
3) **Remittance for payment as prize money:** Remittance of prize money exceeding US$ 1,00,000 for sports activity abroad other than International, National or State level body will require the prior permission of the C.G. (Ministry of Human Resource Development - Department of Youth Affairs and Sports).

Explanation & Answer:

The given cases are discussed as follows:

(i) Mr. F, an Indian National desire to obtain foreign exchange for the payment of Commission on exports. Mr. F cannot obtain foreign exchange because payment of commission on exports under Rupee State Credit Route, is prohibited.

(ii) Mr. F, also desire to obtain US $ 30,000 for a business trip to U.K. Foreign Exchange for business trip upto US$ 2,50,000 can be obtained by any individual. If a person wants to exceed this limit, then prior permission of RBI is required. As the amount required is less than US $ 2,50,000, Mr. F can obtain the foreign exchange without obtaining the permission of RBI.

(iii) Mr. F, also desire to obtain remittance of US $ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia Remittance for payment as prize money. Remittance of prize money exceeding US$ 1,00,000 for sports activity abroad other than International, National or State level body will require the prior permission of the C.G. (Ministry of HRD - Department of Youth Affairs and Sports). As the amount involved is more than US$ 1,00,000 and Mr. F is not an International, National

or State level body, he has to obtain the permission of the C.G. before remitting the prize money of US$ 2,00,000.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain Foreign Exchange from an Authorised Person.

N13:Examine with reference to the Provisions of the Foreign Exchange Management Act, 1999 and the rules made thereunder whether foreign exchange can be drawn for the following purposes:

(i) Mr.Gopal, a cine artist in India proposes to organize a cultural programme at Dubai and requires to draw foreign exchange US $ 1,00,000 for this purpose.

(ii) Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange US$ 40,000 for meeting expenses.

Provision: [Section 5 of the FEMA, 1999 read with Foreign Exchange Management (Current Account Transactions) Rules, 2000 as follows]

Section 5 of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Current Account Transactions) Rules, 2000 set out the provisions as to permissible, prohibited and restricted transaction on current account. Accordingly,

1) **Cultural Tours:** Foreign Exchange drawls for cultural tours require approval of the Ministry of Human Resource Development, (Department of Education and Culture) as prescribed in Schedule II to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 irrespective of the amount of foreign exchange required.
2) **Business Trips:** Foreign Exchange for business trip upto US$ 2,50,000 can be obtained by any individual. If a person wants to exceed this limit, then prior permission of RBI is required.

Explanation & Answer:

The given cases are discussed as follows:

(i) Mr. Gopal, a cine artist in India proposes to organize a cultural programme at Dubai and requires to draw foreign exchange US $ 1,00,000 for this purpose. Mr. Gopal can draw foreign exchange after approval of the Ministry of Human Resource Development, (Department of Education and Culture) irrespective of the amount of foreign exchange required.

(ii) Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange US$ 40,000 for meeting expenses. Mr. Shah can obtain the foreign exchange without obtaining the permission of RBI as foreign exchange for business trip upto US$ 2,50,000 can be obtained by any individual without any permission.

S.M, M15,MTP-Oct.18: Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

a) US$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.

b) Gift Remittance amounting US$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Provision: [Section 5 of the FEMA as follows]

1) **Remittance of Foreign Exchange for studies abroad:**
Individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. It is also provided that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding US $ 2,50,000 based on the estimate received from the institution abroad.
2) **Gift remittance exceeding US$ 10,000:**
Under the Liberalised Remittance Scheme, Gifts / Donation are now allowed up to US $ 2,50,000 for resident individuals. Therefore, Resident individuals can remit up to US $ 2,50,000 either for gift or for donation or for any other permitted current account and capital account transactions under the Liberalized Remittance Scheme. However, the remittance should not exceed US

$ 2,50,000 during a particular financial year.

Explanation & Answer:

The given cases are discussed as follows:

a) Rohan, an Indian Resident individual desires to obtain US$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university. In this case since US $ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

b) Mr. Rohan, also desires to obtain Foreign Exchange for gift remittance amounting US$ 10,000. Since the amount is to be gifted by a resident individual, Mr. Rohan, there is no need for any permission from the RBI. Under the Liberalised Remittance Scheme, Gifts / Donation are now allowed up to US $ 2,50,000 for resident individuals.

N16: Lifesys Limited, a billion dollar, Indian company wishes to create a chair in a reputed university in the U.S. This chair is for the department of computer science. The company wishes to obtain your advise in regard to the following with reference to the FEMA, 1999.

i) Is such "chair" creation permissible?

ii) What is the maximum amount that can be denoted for such chair?

iii) Any formalities to be complied with?

Provision: [Section 5 of the FEMA, 1999 read with Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 as follows]

Provisions as to Transactions relating to donation for creation of chair:

As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with Sec. 5 of the FEMA, 1999 donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or USD 50,00,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the RBI.

Answer:

Considering the above-mentioned provisions, following conclusions may be drawn:

i) "Chair" creation for the department of computer science in reputed university in the U.S. is permissible.

ii) Maximum amount that can be donated for such chair will be 1% of their foreign exchange earnings during the previous 3 financial years or USD 50,00,000, whichever is less without prior approval of the RBI.

iii) In case where donations exceeds 1% of their foreign exchange earnings during the previous 3 financial years or USD 50,00,000, whichever is less, it shall require prior approval of Reserve Bank of India.

MTP-Aug.18: Mr. Manthan, is deputed to India by his company to develop a software programme for a period of 3 years from 1st January, 2016. He is paid salary to his Indian bank account. On 1st May, 2018 he wants to remit his entire salaries ended till 30th April, 2018 to his home country USA. State in the light of relevant provision, the way the remittance of the salary may be done as per the Foreign Exchange of Management Act, 1999.

Provision: [Section 5 of the FEMA, 1999 read with Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 as follows]

As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, a person who is resident but not permanently resident in India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company may make remittance up to his net salary, after deduction of taxes, contribution to provident fund and other deductions.

For this purpose, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years, is a resident but not permanently resident.

Answer:

Mr. Manthan can remit his net salary, after deduction of taxes, contribution to provident fund and other deductions.

SM, N14:

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Provision: [Section 5 of the Foreign Exchange Management Act, 1999]

1) According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

   As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

   (i) Transactions for which drawal of foreign exchange is prohibited,

   (ii) Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and

   (iii) Transactions which require RBI's prior approval for drawl of foreign exchange.

2) Remittance of foreign exchange for medical treatment abroad requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Explanation & Answer:

The given cases are discussed as follows:

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Mr. Z can draw foreign exchange up to the USD 2,50,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital or doctor abroad.

Jan.21 (OLD: Mr. Janak, a person resident outside India i.e. USA has invested in five residential immovable properties under construction in Mumbai.

Each property was negotiated at Rs.1.50 crore with the companies owned by builders. This amount was to be paid in two instalments i.e. 50% on immediate basis on booking and the balance on possession of properties. The above transaction was done by the companies owned by builders through two brokers from USA on commission basis.

Mr. Janak as per term and conditions remitted 50% of the amount of all six immovable properties directly to the Builders.

Answer the following explaining the provision of the Foreign Exchange Management Act, 1999:

a. Whether investment by Mr. Janak and payment of commission on this transaction is permissible?

b. How much maximum amount of commission can be paid to each broker?

Provision: [Section 5 of the FEMA, 1999 read with Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 as follows]

a) The investment in immovable properties in India by Mr. Janak a resident outside India i.e. USA is a capital account transaction which is a permissible capital

account transaction as per Schedule II of the Foreign Exchange Management (Permissible Capital Account Transaction) Regulations which permit acquisition and transfer of immovable property in India by a person resident outside India.

b) As per Schedule III of the FEM (Current Account Transaction) Rules 2000, remittances by persons other than individuals of Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more, shall require prior approval of the Reserve Bank of India.

Explanation & Answer:

In view of the facts of the question and stated provisions:

a) Yes, the investment by Mr. Janak and payment of commission on this transaction is permissible.

b) Calculation of maximum amount of commission

The maximum amount of commission payable to each broker shall be:

No. of properties X Amount of each property X % of inward remittance X Commission % / number of brokers

= (5X1,50,00,000 X 50% X 5 %) / 2

= (5X75,00,000 X 5/100) / 2

= 18,75,000/2

= Rs.9,37,500 to each broker.

N06: Mr. Loma, an Indian National desires to obtain foreign exchange for the following purposes:

i. Payment of commission on exports under Rupee State Credit Route.

ii. Gift remittance exceeding US Dollars 10,000.

Advise him whether he can get foreign exchange and if so, under what condition?

Provision: [Section 2(j) & 5 of the FEMA, 1999 as follows]

As per schedule rule 5 read with schedule III of Foreign Exchange Management (Current Account Transactions) Regulations, 2000,Resident individuals can remit up to US $ 2,50,000 either for gift or for donation or for any other permitted current account and capital account transactions under the Liberalized Remittance Scheme.

Explanation & Answer:

The given cases are discussed as follows:

i. Mr. Loma, also desires to obtain foreign exchange for the payment of commission on export under Rupee State Credit Route, such payment is prohibited as referred in & hence Mr. LOMA cannot withdraw for the said purpose.

ii. The amount is to be gifted by a resident individual, Mr. LOMA, there is no need for any permission from the RBI. Under the Liberalised Remittance Scheme, Gifts / Donation are now allowed up to US $ 2,50,000 for resident individuals. Therefore, Resident individuals can remit up to US $ 2,50,000 either for gift or for donation or for any other permitted current account and capital account transactions under the Liberalized Remittance Scheme. However, the remittance should not exceed US $ 2,50,000 during a particular financial year.

Sec 6: Capital Account Transaction

M17:Ms.Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her. What are the provisions of FEMA governing such type of transaction?

Can Mr. Mittal join her daughter in acquiring such a flat in Australia?

Provision: [Section 6 of the FEMA, 1999 as follows]

1) The provisions governing the acquisition and transfer of immovable property outside India.

A person resident in India may acquire immovable property outside India:

a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of Reserve Bank.

b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015.

c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

3) A Company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

Explanation & Answer:

In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, In acquiring a Flat at Australia.

MTP-March18: Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions.

Provision: [Section 2(e), 6 of the FEMA, 1999 as follows]

1) As per Sec. 2(e) of FEMA Act, 1999 'capital account transactions' means:

a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India.

b) A transaction which alters assets or liabilities in India of person's resident outside India and includes transactions referred to in section 6(3).

2) The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. As per these regulations, capital account transactions may be classified under the following heads.

a) Permissible Capital Account Transaction of persons resident in India (Schedule I)

b) Permissible Capital transactions of persons resident outside India (Schedule II).

c) Prohibited Capital Account Transactions.

3) As per Schedule I of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident in India is permitted to make investment in Foreign Securities.

N07: Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. State its categories and also examine whether the following transactions are permissible or not under the above Act as Capital Account transactions:

(i) Investment by person resident in India in Foreign Securities.

(ii) Foreign currency loans raised in India and abroad by a person resident in India.

(iii) Export, import and holding of currency/currency notes.

(iv) Investment in a Nidhi Company.

(v) Trading in transferable development rights.

Provision: [Section 2(e), 6 of the FEMA, 1999 as follows]

1) As per Sec. 2(e) of FEMA Act, 1999 'capital account transactions' means:

a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3)(omitted).

2) The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. As per these regulations, capital account transactions may be classified under the following heads.

a) Permissible capital account transaction of persons resident in India (Schedule I)

b) Permissible Capital transactions of persons resident outside India (Schedule II).

c) Prohibited capital account transactions.

Answer:

a) In accordance with the provisions mentioned above, following transactions are permitted transactions:

(i) Investment by person resident in India in Foreign Securities.

(ii) Foreign currency loans raised in India and abroad by a person resident in India.

(iii) Export, import and holding of currency/currency notes.

b) In accordance with the provisions mentioned above, following transactions are prohibited transactions:

(i) Investment in a Nidhi Company is prohibited transactions.

(ii) Trading in transferable development rights are prohibited transactions.

PM,M04:Explain the restrictions, if any, under Foreign Exchange Management Act, 1999 in respect of the following issue and transfer of shares:

a) Issue of Equity Shares of Rs. 1 crore at face value accounting for 45 percent of post issue capital to non-resident Indians in U.S.A. on non-repatriation basis. The shares are issued by M/s ABC Knitwear Limited to finance the modernization of its plant.

b) A Non-resident Indian, who is holding Equity shares in M/s DEF Textiles Limited, proposes to sell some shares to another Non-resident Indian for a consideration of Rs. 50 lakhs and also transfer shares of face value of Rs. 25 lakhs to a person resident in India by way of Gift.

Provision: [Section 2(e) & 6 of the FEMA, 1999 as follows]

1) As per Sec. 2(e) of FEMA Act, 1999 'capital account transactions' means:

a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

2) According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

3) **Permissible CAT to PROI:**

(i) Investment in India by a person resident outside India, that is to say,

a) issue of security by a body corporate or an entity in India and investment there in by a person resident outside India; and

b) Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.

(ii) Acquisition and transfer of immovable property in India by a person resident outside India.

(iii) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.

(iv) Import and export of currency/currency notes into/from India by a person resident outside India.

(v) Deposits between a person resident in India and a person resident outside India.

(vi) Foreign currency accounts in India of a person resident outside India.

(vii) Remittance outside India of capital assets in India of a person resident outside India.

(viii) Undertake derivative contracts

Explanation & Answer:

The given cases are discussed as follows:

a) Issue of Equity Shares by M/s ABC Knitwear Limited of Rs. 1 crore to finance the modernization of its plant at face value accounting for 45 percent of post issue capital to non-resident Indians in U.S.A. on non-repatriation basis is permissible Capital Account Transaction to PROI if prior RBI approval is obtained for same as stated above.

b) A Non-resident Indian, who is holding Equity shares in M/s DEF Textiles Limited, proposes to sell some shares to another Non-resident Indian for a consideration of Rs. 50 lakhs and also transfer shares of face value of Rs. 25 lakhs to a person resident in India by way of Gift. This transaction is also permissible as stated in sec 6(3) above, but with prior approval of RBI.

N10: Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restrictions in respect of the following:

(i) Drawal of Foreign Exchange for payments due on account of Amortization of loans in the ordinary course of business.

(ii) A person, who was resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by companies in U.S.A.?

(iii) A person resident outside India proposes to invest in the shares of an Indian company engaged in plantation activities.

Provision: [Section 2(e) of the FEMA, 1999 as follows]

As per Sec. 2(e) of FEMA Act, 1999 'capital account transactions' means:

a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India.

b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

Explanation & Answer:

The given cases are discussed as follows:

(i) There is no restriction in FEMA in regard to drawl of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

(ii) When the person returns to India permanently, he becomes a resident in India. Section 6(4) provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security, etc. if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. In view of this, the person who returned to India permanently can continue to hold the foreign security acquired by him when he was resident in U.S.A.

(iii) No person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -

a) In the business of chit fund, or

b) As Nidhi Company, or

c) In agricultural or plantation activities or

d) In real estate business, or construction of farm houses or

e) In trading in Transferable Development Rights (TDRs).

Hence, purchase by a person resident outside India of shares of a company in India engaged in plantation activities is not permissible.

N12: Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds.

Provision: [Section 6(5) & 8 of the FEMA, 1999 as follows]

1) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

2) Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

3) A person shall sell the realised foreign exchange to an authorised person within 7 days if he has received such exchange as due or accrued remuneration for

services rendered, whether in or outside India, or in settlement of any lawful obligation or an income on assets held outside India, or as inheritance, settlement or gift and in all other cases within 90 days of its receipt.

Explanation & Answer:

The given cases are discussed as follows:

(i) Mrs. Chandra, a resident outside India, may acquire or hold any immovable property of his father in India by way of inheritance in both the conditions, firstly, where her father, a resident outside India, had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or as per the provisions of these Regulations or secondly, where her father, a resident in India.

(ii) Thus, accordingly Mrs. Chandra can sell the property and repatriate outside India the sale proceeds only with the prior permission of the RBI.

RTP M23: Grand Father of Mr. Narendra Kamal was farmer in undivided India and own large chunk of land. Due to partition, his grand-father along other family members evacuated from west Punjab, hence got a piece of agricultural land in compensation under Displaced Persons (Compensation and Rehabilitation) Act, 1954 in that area of east Punjab which is present day Haryana touching NCT.

Such land was inherited by Mr. Saurabh Kamal and Mr. Varun Kamal (both resides in India) in equal portion as per the testament of their Narendra' Grandfather. Mr. Narendra is only child of Mr. Saurabh. At death of Mr. Saurabh in 2005, his will was executed and piece of land belong to him transferred to Mr. Narendra.

Mr. Narendra in 2002, shifted to New Zealand, there he operate an accounting KPO firm.Mr. Narendra surrender Indian citizenship and hold kiwi passport. Now the children of Mr. Narendra is also grown-up. His son want to enter in film-making hence need funds, Mr.Narendra decided to sell the land inherited by him from his father (in-turn from his Grandfather). He approached Mr. Balraj, a property linker for identifying buy for said land.

It was decided that part of proceed will be used by son of Mr. Narendra and rest will be planned to invest in New Zealand only.

You are required to advise Mr. Narendra can he sell/transfer the land he owned in India as per the relevant provisions of FEMA.

Provision: [Section 6(5) & 8 of the FEMA, 1999 as follows]

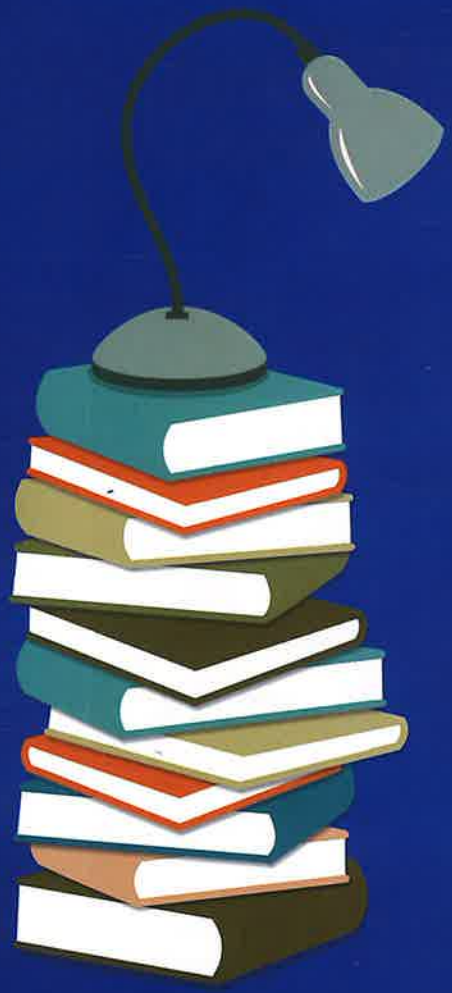
1) According to Section 6 (5) of The Foreign Exchange Management Act 1999, it is provided that a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or the property was acquired, held, or owned by such person when he was resident in India or inherited from a person who was resident in India (like in given case inherited by Mr. Narendra in 2005).

2) Further, a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section as per the second schedule of the FEM (Permissible Capital Account Transaction) Regulation, 2000.

Explanation & Answer:

The given cases are discussed as follows:

According to above provisions, Mr. Narendra allowed transfer (sale) the agriculture land and after seeking permission of RBI can repatriate the sale proceeds, outside India.



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