CA Inter - Corporate & Other Laws

Corporate Law

Companies Act, 2013

Preliminary

1. The information extracted from the audited Financial Statement of Pacific Solutions Private Limited as on 31st March, 2023 is as below:
Paid-up equity share capital Rs. 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs. 10 each. There is no change in the paid-up share capital thereafter. The turnover is Rs. 2,00,00,000.

   It is further understood that Smart Software Limited is holding 2,00,000 equity shares, fully paid-up, of Pacific Solutions Private Limited. Pacific 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 2023-24. The ROC has issued a notice to Pacific 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 Pacific Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
   (ii) Whether Pacific Solutions Private Limited has defaulted in filing its financial statement?

Answer:
i) According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-
(A) paid-up share capital not exceeding four crore rupees; and
(B) turnover as per profit and loss account for the immediately preceding financial year not exceeding forty crore rupees:

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 the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Smart Software Limited (a public company) holds 2,00,000 equity shares of Pacific Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs. 10 totalling Rs. 50 lakh). Hence, Pacific Solutions Private Limited is not a subsidiary of Smart Software Limited and hence it is a private company and not a deemed public company.
Further, the paid up share capital (Rs. 50 lakh) and turnover (Rs. 2 crore) is within the limit as prescribed under section 2(85), hence, Pacific Solutions Private Limited can be categorised as a small company.

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

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.
Pacific Solutions Private Limited being a small company is exempted from filing a cash flow statement as a part of its financial statements. Thus, Pacific Solutions Private Limited has not defaulted in filing its financial statements with Registrar of Companies.

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

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

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

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

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

Company	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.**

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

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

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;
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.

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.

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.

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.
According to section 2(87), 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.

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 by MCA, it is clarified that the shares held by a company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship.
Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding– subsidiary relationship.

Incorporation

3. Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No

new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

Answer:
According to section 3A of the Companies Act, 2013, 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, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
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.

4. P 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. 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?

Ans:
(a) (i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
Hence, in the instant case, the Central Government can revoke the license given to P 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) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

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

(iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)]
In the instant case, P Cricket Club cannot be merged with Z Net Private Limited as the objects of both the companies are different and not similar.

5. 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:
Whether refusal of document by the company is valid?
Whether Suresh can claim damages for it?

Answer:
Serving of document to Company
In terms of Section 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-
registered post, or
speed post, or
courier service, or
leaving it at its registered office, or
means of such electronic or other mode as may be prescribed.
In the instant case, Suresh dispatches some document to AB Ltd. by courier whereas the AOA of said company provides that documents may be served upon the company only through Speed Post. AB Ltd. did not accept the documents on the ground that it is in violation of the AOA.

Taking into account the above provision,
(i) Refusal of documents by AB Ltd. is not valid as sending of documents by courier to AB Ltd. is complying with the provisions given under section 20(1) of the Act.
(ii) Since, the AB Ltd. is at fault by not accepting the documents sent by Suresh, YES, he can claim the damages for any loss occurred to him.

6. Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been singing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firoz bhai. Mr. Parag signed partnership deed with Firoz bhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

Answer:
As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal

should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.
A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

Prospectus and Allotment of Securities

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

Answer:
As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013.
According to section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-

- ✓ the amount stated in the prospectus as the minimum amount has been subscribed, and
- ✓ the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

The amount payable on application on every security shall not be less than 5% of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
In the question, Kite Limited issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.
Further, it revealed that Kite Limited has applied for listing of shares in 3 recognized stock exchanges of which all three applications were rejected.

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

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

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from the stock exchanges where it has applied, before making the public offer. Since all three recognized stock exchanges, where the company has applied for enlisting, have rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.
Consequently, Kite Limited shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

8. Ram Limited is planning to make a private placement of securities. The Managing Director arranged to obtain a brief note from some source explaining the salient features of the issue of private placement that the Board of Directors shall keep in mind while approving the proposal on this subject. The brief note includes, inter alia, the information / suggestions on the following points:
   (i) A private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. he aforesaid ceiling of identified persons shall not apply to the offer made to the qualified institutional buyers but is applicable to the employees of the Company who will be covered under the Company's Employees Stock Option Scheme.
   (ii) The offer on private placement basis shall be made only once in a financial year for any number of identified persons not exceeding 200.

   The Company solicits your remarks on the points referred above as to whether they are valid or not? Reasoned remarks should be given in accordance with the provisions of the Companies Act, 2013.

Answer:
As per the provisions of sub-section (2) of section 42 of the Companies Act, 2013, private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year subject to such conditions as may be prescribed. It is also provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option as per provisions of section 62(1)(b) shall not be considered while calculating the limit of two hundred persons. According to Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.
As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

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

(i) The company is correct in proposing that private placement shall be made only to a select group of identified persons not exceeding 200 in a financial year. This part of the proposal is correct.
The company is also correct in proposing that the aforesaid ceiling of identified persons shall not apply to offer made to the qualified institutional buyers, but the company is not correct in saying that the said ceiling is applicable to employees covered under the Company's Employee Stock Option Scheme. Hence, the second part of the proposal is only partially correct.

(ii) The Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in aggregate in a financial year.
Keeping the ceiling of 200 persons in aggregate during a financial year, offer of private placement can be made more than once in a financial year. Therefore, the second statement is not fully correct.

Share Capital and Debentures

9. SKS Limited issued 8% Rs. 1,50,000; Redeemable Preference Shares of Rs. 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?
Can the company include the dividend unpaid in the above issue of redeemable preference shares?

Answer:
According to section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—
with the consent of the holders of three-fourths in value of such preference shares, and
with the approval of the Tribunal on a petition made by it in this behalf,

issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

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

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

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

10. 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 Rs. 100 Lakh divided into 10 Lakh equity shares of Rs. 10 each. The subscribed and paid-up share capital on that date is Rs. 80 Lakh divided into 8 Lakh equity shares of Rs. 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.
In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.

Answer:
According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:
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.
It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.
According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.
Accordingly, in the light of the stated facts, following shall be the answers:

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

11. 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.

Answer:
Under Section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, 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 (valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed).

In the present case, Shilpi Developers India Limited's allotment, to be classified as shares issued 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, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

12. OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 30,000 per month, to buy 500 partly paid-up Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

Answer:
Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:
a) The employee must not be a 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

In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of Rs. 30,000 per month and loan taken to buy 500 partly paid up equity shares of Rs. 1000 each in OLAF Ltd.

Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons:
The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs. 1.8 Lakhs.
The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

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

Answer:
Appointment of Debenture Trustee: Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.
Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-
(1) beneficially holds shares in the company;
(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
Thus, based on the above provisions answers to the given questions are as follows:

(i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee.
(ii) A creditor whom company owes Rs. 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures, cannot be appointed as a debenture trustee.

Deposits

14. Rashmika Ltd. received share application money of Rs. 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit.
The share application money of Rs. 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 Rs. 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.

Answer:
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;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, Rashmika Limited has received Rs. 50 Lakhs as share application money on 01.06.2021. It failed to allot shares within the prescribed limit. 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.

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.

15. Perfect Limited Company raised the secured deposit of Rs.100 crores an 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	Rs. 60 crores
Plant & machinery	Rs. 20 crores
Factory Shed	Rs. 20 crores
Trade Mark	Rs. 20 crores
Goodwill	Rs. 25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

Answer:
As per second proviso to Section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in
accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.
The other notable points are:
The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
Total value of security should not be less than the amount of deposits accepted and interest payable thereon.
The market value of assets subject to charge shall be assessed by a registered valuer.
The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	**Amount (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

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.

16. The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?

Answer:
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:

- ✓ the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
- ✓ the loan is provided by the promoters themselves or by their relatives or by both; and
- ✓ such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of J 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.
In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.

Registration of Charges

17. 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?

Answer:
As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

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. 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.

Thus, when Krish (Private) Limited obtains working capital loans from financial institut ions 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. 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. 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.

18. 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.

Answer:
According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also the subject -matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge. Hence, the stand

taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

19. Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

Answer: According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.
Thus, the contention of NRT Ltd. is correct

20. Nivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

Answer:
In the given question, Nivedita Limited could not get response from the bank with respect to a letter confirming the settlement of term loan for which the charge was created. The below steps shall be applicable to register the charge in the given circumstances: According to Section 82(2) of the Companies Act, 2013, the Registrar shall, on receipt of intimation under sub-section (1), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

Intimation regarding Satisfaction of Charge
Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from 30 days to 300 days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of prescribed additional fees.

Management and Administration

21. The paid-up share capital of Golden Shoes Limited is Rs. 25,00,000 divided into 2,50,000 equity shares of Rs. 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

Answer:
Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.
Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.
Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

22. 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) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.

Answer:
(i) Rule 17 of the Companies (Management and Administration) Rules, 2014 provides that no explanatory statement as required under section 102 of the Companies Act, 2013, need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement for the resolution proposed to be passed at the meeting.

(ii) 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.

23. A company received a proxy form 54 hours before the time fixed for the start of the meeting. The company refused to accept the proxy form on the ground that the Articles of the company provided that a proxy form must be filed 60 hours before the start of the meeting. Define proxy and decide under the provisions of the Companies Act, 2013, whether the proxy holder can compel the company to admit the proxy in this case?

Answer:
Section 105 of the Companies Act, 2013 deals with the provisions of proxy for meetings.
Section 105(1) of the Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
Further, section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
In the given case, the company received a proxy form 54 hours before the time fixed for start of the meeting. The Company refused to accept proxy on the ground that articles of the company provides filing of proxy before 60 hours of the meeting. In the said case, in line with requirement of the above stated legal provision, a proxy received 48 hours before the meeting will be valid even if the articles provide.

24. Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

Answer: Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

25. 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? Mr. Krish, a shareholder of Moon Light 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?

Answer:
Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules, 2014 read with section 118 of the Companies Act, 2013, each page of every such book shall be 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 thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of Moon Light Ltd. can be signed in the absence of Mr. Shreeram, by any director, authorized by the Board in this respect.

In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company.
As Mr. Krish, in the given case, is the member of the company, he shall be entitled to receive a copy of any minutes book of general meeting.

26. Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of Rs. one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.
    (i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.
    (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

Answer:
(i) In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under:
"In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting."

Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. ` 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.

(ii) The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:

- ✓ Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.
- ✓ The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.
- ✓ In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.
- ✓ In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.
- ✓ A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

Declaration of Dividend

27. Mr. Ambrish, holder of 1000 equity shares of Rs. 10 each of AB Ltd. approached the Company in the last week of September, 2022 with a claim for the payment of dividend of Rs. 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2014 with respect to the financial year 2013-14. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.
Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

Answer:
According to section 124 of the Companies Act, 2013:
(1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.
(2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF) – Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.
(3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the

name of Investor Education and Protection Fund along with a statement containing the prescribed details.
(4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.
As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund)
Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.
In the given question, Mr. Ambrish 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 (Rs. 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. Ambrish for the payment of dividend of Rs. 2,000 (declared in Annual General Meeting on 31.8.2014).
In terms of the above stated provisions, Mr. Ambrish should be advised as under:
(i) If Mr. Ambrish 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.

28. The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

Name of the Company	**Dividend Declaration Date**	**Dividend Amount**	**Remarks**
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period.

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value Rs. 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.
In the context of aforesaid case-scenario, please answer to the following question(s): -
(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?
(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

Answer:

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the *Nidhis*, subject to the following modification:
In case the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.
(i) In case of Suvaas Limited Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.
The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.
Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

Dividend Amount	**Dividend Declaration Date**	**Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022**	**Interest**
800	**25.08.2022**	800×18%×29/365	**11**

In case of Bhandol Nidhi Limited Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was Rs. 100.
So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).
Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.
Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.
Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

Accounts of Companies

29. 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:-

S 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.

Answer:
In case of Nidhi company –
Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if anintimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the
company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ₹ 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

(i) Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital
(ii) All the remaining members holding individually more than 1.2% of the total paid -up share capital of the company.
For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

30. Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.
Advise, how would Dhiman Limited deal with the consolidation of such financial statements.

Answer:
According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place
of business in India. Provided also that in the case of a subsidiary which has been incorporated outside India, which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.
It has also been clarified vide General Circular that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.
Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.
Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.
Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Audit and Auditors

31. 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?

Ans: According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re appoint—
(a) an individual as auditor for more than one term of five consecutive years; and
(b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re appointment as auditor in the same company for five years from the completion of his term;
(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in- charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & Associates and joins Gupta & Gupta firm.
As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years.

32. ABC ltd appointed an individual firm, Sagar & Co. Chartered Accountants as Auditors of the Company of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Sara, wife of Mr. Sagar, invested in the equity shares face value of Rs. 1 lakh of ABC Limited on 15th October, 2019. Mr. Sagar is thereby advised by his partners that he can't continue as an Auditor and must vacate the office immediately. But Sagar & Co. continues to function as statutory auditors of the company. Advice as per the provisions of the Companies Act, 2013. Would your answer be different, if Sara acquired shares of Market Value of 1.5 Lakh?

Answer:
According to section 141(3)(d), a person who, or his relative or partner—

- is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall be disqualified from becoming an Auditor

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed (Rs. 1,00,000)
In the event of acquiring any security or interest by relative above 1 lakh, corrective action to maintain limit shall be taken by auditor within 60 days of such acquisition.

In the case given, Mr. Sagar, Chartered Accountants, did not hold any such security. But Mrs. Sara, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit. Further the Section provides that if disqualification is attracted, he gets a time period of 60 days for taking corrective action.
Since Sagar & Company is not attracted to any disqualification, it can continue to function as auditors of the Company even after 15th October 2019 i.e. after the investment made by his wife in the equity shares of ABC Limited.

Since the relative is allowed to hold security or interest in the company of face value not exceeding 100000, Market value is irrelevant. Assuming that the face value of such shares remain within the limit of 1 lakh. The disqualification shall still not be attracted.

33. HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors1 as per the provisions of the Companies Act, 2013.

Answer:
Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

34. 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?

Answer:
According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.
In the said instance, the Board of directors of 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.
In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013. In the light of the above provisions, it is advised that the Statutory Auditor not to take up the above stated assignment.

Companies Incorporated Outside India

35. What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014?

Answer:
According to section 389 of the Companies Act, 2013:
No person shall issue or circulate prospectus for subscription in securities of a company incorporated or to be incorporated outside India unless before the issue or circulation in India;

- ✓ 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
- ✓ the prospectus states on the face of it that a copy has been so delivered, and
- ✓ Any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed are attached.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

- ✓ any consent to the issue of the prospectus required from any person as an expert;
- ✓ 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;
- ✓ a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
- ✓ a copy of underwriting agreement; and
- ✓ a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

36. Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.

Answer:
Every foreign company shall, in every calendar year,—

- ✓ 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
- ✓ deliver a copy of those documents to the Registrar.

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:
(1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
(2) 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.
(ii) 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.
(iii) 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)]

Limited Liability Partnership Act

37. Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

Ans:
According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
Provided, 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 body corporates shall act as designated partners.
In the given question, at least Mr. Prateek and one nominee of any body corporate shall be designated partners.

38. Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

Answer:
A LLP may be wound up by the Tribunal:

- ✓ if the LLP decides that LLP be wound up by the Tribunal;
- ✓ if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- ✓ if unable to pay its debts
- ✓ if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- ✓ if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- ✓ if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

39. Mohit is a creditor of ABC LLP. He has a claim of Rs. 10,00,000 against the LLP. However, the assets of the LLP are valued at only Rs. 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of Rs. 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

Answer:
A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from

partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence, the creditors of ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit can not claim his deficiency of ` 3,00,000 from the partners of ABC LLP.

Other Laws

FEMA

40. Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India. Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

Answer:
Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.
Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.
Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

41. Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 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 2021-2022 and 2022-2023? 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?

Answer:
According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding

financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 20212022 till 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

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.

42. Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:
    - 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, 2004.
    - ii) WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.
    - iii) WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.

Answer:

- i) MKP Limited is incorporated in India. Therefore, it is a 'person resident in India'. MKP Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of MKP Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India' and so the New York branch is a 'person resident in India'.
- ii) WIP Ltd. as well as Chandigarh branch of WIP Ltd. is a 'person'. WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India. The Chandigarh branch of WIP Ltd. is a 'person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident outside India'.
- iii) The Singapore branch of WIP Ltd., though not owned, is controlled by the Chandigarh branch. The Singapore branch is a person resident in India' since it falls

under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

General Clauses Act

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

Ans:
Good Faith
In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done honestly but with negligence may also be termed as done in good fai th as per the General Clauses Act, 1897.

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

44. 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".

Ans:
(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'.

45. A confusion regarding the meaning of 'financial year' arose between 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 the financial year under the provisions of the General Clauses Act, 1897? How it is different from calendar year?

Answer:
According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.
The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December.

Difference between Financial Year and Calendar Year: Financial year starts from first day of April, but Calendar Year starts from first day of January.

46. Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023.

Answer:
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".
In the given instance, Sheesham Limited declared dividend for its shareholder in its Annual General Meeting held on 8th August 2023. 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 9th August 2023 to 7th September 2023. In this series of 30 days, 8th August 2023 will be excluded and last 30th day, i.e. 7th September 2023 will be included. Accordingly, Sheesham Limited will be required to pay dividend within the time frame of 9th August 2023 and 7th September 2023 (both days inclusive).

47.

i) Kiran and Naman 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 29.04.2023, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897?

ii) Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

Answer:

(i) 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.
In the given question, the court fixed the date of hearing of dispute between Kiran and Naman, on 29.04.2023, which was subsequently announced to be a holiday.
Applying the above provisions we can conclude that the hearing date of 29.04.2023, shall be extended to the next working day.

(ii) According to section 3(23) of the General Clauses Act, 1897, 'Government' or 'the Government' shall include both the Central Government and State Government.
Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.
Thus, when the Income Tax Act, 1961, provides that gratuity paid by the government to its employees is fully exempt from tax, the exemption from gratuity income will be available to the State Government employees also.

Interpretation of Statutes

48. At the time of interpreting a statutes what will be the effect of 'Usage' or 'customs and Practices'?

Ans:
Effect of usage: Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight. In this connection, we have to bear in mind two Latin maxims:

(i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and
(ii) 'Contemporanea exposito est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

49. Explain the following:
(i) Historical Setting
(ii) Use of Foreign Decisions

(iii) Reading statute as a whole
(iv) Without Prejudice with example

Ans:
(i) Historical Setting: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understand ing and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

(iii) It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.
One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.
Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

(iv) When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.
Example**:** Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains……"
This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

50. Nehul, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not required by law to disclose any interest as he is not personally interested or

concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Nehul is correct?

Answer:
Normally, where the words of a statute are in themselves clear and unambiguous, then these words should be construed in their natural and ordinary sense and it is not open to the court to adopt any other hypothetical construction. This is called the rule of literal construction. This principle is contained in the Latin maxim "absoluta sententia expositore non indeget" which literally means "an absolute sentence or preposition needs not an expositor". In other words, plain words require no explanation.
Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.
When we talk of disclosure of 'the nature of concern or interest, financial or otherwise' of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.

In the given question, Nehul (a director) did not disclose his interest in a matter placed before the Board Meeting (in which his sister has interest), as he is not personally interested or concerned in the proposal.
Here, he ought to have considered broader meaning of the provision of law; and therefore, even though he was personally not interested or concerned in the proposal, he should have disclosed the interest.