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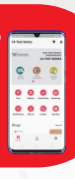

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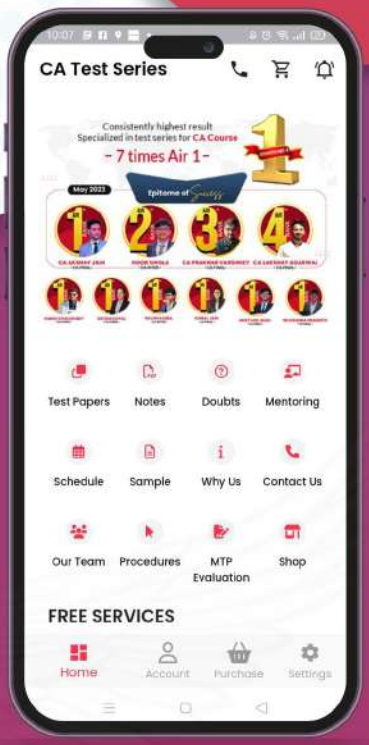

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CORPORATE AND OTHER LAWS

100 IMPORTANT QUESTIONS

Q-1 XYZ Ltd., a small technology start up, is preparing its financial statements for the fiscal year ending March 31, 2023. The company has one shareholder, and its financial statements need to comply with the provisions of the Companies Act, 2013. XYZ Ltd. is uncertain about the inclusion of a specific component in its financial statements.

(a) Identify the **components that constitute a financial statement** according to the Companies Act, 2013.

(b) Explain the **specific exemption** related to a particular component for One Person Company (OPC), small company, and dormant company.

Ans-

(a) The components that constitute a financial statement according to the Companies Act, 2013, include:

(i) Balance Sheet: A snapshot of the company's financial position at the end of the financial year.

(ii) Profit and Loss Account (or Income and Expenditure Account for non-profit activities): A summary of revenues, expenses, and profits or losses incurred during the financial year.

(iii) Cash Flow Statement: A statement showing cash inflows and outflows for the financial year, providing insights into liquidity.

(iv) Statement of Changes in Equity (if applicable): A statement tracking changes in the equity section of the balance sheet, reflecting transactions with shareholders.

(v) Explanatory Notes: Additional information or explanations attached to or forming part of the documents.

(b) The specific exemption related to the financial statement component for One Person Company (OPC), small company, and dormant company is related to the Cash Flow Statement. According to the Companies Act, 2013, these types of companies are not required to include the cash flow statement in their financial statements.

Q-2 ABC Ltd., a well-established technology company, holds a substantial interest in XYZ Innovations Pvt. Ltd., a startup in the same industry. Analyze the relationship between ABC Ltd. and XYZ Innovations Pvt. Ltd. under the Companies Act, 2013, focusing on the concept of an "**associate company.**" Additionally, explain the conditions that would classify their collaboration as a **"joint venture."**

Ans-

(a): Associate Company Relationship

ABC Ltd. and XYZ Innovations Pvt. Ltd. share a relationship under the Companies Act, 2013, where ABC Ltd. holds a significant influence over XYZ Innovations Pvt. Ltd. Despite not being a subsidiary, **XYZ Innovations Pvt. Ltd. is considered an "associate company" of ABC Ltd. This association arises from ABC Ltd.'s control of more than twenty per cent of the total voting power in XYZ Innovations Pvt.** Ltd. This significant influence allows ABC Ltd. to impact strategic decisions or participate actively in the business decisions of XYZ Innovations Pvt. Ltd.

(b): Joint Venture Conditions

In the context of an associate company, the collaboration between ABC Ltd. and XYZ Innovations Pvt. Ltd. could be deemed a "joint venture" if certain conditions are met. A joint venture entails a **joint arrangement where the participating parties jointly control** the venture and have rights to the net assets of that arrangement.

In the case of ABC Ltd. and XYZ Innovations Pvt. Ltd., the joint venture status would be established if both companies share equal control over the collaboration. This implies that

decisions regarding the joint venture are made jointly by ABC Ltd. and XYZ Innovations Pvt. Ltd., with both having an equal say in the management and strategic direction.

Furthermore, for the arrangement to be a joint venture, both parties must have rights to the net assets generated by the collaborative effort.

This case study illustrates how the concepts of an "associate company" and a "joint venture" play out in the dynamic relationship between a larger, influential company (ABC Ltd.) and a smaller, innovative startup (XYZ Innovations Pvt. Ltd.) within the technology industry.

Q-3 XYZ Ltd., a multinational company with its parent company incorporated outside India, operates in the field of manufacturing and has subsidiaries worldwide. Explain the concept of **a "financial year"** as per the Companies Act, 2013, concerning XYZ Ltd.'s situation. Additionally, discuss the provisions related to the financial year for a company with international affiliations and highlight the authority responsible for granting exceptions.

Ans-

As per the Companies Act, 2013, the **"financial year"** for a company like XYZ Ltd., which has its parent company incorporated outside India, refers to the period ending on the 31st day of March each year. However, in cases where the company is incorporated on or after the 1st day of January, the financial year ends on the 31st day of March of the following year.

Provisions for Companies with International Affiliations:

If XYZ Ltd. is a holding, subsidiary, or associate company of a foreign entity and is required to follow a different financial year for consolidating its accounts outside India, it can apply to the Central Government for approval. The Central Government, upon receiving an application in the prescribed form, may grant permission for XYZ Ltd. to adopt any period as its financial year, regardless of whether that period is a year.

In summary, XYZ Ltd., being a multinational company with international affiliations, can seek approval from the Central Government to align its financial year with the global

reporting standards of its foreign parent company. The Central Government holds the authority to grant exceptions to the prescribed financial year, taking into consideration the unique circumstances of companies with international operations.

Q-4 Green Limited is a registered public company having the following:

i	Directors and their Relatives	18
ii	Employees	26
iii	Ex-Employees (Shares were allotted during employment)	15
iv	Members holding shares jointly (7 x 2)	14
v	Other Members	137

The Board of Directors of Green Limited proposes to convert the company into **a private limited company.** Referring the provisions of the Companies Act, 2013, advise:

i. Whether the company can be converted into a private company?

ii. Whether existing number of members need to be reduced for the proposed private company?

Ans-

According to Section 2(68) of the Companies Act, 2013**, "Private Company**" means a company having prescribed minimum paid-up share capital, and which by its articles, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that following shall not be included in the number of members -

(A) Persons who are in the employment of the company; and

(B) Persons who, having been formerly in the employment of the company, were members of the Company while in that employment and have continued to be members after the employment ceased.

Accordingly, total Number of members in Green Limited are:

i	Directors and their relatives	18
ii	Joint shareholders (7x1)	7
iii	Other Members	137
	Total	162

(i) Green Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200,

so Green Limited can be converted into a private company.

(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

Q-5 MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of Rs. 2 crore and turnover of Rs. 60 crore. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is Rs. 30 crore?

Ans-

Small Company: According to **Section 2(85)** of the Companies Act, 2013, Small Company means a company, other than a public company,—

(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively.

(i) In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid up share capital of Rs. 2 crore and having turnover of Rs. 60 crore. Since only one criteria of share capital not exceeding Rs. 4 crore is met, but the second criteria of turnover not exceeding Rs. 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is Rs. 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Q-6 Miss Priya Gupta, a dedicated educator, wishes to establish a non-profit organization in India to provide quality education to underprivileged children. She intends to form a company under Section 8 of the Companies Act, focusing on charitable and educational objectives. Answer the following questions based on the given case scenario.

1. Who can issue a license under Section 8(1) of the Companies Act?

2. What are the conditions for obtaining a license under Section 8(1)?

Ans-

1. The license under **Section 8(1)** of the Companies Act can be issued by the Central Government (Registrar of Companies on its behalf). In this case, the ROC may grant such a license if certain conditions are satisfied.

2. The conditions for obtaining a license under Section 8(1) include:

a. The company's objects should be for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any similar objectives.

b. The company must intend to apply its profits or other income to promote its objects.

c. The company must have the intention to prohibit the payment of any dividend to its members.

Q-7 Playground Pals Cricket Association was established as a Section 8 company under the Companies Act, 2013, with the primary objective of promoting cricket through district-level coaching and friendly matches. Recently, there have been reports of fraudulent activities within the association, Champions Chess Alliance was established as a Section 8 company under the Companies Act, 2013, aiming to promote chess through training programs at the district level and organizing friendly tournaments. Lately, suspicions have arisen about fraudulent activities within the organization, including the unauthorized distribution of dividends to its members. Mr. B, a concerned member, decides to file a complaint with the

Regulatory Authority to prevent further fraudulent conduct by seeking the revocation of the company's license.

(i) Are there provisions in the Companies Act, 2013 that allow for the revocation of the license? If so, specify the relevant provisions.

(ii) Is the winding up of the company a possible course of action?

(iii) Can Champions Chess Alliance merge with Strategy Games Limited, a company specializing in the development of strategic board games?

Ans-

(i) According to section 8(6) of the Companies Act, 2013, the Central Government holds the authority to revoke a company's license if it violates any conditions or requirements specified under section 8, conducts its affairs fraudulently, or acts in a manner contrary to its stated objectives, prejudicial to public interest. Prior to revocation, the Central Government must issue a written notice of intent and provide the company with an opportunity to present its case. Hence, in the current scenario, the license of Champions Chess Alliance can be revoked as fraudulent activities, including unauthorized dividend distribution, contravene the conditions set forth under section 8.

(ii) In the event of license revocation, the Central Government may, by order, direct the winding up of the company if it deems it essential in the public interest. This action can only be taken after affording the company a reasonable opportunity to be heard, as per Section 8(7). Therefore, winding up is a viable option in this case.

(iii) Section 8(10) stipulates that a company registered under this section can only amalgamate with another company registered under the same section and having similar objectives. Considering the diverse nature of activities between Champions Chess Alliance and Strategy Games Limited, with one focused on chess promotion and the other on strategic board games, a merger is not feasible as their objectives are not similar.

Q-8 Surya Ventures Limited, initially authorized for engaging in Information Technology services and related businesses, is considering a shift to the Renewable Energy sector due to changing market dynamics. The management intends to **include Renewable Energy projects in its objects clause.** Assess whether such a modification is permissible under the provisions of the Companies Act, 2013.

Ans-

The Companies Act, 2013 introduces flexibility in altering the memorandum of a company, making the process more straightforward. As per section 13(1) of the Act, a company can, through a special resolution and following the prescribed procedure, alter the provisions of its Memorandum.

In the context of altering the objects clause, section 13(6) mandates the company to file the Special Resolution with the Registrar. Subsequently, as per section 13(9), the Registrar is obligated to register any alteration to the Memorandum regarding the company's objects and provide certification within thirty days from the date of filing of the special resolution.

Section 13(10) emphasizes that no modification in the Memorandum becomes effective unless registered with the Registrar. Consequently, the Companies Act, 2013 allows for the straightforward alteration of the objects clause. Therefore, Surya Ventures Limited has the legal authority to make the necessary amendments to the objects clause in its Memorandum of Association, enabling the inclusion of Renewable Energy projects.

Q-9 XYZ Ltd., an Indian company, has recently entered into a contract with ABC Traders for the supply of raw materials. Unfortunately, the contract was executed without obtaining the necessary resolution from the company's general meeting, as required by its articles of association. ABC Traders is now seeking legal remedies for the breach of contract. **In light of the doctrines of constructive notice and indoor management,** analyze the potential implications for ABC Traders and the enforceability of the contract. Provide insights into any **exceptions to the doctrine of indoor management** that may apply in this scenario.

Ans-

In the given scenario involving XYZ Ltd., an Indian company, and ABC Traders, the doctrines of constructive notice and indoor management play crucial roles in determining the legal implications for ABC Traders and the enforceability of the contract.

Constructive Notice:

The doctrine of constructive notice places an obligation on parties dealing with a company to be aware of the contents of the Memorandum of Association (MOA) and Articles of Association (AOA). As per this doctrine, public documents like the MOA and AOA, registered with the Registrar of Companies, are deemed to be known by those transacting with the company. Even if ABC Traders did not have actual notice of the contents, the law presumes that they had constructive notice of the MOA and AOA.

The effect of constructive notice is that every person dealing with the company is presumed to know and understand the contents of these documents in their true perspective. The absence of notice cannot serve as an excuse for relief, and even without actual knowledge, parties are considered to have implied (constructive) notice.

However, it's important to note that the doctrine of constructive notice has faced criticism for being unrealistic, as business transactions often rely on interactions with company officers rather than a strict adherence to formal documents.

Indoor Management:

On the other hand, the doctrine of indoor management protects outsiders dealing with the company by allowing them to presume that internal proceedings and requirements have been duly met. This doctrine, as established in the case of Royal British Bank v. Turquand, emphasizes that if a person dealing with the company has no reason to doubt the authority of officials, they can assume that internal resolutions have been followed.

In the case of XYZ Ltd., ABC Traders may seek protection under the doctrine of indoor management, arguing that they had a right to assume that the necessary resolution from

the general meeting had been obtained. This is particularly relevant if the irregularity arises from internal matters not disclosed to ABC Traders.

Exceptions to Indoor Management:

However, relief under the doctrine of indoor management is not absolute. Several exceptions may limit its application:

a. Knowledge of Irregularity: If ABC Traders had actual knowledge of the irregularity, the protection of the indoor management rule may not be available.

b. Negligence: If ABC Traders could have easily discovered the irregularities with minimal effort or if the circumstances surrounding the contract were suspicious, the indoor management rule may not apply.

c. Forgery: The rule does not apply if ABC Traders relied on a forged document, as forgery cannot validate a contract.

In conclusion, while ABC Traders may have grounds to seek remedies under the doctrine of indoor management, the presence of exceptions and the specifics of the situation will determine the enforceability of the contract and the extent of legal recourse available to them.

Q-10 ABC Ltd., a holding company, decides to issue new shares and offers them to its subsidiary, XYZ Ltd. However, XYZ Ltd. refuses the offer, citing legal restrictions. ABC Ltd. insists that the prohibition doesn't apply in this case. Evaluate the validity of XYZ Ltd.'s refusal, considering the relevant legal provisions.

Ans-

XYZ Ltd.'s refusal is valid based on **Section 19** of the Act. According to this section, a subsidiary company, including its nominees, is prohibited from holding shares of its holding company. This restriction extends to any allotment or transfer of shares.

The prohibition remains in force unless XYZ Ltd. falls under specific exceptions:

a. Legal Representative: If XYZ Ltd. is acquiring shares as a legal representative of a deceased member of ABC Ltd., the prohibition doesn't apply.

b. Trustee: If XYZ Ltd. is holding shares as a trustee, it is exempt from the restriction.

c. Pre-existing Shareholder: The prohibition is not applicable if XYZ Ltd. was already a shareholder before becoming a subsidiary of ABC Ltd.

Since the scenario in the question doesn't fall under any of these exceptions, XYZ Ltd. is justified in refusing ABC Ltd.'s offer, as it would violate the legal provision outlined in Section 19.

Q-11 Company ABC Ltd. needs to serve a notice to one of its officers regarding an upcoming board meeting. According to Section 20 of the Companies Act, 2013, what are the **permissible modes for serving this document**, and how can the company ensure compliance with the law?

Ans-

Company ABC Ltd. can serve a notice to its officer in accordance with Section 20 of the Companies Act, 2013, and Rule 35 of the Companies (Incorporation) Rules, 2014. The **permissible modes for serving the document** to the company or its officer at the registered office include:

a. Registered Post: The notice can be sent through traditional registered postal services.

b. Speed Post: Company ABC Ltd. may use speed post services for a faster delivery option.

c. Courier Service: Utilizing a reputable courier service is another valid option for serving the document.

d. Leaving at Registered Office: The document can be physically delivered by leaving it at the registered office.

e. Electronic Mode: Sending the notice through electronic or other prescribed modes, as specified by law.

In the case where securities are held with a depository, the records of beneficial ownership can be served on the company by the depository through electronic or other prescribed modes.

Q-12 ABC Ltd., a company engaged in international trade, needs to execute a deed for the purchase of machinery from a foreign supplier. The company doesn't have a common seal. Can you explain how ABC Ltd. can authorize someone to execute the deed on its behalf, and what formality needs to be followed?

Ans-

ABC Ltd. can authorize a person to execute the deed on its behalf through a power of attorney. According to Section 22, Sub-sections 2 and 3 of the Bills of Exchange Act, **a company may grant such authorization through the following steps:**

a. The company can, by a resolution, authorize the execution of deeds through a writing under its common seal. In the case of ABC Ltd. without a common seal, the authorization can be given by 2 directors or by a director and the Company Secretary, if appointed.

b. The authorization can be granted to any person, either generally or in respect of specific matters.

c. The appointed person acts as the company's attorney and is authorized to execute deeds on behalf of the company.

d. The authorization can cover execution in any place, either in or outside India.

e. Deeds signed by the appointed attorney on behalf of the company and under their seal shall be legally binding on the company.

Therefore, in the case of ABC Ltd., it can proceed to authorize an individual, such as a representative or an agent, to execute the deed for the purchase of machinery from the foreign supplier. The authorization should be documented in writing and adhere to the guidelines mentioned in Section 22 of the Bills of Exchange Act.

Q-13 Mr. Arjun, a highly skilled professional with an engineering background, has successfully founded and registered a Private Limited Company in the field of renewable energy. Initially, only Mr. Arjun and his immediate family members hold all the shares in the company. When drafting the Articles of Association, Mr. Arjun ensures that he remains the director for his lifetime, as it is crucial for the company's success. However, his business associate, Ms. Kapoor, advises him about the potential risk of being removed as a director if non-family members acquire 75% or more shares in the future. Mr. Arjun seeks your advice on safeguarding his directorial position. Provide your response in line with the Companies Act, 2013.

Ans-

Entrenchment provisions:

Provisions related to entrenchment are outlined in Section 5 of the Companies Act, 2013. According to these provisions:

- The Articles of Association may include entrenchment provisions, specifying that certain articles can only be altered if more restrictive conditions or procedures than those required for a special resolution are met or complied with.
- Typically, a company's articles can be altered by passing a special resolution. However, entrenchment makes it more challenging to change these provisions, creating a protective measure.

Manner of inclusion of the entrenchment provision:

Entrenchment provisions can only be made either during the formation of a company or through an amendment to the Articles of Association. In the case of a private company, all members must agree, while a special resolution is required for a public company.

Notice to the Registrar of the entrenchment provision:

If the articles contain an entrenchment provision, whether established during formation or through an amendment, the company must notify the Registrar. This notice should be submitted in the prescribed form and manner.

Conclusion:

In Mr. Arjun's case, he can propose an amendment to the articles that all members agree to, stating that he can only be removed as a director if, for instance, 95% of votes are cast in favor of such a resolution. Following the agreement of all members, Mr. Arjun should give notice of the entrenchment provision to the Registrar in the prescribed format. This will help secure his position as a director for the foreseeable future.

Q-14 Rahul and his associates have established a company named InnovateTech Solutions Private Limited. Unbeknownst to them, "InnovateTech" is a registered trademark owned by another entity. After 4 years, the trademark owner discovers the usage of the same name by the company and decides to address the issue. Can the trademark owner compel the company to change its name? Can the trademark owner request the company to change its name at its discretion?

Ans-

According to Section 16 of the Companies Act, 2013, a company's name can be subject to change under certain circumstances:

If the Central Government deems the company's name identical to a name by which another company had been previously registered, it may direct the company to change its

name. The company must, in this case, pass an ordinary resolution and change its name **within 3 months.**

If the company's name is identical to a registered trademark, and the owner of that trademark applies to the Central Government **within three years** of the company's incorporation or registration, the Central Government may direct the company to change its name. The company, in this scenario, must change its name by passing an ordinary resolution within **6 months.**

The company is required to provide notice to the Registrar of Companies (ROC) along with the Central Government's **order within 15 days** of the name change. Failure to comply with these provisions makes the company and the defaulting officer punishable.

In the given case, the owner of the registered trademark is filing an objection after 5 years, which exceeds the stipulated 3-year period. Therefore, the company cannot be compelled to change its name based on this ground.

However, according to **Section 13**, a company has the authority to change its name at any time by passing a special resolution and obtaining the approval of the Central Government. If the owner of the registered trademark requests the company to change its name and the company agrees, it can voluntarily change its name by following the provisions of Section 13.

Q-15 M/s. BrightStar Innovations Limited, an emerging technology company based in Bangalore, is contemplating a strategic shift in its business operations, necessitating a change in its registered office from Bangalore to Hyderabad. The Board of Directors, led by Ms. Ananya, is seeking to understand the procedural aspects and legal implications associated with such a move under Section 12 of the Companies Act, 2013. Provide a comprehensive response detailing the process for changing the registered office and elucidate the role of the Regional Director in the event of a shift outside the jurisdiction of the current Registrar.

Ans-

M/s. BrightStar Innovations Limited, an innovative technology company headquartered in Bangalore, is considering relocating its registered office to Hyderabad due to strategic business reasons. Ms. Ananya, the Managing Director, is keen to comprehend the intricate process involved in effecting this change, as per the provisions stipulated in **Section 12** of the Companies Act, 2013.

Procedure for Change of Registered Office:

1. Notice of Change: M/s. BrightStar Innovations Limited must furnish notice of the proposed change in the registered office's location **within 30 days** of the decision. The notice should be verified and submitted in Form No. INC-22, accompanied by the prescribed fee, to the Registrar of Companies (ROC).

2. Verification to Registrar: The notice submitted must undergo thorough verification to ensure accuracy and authenticity.

3. Approval through Special Resolution: A change in the registered office outside the local limits of any city, town, or village where the current office is situated necessitates the passage of a special resolution by the company. In this case, as the shift is from Bangalore to Hyderabad, a special resolution is mandatory.

4. Confirmation of Change within the Same State:

- If the change involves moving the registered office from the jurisdiction of one Registrar to another Registrar within the same state (e.g., from Bangalore ROC to Hyderabad ROC), the company must seek confirmation from the Regional Director.
- An application, accompanied by the prescribed fee and submitted in **Form No. INC-23,** needs to be filed with the Regional Director for approval.

5. Communication and Filing of Confirmation:

- Upon receiving the application, the Regional Director must communicate the confirmation **within 30 days** to M/s. BrightStar Innovations Limited.

- The company, in turn, is required to file the confirmation with the ROC **within 60 days** from the date of confirmation.
- The ROC will register the change and certify the registration **within 30 days** from the date of filing.

Q-16 Mira Joshi Ltd. plans to raise additional share capital through the issuance of equity shares in different stages over a specific period. However, the company aims to avoid the hassle of issuing a prospectus for each share offering. In light of the Companies Act 2013, outline the steps that Mira Joshi Ltd. should take to circumvent the repeated issuance of prospectuses.

Ans-

A **"shelf prospectus**" refers to a prospectus wherein the securities or class of securities mentioned can be subscribed to in one or more issues over a specified period without the need for a further prospectus.

As per Section 31 of the Companies Act 2013, companies falling under certain classes, as determined by the Securities and Exchange Board of India (SEBI) regulations, have the option to file a shelf prospectus with the Registrar of Companies. The process involves:

- Filing the shelf prospectus at the stage of the initial offer of securities, specifying a period, not exceeding one year, as the validity period.
- This validity starts from the opening date of the first offer of securities under that prospectus.
- For any subsequent offer of securities during the validity period, no additional prospectus is required.

In addition to the shelf prospectus, Mira Joshi Ltd. needs to fulfill other formalities for repeated or subsequent share issuances. The company must submit an information memorandum to the Registrar of Companies within the prescribed time frame before the second or subsequent offer of securities under the shelf prospectus. This memorandum should include all material facts related to new charges, changes in the company's financial position between the previous and current offerings, and any other prescribed changes.

By adhering to these provisions, Mira Joshi Ltd. can effectively utilize a Shelf Prospectus to streamline the process and eliminate the need for repeated issuances of prospectuses.

Q-17 As a financial advisor to XYZ Corporation, the Board of Directors is considering raising funds from the public through the issuance of equity shares. Given the uncertain financial markets, the Board wishes to determine the price per share and the number of shares to be issued post-closure of the issue. In accordance with the Companies Act, 2013, what recommendations would you provide to the Board?

Ans-

As a financial consultant, I would advise the Board of Directors of XYZ Corporation to consider the issuance of a Preliminary Prospectus, commonly known as a Red Herring Prospectus. The term "red herring prospectus" refers to a prospectus that does not disclose complete details regarding the quantum or price of the securities included. [Explanation to Section 32]

Accordingly, XYZ Corporation can raise funds from the public through a red herring prospectus, allowing flexibility in determining the price per security and the number of securities after the closure of the issue.

To implement this strategy, the company should adhere to the provisions of section 32, which govern the issuance of a red herring prospectus:

- **Issuance before Prospectus:** The red herring prospectus is to be issued before the prospectus.

- **Filing with the Registrar:** XYZ Corporation should file the red herring prospectus with the Registrar at least three days before opening the subscription list and the offer.

- **Obligations Comparable to Prospectus:** The red herring prospectus should carry the same obligations as a regular prospectus. Any variations between the red herring prospectus and the final prospectus should be clearly highlighted.

- **Filing Post-Closure:** Upon the conclusion of the offer, XYZ Corporation must file the prospectus with the Registrar and the Securities and Exchange Board. This prospectus should include the total capital raised, the closing price of the securities, and any other details not covered in the red herring prospectus.

Q-18 ABC Ltd. is planning to issue a prospectus for its upcoming public offering of securities. The company is aware of the legal doctrine of Uberrimae fides, emphasizing utmost good faith in contracts. During the issuance of the prospectus, the company inadvertently includes a statement that, although not intentionally false, turns out to be misleading. Discuss the potential criminal and civil liabilities under the Companies Act, 2013, with reference to mis-statements in the prospectus.

Ans-

Liability for unintentional misleading statement finds its way into the Prospectus:

Criminal Liability (Section 34):

Section 34 of the Companies Act, 2013 imposes criminal liability on anyone authorizing a prospectus containing untrue or misleading statements. Guilty parties, found under this section, face punishment as per Section 447.

Civil Liability (Section 35):

Section 35 deals with civil liability for mis-statements in the prospectus. If subscribers suffer loss or damage as a result of acting on the basis of a misleading prospectus, they have the right to seek compensation. In our case, investors who relied on the prospectus and incurred losses due to the unintentional misleading statement may file claims for compensation.

Persons Liable (Section 35):

The liability under Section 35 extends to the company and specific individuals involved in the issuance of the prospectus:

(i) Company

(ii) Directors at the time of the issue

(iii) Individuals named in the prospectus as directors

(iv) Promoters

(vi) Those who authorized the prospectus

(vii) Experts referred to in Section 26(5)

ABC Ltd. should be cautious and diligent in rectifying the unintentional misleading statement. Legal consequences, both criminal and civil, may arise if due care is not taken. This emphasizes the importance of ensuring the accuracy and completeness of information in a prospectus to maintain the principles of Uberrimae fides.

Q-19 XYZ Ltd. recently issued shares to the public, and you, as a financial analyst, are tasked with explaining the concept of allotment and the significance of minimum subscription. Provide a brief case study to illustrate how the minimum subscription plays a crucial role in the allotment process.

Ans-

As per Section 39 allotment refers to the acceptance by a company of an offer to take shares. It is the process of appropriating shares from the unappropriated capital when an application is accepted.

Significance of Minimum Subscription:

The minimum subscription is a vital prerequisite for a valid allotment. In the context of a public share offering, the prospectus must specify a minimum subscription amount. **No shares can be allotted unless:**

a. The stated minimum subscription amount has been subscribed.

b. The sums payable on application (at least 5% of the nominal amount or as specified by SEBI) have been received by the company.

Case Study:

XYZ Ltd. issued a prospectus to the public, indicating a minimum subscription amount for its shares. During the subscription period, only 60% of the minimum subscription was achieved. The company, adhering to regulatory requirements, cannot proceed with the allotment until the minimum subscription amount is met. This scenario underscores the critical role of minimum subscription in ensuring a solid capital base before shares are allotted. It safeguards investors' interests and maintains the financial integrity of the company, preventing premature allotment in the absence of adequate capital infusion.

Q-20 Sunrise Developers Limited plans to pay an underwriting commission of 2.5% on the value of debentures, even though their articles of association allow only 2%. Additionally, the company intends to offer the underwriting commission in the form of office spaces. Assess the validity of these decisions under the Companies Act, 2013.

Ans-

According to **Section 40(6)** of the Companies Act, 2013, a company can pay commission on its securities under certain conditions outlined in the Companies (Prospectus and Allotment of Securities) Rules, 2014. In this case:

(a) The company's articles must authorize such commission.

(b) The commission can be paid from the issue proceeds or the company's profits.

(c) For debentures, the commission rate cannot exceed 2.5% of the debenture price or the limit specified in the articles, whichever is lower.

Given these conditions, if Sunrise Developers Limited's articles limit the commission to 2%, the decision to pay 2.5% is not valid.

However, paying the commission in the form of office spaces is allowed, as there is no prohibition on non-cash payments. The flexibility to pay in cash, kind, lump sum, or as a percentage is established in the case of Booth v New Africander Gold Mining Co.

Q-21 ABC Confections Limited is seeking to secure funds for its upcoming venture. In line with this objective, the company has issued private placement offer letters, intending to issue equity shares to 60 individuals. Among them, five are qualified institutional buyers, and the remainder consists of individual investors. Prior to finalizing the allotment of equity shares through this offer letter, the company has initiated another private placement offer letter directed at an additional 160 individuals, specifically for the issuance of debentures.

(a) As a publicly traded company, is ABC Confections Limited permitted to issue securities via a private placement offer?

(b) Does this action align with the regulations governing private placements, or should these offerings be categorized as public offers?

(c) What if the debenture offer is presented after the allotment of equity shares but within the same financial year?

Ans-

According to Section 42 of the Companies Act, 2013, both private and public companies have the authority to conduct private placements by issuing private placement offer letters. However, such offers should be extended to no more than fifty individuals, or a higher number as prescribed, in a given financial year. It's important to note that for the purpose of counting individuals, Qualified Institutional Buyers (QIBs) and employees participating in a scheme of employees' stock option are excluded.

❖ **Rule 14(2)** of the Companies (Prospectus and Allotment of Securities) Rules, 2014 specifies a maximum limit of 200 individuals to whom securities can be offered through private placement in a financial year. This limit should be considered separately for each type of security.

❖ If a company issues an offer or invitation to a number exceeding the prescribed limit, it will be deemed a public offer and subject to the regulations governing prospectuses. Additionally, a company cannot make a fresh offer under this section if the allotment from a previous offer has not been completed, or if the offer has been withdrawn or abandoned.

In the case of ABC Confections Limited, a public company, the private placement provisions permit fundraising through this avenue. The company has extended an offer to 60 individuals, with only 55 effectively considered due to the participation of five qualified institutional buyers. This falls well within the 200-person limit, demonstrating compliance with private placement provisions.

(a) However, the scenario changes with the second private placement offer for debentures initiated before completing the allotment of equity shares from the first offer.

(b) Consequently, the second offer does not adhere to the provisions of Section 42, and both offers are treated as public offerings.

(c) If the company issues an offer for debentures within the same financial year after completing the allotment of equity shares, both offers can be appropriately treated as private placement offers.

Q-22 Describe different situations that could result in the allocation of securities being categorized as irregular allotment under the Companies Act, 2013.

Ans-

Irregular allotment, a term not explicitly defined in the Companies Act, 2013, necessitates an examination of the prerequisites for a proper securities issuance and the implications of failing to meet those requirements. Essentially, an allotment of shares becomes irregular when a company breaches Sections 23, 26, 39, or 40. **Instances leading to irregular allotment include:**

1. Failure by a company to issue a prospectus in a public offer as mandated by Section 23.

2. Issuance of a prospectus by the company that either omits required matters outlined in Section 26(1) or provides misleading, faulty, or incorrect information.

3. Non-filing of the prospectus with the Registrar for submission under Section 26(4).

4. Failure to meet the minimum subscription specified in the prospectus as per Section 39.

5. Receipt of an application amount less than 25% of the nominal value of the offered securities or lower than the amount prescribed by SEBI, in case the minimum application amount is not met.

6. In the context of a public issue, absence of approval for listing from one or more recognized stock exchanges under Section 40 of the Companies Act, 2013.

Q-23 Imagine Mr. Arjun is a shareholder in XYZ Ltd., holding equity share capital. The company is contemplating changes to the rights associated with Mr. Arjun's class of shares. Provide a detailed analysis based on the Companies Act, 2013, addressing Mr. Arjun's rights and the conditions that must be met for the variation of shareholders' rights.

Ans- As per Section 47

(i) Every member holding equity share capital in a company limited by shares **has the right to vote on resolutions**, and

(ii) The voting power on a poll is proportional to their share in the paid-up equity capital. However, it's important to note that if XYZ Ltd. is a Nidhi Company, Mr. Arjun's voting rights on a poll **cannot exceed five percent** of the total voting rights of equity shareholders.

Now, considering the proposed changes to the rights associated with Mr. Arjun's class of shares, Section 48 becomes relevant. **To proceed with the variation of shareholders' rights, three conditions must be met:**

❖ **Provision in Memorandum or Articles:** Firstly, there should be a provision in the memorandum or articles of XYZ Ltd. allowing the company to vary the rights of Mr. Arjun's class. If such a provision is absent, the terms of issue of the shares of that class **should not prohibit such a variation.**

❖ **Consent of Shareholders:** The holders of **at least 75%** of the issued shares of Mr. Arjun's class must give their consent in writing or pass a special resolution at a separate class meeting. Additionally, if the variation affects the rights of any other class of shareholders, the consent of three-fourths of that other class is also required.

❖ **Tribunal Confirmation:** Finally, the holders of **at least 10%** of the shares of Mr. Arjun's class, who did not consent to or vote in favor of the resolution, have the right to apply to the Tribunal. The proposed variation will not take effect unless and until it is confirmed by the Tribunal.

In summary, Mr. Arjun can exercise his voting rights on resolutions related to the proposed changes, and the variation of his class of shares' rights can only occur if the conditions outlined in Section 48 are duly met, ensuring a fair and transparent process.

Q-24 ABC Ltd., an Indian company, is considering issuing shares at a price lower than the face value to its creditors as part of a debt conversion plan. Analyze the legal implications of such an action, considering the relevant provisions of the Companies Act, 2013. Provide insights into the circumstances under which such issuance is permissible and any regulatory framework involved.

Ans-

According to Section 53(1), a company is generally not allowed to issue shares at a discount.

According to section 54 of the Companies Act, 2013, notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the prescribed conditions are fulfilled.

However, an exception is provided under Sub-section 2A, which was introduced by the Companies (Amendment) Act, 2017. This amendment empowers the company to issue shares at a discount to its creditors **under the following circumstances:**

a. Statutory Resolution Plan: If the issuance of shares at a discount is part of a statutory resolution plan.

b. Debt Restructuring Scheme: If the issuance is a result of converting debt into shares as part of a debt restructuring scheme.

Therefore, in the case of ABC Ltd., the company may proceed with issuing shares at a discount as part of the debt conversion plan without violating Section 53 of the Companies Act, 2013.

Q-25 ABC Ventures Pvt. Ltd., established on 7.5.2015, is an unlisted company with a share capital of rupees seventy-five crores. Recently, the company has strategically chosen to issue sweat equity shares to its directors and employees, with the decision made on 9.6.2023. The company has proposed the issuance of 15% sweat equity shares, amounting to 20% of its paid-up equity shares, featuring a four-year locking period to underscore its identity as an emerging business. How can you justify these particulars concerning the provisions for the issuance of sweat equity shares by an expanding enterprise, taking into account the regulations of the Companies Act, 2013? Explain.

Ans-

Sweat Equity Shares are regulated by **section 54** of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. As per section 54, a company is authorized to issue sweat equity shares to its directors and permanent employees. According to the proviso to Rule 8(4), a startup company, defined in notification number G.S.R.127(E), dated 19th February 2019 by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, can issue sweat equity **shares not exceeding 50% of its paid-up share capital within 10 years** from its date of incorporation or registration.

According to Rule 8(5), the sweat equity shares allotted to directors or employees must be locked in/non-transferable for a period of three years from the date of allotment.

In the given case, ABC Ventures Pvt. Ltd. has the authority to issue sweat equity shares by passing a special resolution at its general meeting. The company, as a startup, is justified in issuing 15% sweat equity shares, which is within the overall limit of 50% of its paid-up share capital. However, it is important to note that the lock-in period for the shares is limited to a

maximum of three years from the date of allotment (not four years as mentioned in the question).

Q-26 LMN Corporation issued 8% Rs. 2,00,000; Redeemable Preference Shares of Rs. 150 each in March 2011, with a redemption period of 12 years. Owing to the economic challenges posed by the Covid-19 pandemic, the corporation is struggling to redeem the preference shares or honor dividend payments as per the terms of the issue. Seeking a resolution, the company, with the consent of 80% in value of the Redeemable Preference Shareholders, has filed a petition with the National Company Law Tribunal (NCLT) to secure approval for the issuance of further redeemable preference shares equal to the outstanding amount. Evaluate the likelihood of the petition's approval by the NCLT in light of the relevant provisions of the Companies Act, 2013. Additionally, discuss the potential inclusion of the unpaid dividend in the proposed issuance of redeemable preference shares.

Ans-

In accordance with **Section 55(3)** of the Companies Act, 2013, a company facing difficulties in redeeming preference shares or paying dividends on such shares may seek resolution.

(i) The company must obtain the consent of three-fourths (75%) in value of the preference shares and

(ii) Secure approval from the Tribunal through a filed petition.

In this case, the company has obtained the consent of 80% in value of the Redeemable Preference Shareholders, **making the petition valid and likely to be approved by the NCLT.**

With the consent of three-fourths (75%) in value of the preference shares, the company can include the unpaid dividend in the proposed issuance of redeemable preference shares. This provision enables the company to issue further redeemable preference shares equal to the

amount due, incorporating the unpaid dividend on the unredeemed preference shares. Adhering to statutory requirements is essential for the successful approval of such petitions.

Q-27 LMN Corporation, a private company, recently refused to register the transfer of securities owned by Ms. Priya, providing specific reasons for the refusal. Ms. Priya, the transferor, has received the notice of refusal from LMN Corporation. Elucidate the steps LMN Corporation is obligated to take when refusing to register the transfer of securities. Further, discuss the appeal process available to Ms. Priya if she decides to challenge the refusal.

Ans-

Refusal for Registration of transferred /transmitted securities:

As per Section 58 of the Companies Act, 2013, when a private company like LMN Corporation declines to register the transfer of securities, it must send a notice of refusal to both the transferor (Ms. Priya) and the transferee or the person giving intimation of transmission, explaining the reasons for refusal. This notice should be dispatched **within thirty days** from the date on which the instrument of transfer or intimation of transmission was delivered to the company.

The transferee may, appeal to the Tribunal **within thirty days** from the date of receiving the notice. Alternatively, if LMN Corporation fails to send a notice**, within sixty days** from the date of delivering the instrument of transfer or intimation of transmission.

Remedies available to the Transferee against the company:

The Tribunal, after hearing the parties, has the authority, according to Sub-section 5 of Section 58, to dismiss the appeal or issue an order:

(i) Directing LMN Corporation to register the transfer or transmission within ten days or

(ii) Rectify the register. The Tribunal may also instruct the company to pay damages, if any, sustained by Ms. Priya or any other aggrieved party.

Conclusion: Priya, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Q-28 The Board of Stellar Motors India Ltd. is contemplating a change in the Capital Clause of their Memorandum of Association. Provide guidance on the possible methods to alter the mentioned clause in accordance with the provisions of the Companies Act, 2013.

Ans-

Capital Clause Modification: According to **section 61 (1)** of the Companies Act, 2013, a public limited company with a share capital can modify its Memorandum in a general meeting, subject to authorization by its Articles, **in the following ways:**

(i) Increase its authorized share capital by an amount deemed expedient;

(ii) Consolidate and divide its share capital into shares of a larger denomination than its existing ones. However, any consolidation and division leading to changes in shareholders' voting percentage requires approval from the Tribunal through a prescribed application.

(iii) Convert any or all of its paid-up shares into stock and reconvert that stock into fully paid shares of any denomination.

(iv) Sub-divide its shares into smaller denominations than specified in the Memorandum;

(v) Cancel shares that, as of the resolution's passing date, have not been taken or agreed to be taken by any party, thereby reducing the share capital by the cancelled shares' amount.

Moreover, as per section 64, when a company alters its share capital using the methods mentioned above, it must submit a notice in Form No. SH-7, as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014, to the Registrar, along with the amended memorandum within thirty days of the alteration. The modification of the capital clause in the memorandum, if authorized by the Articles, requires the passing of an ordinary resolution, as per Section 61 (1) of the Companies Act, 2013.

Q-29 ABC Steel Industries is a renowned company engaged in the production of various steel products, boasting a strong brand presence. The Balance Sheet as of March 31, 2023, presents the following financial standing:

1. Authorized Share Capital (30,00,000 equity shares of Rs. 12/- each) Rs. 3,60,00,000

2. Issued, subscribed, and paid-up Share Capital (12,00,000 equity shares of Rs. 12/- each, fully paid-up) Rs. 1,44,00,000

3. Free Reserves Rs. 4,50,00,000

The Board of Directors is contemplating a bonus issue of 1 share for every 2 shares held by the existing shareholders. To proceed, they seek clarity on the provisions of the Companies Act, 2013, related to the conditions and manner of issuing bonus shares.

Ans-

As per Section 63 of the Companies Act, 2013, a company has the authority to issue fully paid-up bonus shares to its members, drawing from:

(i) Its free reserves;

(ii) The securities premium account; or

(iii) The capital redemption reserve account.

It's imperative to note that no bonus shares shall be issued by capitalizing reserves resulting from the revaluation of assets.

The conditions for the issuance of Bonus Shares include:

(i) Authorization by the Articles of the company;

(ii) Approval in the general meeting based on the Board's recommendation;

(iii) No defaults in payment of interest or principal concerning fixed deposits or debt securities;

(iv) No defaults in statutory dues of employees, such as provident fund, gratuity, and bonus;

(v) Conversion of partly paid-up shares to fully paid-up status;

(vi) Adherence to the conditions stipulated by Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014, which specifies that once a company announces a bonus issue, withdrawal is not permitted.

Additionally, it's crucial to ensure that bonus shares are not issued in lieu of dividend.

For ABC Steel Industries to proceed with the bonus issue, reserves of Rs. 72,00,000 (i.e., half of Rs. 36,00,000 the paid-up share capital) are required, and the company presently possesses this amount in reserves.

Thus, by adhering to the outlined conditions, the company can move forward with the bonus issue of 1 share for every 2 shares held by existing shareholders.

Q-30 ABC Ltd., an Indian company limited by shares, is considering a strategic financial move to enhance its liquidity. The company aims to cancel a portion of its paid-up share capital that is currently unrepresented by any available assets. Identify the steps XYZ Ltd. needs to

take for the reduction of share capital. Additionally, elaborate on the role of a regulatory authority in overseeing this process.

Ans-

To initiate the reduction of share capital, ABC Ltd. must follow a specific procedure outlined in Section 66 of the Companies Act. The steps involved are as follows:

1. Special Resolution: The company needs to pass a special resolution approving the reduction of share capital. This should include alterations to its memorandum, reducing the amount of share capital and shares accordingly.

2. Notice to Relevant Authorities: ABC Ltd. is required to issue notice of the reduction application to the Central Government (through Regional Directors), the Registrar, the Securities and Exchange Board (for listed companies), and the creditors of the company.

The Tribunal will consider representations, if any, made by the authorities and creditors within three months from the date of receiving the notice.

4. Tribunal's Order: The Tribunal may make an order confirming the reduction if it is satisfied that the debts or claims of every creditor have been addressed, and the proposed accounting treatment aligns with the specified accounting standards.

5. Publication of Order: ABC Ltd. must publish the Tribunal's order confirming the reduction in share capital in the manner directed by the Tribunal.

6. Submission to Registrar: Within thirty days of receiving the order, the company should submit a certified copy of the Tribunal order, along with minutes containing the special resolution, to the Registrar. The submission should include details such as the amount of share capital, the number of shares, the amount per share, and the amount deemed to be paid-up on each share at the registration date.

Upon receipt, the Registrar will register the information and **issue a certificate confirming** the reduction of share capital.

Q-31 LMN Pvt. Ltd., an unlisted company, passed a special resolution in a general meeting on January 10, 2023, to buy back 35% of its own equity shares. The articles of association empower the company to buy back its own shares. Earlier, the company had also passed a special resolution to buy back its own shares on February 1, 2022. The company further decided that the payment for buy-back would be made out of the proceeds of the company's earlier issue of equity shares. In the light of the provisions of the Companies Act, 2013,

(i) Evaluate whether the company's proposal is in compliance with the Companies Act, 2013.

(ii) What would be your response if the buy-back offer date is revised from January 10, 2022, to January 25, 2023, and the percentage of buy-back is reduced from 35% to 20%, while keeping the source of purchase as mentioned above?

Ans-

(i) LMN Pvt. Ltd.'s proposal to buy back is not in compliance with the Companies Act, 2013, for the following reasons:

- The company proposed to buy back 35% of its own equity shares, exceeding the limit specified in Section 68(2)(c) of the Companies Act, 2013, which restricts buyback of equity shares to 25% of its total paid-up equity capital in any financial year.
- The company had previously passed a special resolution on February 1, 2022, for a buyback. However, the new resolution on January 10, 2023, is not valid as per the Companies Act, which prohibits making a buyback offer within one year from the closure of the preceding offer.

The company's decision to use the proceeds of the earlier issue of equity shares for the buyback is not in order, as per the proviso to Section 68(1). Buyback of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind.

(ii) If the buyback offer date is revised from January 10, 2022, to January 25, 2023, and the percentage of buyback is reduced from 35% to 20%, while keeping the source of purchase as mentioned above, the company's proposal remains non-compliant. The reduction in the

buyback percentage to 20% aligns with the legal limit, but the use of proceeds from the earlier issue remains invalid under Section 68(1) proviso of the Companies Act, 2013. The one-year restriction from the closure of the preceding offer also renders the revised proposal invalid.

Q-32 ABC Ltd., a publicly listed company, is considering a share buy-back. What mandatory steps must the company undertake regarding the declaration of solvency before implementing the resolution for the buy-back?

Ans-

ABC Ltd. is required to follow specific steps related to the declaration of solvency, as mandated by the Companies Act, 2013. These steps include:

1. Filing of Declaration: ABC Ltd. needs to file a declaration of solvency with the Registrar of Companies and SEBI if its shares are listed on any stock exchange.

2. Form and Verification: The declaration must be submitted using **Form SH-9** and must be verified by an affidavit.

The affidavit should confirm that the Board of Directors has conducted a thorough inquiry into the company's affairs, stating that the company can meet all its liabilities and will not be insolvent for **12 months** from the declaration date.

3. Signing Authority: The declaration must be signed by at least two directors of the company, with one of them being the managing director if applicable.

Q-33 What are the provisions Under the Companies Act, 2013, regarding the appointment of a 'Debenture Trustee' by a company issuing debentures to the public? Discuss the

eligibility criteria for individuals to be appointed as debenture trustees and provide explanations for the following scenarios:

(i) Can a shareholder, holding shares valued at Rs. 15,000, be appointed as a debenture trustee?

(ii) Is it permissible for a creditor, to whom the company owes Rs. 1,500, to serve as a debenture trustee?

(iii) Can a person who has given a guarantee for the repayment of both principal and interest on the debentures be appointed as a debenture trustee?

Ans-

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 rules, no person shall be appointed as a debenture trustee, if he-

(i) Beneficially holds shares in the company;

(ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

Applying these provisions to the scenarios:

(i) No, a shareholder holding shares valued at Rs. 15,000 cannot be appointed as a debenture trustee.

(ii) No, a creditor owed Rs. 1,500 cannot be appointed as a debenture trustee, irrespective of the owed amount.

(iii) No, a person providing a guarantee for both principal and interest on the debentures cannot be appointed as a debenture trustee. This ensures the independence and impartiality of debenture trustees in safeguarding the interests of debenture holders.

Q-34 "Alpha Manufacturing Pvt. Ltd.," an Indian manufacturing company, is contemplating accepting deposits from the public to fund expansion projects. In light of this, discuss the prohibitive provisions and exemptions of the Companies Act, 2013, applicable to Alpha Manufacturing Pvt. Ltd.

Ans-

Prohibitive Provisions: Section 73 (1) of the Companies Act, 2013, mandates that no company, including Alpha Manufacturing Pvt. Ltd., can accept or renew deposits from the public unless it adheres to the prescribed manner outlined in Chapter V of the Act for such

transactions. This implies that Alpha Manufacturing Pvt. Ltd. must follow the specified procedures for the acceptance or renewal of deposits to ensure compliance with the law.

Exempted Companies:

Alpha Manufacturing Pvt. Ltd. needs to be aware of the exemptions provided under Section 73 (1). The following companies are exempted from the prohibition outlined in this section:

- Banking companies
- Non-banking Financial Companies (NBFCs)
- Housing Finance Companies (HFCs)
- Other companies notified by the Central Government after consultation with the Reserve Bank of India.

Furthermore, Rule 1 (3) clarifies that the 'Deposit Rules' do not apply to Housing Finance Companies registered with the National Housing Bank under the National Housing Bank Act, 1987. Therefore, if Alpha Manufacturing Pvt. Ltd. falls within any of the exempted categories, it may have certain relaxations in adhering to the 'deposit provisions.'

In conclusion, while Alpha Manufacturing Pvt. Ltd. explores the option of accepting deposits for its expansion projects, it must carefully consider and comply with the prohibitive provisions and exemptions outlined in Section 73 (1) of the Companies Act, 2013, to ensure legal and regulatory compliance.

Q-35 Discuss the maximum amount of deposits Omega Innovations Pvt. Ltd. can accept from its members, considering the provisions of the Companies Act, 2013, and the specific exceptions and conditions applicable to private companies.

Ans-

Omega Innovations Pvt. Ltd. can accept or renew deposits from its members **up to 35%** of the aggregate of its paid-up share capital, free reserves, and securities premium account, as per the standard provision under the Companies Act, 2013.

However, as an exception, being a private company, it has the flexibility to accept from its members monies **not exceeding 100%** of the aggregate of the paid-up share capital, free reserves, and securities premium account.

In such cases, the company is required to file the details of the monies accepted with the Registrar in **Form DPT-3.**

Moreover, Omega Innovations Pvt. Ltd. falls under the exempted category from the maximum **limit in certain conditions.**

★ If it qualifies as a start-up, it is entitled to this exemption for ten years from the date of its incorporation.

★ Alternatively, if the company is not an associate or a subsidiary of any other company, has borrowings less than twice its paid-up share capital or fifty crore rupees, and has not defaulted in repayment of such borrowings at the time of accepting deposits under section 73, then the maximum limit on deposits does not apply to Omega Innovations Pvt. Ltd.

Q-36 "Delta Ventures Ltd.," a Indian public company, has a net worth of Rs. 120 crores and an annual turnover of Rs. 550 crores. The company is exploring the possibility of accepting deposits from the public to finance its upcoming projects. In light of the provisions of the Companies Act, 2013, discuss whether Delta Ventures Ltd. qualifies as an 'eligible company.' Elaborate on the conditions related to net worth/turnover and the procedural requirements, including the necessity of passing special resolutions.

Ans-

According to Section 76, an 'eligible company' should have a net worth of **not less than one hundred crore rupees** or a turnover of **not less than five hundred crore rupees** which has

obtained prior consent through a special resolution in a general meeting before initiating the acceptance of deposits from the public.

However, if Delta Ventures Ltd. is accepting deposits within the limits specified under section 180 (1) (c), it has the option to use an ordinary resolution for the same purpose.

In the case of Delta Ventures Ltd., with a net worth of Rs. 120 crores and an annual turnover of Rs. 550 crores, the company satisfies the net worth/turnover criterion and qualifies as an 'eligible company.'

Delta Ventures Ltd., with its financial standing, is eligible to accept deposits from the public, provided it complies with the stipulated conditions and procedural requirements.

Q-37 Discuss the key provisions and conditions related to the appointment of trustees for depositors that "Theta Financial Services Ltd." must consider while planning to accept deposits from the public. Highlight the steps and considerations involved in appointing trustees for creating security for the deposits.

Ans-

Theta Financial Services Ltd., in its endeavour to accept deposits from the public, must navigate specific provisions, regarding the appointment of trustees for depositors as mentioned in **Rule 7** of the Companies (Acceptance of Deposits) Rules, 2014::

• One or more trustees for depositors need to be appointed by the company for creating security for the deposits.

• A written consent shall be obtained from the trustees before their appointment.

• A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.

• The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

• No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

(a) Is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any material pecuniary relationship with the company;

(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

(e) is related to any person specified in clause (a) above.

• **Removal of Trustees:** No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Q-38 State, with reasons, whether the following statements are true or false?

i. "ABC Enterprises Pvt. Ltd." is entitled to accept deposits from its members up to Rs. 75 Lakh, given that the aggregate of its paid-up capital, free reserves, and security premium account is Rs. 75 Lakh.

ii. A Government Corporation, eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from the public exceeding 30% of the aggregate of its paid-up capital, free reserves, and security premium account.

Ans-

i. As per the provisions of Section 73(2) of the Companies Act, 2013, and Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company can accept deposits from its members **not exceeding thirty-five per cent** of the aggregate of the Paid-up share capital, free reserves, and securities premium account. However, a private company, like "ABC Enterprises Pvt. Ltd.," has the flexibility to accept deposits from its members up to one hundred per cent of the aggregate of the paid-up share capital, free reserves, and securities premium account.

The given statement about ABC Enterprises Pvt. Ltd. being eligible to accept deposits from its members up to Rs. 75 Lakh is true.

ii. Contrary to the statement, a Government Corporation is not eligible to accept or renew deposits under section 76 if the amount of such deposits, along with other outstanding deposits, **exceeds thirty-five per cent** of the aggregate of its Paid-up share capital, free reserves, and securities premium account.

Therefore, the statement prescribing the limit of 30% for a Government Corporation to accept deposits from the public is False.

Q-39 Discuss the following situations in the light of the 'Deposit provisions' as contained in the Companies Act, 2013, and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Ananya, one of the Directors of Stellar Innovations Pvt. Ltd., a recently established company, requested her associate Rohit to lend Rs. 25 lacs to the company in a single tranche through a convertible note, repayable within six years from the date of its issue. Advise whether it qualifies as a deposit or not.

(ii) Radiant Textiles Ltd. is interested in accepting deposits totaling Rs. 40 lacs from its members for a tenure of less than six months. Can the company proceed with this, and if so, are there any conditions to be met?

Ans-

(i) In accordance with **Rule 2 (1) (c) (xvii)** of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives an amount by way of a convertible note, not exceeding Rs. 25 lacs in a single tranche, from a person, it shall not be treated as a deposit.

However, in the given scenario, Stellar Innovations Pvt. Ltd., a start-up, received Rs. 25 lacs from Rohit through a convertible note repayable within six years. As the amount is within the prescribed threshold, it will not be considered a deposit, and the provisions related to the acceptance of deposits will not apply.

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is generally prohibited from accepting or renewing deposits repayable on demand or in less than six months. Nevertheless, an exception allows a company to accept or renew deposits for repayment earlier than six months if the purpose is to meet short-term fund requirements. However, certain conditions must be met:

(1) Such deposits shall not exceed ten per cent of the aggregate of the paid-up share capital, free reserves, and securities premium account of the company.

(2) Such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the case of Radiant Textiles Ltd., wanting to accept Rs. 40 lacs in deposits for a tenure less than six months, the company can proceed if it justifies that the deposits are necessary to

meet its short-term fund requirements. Nevertheless, the deposits should not exceed 10% of the aggregate of its paid-up share capital, free reserves, and securities premium account, and they should be repayable only on or after three months from the date of such deposits.

Q-40 Answer the following citing relevant provisions:

(a) "Harmony Electronics Ltd." with a paid-up capital of Rs. 2 crores availed a term loan of Rs. 15,00,000 from "Omega Banking Corporation" to procure electronic components. Ms. Aanya, a director of the company, believes that this loan should be considered a 'deposit.' Is her contention correct?

(b) "Inventive Pharma Solutions Ltd." is facing financial strain and wishes to utilize a portion of its 'Deposit Repayment Reserve Account' to settle its short-term creditors demanding repayment of Rs. 30,00,000. Can the company rightfully use the funds from the 'Deposit Repayment Reserve Account' in this manner?

(c) Mr. Rajiv, a shareholder in "Creative Arts Private Limited," holds 8,000 shares of Rs. 20 each. His spouse Kavya and his three daughters Anika, Pari, and Zara are also shareholders in the company, each holding 1,500 shares. Responding to the company's invitation for deposits from its members, Rajiv intends to deposit Rs. 2,50,000 for 24 months jointly with his wife and three daughters. Can "Creative Arts Private Limited" accept the deposit jointly in five names, considering all depositors are shareholders of the company?

Ans-

(a) In accordance with **Rule 2 (1) (c) (iii)** of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from a banking company shall not be considered as a 'deposit.'

Therefore, Ms. Aanya's contention that the term loan of Rs. 15,00,000 from Omega Banking Corporation should be considered a 'deposit' is incorrect.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, explicitly states that the amount deposited in the 'Deposit Repayment Reserve Account' cannot be utilized by a company for any purpose other than the repayment of deposits.

Consequently, "Inventive Pharma Solutions Ltd." is not permitted to use its 'Deposit Repayment Reserve Account' to settle its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, allows deposits to be accepted in joint names not exceeding three, as desired by depositors.

Accordingly, "Creative Arts Private Limited" can accept the deposit of Rs. 2,50,000 jointly with Rajiv, his wife Kavya, and one of his daughters (Anika, Pari, or Zara), but not with all three daughters jointly, adhering to the provision.

Q-41 Mr. Arjun, the owner of ABC Textiles Pvt. Ltd., decides to secure a loan for expanding his textile business. In the process, he creates a 'Floating Charge' on the company's assets. Explain the concept of a Floating Charge and elaborate on the circumstances that lead to the crystallization of a Floating Charge.

Ans-

A 'Floating Charge' is a security interest created on assets, such as raw materials, stock-in-trade, and debtors, which are subject to fluctuations or changes. In the case of ABC Textiles Pvt. Ltd., this charge allows the company to use the assets for trading or producing final goods for sale while serving as security for a loan.

The distinguishing feature of a Floating Charge is that it hovers over ever-changing assets, unlike a fixed charge. The assets offered as security can be utilized by the company in its ordinary course of business. Consequently, a buyer acquiring such assets during this period obtains them free of any charge.

The process of 'Crystallization' occurs when the Floating Charge transforms into a Fixed Charge. This typically happens when the creditor enforces the security due to a breach of

terms or when the company faces liquidation. The assets covered by the Floating Charge become fixed and are then available for realization by the lender to ensure the repayment of the borrowed money.

The dormant state of a Floating Charge persists until it crystallizes. Crystallization may be triggered by various events, including the violation of terms and conditions, the cessation of business operations, the company going into liquidation, or the enforcement of security by creditors.

Q-42 ABC Ltd. has created a charge on its machinery and needs to register it in compliance with Section 77 of the Companies Act, 2013. Explain the procedure the company should follow for registration and the consequences of failing to register the charge within the stipulated timeframe.

Ans-

To register the charge on its machinery, ABC Ltd. must follow the procedure outlined in Section 77 of the Companies Act, 2013:

Submission of Particulars: ABC Ltd. needs to submit the particulars of the charge in the prescribed form along with a copy of the instrument creating the charge. Both documents must be duly signed by the company and the charge holder. (Section 77)

Timeframe for Registration: The registration must take place within 30 days of the creation of the charge. This includes tangible assets like machinery and extends to intangible assets such as patents or trademarks. (Section 78)

Filing with the Registrar: The submission should be made to the Registrar of Companies within the specified timeframe, and the requisite filing fee must accompany the documents. (Section 78)

Consequences of Failing to Register:

Failure to register the charge within the stipulated timeframe attracts penalties. The company may face legal consequences, and the charge may not be recognized as valid against liquidators, creditors, or any other stakeholders. (Section 79)

Extension of Time Limit:

If the charge was created before 02-11-2018 and not registered within the initial 30 days, ABC Ltd. can apply to the Registrar for an extension, allowing registration within 300 days from creation. If the charge remains unregistered after this extended period, it must be registered within six months from 02-11-2018, accompanied by prescribed additional fees. (Section 78)

Q-43 XYZ Ltd., an Indian company, has recently created a charge on its machinery situated in India. The instrument of charge needs to be filed with the Registrar of Companies. Explain the verification process for the instrument of charge in this scenario, including who can issue the certificate and under what circumstances.

Ans-

To verify the instrument of charge for machinery located in India, XYZ Ltd. must adhere to the regulations outlined in the Companies Act, 2013. The verification process is as follows:

(a) Verification for Property Outside India:

If the machinery is situated solely outside India, the copy of the instrument creating or modifying the charge shall be verified by a certificate issued either:

- Under the seal, if any, of XYZ Ltd.
- Under the hand of any director or company secretary of XYZ Ltd.
- Under the hand of an authorized officer of the charge-holder.
- Under the hand of some person other than XYZ Ltd. who is interested in the mortgage or charge.

(b) Verification for Property in India:

Since the machinery is located in India, the copy of the instrument creating or modifying the charge shall be verified by a certificate issued under the hand of any director or company secretary of XYZ Ltd. or an authorized officer of the charge holder.

Q-44 XYZ Ltd. recently created a charge on its property in favor of ABC Pvt. Ltd. However, XYZ Ltd. failed to register the charge within the prescribed period, as required by law. As a result, ABC Pvt. Ltd., the charge-holder, decides to take action to ensure the registration of the charge.

1. Describe the process that ABC Pvt. Ltd. needs to follow to register the charge.

2. Explain the role of the Registrar in this scenario and the steps involved once ABC Pvt. Ltd. submits the application for registration.

3. Under what circumstances can the Registrar refuse to allow registration by the charge-holder?

4. If ABC Pvt. Ltd. is successful in obtaining registration on its application, what rights does it have regarding the recovery of fees from XYZ Ltd.?

Ans-

1. Process for Registration:

As per Sec. 78 ABC Pvt. Ltd. must apply to the Registrar for the registration of the charge along with the instrument of charge within the prescribed time, form, and manner. The application should be made within the period of 30 days after XYZ Ltd. fails to register the charge.

2. Role of the Registrar and Steps Involved:

Upon receiving the application from ABC Pvt. Ltd., the Registrar will issue a notice to XYZ Ltd. regarding the pending registration. If no objection is received within the specified period, the Registrar will allow the registration upon payment of the prescribed fees by ABC Pvt. Ltd. The entire process, from application to registration, should take place within a period of 14 days after giving notice to XYZ Ltd.

3. Circumstances for Registrar's Refusal:

The Registrar may refuse registration by the charge-holder if, during the notice period, XYZ Ltd. registers the charge or provides sufficient cause as to why the charge should not be registered. In such cases, the charge-holder's application may be rejected.

4. Rights of ABC Pvt. Ltd. for Fee Recovery:

If ABC Pvt. Ltd. successfully obtains registration through its application, it is entitled to recover from XYZ Ltd. the amount of any fees or additional fees paid to the Registrar for the purpose of registering the charge. This recovery is a right granted to the charge-holder in accordance with the relevant legal provisions.

Q-45 M/s Harmony Textiles Ltd., an Indian company, registered a charge on its machinery. Mr. Kapoor, without verifying the records of charges, invests a significant amount in the company, assuming the machinery is free from any encumbrances. Discuss the legal implications for Mr. Kapoor based on relevant provisions of the Companies Act, 2013.

Ans-

According to **Section 80** of the Companies Act, 2013, when a charge is registered under Section 77, any person acquiring the property, assets, or any interest therein shall be deemed to have notice of the charge from the date of registration.

In the case of M/s Harmony Textiles Ltd., since the charge on the machinery was properly registered, Mr. Kapoor, despite being unaware, is deemed to have constructive notice of the charge.

By investing in the company without verifying the records of charges maintained at the office of the Registrar of Companies, Mr. Kapoor is considered to have neglected a crucial due diligence step. Consequently, if Mr. Kapoor suffers a loss due to the charge on the machinery, he cannot claim the loss from M/s Harmony Textiles Ltd. The law deems that he had notice of the charge, emphasizing the importance of thorough verification before entering into financial transactions with a company.

Q-46 M/s Horizon Enterprises Pvt. Ltd. hypothecated its manufacturing plant to a Nationalized Bank and availed a term loan. The Company duly registered the charge with the Registrar of Companies. Subsequently, Horizon Enterprises successfully settled the term loan in full. Despite the settlement, the Company faced non-responsiveness from the Bank regarding its request for a letter confirming the loan's settlement. In the context of the Companies Act, 2013, elucidate the relevant provisions for registering the satisfaction of charge in such circumstances. Additionally, specify the timeframe within which the Registrar of Companies may permit the company to intimate the satisfaction of charges.

Ans-

In the given scenario involving Horizon Enterprises Pvt. Ltd., where the Bank did not respond to the Company's request for a letter confirming the settlement of the term loan, the following steps can be taken to register the satisfaction of charge:

According to Section 82(2) of the Companies Act, 2013, upon receiving intimation under sub-section (1), the Registrar is mandated to send a notice to the holder of the charge, calling upon them to show cause within a specified time, not exceeding 14 days, as to why payment or satisfaction in full should not be recorded. If no cause is shown within the stipulated period, the Registrar is authorized to order the entry of a memorandum of

satisfaction in the register of charges under Section 81 of the Act and inform the company accordingly.

The **intimation** regarding the satisfaction of charge should be submitted to the Registrar within 30 days from the date of payment or satisfaction, as per Section 82 of the Companies Act, 2013.

The **proviso to Section 82(1)** extends this period from 30 days to 300 days. The Registrar has the discretion, upon application by the company or the charge holder, to allow the intimation to be made within this extended period, subject to the payment of prescribed additional fees. It is crucial for Horizon Enterprises to adhere to these provisions to ensure proper compliance and avoid any legal implications stemming from the delayed intimation.

Q-47 Rajat recently acquired a property from Evergreen Estates Pvt. Ltd., which was initially mortgaged to ABC Bank. Rajat settled the outstanding dues with ABC Bank, and the mortgage release was duly noted by the sub-registrar. However, neither Evergreen Estates nor ABC Bank has filed particulars of satisfaction of charge with the Registrar of Companies. In this context, can Rajat approach the Registrar and seek relief? Discuss this matter with reference to the relevant provisions of the Companies Act, 2013.

Ans-

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charge even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence in shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that –

- The debt has been satisfied in whole or in part; or

- The part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties – The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate – As per Rule 8(2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Rajat can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction nothing the release of charge.

Q-48 XYZ Corporation established a charge in favor of Top Finance Ltd., which was duly registered. Subsequently, the financial institution increased the facility by an additional Rs.30 crore. Unfortunately, due to inadvertence, the modification in the original charge was not registered. Provide advice to the company on the appropriate course of action to rectify this oversight.

Ans-

XYZ Corporation is advised to immediately file an application for rectification of the Register of Charges in Form No. CHG-8 with the Central Government in accordance with Section 87 of the Companies Act, 2013.

Section 87 and Rule 12 empower the Central Government to order rectification of Register of Charges in the following cases of default:

(i) When there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

(ii) When there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it was not of a nature to prejudice the position of creditors or shareholders of the company.

The application in **Form CHG-8** shall be filed by the company or any interested person. Therefore, Top Finance Ltd. can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Q-49 Greenfield Industries Ltd. created a charge on its assets on 8th June 2022. However, the company failed to register the charge with the Registrar of Companies until 20th July 2022.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realizes its mistake of not registering the charge on 5th September 2022 (instead of 20th July 2022), can it still register the charge? Provide advice with reference to the relevant provisions of the Companies Act, 2013.

Ans-

Registration of Charge:

• As per Sec. 77(1) of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings,

whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

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

(a) Greenfield Industries Ltd. did not register the charge with the Registrar of Companies till 20th July 2022. In this case particulars of charge were not filed within the prescribed period of 30 days. Taking advantage of clause (b) of first proviso to Sec. 77(1), Greenfield Industries Ltd. should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

(b) Clause (b) of second Proviso to Sec. 77(1) provides another opportunity for registration of charge by granting a further period of 60 days but the company is required to pay ad valorem fees. If the company realises its mistake of not registering the charge on 5th September 2022 instead of 20th July 2022, it shall be noted that a period of 60 days has already expired from the date of creation of charge. Since the first 60 days from creation of charge have expired on 9th August 2022, Greenfield Industries Ltd. can still get the charge registered within a further period of 60 days from 9th August 2022 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Q-50 Elite Ventures Pvt. Ltd. on 15th August 2023 secured a working capital loan of Rs. 30 lakhs by offering its Machinery and Inventory as security, and an adhoc overdraft of Rs. 7 lakhs on the personal guarantee of a Director of Elite Ventures Pvt. Ltd., from a financial

institution. Is the company required to create a charge for the working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?

Ans-

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 register able under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

Thus, when Elite Ventures Pvt. Ltd. obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 30 Lakh working capital loan, it is required to create a charge on it.

Elite Ventures Pvt. Ltd. is not required to create a charge for Rs. 7 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.

Q-51 ABC Limited, a listed company in India, is planning to close its register of members for maintenance. Can you provide information on the permissible limits for closing the register of members in a given year according to the Companies Act, 2013, and specify the minimum notice period as per Rule 10 of the Companies (Management & Administration) Rules, 2014? Additionally, please highlight any exemptions granted to private companies in this context.

Ans-

ABC Limited, being a listed company in India, can **close its register** of members for an aggregate **period of 45 days** in each year, with no single closure exceeding 30 days, as per Section 91(1)(i) of the Companies Act, 2013.

The closure must be preceded by a **minimum notice period of seven days**, or such lesser period as specified by the Securities Exchange Board of India (SEBI), for listed companies or those intending to get their securities listed, as outlined in Section 91(1)(ii) and Rule 10(1) of the Companies (Management & Administration) Rules, 2014.

To comply with the notice requirement, ABC Limited must publish the closure notice at least once in a vernacular newspaper with wide circulation in the district where the registered office is situated and once in an English newspaper with similar circulation in that district. Additionally, the notice should be published on the Central Government-notified website and on the company's website, if available **(Rule 10(1)).**

However, it's noteworthy that **Rule 10(2)** provides an exemption for private companies. ABC Limited, if classified as a private company, is exempted from issuing a public notice in newspapers. Instead, it is required to issue a minimum seven days' notice directly to its members prior to closing the registers (Rule 10(2)).

Q-52 For the financial year 2022-2023, XYZ Limited, being a small company incorporated in India, is required to prepare its annual return in accordance with the Companies Act, 2013. Please provide the specific details that XYZ Limited must include in its annual return as mandated by the Act. Additionally, explain the provisions regarding the signing of the annual return and specify the applicable form for filing in the case of a small company.

Ans-

For the financial year 2022-2023, XYZ Limited, being a small company in India, is required to incorporate specific particulars in its annual return as per **Section 92(1)** of the Companies Act, 2013. **These particulars include:**

(a) Details about the registered office, principal business activities, and information regarding holding, subsidiary, and associate companies.

(b) Information about shares, debentures, other securities, and the shareholding pattern.

(d) Particulars about members and debenture-holders, including any changes since the close of the previous financial year.

(e) Information about promoters, directors, key managerial personnel, along with changes therein since the close of the previous financial year.

(f) Details about meetings of members, Board, and various committees, including attendance details.

(g) Information about the remuneration of directors and key managerial personnel.

(h) Any penalty or punishment imposed on the company, its directors, or officers, along with details of compounding of offences and appeals made against such penalties or punishments.

(i) Matters related to certification of compliances and prescribed disclosures.

(j) Details, as prescribed, regarding shares held by or on behalf of Foreign Institutional Investors.

(k) Any other matters as may be prescribed.

Furthermore, in accordance with the Second Proviso to **Section 91(1),** XYZ Limited, being a small company, must file its annual return from the financial year 2020-2021 onwards in **Form No. MGT-7A.** It's important to note that the annual return should be signed by a director of the company and the company secretary. In case there is no company secretary, it should be signed by a company secretary in practice.

Q-53 ABC Pvt. Ltd., an Indian company based in Bangalore, has a diverse shareholder base, with members residing in different cities like Chennai, Delhi, and Kolkata. The Board of Directors is contemplating the possibility of keeping certain registers and copies of returns at a location other than the registered office.

(a) Discuss the provisions of the Companies Act, 2013, regarding the permissibility of maintaining records at an alternate location and the procedure involved.

(b) Subsequently, explain the rights and procedures a debenture holder, such as Mr. Rajesh, from the same company has for inspecting these records.

Ans-

Place of keeping and inspection of Registers, Returns, etc.:

(i) Maintenance of the Register of Members etc.:

AS per Sec. 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company u/s 88 and copies of the annual return filed u/s section 92 shall be Kept at the registered office of the company:

provided that such registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

Conclusion: ABC Pvt. Ltd. can also keep the registers and returns at Chennai, Delhi, and Kolkata after compliance with the provisions of Sec. 94(1), provided more than 1/10th of the total number of members entered in the register of members reside in Chennai, Delhi, and Kolkata.

(ii) Inspection of register of Members:

As per Sec. 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture holder, other security holder or beneficial owner,

during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Additionally, **Rule 14(1)** specifies that the registers and indices shall be open for inspection during business hours, as decided by the Board.

Conclusion: Mr. Rajesh, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees.

Q-54 M/s Harmony Textiles Pvt. Ltd., an Indian company, held its Annual General Meeting (AGM) on 15th July 2023. However, due to unforeseen circumstances, the company failed to file its annual return within the stipulated time frame. Discuss the provisions of the Companies Act, 2013, regarding the time limit for filing the annual return and the penalties applicable in case of non-compliance.

Ans-

Filing of copy of Annual return with the Registrar:

As per Sec. 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the AGM is held or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the annual general meeting.

As per Sec. 92(5) of the Companies Act, 2013, if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of Rs.10,000 and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.2 lakh in case of a company and Rs.50,000 in case of an officer who is in default.

Penalty for Company Secretary in Practice:

If the company secretary in practice certifies the annual return not in accordance with Section 92 or the rules, Section 92(6) imposes a penalty of two lakh rupees on the company secretary.

In conclusion, M/s Harmony Textiles Pvt. Ltd. must adhere to the 60-day deadline for filing its annual return, as stipulated by Section 92(4) of the Companies Act, 2013. Failure to meet this deadline incurs penalties outlined in Section 92(5), with potential daily fines for continuing non-compliance.

Q-55 Alpha Pharmaceuticals Ltd. issued a notice for holding its annual general meeting on 15th October 2022. The notice was dispatched to the members on 22nd September 2022. Some members of the company alleged that the company has not complied with the provision of the Companies Act, 2013, with regard to the period of notice and as such the meeting was invalid. Referring to the provision of the Companies Act, 2013, decide:

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall in the notice, state and explain by how many days does the notice fall short of statutory requirements?

(iii) Whether the length of serving of notices be curtailed by Article of Association?

Ans-

According to **section 101(1)** of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed. Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of the meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice

of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted.

Hence, in the given question:

(i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and the date of the meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, the notice falls short by 2 days.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Q-56 XYZ Limited, an Indian company, has decided to send notices of its annual general meeting through electronic mode as per Rule 18 of the Companies (Management & Administration) Rules, 2014. The company follows all the prescribed guidelines for sending notices via email. Mr. Raj, a member of XYZ Limited, did not receive the notice and claims that the company is in default. Evaluate the situation based on the rules mentioned and determine whether the company is indeed in default. Provide reasons for your conclusion.

Ans-

In this case, XYZ Limited, in compliance with Rule 18 of the Companies (Management & Administration) Rules, 2014, opted to send notices of its annual general meeting through electronic mode. **According to the rules:**

1. The company is permitted to send notices through email, and various formats such as text, attachment, electronic link, or Uniform Resource Locator (URL) are acceptable.

2. Rule 18(3) mandates that the email should be addressed to the person entitled to receive it as per the records of the company provided by the depository.

3. The company is obligated to provide an advance opportunity, at least once in a financial year, for members to register or update their email addresses.

4. The subject line of the email should specify the name of the company, the type of meeting, place, and the scheduled date.

5. If sent as a non-editable attachment, it should be in Portable Document Format (PDF) or a non-editable format with a link or instructions for downloading the relevant software.

6. The company's obligation is fulfilled upon email transmission, and it is not held responsible for failures beyond its control.

7. If a member fails to provide or update their email address, the company is not in default for not delivering the notice via email.

Considering these rules, if Mr. Raj did not receive the notice, the company may not be in default if it has adhered to the stipulated guidelines. It is crucial to examine whether XYZ Limited followed the procedures, including updating members' email addresses, using correct subject lines, and ensuring transmission success. If the company has fulfilled these requirements, **Mr. Raj's claim may not be valid.**

Q-57 ABC Corporation, an Indian company, urgently needs to convene a general meeting to address critical matters. The standard notice period for general meetings is 21 clear days, but ABC Corporation wishes to call the meeting with a shorter notice period. Explore the conditions under which a general meeting can be called with less than 21 days' notice, as per the proviso of the Companies Act, 2013. Assess the requirements and implications for ABC Corporation in obtaining consent for a shorter notice.

Ans-

In the given case of ABC Corporation, the company is contemplating convening a general meeting on short notice, deviating from the standard 21 clear days. According to the proviso

to Section 101(1) of the Companies Act, 2013, a general meeting may be called with a shorter notice period if certain conditions are met:

Annual General Meeting (AGM):

Consent in writing or electronic mode is required from not less than ninety-five percent of the members entitled to vote at the AGM.

Other General Meetings:

- For companies with a share capital: Consent is needed from the majority in number of members entitled to vote, representing not less than ninety-five percent of the paid-up share capital giving the right to vote.
- For companies without a share capital: Consent is required from not less than ninety-five percent of the total voting power exercisable at the meeting.

It is crucial for ABC Corporation to ensure that the necessary consent is obtained based on the type of general meeting. Members who can vote only on specific resolutions must be considered only for those particular resolutions.

The company should be mindful of the stringent conditions for obtaining consent, and failure to meet the specified criteria may render the calling of the meeting with shorter notice invalid. ABC Corporation must carefully assess the member consent percentages and voting rights to comply with the provisions of Section 101(1) of the Companies Act, 2013.

Q-58 Vivan Textiles Limited has issued a notice of a General Meeting to its members, indicating that a resolution to increase the share capital of the company would be discussed. A shareholder, Anika, raised a concern stating that the notice did not specify the amount of the proposed increase. Is Anika's objection valid?

Ans-

In accordance with **section 102 (2) (b)** of the Companies Act, 2013, any business transacted at a general meeting, other than an Annual General Meeting (AGM), is considered special business.

Furthermore, as per section 102 (1), a statement must be annexed to the notice for any general meeting, setting out material facts concerning each item of special business. These include:

(a) The nature of concern or interest, financial or otherwise, if any, regarding each item, including:

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) Any other information and facts enabling members to understand the meaning, scope, and implications of the items of business and make informed decisions.

Considering these provisions, Anika's objection is valid. The details of the proposed increase in share capital, including the amount, are material facts essential for the members to comprehend the implications of the resolution. Therefore, the notice is deemed invalid under section 102 of the Companies Act, 2013.

Q-59 ABC Electronics Limited, an Indian public company with 3,500 members, has called for a general meeting scheduled to begin at 10:00 AM. Evaluate the quorum requirement for the meeting based on Section 103 of the Companies Act, 2013. If the quorum is not met within half an hour from the scheduled time, discuss the consequences for the meeting. Additionally, outline the procedures for an adjourned meeting under Section 103 (2) and (3).

Ans-

Requirement of Quorum as outlined in Section 103 of the Companies Act, 2013:

- If the number of members is not more than 1000, the quorum shall be 5 members personally present.
- If the number of members is more than 1000 but up to 5000, the quorum shall be 15 members personally present.
- If the number of members exceeds 5000, the quorum shall be 30 members personally present.

Given that ABC Electronics Limited has 3,500 members, the quorum for the meeting would be **15 members personally present.**

Consequences if the quorum is not met within half an hour from the scheduled time of 10:00 AM:

If the quorum is not present within half an hour from the scheduled time, the meeting shall stand adjourned to the same day in the next week at the same time and place. The company must provide not less than three days' notice to the members, either individually or by publishing an advertisement in newspapers (one in English and one in the vernacular language) circulating at the place where the registered office is situated.

If the quorum is not present at the adjourned meeting within half an hour, the members present shall form the quorum for that adjourned meeting.

Q-60 XYZ Ltd. is a company registered under the Companies Act, 2013 in India. Mr. Raj, a shareholder holding 8% of the total share capital of the company, wishes to appoint a proxy for an upcoming general meeting. Explain the provisions of Section 105 and Rule 19 concerning the appointment of proxies, and analyze whether Mr. Raj is eligible to appoint a proxy based on the given information.

Ans-

Section 105 of the Companies Act, 2013, grants the right to any member of a company entitled to attend and vote at a meeting to appoint a proxy to attend and vote on their behalf. However, proxies are not allowed to speak at the meeting and can only vote on a poll.

Rule 19 further outlines specific conditions. In the case of companies without share capital, unless the articles state otherwise, Section 105(1) does not apply. The Central Government may prescribe exceptions for certain classes of companies.

For companies registered under **section 8** (charitable companies), a member cannot appoint a proxy unless that person is also a member of the company. Additionally, a person can act as a proxy for members not exceeding fifty, with an aggregate holding of not more than 10% of the total share capital, unless a member holding more than 10% appoints a single proxy who cannot act for any other person.

Conclusion:

In the case of XYZ Ltd., since it is a company with share capital, Section 105(1) applies. As Mr. Raj holds 8% of the total share capital, he is eligible to appoint a proxy according to Rule 19. The rule allows members with an aggregate holding of not more than 10% to appoint proxies, and Mr. Raj falls within this limit.

Q-61 Rahul, a shareholder, issues a notice to the company five days before the scheduled meeting, expressing his intention to inspect proxies. Subsequently, he approaches the company two days before the scheduled meeting for the said inspection. Evaluate the legal position concerning Rahul's demand for inspecting proxies in accordance with the provisions of the Companies Act, 2013.

Ans-

As per **section 105 (8)** of the Companies Act, 2013, every member entitled to vote at a company meeting or on any resolution has the right to inspect proxies during the period from **twenty-four hours** before the meeting's commencement to its conclusion. This inspection can take place at any time during the business hours of the company, provided that the member gives **not less than three days'** written notice of the intention to inspect.

In this scenario, Rahul has duly provided the required notice, meeting the stipulated conditions. Consequently, the validity of the notice cannot be contested. However, it is crucial to note that the inspection of proxies is permissible only during the specified period, beginning 24 hours before the meeting and concluding with the meeting's end.

Considering the above legal provision, Rahul is entitled to undertake the inspection strictly within the mentioned timeframe and not two days prior to the scheduled meeting.

Q-62 Mr. Arjun, a shareholder in XYZ Ltd., attends the annual general meeting where several resolutions are to be voted upon. The company has a share capital, and Mr. Arjun holds shares on which an aggregate sum of Rs.6,00,000 has been paid-up. During the meeting, he is dissatisfied with the show of hands voting process and wishes to demand a poll. **Discuss the legal position regarding Mr. Arjun's right to demand a poll, the conditions he must fulfill, and the possibility of withdrawing the poll demand.**

Ans-

Under **Section 109** of the Companies Act, 2013, Mr. Arjun, being a shareholder in XYZ Ltd., has the right to demand a poll during or before the declaration of results of the voting on any resolution, provided certain conditions are met. In the case of a company with a share capital, a poll can be demanded by members present in person or by proxy (where allowed), holding **not less than 1/10th** of the total voting power or shares on which an aggregate sum of **not less than Rs. 5,00,000** (or such higher amount as may be prescribed) has been paid-up.

In the given scenario, since Mr. Arjun holds shares on which an aggregate sum of ₹6,00,000 has been paid-up, he satisfies the conditions to demand a poll. It's important to note that the demand for a poll can be made on each resolution separately.

However, Mr. Arjun should be aware that the demand for a **poll can be withdrawn at any time** by the persons who initially made the demand. If, for any reason, he decides to withdraw his demand for a poll, he has the right to do so.

In conclusion, Mr. Arjun has a valid right to demand a poll given the conditions specified in Section 109. Additionally, he has the option to withdraw the poll demand if he so chooses at any point during the meeting.

Q-63 XYZ Ltd., an Indian company, recently conducted a Board Meeting on January 15, 2023, to discuss crucial matters pertaining to the company's expansion plans and financial strategies. Mr. Raj Kumar, the Chairman of the Board, presided over the meeting. The meeting had several resolutions passed, including the approval of a major investment proposal.

Considering the provisions of Section 118 of the Companies Act, 2013, answer the following questions:

a. What is the statutory obligation of XYZ Ltd. regarding the preparation, signing, and retention of minutes for the Board Meeting held on January 15, 2023?

b. What information should be included in the minutes of the Board Meeting?

c. what circumstances can the Chairman exclude certain matters from the minutes of the Board Meeting?

Ans-

a. According to **Section 118** of the Companies Act, 2013, XYZ Ltd. is obligated to prepare, sign, and keep minutes of every Board Meeting **within 30 days** of the conclusion of the meeting concerned.

b. The minutes of the Board Meeting should include:

- the names of the directors present at the meeting.
- In the case of resolutions, it should include the names of directors dissenting from or not concurring with the resolution.

c. The Chairman can exclude matters from the minutes

- if they are defamatory,
- irrelevant, immaterial to the proceedings, or
- detrimental to the interests of the company.

Q-64 XYZ Ltd., a listed company in India with over 1,500 shareholders, plans to transition from physical to electronic records as per Section 120 of the Companies Act, 2013. Analyze the conditions in Rule 27 of the Companies (Management and Administration) Rules, 2014, and provide guidance to XYZ Ltd. on the conversion process.

Ans-

1. Timeframe for Conversion:

XYZ Ltd. has a six-month window, as per Rule 27, to convert existing physical records to electronic mode from the date of Section 120 notification.

2. Board Approval:

Obtain board approval for the method and systems used for maintaining electronic records.

3. Compliance with Act and Rules:

Ensure electronic records comply with all requirements in the Companies Act, 2013, and related rules.

4. Readability, Retrieval, and Reproducibility:

Electronic records must be readable, retrievable, and reproducible in printed form.

5. Digital Signing and Immutability:

Implement secure digital signing to date and sign records digitally, preventing further edits.

6. Updatability and Record of Updates:

Ensure records can be updated as per rules, with a clear record of each update's date.

Conclusion: XYZ Ltd. must follow prescribed procedures meticulously to transition seamlessly, mitigating the risk of penalties and legal repercussions.

Q-65 ABC Pvt. Ltd., a private company in India, was incorporated on January 1, 2022. The financial year-end is March 31. Explore the provisions of Section 96 of the Companies Act, 2013, regarding the holding of Annual General Meetings (AGMs). Analyze when ABC Pvt. Ltd. should conduct its first AGM, subsequent AGMs, and **the permissible gap between two AGMs.** Additionally, discuss the circumstances under which the Registrar m**ay grant an extension for holding an AGM** and any limitations on such extensions.

Ans-

According to Section 96 of the Companies Act, 2013, regarding the holding of Annual General Meetings (AGMs). **The key points to consider are as follows:**

❖ **First Annual General Meeting (AGM):** ABC Pvt. Ltd. is required to hold its first AGM **within 9 months** from the closing of its first financial year. As the company was

incorporated on January 1, 2022, and the financial year-end is March 31, 2023, the first AGM should be conducted by December 31, 2023.

❖ **Subsequent AGMs:** Subsequent AGMs must be held **within 6 months** from the closing of each financial year. For example, if ABC Pvt. Ltd.'s financial year ends on March 31, 2024, the AGM for that financial year should be conducted by September 30, 2024.

❖ **Gap between Two AGMs:** The gap between two AGMs should not exceed 15 months. ABC Pvt. Ltd. must ensure that there is no interval of **more than 15 months** between consecutive AGMs.

❖ **Extension of AGM Validity Period:** If, for any special reason, ABC Pvt. Ltd. finds it impossible to hold an AGM within the prescribed time, the Registrar may grant an extension for a **period not exceeding 3 months**. However, it's important to note that such extensions are not applicable for the first AGM.

In summary, ABC Pvt. Ltd. should schedule its first AGM by December 31, 2023, If the company encounters difficulties in meeting the AGM timeline, it may seek an extension from the Registrar for up to 3 months, except for the first AGM, which does not qualify for such an extension.

Q-66 XYZ Ltd., a private unlisted company in India with its registered office in Chennai, is planning its annual general meeting (AGM). Ms. Kapoor, the company secretary, is exploring the feasibility of holding the AGM at a location other than the registered office and during non-standard business hours due to certain logistical constraints. In this context, please address the following:

a) Under what conditions, as specified in Section 96 (2) of the Companies Act, 2013, can XYZ Ltd. hold its AGM at a location other than the registered office?

b) Considering the timing of the AGM, is XYZ Ltd. allowed to schedule the meeting outside the standard business hours? Are there any exceptions to this rule?

c) Elaborate on the circumstances under which the Central Government may grant an exemption to XYZ Ltd. from the provisions related to the timing and location of the AGM.

Ans-

a) As per **Section 96 (2)** of the Companies Act, 2013, XYZ Ltd. can hold its AGM at a location other than the registered office if consent is provided in writing or through electronic mode by all the members in advance. This condition ensures that the decision to convene the AGM at an alternative location is collectively agreed upon by the members.

b) While **Section 96 (2)** allows for flexibility in scheduling the AGM, XYZ Ltd. should be mindful that the timing falls **between 9 a.m. and 6 p.m**. on any day that is not a National Holiday. Exceptions to this timing rule can be made if all members unanimously consent to holding the AGM outside the standard business hours, ensuring that the meeting time is convenient for everyone involved.

c) The Central Government has the authority to exempt XYZ Ltd. from the provisions of Section 96 (2) under specific conditions. If XYZ Ltd. faces logistical challenges or deems it impractical to hold the AGM at the registered office or within the city of the registered office, the company can apply for exemption.

Q-67 XYZ Ltd, a listed public company in India, held its Annual General Meeting (AGM) for the financial year 2022-2023 on 15th December 2023. However, due to unforeseen circumstances, the company faced challenges in preparing the report on the AGM within the stipulated 30 days of its conclusion, as mandated by Section 121 of the Companies Act, 2013. Discuss the potential penalties that XYZ Ltd and its officers might face for this default,

taking into consideration the exceptional circumstances faced by the company. Provide insights into the penalties specified by Section 121 and the consequences of continuing failure.

Ans-

In the given scenario, where XYZ Ltd faced unforeseen circumstances leading to challenges in preparing the report on the Annual General Meeting (AGM) within the prescribed 30 days, the company and its officers are still subject to penalties as per Section 121 of the Companies Act, 2013. **The penalties are outlined below:**

1. Penalty for the Company:

XYZ Ltd shall be liable to a penalty of **one lakh rupees** for the initial failure to file the report within the stipulated 30-day period. In case of continuing failure, an additional penalty of **five hundred rupees** for each day after the first during which such failure continues will be imposed, subject to a maximum of **five lakh rupees**.

2. Penalty for Officers of the Company:

Every officer of XYZ Ltd who is in default, including the Company Secretary, shall be liable to a penalty **not less than twenty-five thousand rupees**. In case of continuing failure, an additional penalty of **five hundred rupees** for each day after the first during which such failure continues will be imposed, subject to a maximum of **one lakh rupees**.

Q-68 Evaluate the legitimacy of the following scenario in light of the applicable provisions of the Companies Act, 2013:

The Board of Directors of Royal Logistics Solutions Pvt. Ltd. convened an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned due to the absence of a quorum. Provide advice to the company.

Ans-

In accordance with **section 100 (2)** of the Companies Act 2013, the Board of Directors is obligated to convene a general meeting upon requisition made by the prescribed minimum number of members.

As outlined in **Section 103 (2)** (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting called on the requisition of members, the meeting shall stand cancelled.

Therefore, the meeting convened by Royal Logistics Solutions Pvt. Ltd. stands cancelled, and the decision of the Board of Directors to adjourn it is **not appropriate or valid.**

Advice to the Company:

Royal Logistics Solutions Pvt. Ltd. should acknowledge the cancellation of the meeting and take appropriate steps to communicate this to the members. Additionally, the company should consider addressing the issue that led to the lack of quorum, possibly by providing more notice or taking measures to enhance member participation.

Q-69 Regarding the timeframe for making entries in the register of members, register of debenture-holders, or register of other security holders, there is a standard seven-day period after Board of Directors or its committee approval. However, certain events allow for entries to be made even after seven days. Identify and explain these events.

Ans-

In this context, **Rules 5(7) and 5(8)** of the Companies (Management and Administration) Rules, 2014, play a crucial role.

According to Rule 5(7), for companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien, or hypothecation created by the promoters in respect of any securities of the company held by the promoter, including the names of pledgee/pawnee and any revocation therein, should be entered in the register within fifteen days from such an event.

Furthermore, Rule 5(8) specifies that if promoters of any listed company, which has formed a joint venture company with another entity, have pledged, hypothecated, or created a charge or lien in respect of any security of the listed company in connection with such a joint venture company, the particulars of such pledge, hypothecation, charge, and lien shall be entered in the register of members of the listed company within fifteen days from the occurrence of such an event.

In both these scenarios, it is permissible for listed companies to make entries related to pledge, charge, lien, or hypothecation in the registers within fifteen days from the happening of such events.

Q-70 Miracle AgroTech Limited conducted its Annual General Meeting on October 5, 2022, presided over by Ms. Radha, the Chairwoman of the Board of Directors. However, on October 7, 2022, Ms. Radha, without signing the minutes of the meeting, had to urgently leave for a family emergency in New York. According to the provisions of the Companies Act, 2013, analyze the procedure for signing the minutes of the mentioned meeting in the absence of Ms. Radha and by whom.

Ans-

Section 118 of the Companies Act, 2013 mandates that every company should prepare, sign, and maintain minutes of the proceedings of every general meeting within thirty days of its conclusion. These minutes serve as evidence of the recorded proceedings in a meeting.

As per Rule 25 of the Companies (Management and Administration) Rules 2014, in conjunction with Section 118 of the Companies Act, 2013, each page of the minutes book must be initialled or signed. The last page of the record of proceedings of each meeting, in the case of minutes of a general meeting, should be dated and signed by the Chairman of that meeting within the stipulated thirty-day period. In the event of the death or inability of the Chairman within that period, the last page can be signed by a director duly authorized by the Board for the purpose.

Therefore, in the absence of Ms. Radha, the minutes of the meeting can be signed by any other director who is duly authorized by the Board.

Q-71 Zenith Software Solutions Pvt. Ltd. was incorporated on 15th March 2022 with the objective of providing IT services. The Company adopted its first financial year from 15th March 2022 to 30th June 2023. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013, revealed a net profit. The Board of Directors declared a 15% interim dividend at their meeting held on 10th September 2023, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

(i) Whether Zenith Software Solutions Pvt. Ltd. has complied with due diligence in declaring interim dividends?

(ii) Can the company declare a dividend if it was registered under Section 8 of the Companies Act, 2013?

(iii) What are the penal consequences in case of failure to pay the interim dividend?

Ans-

(i) According to **Section 123(3)** of the Companies Act, 2013, the Board of Directors of a company may declare interim dividends during any financial year or at any time during the period from the closure of the financial year until the holding of the annual general meeting.

It can be paid out of the surplus in the profit and loss account, profits of the financial year for which the dividend is sought to be declared, or profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In this case, Zenith Software Solutions Pvt. Ltd. has complied with due diligence in declaring interim dividends. The Interim Dividend was declared by the Board of Directors at their meeting held on 10th September 2023, before holding its first Annual General Meeting. Additionally, the financial statement revealed a net profit, allowing the interim dividend to be paid out of the profits of the financial year ending 30th June 2023.

(ii) According to **Section 8(1)** of the Companies Act, 2013, a company having a license under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed. Therefore, Zenith Software Solutions Pvt. Ltd., being registered under Section 8, cannot declare and pay dividends to its members.

(iii) Penal consequences: According to **Section 127** of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted **within thirty days** from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if knowingly a party to the default, be punishable with imprisonment that may **extend to two years** and with a fine not less than **one thousand rupees** for every day during which such default continues. The company shall also be liable to pay simple interest at the rate of **eighteen per cent** per annum during the period for which such default continues.

Q-72 Mr. S, holder of 800 equity shares of Rs. 12 each of CD Ltd., approached the Company in the first week of October 2021 with a claim for the payment of dividend of Rs. 3000 declared @ 15% by the Company at its Annual General Meeting held on 25.09.2012 with

respect to the financial year 2011-12. The Company refused to accept the request of Mr. S 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.

Ans-

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.

In the given question, Mr. S 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 25.09.2012 to the first week of October 2021). As a result, his unclaimed dividend (Rs. 3,000) along with such shares (800 equity shares) must have been transferred to the Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. S for the payment of dividend of Rs. 3,000 (declared in Annual General Meeting on 25.09.2012).

In terms of the above-stated provisions, Mr. S should be advised as under:

(i) If Mr. S 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 a refund of the dividend amount, which was transferred to the above fund, in accordance with the prescribed rules.

Q-73 XYZ Ltd. has a paid-up share capital of Rs 15 crore and free reserves of Rs 75 crore, as on 31st March 2020. The company incurred a loss of Rs 60 lakh after providing for depreciation for the year ended 31st March 2020, making it unable to declare any dividend for the said year from profits. However, the Board of directors of the company announced the declaration of a dividend of 15% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 18%. Referring to the provisions of the Companies Act, 2013, examine the validity of the declaration of dividend.

Ans-

As per the Second Proviso to **Section 123(1)** of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare a dividend out of the accumulated profits of previous years transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

(i) The rate of dividend declared shall not exceed the average of the rates at which the dividend was declared by the company in the immediately preceding three years.

As per the facts of the question, the present rate of dividend is 15%, and the average dividend declared in the last three years is 18%. So, this condition is fulfilled.

Since the company has not declared any dividend in the **preceding three financial years**, hence condition I is not applicable in this case.

(ii) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: Rs 2.25 Crores (15% of Rs 15 Crores i.e., on paid-up capital)

10% of paid-up share capital and free reserves: 10% of (15 crores + 75 crores) = Rs 9 Crores.

This condition is fulfilled as the amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(iii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which the dividend is declared, and only thereafter, any dividend in respect of equity shares shall be declared.

(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: Rs 72.75 Crores (75 Crores – 2.25 Crores)

15% of paid-up share capital: Rs 2.25 Crores (15% of 15 Crores)

This condition is fulfilled. Taking into account all the conditions, it can be said that the declaration of dividend by XYZ Limited is valid.

Q-74 Global Technologies Corporation declared and paid dividends on time to all its equity holders for the financial year 2022-23, except in the following two cases:

(i) Ms. Priya Sharma, holding 300 shares, had instructed the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend, but the bank returned the payment due to a mismatch in the payee's name in the bank records. The company, however, did not inform Ms. Priya Sharma about this discrepancy.

(ii) Dividend amount of Rs. 75,000 was not paid to the successor of Late Mr. Singh, in view of the court order restraining the payment due to a legal dispute within the family about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Ans-

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividends on time. One of such situations is where a shareholder has given directions to the company regarding the payment of dividends, and those directions could not be complied with, but the non-compliance was not communicated to him.

In this case, the company failed to inform shareholder Ms. Priya Sharma about the non-compliance of her direction regarding the payment of dividends. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, provides that no offense shall be deemed to have been committed where the dividend could not be paid by reason of the operation of law.

In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its directors, etc.

Q-75 The registered office of Himalaya Ltd. is situated in a classified backward area of Karnataka. The Board is contemplating keeping its books of account at its corporate office in Bengaluru, which is conveniently located. Seeking your advice, the Board wants to know the feasibility of maintaining accounting records at a place other than the registered office of the company. Provide your advice.

Ans-

In accordance with **Section 128(1)** of the Companies Act, 2013, every company, including Himalaya Ltd., is mandated to prepare and maintain books of accounts, relevant books and papers, and financial statements for each financial year. These records **must accurately depict the state of the company's affairs**, covering both the registered office and any branch offices, if applicable, while adhering to accrual accounting and the double-entry system.

The proviso to Section 128(1) allows Himalaya Ltd.'s Board of Directors to decide to keep some or all of the aforementioned books of account and relevant papers at a place in India other than the registered office. If such a decision is made, the company must file a notice with the Registrar **within seven days**, providing the full address of the alternative location. Additionally, Himalaya Ltd. has the option to maintain these records in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014.

Therefore, the Board of Himalaya Ltd. can proceed with keeping its books of account at its corporate office in Bengaluru by following the outlined procedure.

Q-76 Rahul, also a CA Intermediate student, finds himself in a situation where his fellow CA Intermediate friend seeks clarification on the provisions of the Companies Act, 2013, pertaining to the following:

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

(ii) Period of preservation of books of accounts

Ans-

(i) Inspection by Directors

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

Assistance by officers and employees:

As outlined in Section 128(4), when an inspection occurs under sub-section (3), the officers and other employees of the company are obligated to provide the person conducting the inspection with all reasonable assistance related to the inspection.

(ii) Period for preservation of books:

As per **Section 128(5)** of the Companies Act, 2013, the company is required to maintain the books of accounts, along with relevant vouchers for any entry, in good order for a minimum of eight years immediately preceding the relevant financial year.

In the case of a company incorporated less than eight years before the financial year, the books of accounts for the entire preceding period, along with vouchers, should be preserved. Notably, the proviso to sub-section 5 allows the Central Government, in case of an investigation ordered under Chapter XIV of the Act related to inspection, inquiry, or investigation, to direct that the books of account be kept for a longer period than 8 years, as deemed fit, providing specific directions to that effect.

Q-77 (i) ABC Corporation, formed under the regulations of the Companies Act, 2013, has two subsidiaries - XYZ Corporation and PQR Corporation. All three entities have compiled their financial statements for the fiscal year ending on March 31, 2021. In compliance with

the provisions of the Companies Act, 2013, elaborate on how the subsidiaries XYZ Corporation and PQR Corporation should formulate their Balance Sheet and Statement of Profit & Loss.

(ii) The Companies Act, 2013 imposes an additional responsibility on the Board of Directors to include a 'Directors' Responsibility Statement' in the board's Report. Provide a brief explanation of three matters that must be included in this statement according to the Companies Act, 2013.

Ans-

(i) As per section 129(3) of the Companies Act, 2013, when a company has one or more subsidiaries or associate companies, it must, in addition to the financial statements outlined in sub-section (2), prepare a consolidated financial statement (CFS) for the company and all subsidiaries and associate companies. This should be done in the same form and manner as the company's own financial statements and in accordance with applicable accounting standards. The consolidated financial statement must be presented at the annual general meeting along with the company's financial statement.

Additionally, a separate statement containing the key features of the financial statement of subsidiaries or associate companies, in **Form AOC-1** as per Rule 5 of the Companies (Accounts) Rules, 2014, should be attached.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules 2014

Since the consolidation of accounts is the responsibility of the holding company (ABC Corporation), XYZ Corporation and PQR Corporation should prepare their Balance Sheet and Statement of Profit and Loss in accordance with the relevant provisions of the Companies Act, 2013 and in compliance with the applicable Accounting Standards.

(ii) Directors' Responsibility Statement: Section 134(5) of the Companies Act, 2013 stipulates that the Directors' Responsibility Statement, as mentioned in section 134(3)(c), must affirm the following:

(1) The preparation of annual accounts followed the applicable accounting standards, with proper explanations for any material departures.

(2) The directors selected consistent accounting policies, made reasonable and prudent judgments and estimates to present a true and fair view of the company's state of affairs at the end of the financial year and its profit and loss for that period.

(3) The directors ensured the proper maintenance of adequate accounting records in accordance with the Act to safeguard the company's assets and prevent and detect fraud and other irregularities.

(4) The annual accounts were prepared on a going concern basis.

(5) For listed companies, the directors laid down internal financial controls, ensuring their adequacy and effective operation. Internal financial controls include policies and procedures for orderly and efficient business conduct, adherence to company policies, safeguarding assets, preventing and detecting frauds and errors, ensuring accuracy and completeness of accounting records, and timely preparation of reliable financial information.

(6) The directors devised proper systems to ensure compliance with applicable laws, and these systems were adequate and effective.

Q-78 The Board of Directors of Zenith Technologies Incorporated comprises Ms. Radhika (Director), Mr. Arjun (Director), and Mr. Anand (Managing Director). The company has also engaged the services of a Company Secretary.

The financial statements of the company were endorsed by Ms. Radhika and Mr. Arjun. Evaluate whether the validation of the financial statements of the company aligns with the provisions of the Companies Act, 2013.

Ans-

As per section 134(1) of the Companies Act, 2013, the financial statements, including any consolidated financial statements, must receive approval from the Board of Directors before being signed on behalf of the Board. This can be done by the chairperson of the company if authorized by the Board, or by two directors, one of whom should be the managing director (if appointed), along with the Chief Executive Officer, the Chief Financial Officer, and the company secretary (if appointed).

In the case of a **One Person Company**, only one director's signature is required for submission to the auditor.

In this scenario, the Balance Sheet and Profit and Loss Account have been signed solely by Ms. Radhika and Mr. Arjun, both directors. In accordance with Section 134(1) of the Companies Act, 2013, Mr. Anand, the Managing Director, should have been one of the signing directors. Furthermore, since the company has a Company Secretary, their signature is also required on the financial statements. Therefore, to comply with the provisions, Mr. Anand, as the Managing Director, and the Company Secretary should also sign the financial statements.

Q-79 (i) SKIP Limited (the Company) was incorporated on 01.04.2019. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2019-20	Rs 5.00 crore	Rs 3.75 crore
2020-21	Rs 7.00 crore	Rs 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2021-22, if it is mandatory. You are requested to advice the Company

in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

Ans-

(i) According to **section 135(1)** of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to **section 135(5),** the Board of every company referred to in sub- section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the "Net Profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of SKIP Limited for the FY 2020-21 is Rs 7 crore, hence, SKIP Limited is required to constitute a CSR committee during FY 2021-22 as the Net profit before tax for the FY exceeds Rs. 5 crore.

2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (SKIP Limited was incorporated on 1.04.2019.)

Average Net Profit since incorporation: (Rs 5 crore + Rs 7 crore)/ 2 = Rs 6 crore

Minimum contribution towards CSR will be: 2% of Rs 6 crore = Rs 0.12 crore or Rs 12 Lacs

Q-80 The Galactic Union owns 51% of the paid-up equity share capital of Star Innovations. The audited financial statements of Star Innovations for the financial year 2021-22 were disclosed at its annual general meeting on 30th September 2022. However, awaiting the comments of the Celestial Auditor General on the said accounts, the meeting was adjourned without adopting the accounts. Upon receipt of the Celestial Auditor General's comments on the accounts, the adjourned annual general meeting took place on 14th October 2022, where the accounts were adopted. Subsequently, Star Innovations filed its financial statements for the financial year 2021-22 with the Registrar of Companies on 10th November 2022. Assess, with reference to the applicable provisions of the Galactic Companies Act, whether Star Innovations has complied with the statutory requirement regarding filing of accounts with the Registrar?

Ans-

According to the first proviso to **section 137(1)** of the Galactic Companies Act, if financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents must be filed with the Registrar within thirty days of the date of the annual general meeting. The Registrar will record them provisionally until the financial statements are filed after adoption in the adjourned annual general meeting for that purpose.

According to the second proviso to section 137(1) of the Galactic Companies Act, financial statements adopted in the adjourned AGM should be filed with the Registrar within thirty days of the date of such adjourned AGM, with prescribed fees or additional fees as may be applicable.

In this scenario, Star Innovations adopted its accounts at the adjourned AGM on 14th October 2022 and filed the financial statements with the Registrar on 10th November 2022, within 30 days of the adjourned AGM. However, Star Innovations did not file its unadopted financial statements within 30 days of the original annual general meeting held on 30th September 2022.

Therefore, Star Innovations has complied with the statutory requirement by filing the adopted accounts within the due date with the Registrar, but it has not fulfilled the provisions regarding filing unadopted accounts within the specified timeframe.

Q-81 Gopika Ltd. was established in 2000 in the city of Coimbatore, primarily engaged in the manufacturing of electronic components. The company is currently in the process of selecting statutory auditors for the financial year 2022-23.

Evaluate the eligibility of the following individuals for appointment as the statutory auditor of Gopika Ltd:

(i) Harish, a qualified Chartered Accountant, holds equity shares of nominal value Rs. 1,50,000 in Suman Ltd., an associate company of Gopika Ltd.

(ii) Ananya, a qualified Chartered Accountant, whose daughter owes Gopika Ltd. a sum of Rs. 1,20,000.

(iii) Arjun, a qualified Chartered Accountant, who was convicted in 2015 by a court for an offence involving fraud.

Ans-

Eligibility to be appointed as auditor of a company:

(i) According to **Sec. 141(3)(d)(i)** of the Companies Act, 2013, along with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified if he, his relative, or partner holds any security or interest in the company, its subsidiary, or its holding or associate company.

Therefore, Harish is ineligible for the auditor position in Gopika Ltd. due to his holdings in Suman Ltd.

(ii) In accordance with **Sec. 141(3)(d)(ii),** a person is disqualified if he, his relative, or partner is indebted to the company, its subsidiary, or its holding or associate company, exceeding Rs. 5,00,000.

Ananya is eligible to be appointed as the statutory auditor since her daughter's debt to Gopika Ltd. is within the permissible limit.

(iii) As per **Sec. 141(3)(h),** a person convicted of an offence involving fraud and not having completed 10 years from the date of conviction is not qualified to be appointed as an auditor.

Arjun, having been convicted in 2015, is disqualified from being appointed as the statutory auditor of Gopika Ltd.

Q-82 ABC Corporation was incorporated on 15.07.2023, and the company has a paid-up share capital of Rs. 7 crores. The major shareholders of the company are as follows:

Central Government: 2.10 (in Rs.)

Punjab Government: 1.80 (in Rs.)

Others: 3.10 (in Rs.)

The Board of Directors appointed the first auditor on 20.11.2022, and objections were raised by the members, claiming that only the members have the authority to appoint the first auditor.

Evaluate the validity of the appointment under the provisions of the Companies Act, 2013, and provide guidance on the members' contention.

Ans-

As defined by **Sec. 2(45)** of the Companies Act, 2013, a "Government company" is one in which not less than 51% of the paid-up share capital is held by the Central Government, State Government(s), or a combination of both. This includes subsidiary companies of such Government entities.

According to **Sec. 139(7)** of the Companies Act, 2013, for a Government company, the first auditor should be appointed by the Comptroller and Auditor General (C&AG) of India within 60 days from the date of company registration. If the C&AG fails to make the appointment within this period, the company's Board of Directors has the authority to appoint the auditor within the next 30 days. If the Board also fails to do so within the subsequent 30 days, the matter is to be communicated to the members, who will appoint the auditor within the next 60 days at an Extraordinary General Meeting (EGM). The appointed auditor will hold office until the conclusion of the first annual general meeting.

In the case of ABC Corporation, being a government company with 55.71%[(2.10 + 1.80)/7= 55.71%] of the share capital held by the Federal and State Authorities, the first auditor should have been appointed by the C&AG of India within 60 days from the date of incorporation. Therefore, the Board of Directors' appointment on 20.11.2022 is not valid.

The Board of Directors is only authorized to appoint the first auditor if the C&AG does not make the appointment within the stipulated 60 days. Subsequently, if the Board fails to appoint an auditor within the next 30 days, the responsibility is transferred to the members, who will appoint the auditor within the next 60 days at an EGM.

Conclusion:

The contention of the members, asserting that only the members have the authority to appoint the first auditor of a Government company, is not correct.

Q-83 XYZ & Co., a firm of Chartered Accountants, was reappointed as auditors at the Annual General Meeting of Y Ltd. held on 15.11.2021. However, the Board of Directors recommended their removal before the expiry of the term by passing a resolution in the Board Meeting held on 20.04.2022. Subsequently, having considered the Board's recommendation, XYZ & Co. were removed at the general meeting held on 30.06.2023 by passing a special resolution, subject to the approval of the Central Government.

Explain the provisions for the removal of second and subsequent auditors, and evaluate the validity of the removal of XYZ & Co. by Y Ltd. under the provisions of the Companies Act, 2013.

Ans-

Removal of auditor before expiry of tenure:

According to **Section 140(1)** of the Companies Act, 2013, the procedure for the removal of auditors is outlined. The auditor appointed under **Section 139** may be removed from office before the expiry of the term only by a special resolution of the company, after obtaining the previous approval of the Central Government (C.G.) in that regard in the prescribed manner.

Additionally, it is stipulated that before taking any action under **Section 140(1),** the concerned auditor should be given a reasonable opportunity to be heard.

Therefore, in compliance with Section 140(1) of the Companies Act, 2013, read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, **the following steps should be taken for the removal of an auditor before the completion of the term:**

(a) The application to the Central Government for the removal of the auditor shall be made in Form ADT-2 and accompanied by the prescribed fees.

(b) The application should be submitted to the C.G. within 30 days of the resolution passed by the Board.

(c) The company should hold the general meeting within 60 days of receiving approval from the Central Government to pass the special resolution.

Conclusion:

In the present case, the decision of Y Ltd. to remove XYZ & Co., auditors of the company at the general meeting held on 30.06.2023, subject to the approval of the Central Government, is not valid. The approval of the Central Government should be obtained before passing the special resolution in the general meeting.

Q-84 Grape & Associates, Chartered Accountants, a Limited Liability Partnership firm with CA P, CA Q, and CA R as partners, is the statutory auditor of a listed company M/s Mega Corporation for the past 6 years as of 1.04.2022.

CA Q is also a partner in another Chartered Accountant firm Apple & Co., Chartered Accountants. Provide guidance under the provisions of the Companies Act, 2013:

(1) Up to how many years can Grape & Associates continue as statutory auditors of M/s Mega Corporation?

(2) What shall be the cooling-off period for Grape & Associates concerning M/s Mega Corporation?

(3) Can Apple & Co. be appointed as statutory auditors of M/s Mega Corporation and its another listed subsidiary M/s Bright Industries during such cooling-off period?

(4) Can Grape & Associates be appointed as internal auditors of M/s Mega Corporation and its another listed subsidiary M/s Bright Industries during such cooling-off period?

Ans-

Rotation of Auditor and Cooling-off period:

Section 139(2) of the Companies Act, 2013, outlines the provisions relating to the rotation of auditors and specifies the following:

(i) Listed companies and other prescribed class or classes of companies (except OPC and small companies) shall not appoint or reappoint an audit firm as an auditor for more than two terms of 5 consecutive years.

(ii) An audit firm that has completed its term (i.e., two terms of five consecutive years) shall not be eligible for reappointment as an auditor in the same company for five years from the completion of such term.

(iii) Further, as of the date of appointment, no audit firm having a common partner or partners with another audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.

Conclusion:

(1) Grape & Associates can continue as statutory auditors of M/s Mega Corporation for 4 more years from 1.4.2022, i.e., they can continue in office only until 31.3.2026.

(2) The cooling-off period shall be 5 years.

(3) Apple & Co. cannot be appointed as statutory auditors of M/s Mega Corporation during the cooling-off period of Grape & Associates, as CA. Q is the common partner in both Grape & Associates and Apple & Co. However, Apple & Co. can be appointed as statutory auditors of M/s Bright Industries (a listed subsidiary of M/s Mega Corporation) during the cooling-off period.

(4) As per Section 138(1) of the Companies Act, 2013, every listed company and other prescribed class of companies shall be required to appoint an internal auditor. Accordingly, Grape & Associates can be appointed as internal auditors of M/s Mega Corporation and its subsidiary M/s Bright Industries (a listed company). The provision of the cooling-off period as given under Section 139 of the Companies Act, 2013, shall not be applicable to internal auditors.

Q-85 ABC Corporation Limited, a Company Limited incorporated in Malaysia, wishes to establish a branch office in Kolkata, India. As a practicing Chartered Accountant appointed by the company as a liaison officer for compliance of legal formalities, you are tasked with examining the provisions of the Companies Act, 2013, and providing answers to the following:

(i) Whether the branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company upon the establishment of a branch office in Kolkata.

Ans-

(i) As per **section 2(42)** of the Companies Act, 2013, a "Foreign company" refers to any company or body corporate incorporated outside India that:

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

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

Branch offices are typically viewed as an extension of the Parent Company's office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activities in India, necessitating compliance with the provisions of this chapter and other relevant sections of the Companies Act, 2013.

(ii) Pursuant to **section 380(1)** of the Companies Act, 2013, every foreign company must, within 30 days of establishing a place of business in India, submit the following documents to the Registrar for registration:

(a) A certified copy of the charter, statutes, or memorandum and articles of the company, or any other instrument constituting or defining the company's constitution. If the documents are not in English, a certified translation in English is required;

(b) The complete address of the registered or principal office of the company;

(c) A list of the directors and secretary of the company, including specific particulars as prescribed. The particulars include:

(1) Full personal name and surname;

(2) Any former name or names;

(3) Father's, mother's, or spouse's name;

(4) Date of birth;

(5) Residential address;

(6) Nationality;

(7) Passport details;

(8) Income-tax PAN, if applicable;

(9) Occupation;

(10) Directorship in any other Indian company;

(11) Other directorships held;

(12) Membership Number (for Secretary only);

(13) E-mail ID.

(d) The name and address of persons in India authorized to accept service of process on behalf of the company;

(e) The full address of the office in India deemed as its principal place of business;

(f) Particulars of opening and closing of a place of business in India on earlier occasions;

(g) A declaration stating that none of the directors or the authorized representative in India has been convicted or debarred from the formation and management of companies in India or abroad;

(h) Any other information as prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, documents are to be delivered to the Registrar having jurisdiction over New Delhi.

Q-86 Global Ventures Inc., a foreign company without establishing a place of business in India, intends to issue a prospectus for the subscription of securities in India. In your capacity as a consultant for the company, provide guidance on the procedure for such an issuance of a prospectus by Global Ventures Inc.

Ans-

In accordance with **section 389** of the Companies Act, 2013, no individual shall issue, circulate, or distribute in India any prospectus offering securities for subscription in a company incorporated or to be incorporated outside India, regardless of whether the company has established, will establish, or has no plans to establish a place of business in India. Before such issuance, circulation, or distribution of the prospectus in India, a copy of the prospectus, certified by the chairperson of the company and two other directors of the company, indicating approval by resolution of the managing body, must be delivered for registration to the Registrar. The prospectus should explicitly state that a certified copy has been submitted for registration, and it should bear any necessary consent for the prospectus issuance as required by section 388.

Additionally, the prospectus should be accompanied by any prescribed documents under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.

Global Ventures Inc., the foreign company, should proceed with the issuance of the prospectus in strict compliance with the aforementioned provisions of section 389 of the Companies Act, 2013.

Q-87 Elysium GmbH, a foreign company based in Germany, has established a place of business in Mumbai. Outline the relevant provisions of the Companies Act, 2013, and rules established thereunder concerning the preparation and filing of financial statements, as well as the documents to be appended to the financial statements by the foreign company.

Ans-

Preparation and Filing of Financial Statements by a Foreign Company:

In accordance with section 381 of the Companies Act, 2013:

(i) Elysium GmbH, being a foreign company, is obligated, in every calendar year:

(a) To prepare a balance sheet and profit and loss account in the prescribed form, containing specified particulars and inclusive of or attached to documents as prescribed.

(b) To deliver a copy of these documents to the Registrar.

As per the Companies (Registration of Foreign Companies) Rules, 2014, Elysium GmbH shall prepare financial statements for its Indian business operations in accordance with Schedule III or as closely aligned as possible for each financial year. The required documents to be annexed should comply with Chapter IX, i.e., Accounts of Companies.

(ii) The Central Government holds the authority to direct that, in the case of any foreign company or a class of foreign companies, the requirements of clause (a) of section 381(1) may not apply, or may apply with specified exceptions and modifications outlined in a notification.

(iii) If any of the specified documents are not in the English language, a certified translation in English must be annexed. [Section 381(2)]

(iv) Elysium GmbH is required to send to the Registrar, along with the documents, a list in the prescribed form of all places of business it has established in India as of the date relevant to the balance sheet.

As per the Companies (Registration of Foreign Companies) Rules, 2014, Elysium GmbH must file with the Registrar, along with the financial statement in Form FC-3 and the prescribed fee, a list of all the places of business established by the foreign company in India as of the date of the balance sheet.

Should any foreign company cease to have a place of business in India, it must promptly notify the Registrar. From the date of providing notice, the obligation of the company to deliver any document to the Registrar shall cease if it does not have any other place of business in India.

(v) According to the Companies (Registration of Foreign Companies) Rules, 2014:

(a) Additionally, Elysium GmbH, along with the financial statement, must attach the following documents:

(1) Statement of related party transactions

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any)

These statements should include other particulars as prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents must be delivered to the Registrar within six months from the close of the financial year to which the documents relate.

Q-88 ABC Innovations LLP was incorporated on 01.12.2022. On 01.04.2023, a partner of a partnership firm named XYZ Innovators, registered under the Indian Partnership Act, 1932 since 01.04.2005, approached the ROC. The partner requested that, as the name of LLP is closely similar to the name of their already registered partnership firm, the LLP should consider changing its name. Explain whether ABC Innovations LLP is obligated to change its name under the provisions of the Limited Liability Act, 2008.

Ans-

Section 15 of the LLP Act, 2008 stipulates that no LLP shall be registered by a name which, in the opinion of the Central Government, is:

(a) undesirable; or

(b) identical or too nearly resembles that of any other LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999.

Furthermore, **section 17** provides that if the name of an LLP is identical with or too nearly resembles:

(a) that of any other LLP or a company; or

(b) a registered trademark of a proprietor under the Trade Marks Act, 1999,

then, upon the application of such LLP or proprietor mentioned in clauses (a) and (b) respectively, or a company, the Central Government may direct the LLP to change its name within a period of 3 months from the date of issuing such direction.

In accordance with these provisions, ABC Innovations LLP is not obliged to change its name solely because it resembles the name of a partnership firm. These regulations are specifically applicable in cases where the name closely resembles that of an LLP, a company, or a registered trademark of a proprietor.

Therefore, ABC Innovations LLP is not required to change its name even if it bears a resemblance to the name of the partnership firm XYZ Innovators.

Q-89 Mr. Arjun Singh wishes to establish an LLP with himself, his spouse Mrs. Aanya Singh, and one Hindu Undivided Family (HUF) as partners. Can this LLP be incorporated under the LLP Act, 2008? Explain.

Ans-

Section 5 of the Limited Liability Partnership (LLP) Act, 2008 states that any individual or body corporate may be a partner in an LLP. However, an individual is ineligible to become an LLP partner if:

(a) the individual has been declared of unsound mind by a Court of competent jurisdiction, and the finding is currently in force;

(b) the individual is an undischarged insolvent; or

(c) the individual has applied to be adjudicated as an insolvent, and the application is pending.

Furthermore, **Section 2(1)(e)** defines a Body Corporate as a company under 'clause (20) of section 2 of the Companies Act, 2013, and includes:

(i) an LLP registered under this Act;

(ii) an LLP incorporated outside India; and

(iii) a company incorporated outside India,

excluding:

(i) a corporation sole;

(ii) a co-operative society registered under any current law;

(iii) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may specify by notification in the Official Gazette.

Therefore, an HUF is not covered within the definition of a body corporate and cannot be a partner in an LLP.

Q-90 There exists an LLP named Ganges Infra Ventures LLP, comprising 4 partners: Mr. Ravi, Mr. Rashid, Mr. Karan, and Mr. Alan. Mr. Ravi and Mr. Alan are non-residents, while the

other two are residents. The LLP intends to appoint Mr. Ravi and Mr. Rashid as Designated Partners. Explain, in the context of the Limited Liability Partnership Act, 2008, whether the LLP can proceed with this decision.

Ans-

In accordance with **Section 7** of the LLP Act, 2008, every LLP is required to have at least two designated partners who must be individuals, and at least one of them must be a resident in India. The explanation to this section defines "resident in India" as a person who has stayed in India for a period of not less than one hundred twenty days during the financial year.

In the given scenario, apart from Mr. Karan and Mr. Rashid, Mr. Alan should also be designated as a partner to ensure compliance with the residency requirement. Therefore, the LLP can proceed with appointing Mr. Ravi and Mr. Rashid as designated partners while ensuring that at least one of them is a resident in India.

Q-91 When a notice, mandated by statutory rules to be dispatched through "registered post acknowledgment due," is sent using only "registered post," does the presumption safeguarding notice service by "registered post" under the General Clauses Act remain valid? Analyze the validity of such notice in this context, considering the provisions of the General Clauses Act, 1897.

Ans-

According to **Section 27** of the General Clauses Act, 1897, if any legislation or regulation requires a document to be served by post, the service is deemed effective if the following conditions are met:

(i) Proper addressing,

(ii) Pre-paying, and

(iii) Posting by registered post.

The letter containing the document is considered served at the time it would be delivered in the ordinary course of post.

In this case, the statutory rules explicitly mandate the service of notice by "registered post acknowledgment due." Therefore, deviating from this requirement by sending the notice via "registered post" alone does not comply with the rules. However, if the statutory rules did not specify the mode of service, sending the notice by registered post alone would suffice.

It's essential to note a similar case, **United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181,** where the presumption of serving notice under "registered post" was found untenable when the statutory rules required "registered post acknowledgment due."

Q-92 A, the owner of a piece of land containing fifty mango trees, sold the land along with the wood obtained after felling the fifty trees to B. A is uncertain whether the sale of timber constitutes a sale of immovable property. Provide guidance based on the provisions of the General Clauses Act, 1897.

Ans-

As per the definition of "Immovable Property" in **Section 3(26)** of the General Clauses Act, 1897, the term includes:

(i) Land,

(ii) Benefits to arise out of land, and

(iii) Things attached to the earth, or

(iv) Permanently fastened to anything attached to the earth.

This definition is inclusive, covering land, benefits arising from land, things attached to the earth, and items permanently fastened to anything attached to the earth. When an enactment defines immovable property negatively and is not exhaustive, the General Clauses Act's definition applies.

In the present scenario, A has sold land along with the timber obtained after cutting fifty mango trees on the land. According to the provided definition, land qualifies as immovable property. However, timber, being disconnected from the earth, does not fall under the category of immovable property. Therefore, the sale of timber in this case does not tantamount to the sale of immovable property.

Q-93 With reference to the provisions of the General Clauses Act, 1897, determine the day/date on which the following Regulation/Ordinance comes into force. Provide reasons for your conclusions.

(1) A State Ordinance which has not explicitly mentioned a specific date for commencement.

(2) The Insurance Regulatory and Development Authority of India (IRDAI) (Insurance Brokers) (Amendment) Regulations, 2022 were issued by IRDAI via Notification dated 10th March 2022, with effect from 1st July 2022.

Ans-

According to **Section 5** of the General Clauses Act, 1897, when a State Ordinance does not specify a particular date for commencement, it shall take effect on the day it receives the assent of the Governor in the case of a State Ordinance.

(2) In the case of the Insurance Regulatory and Development Authority of India (IRDAI) (Insurance Brokers) (Amendment) Regulations, 2022, if a specific date of enforcement is prescribed in the Official Gazette, the Regulations shall come into force from that specified date.

Therefore, considering the notification date of 10th March 2022 and the specified effective date of 1st July 2022 in the Gazette, the Regulations will be enforced from 1st July 2022.

Q-94 Explain the significance of the Preamble in interpreting a statute. Can the Preamble override the clear provisions of an Act?

Ans-

The **Preamble** expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Tile, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, **for example**, where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Q-95 In what way are the following terms considered as external aid in the interpretation of statutes:

(i) Historical Setting

(ii) Use of Foreign Decisions

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

understanding 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.

Q-96 (i) Explain the role and purpose of a proviso in statutory interpretation, using a hypothetical scenario involving an Indian company and a relevant statutory provision.

(ii) Elaborate on the significance of dictionary definitions in statutory interpretation, emphasizing the importance of context and judicial decisions. Provide a hypothetical example involving an Indian statute and a term not defined within the Act.

Ans-

(i) The normal function of a **proviso** is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it. Provisos that are so included begin with the words, "provided that". The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

• Exception clauses are intended to restrain the enacting clause to particular cases.

• Savings clause is used to preserve from destruction certain rights, remedies, or privileges already existing.

It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

(ii) Dictionary definitions refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing Statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

Q-97 Explain the rule in 'Heydon's Case' while interpreting the Statutes quoting an example.

Ans-

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in **the Heydon's case**. This rule enables, consideration of four matters in constituting an Act:

(1) what was the law before making of the Act,

(2) what was the mischief or defect for which the law did not provide,

(3) what is the remedy that the Act has provided, and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore , even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.

Q-98 Mr. Verma, an Indian National, intends to acquire Foreign Exchange for the following purposes:

(i) Remittance of Euro 40,000 from the proceeds of a gaming competition.

(ii) Euro 80,000 for organizing an international art exhibition in Europe. Provide guidance on whether he can obtain Foreign Exchange and the conditions that apply.

Ans-

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence, Mr. Verma cannot withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence, in respect of item (ii), **Mr. Verma can withdraw the Foreign Exchange** after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Q-99 Ms. Priya, a resident of India during the Financial Year 2020-2021, departed for Canada on 20th August 2021 to pursue a 2-year program in Environmental Science. What would be her residential status under the Foreign Exchange Management Act, 1999 for the Financial Years 2021-2022 and 2022-2023?

Ms. Priya requires USD 20,000 annually for tuition fees and USD 25,000 for incidental and stay expenses. Can she obtain the necessary Foreign Exchange, and if so, what are the conditions?

Ans-

Residential Status: As per section 2(v) of the Foreign Exchange Management Act, 1999, a 'Person resident in India' refers to an individual residing in India for more than 182 days during the preceding financial year [Section 2(v)(i)]. However, this definition excludes

individuals who have left India or stay outside India for employment or any other purpose indicating an intention to stay outside India for an uncertain period.

In the case of Ms. Priya, who was a resident in India during the financial year 2020-2021 and left for Canada on 20th August 2021 for a 2-year program, she will be considered a resident until 19th August 2021. From 20th August 2021 onwards, she will be treated as a person resident outside India. It's noteworthy that the Reserve Bank of India (RBI) has clarified in its circular that students are generally considered non-residents, as they often work abroad to support their studies and living expenses.

Foreign Exchange for studies abroad: According to Para I of Schedule III to the Foreign Exchange Management (Current Account Transactions) Amendment Rule, 2015, individuals can avail of foreign exchange up to the limit of USD 2,50,000 for studies abroad. Any additional remittance beyond this limit requires prior approval from the RBI. The proviso to Para I allows individuals to remit amounts exceeding USD 2,50,000 based on estimates from the foreign institution without prior RBI approval.

In the case of Ms. Priya, who requires USD 45,000 annually for academic and living expenses, she falls within the permissible limit, and thus, she can obtain the required Foreign Exchange without seeking prior approval from the RBI.

Q-100 Mr. Arjun, an Indian resident individual, wishes to obtain Foreign Exchange for the following purposes:

(A) GBP 80,000 for pursuing studies abroad based on estimates provided by the foreign university.

(B) Gift Remittance amounting to GBP 7,000.

Provide advice on whether he can obtain Foreign Exchange and, if so, under what condition(s)?

Ans-

(A) Remittance of Foreign Exchange for studies abroad: The Foreign Exchange Management Act, 1999 allows the release of foreign exchange for studies abroad up to a limit of USD 250,000 without requiring prior permission from the RBI. However, if the amount exceeds this limit, prior approval from the RBI is necessary. The proviso to Para I of Schedule III also permits individuals to make remittances exceeding USD 250,000 based on estimates received from the foreign institution.

In the case of Mr. Arjun, who seeks GBP 80,000 for studies abroad, which is equivalent to approximately USD 105,000 (considering the exchange rate), no permission from the RBI is required as the amount falls within the permissible limit.

(B) Gift remittance exceeding GBP 7,000: According to the provisions of Section 5 of FEMA 1999, certain rules govern the withdrawal of foreign exchange for current account transactions, including gift remittances. Gift remittances exceeding USD 250,000 require prior approval from the RBI.

However, in the present scenario, as Mr. Arjun intends to make a gift remittance of GBP 7,000, equivalent to approximately USD 9,200 (considering the exchange rate), no permission from the RBI is necessary.