Addendum Sheet for May'24 students

This sheet covers Chapter-wise **EXTRA questions** of May'23 exams, RTP Nov'23, MTP 1 and 2 of Nov'23 along with answers which needs to be solved over and above The Ultimate Solution QB of May'24. It does **not include Nov'23** exam questions as suggested answers are awaited.

Chapter 4 – Share Capital and Debentures

Question 1

Satvikya Private Limited was formed on 25th April, 2020. At the time of formation, it had provided in its articles that the company shall not be permitted to accept or keep advance subscription or call money in advance. However, in the August 2023, the need was felt to amend the articles with respect to retention of calls-in-advance. Decide whether the provision inserted in the articles at the time of formation of the company, can be considered as void?

[RTP Nov 23]

Answer

Section 50 of the Companies Act, 2013, deals with acceptance of call money in advance by a company which requires that such acceptance can be made only if the company is authorised by its articles to do so.

According to section 6 of the Companies Act, 2013,

'Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant (in conflict) to the provisions of this Act, become or be void, as the case may be.

In simple words, the provisions of this Act shall have overriding effect. It is also to be noted that section 6, starts with "Save as otherwise ….". It means that if any other section of the Act says that article is superior then we will treat it accordingly.

Here, in the given case, articles of Satvikya Private Limited provide that the company shall not be permitted to accept or keep advance subscription or call money in advance and accordingly here, such provision contained in the articles of association will prevail and cannot be considered as void.

Question 2

Innovative Ltd., a start-up by a few qualified professionals, which was incorporated in 2014. The company is booming and favouring the younger generation to work. The Capital Structure of the company is as follows:

Particulars	*INR (Crore)*
Authorised Share Capital	
100,00,000 Equity Shares of ₹ 10 each	*10.00*
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of ₹ 10 each	*5.00*
Share Premium	*1.00*
General Reserve	*3.52*
Profit & Loss Account	*1.58*

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price Rs. 25 per share with a consideration of Rs. 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares under the Companies Act, 2013.

(i) Whether size of issue of sweat equity shares was appropriate?

(ii) Whether lock-in period was justifiable?

(6 Marks) [May 23]

Answer

Issue of Sweat Equity Shares: As per section 53, a company shall not issue shares at a discount, except as provided in section 54.

Section 54 of the Companies Act, 2013 states that sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.

Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

Conditions: According to section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—
(a) the issue is authorised by a special resolution passed by the company;
(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

Limit on issue of Sweat Equity Shares: According to proviso to Rule 8 (4) of the Companies (Share Capital & Debentures) Rules 2014, w.r.t a start-up company, it may issue sweat equity shares not exceeding fifty percent of its paid-up capital up to ten years from the date of its incorporation or registration.

Lock-in Period: Rule 8 (5) of the Companies (Share Capital & Debentures) Rules 2014, states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment.

Accordingly, in the given instance,

(i) Size of issue of sweat equity shares was appropriate, as the decision of the company to issue 30% sweat equity shares to a class of directors and employees was within the prescribed limit. Resolution containing 15 lakh sweat equity shares was also within the limit of 25 lakh sweat equity shares (i.e.,50% of paid-up capital) with the details as to the current market price and with the consideration to be issued.

(ii) No, as per law, lock-in period will be of three years from the date of allotment. Here, it states five years which is against the law.

Chapter 5 – Acceptance of Deposits by Companies

Question 3

Mr. Raj is an employee of DSP Trading Pvt Ltd. As per his contract of employment, his annual salary is Rs. 5,00,000. Mr. Raj paid to the company Rs. 5,30,000 in the nature of noninterest bearing security deposit. Referring to the provisions of the Companies Act, 2013, define deposit and decide whether this amount received from Mr. Raj will be considered as deposit as per rule 2(1)(c)?

(5 Marks) [May 23]

Answer

Deposit: According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.

In the instant case, Rs.5,30,000 was received by DSP Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Raj, who draws an annual salary of Rs.5,00,000 under a contract of employment.

Accordingly, amount of Rs.5,30,000 received from Mr. Raj, will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c) of the Act, as the amount received from Mr. Raj is more than his annual salary of Rs.5,00,000.

Chapter 6 – Registration of Charges

Question 4

City Bakers Limited obtained a term loan of Rs. 1,00,00,000 from DNB Bank Ltd. The loan was granted by the bank by creating a charge on one of its office buildings and the charge was duly registered within 20 days from the date of creation of charge. Will such registration of charge be deemed to be a notice of charge to any person who wishes to lend money to the company against the security of such property? Also explain the extension of time limit of its registration with the provisions under the Companies Act, 2013.

(5 Marks) [May 23]

Answer

Registration of Charge to act as Constructive Notice (Section 80 of the Companies Act, 2013): Section 80 provides that where any charge is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, every person proposing to deal with a company, should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

Yes, in compliance to stated law, such registration of charge be deemed to be notice of charge to any person who wishes to lend money to the company against the security of such property.

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge.

In the given case, City Bakers Limited obtained a term loan from DNB Bank Ltd. by creating a charge on its office building which was duly registered within 20 days from date of creation of charge.

Extension of time may be granted where registration of charge was not effected within the original period of 30 days. In such case, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered within the extended period also, then the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Alternate Answer to this part of question (Extension of Time Limit)

Extension of Time Limit: The original period within which a charge needs to be registered is 30 days from the date of creation of charge. Provisions relating to extension of time limit as under:

(i) **Charges created before 02-11-2018**: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation. **Further**, if the charge is not registered within the extended period of 300 days, it shall be done within six months from 02-11-2018 on payment of prescribed additional fees.

(ii) **Charges created on or after 02-11-2018:** In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If **the** charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

Chapter 7 – Management and Administration

Question 5

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

[RTP Nov 2023]

Answer

Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

Chapter 8 – Declaration and Payment of Dividend

Question 6

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

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

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value Rs. 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits.

In the context of aforesaid case-scenario, please answer to the following question(s):-

(a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amount(s)?

(b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

[RTP Nov 23]

Answer

(a) According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, in terms of Notification No. GSR 465 (E), dated 05-06-2015, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:

In case the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi company for at least 3 months.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows:

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

(i) In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was Rs.100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04.12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b)

A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial year(s) and such arrears of dividend would be payable from the following financial year(s) profits.

Question 7

ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the FY 2021-22, the company declared interim dividend of 10% on the equity shares The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5 th August, 2022, and recommended a final dividend of @15% in this board meeting.

The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act, 2013.

(6 Marks) [May 23]

Answer

Interim dividend: As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively.

Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates (15+20+25=60/3) at which dividend was declared by it during the immediately preceding three financial years. Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend

to be declared shall be given at the rate not exceeding 20%

(ii) **Final dividend:** Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

Question 8

The aggregate value of the paid-up share capital of ABC Security Services, was Rs.200 crore divided into 20 crore equity shares of Rs.10/- each at the end of the Financial Year 2021-22 having its registered office at Mumbai. This company had been registered with an authorized share capital of Rs.300 crore divided into 30 crore equity shares of Rs.10/- each. The extract of Balance Sheet of the company as on 31st March, 2022 showed the following figures:

Particulars	Rs. (Crores)
Authorised Share Capital	300
Issued, Subscribes and Paid-up Share Capital	200
Free Reserves Created out of profits	200
Securities Premium Account	80
Profit & Loss Account (Cr.)	80
Reserves out of Revaluation of assets	25
Misc. Expenditure not written off	10

Turnover of the company during the Financial Year 2021-22 was Rs.800 crore and the net profit calculated in accordance with section 198 of the Companies Act, 2013 with other adjustments as per CSR Rules was Rs.4 crore only.

Praveen, Company Secretary of the company advised that the company attracts the provisions of section 135 of the Companies Act, 2013 and all the formalities have to be complied with accordingly.

Thereafter, on 30th April, 2022 a CSR committee was formed to comply with the provisions of Corporate Social Responsibility. The Board of Directors of the company constituted of the following persons as its directors:

Mohan Singh	Managing Director
Rohit and Bhavna	Independent Directors
Venkatesh, Isha, Mohit and Muskaan	Directors

On the basis of above facts and by applying applicable provisions of Companies Act, 2013, answer the following:

(i) Is the contention of Praveen, Company Secretary of the company that the company attracts the provisions of section 135 of the Companies Act, 2013 and is required to form a CSR committee is correct? Support your answer with the applicable provision and the required calculation.

(ii) It was decided that Mohan Singh, Venkatesh, Isha and Bhavna will be the members of CSR committee. Is this decision correct in the light of provisions of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014?

(6 Marks) [May 23]

Answer

(i) Correctness of the contention and required calculations: 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 (CSR) of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Net worth meaning and calculation: As per the requirement, "Net worth" in the light of the provided particulars calculated as Rs. 520 crore [aggregate value of the paid-up share capital (` 200 crore), all reserves created out of the profits (` 200 crore), securities premium account (` 80 crore) and debit or

credit balance of the profit and loss account (` 50 crore), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off (` 10 crore), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation], Turn over given as Rs. 800 crore and Net profits Rs. 4 crore. Since the net worth is not less than Rs. 500 crore section 135(1) is attracted.

Yes, the contention of Praveen, the Company Secretary is correct w.r.t the constitution of CSR Committee as per the compliance of requirement of section 135 of the Companies Act, 2013.

(ii) **Correctness of constitution of CSR Committee**: As per requirement, Corporate Social Responsibility Committee of the Board shall be consisting of three or more directors, out of which at least one director shall be an independent director. Decision that Mohan Singh, Venkatesh, Isha and Bhavna (Independent Director) will be the members of CSR Committee, is correct.

Chapter 10 – Audit and Auditors

Question 9

Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013.

[RTP Nov 23]

Answer

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.

Question

SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of `10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

(3 Marks) [May 23]

Answer

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the as above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Consequences as regards to Audit firm

Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be

liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Question 10

L Ltd. having 2,000 members with paid-up capital of Rs. 1 crore, decided to hold its Annual General Meeting (AGM) on 21stAugust, 2022. On 2nd July, 2022, 50 members holding paid-up capital of Rs. 6 lakh in aggregate, has given notice of their intention for a resolution to be passed at the Annual General Meeting for appointing Dawar & Co., as its Statutory auditor from Financial Year 2022-23 onwards, instead of its existing Statutory auditor, SNS & Co. which was originally appointed for 5 years term and had completed only 3 years term.

When such notice was received by existing auditors, they sent a representation in writing to the company along with a request for its notification to the members of the company.

In the context of aforesaid facts, answer the following question(s) according to provisions of the Companies Act, 2013:

(i) Whether the said notice was given by adequate number of members and within the prescribed time limit to L Ltd.?

(ii) Whether the company was bound to send such representation to its members made by SNS & Co?

(4 Marks) [May 23]

Answer

(i) **Special Notice:** As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than retiring auditor at an Annual General Meeting requires special notice.

As per section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Rule 23 provides, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

Here, L Ltd. is having 2,000 members with paid-up capital of `1 crore, and it received a notice from its 50 members holding paid-up capital of Rs. 6 lakh, in aggregate, on 2nd July, 2022 for a resolution to be passed at the AGM to be held on 21st August, 2022.

As the members who gave the notice hold more than Rs. 5 lakh in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21st August, 2022, and the notice was given on 2 nd July, 2022 i.e., within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to L Ltd.

[**Note:** In the given question 50 members are holding paid-up share capital of Rs.6 lakh. In fact they are holding more than 1% of total voting power as the paid -up share capital of the company is Rs.1 crore. This can also be considered as fulfillment of the condition. Further, a presumption may be taken that these members are holding equity shares carrying voting rights in absence of any specific information given in the question regarding class of shares.]

(ii) **Representation to members**: Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, —
(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

Yes, as per section 140(4) of the Companies Act, 2013, the company was bound to send the representation made by SNS & Co., to its members.
However, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, a copy thereof shall be filed with the Registrar and the auditor may (without prejudice to his right to be heard orally) require that representation shall be read out at the meeting.

Other Laws

The General Clauses Act, 1897

Question 11

Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?

[RTP Nov 23]

Answer

By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Mrs. Neelu Chandra, director in Laddoo Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Laddoo Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Mrs. Neelu Chandra is bound to comply by section 166 of the Companies Act, 2013.

Question 12

"No shall be prosecuted and punished for the same offence more than once." Explain in the light of provisions of section 26 of the General Clauses Act, 1897.

(3 Marks) [May 23]

Answer

"Provision as to offence punishable under two or more enactments" [Section 26 of the General Clauses Act, 1897]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Even **Article 20(2)** of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.

Provisions of section 26 of General Clauses Act, 1897 read with Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Other Laws
Interpretation of Statutes

Question 13

Explain the meaning of 'Without Prejudice' as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example.

[RTP Nov 23]

Answer

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions, the particular provisions would not restrict or limit the operation and generality of the preceding general provisions.

In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions. Example: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains……"

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Question 14

Explain the Doctrine of Contemporanea Expositio.

(3 Marks) [May 23]

Answer

Doctrine of Contemporanea Expositio

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "Contemporanea Expositio est optima et fortissinia in lege" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.